

PAPERS LAID	
DATE	15/11/2018
TABLED BY	Chairperson
COMMITTEE	Finance & Budget
	11/11/18

# INTERNAL MEMO

SENATE STANDING COMMITTEE ON FINANCE AND BUDGET

**To:** Speaker of the Senate

**Thro':** Clerk of the Senate

**Thro':** Senior Deputy Clerk (EG)

**Thro':** Director, Committee Services

**From:** Principal Clerk Assistant

**Date:** 13<sup>th</sup> November, 2018



*RT. Hon Speaker*  
*You may approve for tabling.*  
*14/11/18*

*Forwarded and recommended*  
*14/11/18*

*Approved*  
*[Signature]*  
*14/11*

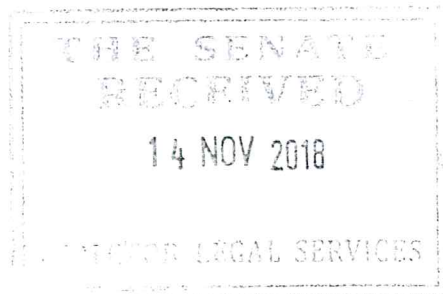
**RE: REPORT ON THE PUBLIC PRIVATE PARTNERSHIP (AMENDMENT) BILL (NATIONAL ASSEMBLY BILLS NO.52 OF 2017)**

The above matter refers.

The standing Committee on Finance and Budget has considered and adopted its report on the Public Private Partnership (Amendment) Bill (National Assembly Bills No.52 of 2017).

The purpose of this memo is to forward for your information, the Report and seek your approval for tabling of the said report to the Senate.

*for* Emmy Chepkwony.





**TABLE OF CONTENTS**

TABLE OF CONTENTS ..... 2

PREFACE ..... 3

    Mandate and Functions of the Committee ..... 3

    Membership of the Committee ..... 4

EXECUTIVE SUMMARY ..... 5

Acknowledgements ..... 6

CHAPTER ONE ..... 8

    Introduction ..... 8

    Overview of the Bill ..... 8

CHAPTER TWO ..... 10

    Submissions from Stakeholders During Public Hearings ..... 10

CHAPTER THREE ..... 15

    Committee Observations and Recommendations ..... 15

APPENDICES ..... 19



## PREFACE

### Mandate and Functions of the Committee

Article 124 of the Constitution of Kenya, provides for the establishment of Committees by either House of Parliament. Committees are central to the workings, roles and functions of Parliament as set out in Article 94 and more specifically in Article 96 of the Constitution as regards the Senate.

Parliamentary committees consider policy issues, scrutinize the workings and expenditure of the national and county governments and examine proposals for legislation. The roles of committees are twofold, investigative process and deliberative process. The end results of these processes are reports to the House in plenary on inquiry of certain issues under the mandate of a particular committee.

*The Standing Committee on Finance and Budget is established pursuant to standing order 218(3) of the Senate Standing Order and is mandated –*

- a) To investigate, inquire into and report on all matters relating to coordination, control and monitoring of the county budgets and to examine –
    - i) the Budget Policy Statement presented to the Senate;*
    - ii) report on the Budget allocated to Constitutional Commissions and independent offices;*
    - iii) the Division of Revenue Bill, County Allocation of Revenue Bill, and cash disbursement schedule for county governments.*
    - iv) to consider all matters related to resolutions and Bills for appropriations, share of national revenue amongst the counties and all matters concerning the National Budget, including public finance and monetary policies and public debt, planning and development policy and**
- b) To pursuant to Article 228 (6) of the Constitution, to examine the report of the Controller of Budget on the implementation of the budgets of county governments.*



## Membership of the Committee

The Committee was constituted by the House on Thursday 14<sup>th</sup> December, 2017, during the First Session of the Twelfth (12<sup>th</sup>) Parliament. The Committee as currently constituted, comprises the following Members-

1. Sen. (Eng) Mohamed M. Mahamud, CBS,MP - Chairperson
2. Sen. (Dr) Isaac Mwaura, CBS, MP - Vice Chairperson
3. Sen. Wetang'ula Moses Masika, EGH, MP - Member
4. Sen. Mutula Kilonzo Junior, MP - Member
5. Sen. Aaron Cheruiyot, MP - Member
6. Sen. (Dr.) Ali Abdullahi Ibrahim, CBS, MP - Member
7. Sen. (Dr) Rose Nyamunga, MP - Member
8. Sen. Boniface Mutinda Kabaka, MP - Member
9. Sen. CPA Farhiya Haji, MP - Member






## Acknowledgements

The Committee acknowledges the Council of Governors, Kenya National Chamber of Commerce and Industry- Uasin Gishu Chapter, The Institute for Social Accountability, (TISA), Uasin Gishu County Executive and members of the public who made insightful contributions and recommendations to the Bill. Further, the Committee thanks the Offices of the Speaker and Clerk of the Senate for the support extended to the Committee in execution of its mandate.

Appreciations to all Members of the Committee for their patience, sacrifice and commitment to public service, which enabled the Committee complete the assigned task within the stipulated time.

It is now my pleasant duty and privilege, on behalf of the Standing Committee on Finance and Budget, to present to the Senate, this Report of the Committee on the The Public Private Partnerships (Amendment) Bill, (National Assembly Bills No. 52 of 2017).

SIGNED:



.....

**SEN. (ENG) MOHAMED M. MAHAMUD, CBS, M.P.**

**(CHAIRPERSON, STANDING COMMITTEE ON FINANCE AND BUDGET)**

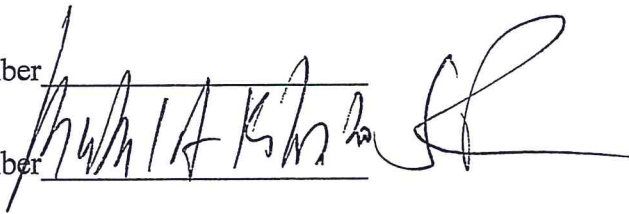
Date: ..... 6 / 11 / 18 .....



Pursuant to standing order 213 of the Senate Standing Orders, the Senate Standing Committee on Finance and Budget Committee adopted the report on The Public Private Partnerships (Amendment) Bill, (National Assembly Bills No. 52 of 2017). The Members of the Committee hereby affix their signatures to this Report to affirm the support for the Report –


Sen. (Eng) Mohamed M. Mahamud, CBS, MP -Chairperson 

Sen. (Dr) Isaac Mwaura, CBS, MP -Vice Chairperson \_\_\_\_\_

Sen. Wetang'ula Moses Masika, EGH, MP - Member 

Sen. Mutula Kilonzo Junior, MP - Member \_\_\_\_\_

Sen. Aaron Cheruiyot, MP - Member \_\_\_\_\_

Sen. (Dr.) Ali Abdullahi Ibrahim, CBS, MP - Member 

Sen. (Dr) Rose Nyamunga, MP - Member 

Sen. CPA Farhiya Haji, MP - Member 

Sen. Boniface Mutinda Kabaka, MP - Member \_\_\_\_\_



## CHAPTER ONE

### Introduction

The Public Private Partnerships (Amendment) Bill, (National Assembly Bills No. 52 of 2017) seeks to amend the Public Private Partnerships Act, No. 15 of 2013 to recognize County Governments as contracting authorities and in particular, to provide for the entry and implementation of public private partnership agreements by County Governments. The Bill regulates the process through which contracting entities engage with private entities in the provision of services and the establishment of facilities through public private partnership agreements

### Overview of the Bill

The Bill seeks to-

- a) provide for recognition of county governments as distinct contracting parties by including them in the definition of a Contracting Authority as under section 2 of the principal Act;
- b) provide for empowerment of the Contracting Authority by granting them the permission to reserve certain projects for disadvantaged groups;
- c) give county governments the mandate to approve the county priority list before submitting the same to the Unit for publication alongside the national government priority list;
- d) provide that the Committee upon receipt of the project lists from the national government contracting authorities and the recommendations of the Unit, it shall consider the lists and submit to the Cabinet, for approval, a national priority list which shall include county approved priority lists of PPP projects that have been submitted to the Unit.
- e) set out expressly the technical expertise that the contracting authority shall have to procure the development, preparation, procurement, contract negotiation and management of a project under the Act. It also provides for the appointment of a transaction advisor to assist a contracting authority that does not have the technical expertise to procure a project under the Act;



- f) provide for a detailed mechanism on the preparation of evaluation report. It provides that the proposal evaluation team may reject all submissions by bidders, prepare a report stating the reasons for the rejection and then submit the report to the accounting officer. Further, it provides that a bidder whose bid has been rejected shall not be entitled to compensation and that where all bids have been rejected, the contracting authority may start a new tender process; and
- g) provide for the procedure for county government public private partnership projects. It gives a county government a right to enter into a public private partnership agreement and that it shall be responsible for the administration of the overall project development cycle. It further provides that where a county government intends to enter into public private partnership agreements, it shall cause user departments or county corporations, as the case may be, to prepare project proposals for approval at the county government level, detailing the strategic and operational benefits of entering into such agreement.





## CHAPTER TWO

### Submissions from Stakeholders During Public Hearings

This Chapter presents the submissions from various stakeholders. It highlights the views and recommendations of the public submitted during the public hearings held on Thursday, 27<sup>th</sup> September, 2018.

#### 1. Council of Governors – COG

The Council was represented by Hon. Jackson Mandago, Governor, Uasin Gishu County. The council submitted as follows-

- a) There was need for the law to differentiate county governments' and national government's PPPs processes.
- b) 54A(2) should be amended by deleting the statement after the word unit- this is because there was an already established system of approval of PPP projects under the PPP Act.
- c) 54(5) (b) should be deleted to eliminate ambiguity since PPP engagements must show value for money and there was no need for considering affordability.
- d) 54(6) –amend to provide that the CS shall make regulations in consultations with county governments- the spirit of Article 6(2) of the Constitution.

Addition proposals to amend the Act

- a) Amend section 24(3) by adding 'in consultation with the county governments through the Council of Governors' immediately after the Cabinet Secretary...'
- b) Section 4- the composition of PPP Committee does not include representation from the county governments. It should be amended to reflect the two levels of government
- c) The Act should be amended to separate the provisions on approval of County PPPs from the National Governments PPPs. A replica of the format used in drafting of the PFM Act, 2012.



## **2. Uasin Gishu County Executive**

The Uasin Gishu Executive led by CPA Julius Kipletting– CECM Finance and Economic Planning made submission as follows-

- a) The law should simplify the PPP process to enable counties undertake projects under PPPs;
- b) The bill should decentralize PPP committees and PPP units to county levels;
- c) There should be provisions on the training of personnel on PPP management and negotiation;
- d) The bill should allow county assemblies to be involved in approval of PPP projects;
- e) The law should recognize and take advantage of different PPP models like BOT, OBFM, BOO, DFMO and OMT.  
BOT- Build Operate and Transfer,  
BOO - Build, Own and Operate,  
DFMO – Design, Finance, Manage and Operate, and  
OMT- Operate, Maintain and Transfer.
- f) There was need for measures on which the government may support waiver and concessions.
- g) The composition of the PPP committee should reflect the two levels of governments.
- h) The CS should consult county governments when making PPP regulations.
- i) There was need to have a law that will protect the investors especially at the point of transition of county governments.

## **3. Uasin Gishu County Assembly Budget and Appropriations Committee**

The County Assembly represented by the Chairman, Budget and Appropriations Committee made presentation as follows-



- a) Clause 8 should be amended since the process was long and tedious: the process required to be shortened. Further, there was need to separate the approval of county government PPPs engagement from national government PPPs.
- b) Clause 14- the term 'Accounting officer' was introduced but was not defined in clause 2.
- c) Clause 16 – 54(A)
  - (3) the person responsible for task was not indicated
  - (5)(b) Accessing CS National Treasury for approval will be difficult and may create a barrier to PPP engagements

**4. Kenya National Chamber of Commerce and Industry (KNCCI) – Uasin Gishu County Chapter.**

The Vice Chair informed the Committee that-

- a) The bill did not provide any preference to local investors who may wish to engage in PPP Projects.
- b) The local investors have difficulties in accessing information on PPPs yet the law did not provide mechanisms on how such information may be availed to local business community.
- c) The approval process was lengthy; yet there was need to have pro-business legislations to ensure improved ease of doing business and attraction of investors.
- d) There should be a threshold on which PPP projects the county governments may approve and engage while the rest may be left for the national government approval.
- e) The bill should be amended to include a member representing the business community in the PPP Committee.



## 5. Uasin Gishu County Juakali Welfare Association

The representatives made presentation that-

- a) The County governments County Integrated Development Plans (CIDP) had flagship projects which were expensive for the county government to implement in short run. Thus, PPPs would be useful in achieving such projects.
- b) There should be a threshold on which PPP projects county governments may engage in while very expensive projects would be left for the national government to engage.

## 6. Dr. Daniel Mutegi, PhD Candidate in Urban Management, University of Nairobi

In his memorandum, he proposed that-

- a) Clause 54A be amended to provide that the Senate will have a say on the PPP projects since it represents the interests of counties.
- b) Clause 54A(2) be amended to allow counties form a County PPP unit to articulate county PPP issues.
- c) Clause 54A(6) be amended to provide that the Cabinet Secretary will consult the Council of Governors and the Senate when making Regulations.

He further proposed that-

- a) the PPP Unit at the National Treasury should come up with strategies, programmes and budgets for PPP capacity building in the counties, which should be shared with the Senate and Council of Governors.
- b) section 12(3) of the principal Act be amended to broaden the qualifications of the Director PPP to include professional from the built environment.
- c) section 14 of the Act be amended by inserting “to conduct project viability analysis; undertake social worthiness and rationale for any proposed project”
- d) Part X of the Act on the financial provisions should be broadened as regards sources of funds- government should set up a PPP facilitation fund which is bigger than the annuity funds or the project facilitation fund. PPP projects to have a 1% of the annual budget to the effective operationalization of PPPs in all sectors. Money appropriated to counties be retained at the National Treasury to be factored into county PPP programmes for those counties.





- e) There should be a proviso in the law to provide for capacity building of contracting authorities and counties. PPP Unit of the National Treasury to come up with strategies, programmes and budgets for PPP capacity building in the counties. The same be shared with the Senate and CoG.
- f) The PPP Policy 2011 be reviewed to align it to the Constitution

#### **7. The Institute for Social Accountability – TISA**

In their memorandum, they proposed that the principal Act be amended to provide for-

- a) Access to information provisions in the PPP implementation cycle from the PPP Committee, Unit and nodes. They indicated that there was no consideration for public input in PPP processes and arrangement. The provisions for information are tokenistic and insufficient in view of Article.
- b) Public participation in the development and finalization of the project priority list at the national and county government. The principal Act has no provision for public participation in PPP whereas Public participation is an unequivocal right.
- c) Public participation prior to a determination being made on feasibility studies by national and county governments of potential PPP projects. Public participation ought to educate the citizens on contracting authority's and private entity's contribution to the PPP venture, value for money consideration, arrangements for revenue sharing on user fees. User fees paid by the public must be predictable and constrained in a manner that protects public interest
- d) Mandate of the Committee to make a determination on the sufficiency of the degree of public participation and access to information conducted by the Unit.
- e) PPP projects to be aligned to national and county government planning processes and the Unit to ensure that PPPs approved for implementation are reflected in the BPS and CFSP.

They argued that the proposed amendment seeking to reduce the role of PPP Committee in the process undermines accountability in the national government in matters concerning PPPs especially the replacement of the PPP Committee with the Unit in project identification, selection and prioritization.



## CHAPTER THREE

### Committee Observations and Recommendations

#### Observations

During the consideration of the Bill, the Committee observed that-

- a) Clause 2
  - The definition of contracting authority at county level should refer to county entities and not county corporations.
  - The definition of transaction advisor should be a person appointed in writing preferably retain the definition in the Act’.
- b) Clause 7, the requirement for ‘contracting authority’ to reserve certain projects for disadvantaged groups may be untenable.
- c) Clause 8 should be redrafted to ensure/ reflect clearly the channel of approval of PPP projects. Further, county government PPP projects should be subjected to approval of the county executive committee.
- d) Clause 14
  - (2) should be deleted as it is superfluous
  - (3) necessitates the need to define ‘Accounting officer’ in clause 2
  - (6) required redrafting for clarity purpose.
- e) Clause 16 insertion of 54B was not necessary- should be deleted
- f) Clause 19 should be amended so as to provide-
  - (a)(ii) (b) six persons with relevant knowledge, skills and experience.
  - (a)(iii) two persons of either gender with relevant knowledge, skills and experience.



## **Recommendation**

The Committee recommends that the Senate approves the Public Private Partnership (Amendment) Bill (National Assembly Bills No. 52 of 2017) with following amendments-

### **CLAUSE 7**

**THAT** the Bill be amended by deleting clause 7.

### **CLAUSE 8**

**THAT** clause 8 of the Bill be amended-

- (a) in paragraph (a), in the proposed new proviso, by deleting the words “county government” appearing immediately after the words “approval by the” and substituting therefor the words “county executive committee”;
- (b) by inserting the following new paragraph immediately after paragraph (b)-
  - (c) in subsection (3) by inserting the words “in consultation with the Council of County Governors” immediately after the words “the Cabinet Secretary shall”.

### **CLAUSE 12**

**THAT** clause 12 of the Bill be amended in the proposed new subsection (1) by deleting the word “in consistence” appearing immediately after the words “this Act and” and substituting therefor the word “consistent”.

### **CLAUSE 16**

**THAT** clause 16 of the Bill be amended -

- (a) in the proposed new section 54A-
  - (i) by deleting subsection (2) and substituting therefor the following new subsection-
    - (2) Where a county government intends to enter into a public private partnership agreement, it shall cause its user department or county entity, as the case may be, to prepare a project proposal for approval by the respective county executive committee, detailing the strategic and operational benefits of entering into such an arrangement.



- (ii) by deleting the words “County government” appearing immediately after the words “approved by the” and substituting therefor the words “county executive committee or county assembly” appearing in the introductory phrase to subsection 5.

(b) in the proposed new section 54B by deleting subsection (2).

#### CLAUSE 19

THAT clause 19 of the Bill be amended in paragraph (a) by-

- (a) inserting the word “relevant” immediately after the words “persons with such” appearing in the proposed new paragraph (a)subparagraph (ii);
- (b) inserting the word “ having relevant experience and knowledge” immediately after the words “opposite gender” appearing in the proposed new paragraph (ba) subparagraph (iii);

#### NEW CLAUSES

THAT the Bill be amended by inserting the following new clause immediately after clause 4-

Amendment  
of section 18  
of No. 15 of  
2013.

4A. Section 4 of the principal Act is amended in subsection (1) by-

- (a) inserting the following new paragraph immediately after paragraph (f)-
  - (fa) three persons nominated by the Council of County Governors;
- (b) deleting the word “four” appearing immediately before the words “persons not being” and substituting therefor the words “two” appearing in paragraph (g);
- (c) insert the words “and infrastructure” immediately after the words “responsible for transport” in paragraph (i); and
- (d) deleting paragraph (j).

THAT the Bill be amended by inserting the following new clause immediately after clause 5-

Amendment  
of section 18  
of No. 15 of  
2013.

5A. Section 18 of the principal Act is amended by inserting the following new subsection immediately after subsection (2)-





(3) A contracting authority under subsection (1) shall ensure that it facilitates public participation on a project that it intends to finance, operate, equip or maintain.

## CLAUSE 2

THAT clause 2 of the Bill be amended-

- (a) in paragraph (a) in the proposed new definition of the term “contracting authority” by deleting the word “corporation” appearing immediately after the words “government or county in sub-paragraph (ii) and substituting therefor the word “entity”;
- (b) by deleting paragraph (b);
- (c) inserting the following new definitions in their proper alphabetical sequence-
  - “accounting officer” means in the case of-
    - (a) a national government entity, the person designated as an accounting officer by the Cabinet Secretary responsible for finance in accordance with the provisions of the Public Finance Management Act;
    - (b) the Parliamentary Service Commission, the Clerk of the Senate in accordance with the provisions of the Public Finance Management Act; and
    - (c) the National Assembly, the Clerk of the National Assembly in accordance with the provisions of the Public Finance Management Act; and
    - (d) a Constitutional Commission, institution or Independent Office the person responsible for the administration of the Commission or institution or Independent Office in accordance with the provisions of the Public Finance Management Act.
    - (e) a county government entity, the person responsible for the administration of the county government entity in accordance with the provisions of the Public Finance Management Act;
    - (f) a county assembly, the clerk of the county assembly in accordance with the provisions of the Public Finance Management Act;
    - (g) the Judiciary, the Chief Registrar of the Judiciary in accordance with the provisions of the Public Finance Management Act;



## APPENDICES

- (a) Submissions
- (b) Minutes of the Committee sittings





**COUNCIL OF GOVERNORS**

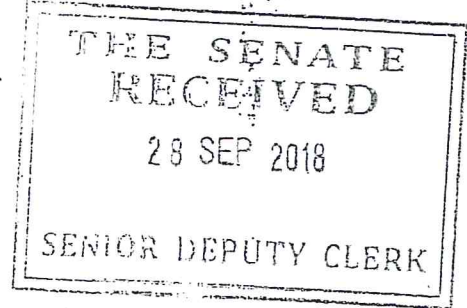
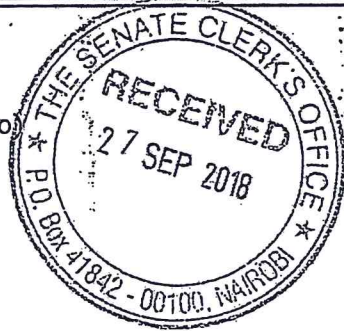
Westlands Delta House 2<sup>nd</sup> Floor, Waiyaki Way.  
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Our Ref. COG/6/50/1A Vol. 4 (30)

26<sup>th</sup> September, 2018

Mr. Jeremiah Nyegenye, CBS  
The Clerk of the Senate  
Parliament Buildings  
**NAIROBI**



Dear Mr. Nyegenye

LETTER FORWARDING THE LEGISLATIVE MEMORANDUM ON THE PUBLIC PRIVATE PARTNERSHIP BILL, 2017

The above matter refers.

The Council of Governors appreciates that in realizing the objects of Devolution, the principles of consultation and cooperation under Article 6(2) and Article 189 of the Constitution are inevitable.

Based on these principles, the Council of Governors has reviewed the Public Private Partnership (Amendment) Bill, National Assembly Bill No. 52 of 2017 and would like to forward for your consideration the following legislative memorandum attached herewith.

Yours sincerely

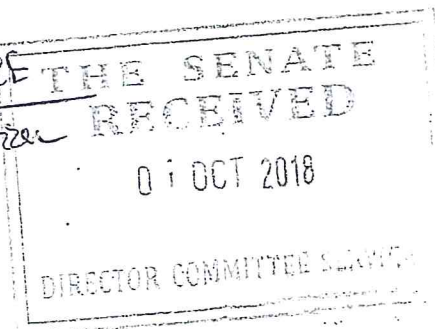
Jacqueline Mogeni  
Chief Executive Officer

① Dcom

For the Committee.

EP 28/09/18

② PCS - Finance and Budget  
Please bring to the attention  
of the Committee  
officers



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**COUNCIL OF GOVERNORS**

**LEGISLATIVE MEMORANDUM ON THE PUBLIC PRIVATE PARTNERSHIPS  
(AMENDMENT) BILL, 2017**

**To**

**THE NATIONAL ASSEMBLY**

**From**

**THE COUNCIL OF GOVERNORS**

**MEMORANDUM ON THE PUBLIC PRIVATE PARTNERSHIPS (AMENDMENT) BILL, 2017**

The Council of Governors,

In recognition of Article 1(4) of the Constitution of Kenya, that sovereign power of the people is exercised at the national level and the county level;

In further recognition of Article 6 (2) that governments at the national and county levels are distinct; and

Aware of the need for coordination and consultation between the National Government and County Governments to ensure that legislation responds to the key issues facing devolution, and further reflects the spirit and objects of devolution.

The Council hereby notes as follows on the Public Private Partnerships (Amendment) Bill, 2017:

**Comments on Specific provisions**

Section No.	Provision of Section in the Bill	Proposed Amendment	Justification for amendment and recommendation
12. The principal Act is amended by inserting the following new section immediately after section 54—	12. The principal Act is amended by inserting the following new section immediately after section 54—  54A. (2) Where a county government intends to enter into a public private partnership arrangement, it shall cause its user departments or county corporations, as the case may be, to prepare and submit a project proposal to the Unit for consideration and recommendation detailing the strategic and operational benefits of entering into such an arrangement.	Amend Section 54A (2) to read as follows; “(2) Where a county government intends to enter into a public private partnership arrangement, it shall cause its user departments or county corporations, as the case may be, to prepare and submit a project proposal to the Unit.”	1. Section 6(3) of the County Governments Act stipulates that a County Government has power to enter into partnerships with any public or private organization. 2. There is already an established system of approval under the Act for PPP Projects. As such issues of Consideration and recommendation for PPP is solemnly mandated to the Committee.



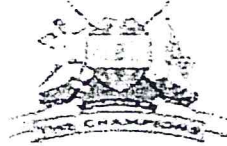
<p>12. The principal Act is amended by inserting the following new section immediately after section 54—</p>	<p>(5) A county government shall implement a public partnership project if the project—  (a) provides value for money;  (b) is determined to be affordable; and  (c) ensures appropriate risks are transferred to the private party.</p>	<p><b>Amend Section 54A (5) to read as follows;</b>  (5) A county government shall implement a public partnership project if the project—  (a) provides value for money; and  (b) ensure that in the event of risk, the same shall be borne by the private party.</p>	<p>The proposed amendment in subsection 5(a) provides that that PPP engagements must show value for money therefore, affordability is subsection 5(b) is ambiguous and will restrict County Governments to engage private institutions.</p>
<p>12. The principal Act is amended by inserting the following new section immediately after section 54—</p>	<p>(6) The Cabinet Secretary may make regulations for the better implementation of public private partnership arrangements, including—  (a) projects that may be undertaken by county governments;  (b) the thresholds of contingent liabilities that may be approved for such projects; (c) the management of the public private partnership procurement processes by county governments; and  (d) the negotiation of project terms by County governments.</p>	<p>The Cabinet Secretary in consultation with County Governments may make regulations for the better implementation of public partnership arrangements.</p>	<p>In the spirit of Article 6 (2) of the Constitution the regulations should be made in consultation with County Governments. In addition, section (a) – (d) should be deleted as the same should be included in the regulations and not the Act.</p>

Other Recommendations to the Principal Act

1. We propose the amendment of Section 24(3) of the principal Act by adding "in consultation with County Governments through the Council of Governors" immediately after "The Cabinet Secretary..."
2. Section 4 of the Principal Act establishes the PPP Committee which does not include County representation. The Section should therefore be amended accordingly to ensure that there is 50/50 representation by both levels of government.
3. The Council further proposes that the National Assembly and the Senate enacts two legislation on Public Private Partnership arrangements one for the National Government and for County Governments as the case in the Public Financial Management Act. The purpose is to bring clarity on both levels of Governments the approval process and assist both levels of Governments in executing PPP arrangements.

*Unless  
delivered  
2/12/2015*

REPUBLIC OF KENYA



COUNTY GOVERNMENT OF UASIN GISHU

THE COUNTY TREASURY

OFFICE OF THE COUNTY EXECUTIVE - FINANCE AND ECONOMIC PLANNING

Email: [cecfinance@uasingishu.go.ke](mailto:cecfinance@uasingishu.go.ke)

Website: [www.uasingishu.go.ke](http://www.uasingishu.go.ke)

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Finance and Economic Planning Office.

P O Box 40-30100

**ELDORET**

when replying quote Ref No: UGC/FIN EP/SENATE/VOIT/3

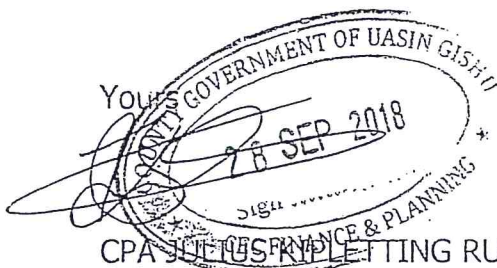
28<sup>th</sup> September, 2018

The Clerk to Senate  
Parliament Buildings  
P.O. Box 41842-00100  
**NAIROBI**

Dear *Clerk*

**SUBJECT: LETTER FORWARDING THE LEGISLAIVE MEMORANDUM ON  
THE PUBLIC PRIVATE PARTNERSHIP BILL, 2017**

Based on the principles of devolution as per Article 6(2) and article 189 of the constitution. The County Government of Uasin Gishu wishes to forward for your consideration the following legislative memorandum attached herewith.



CPA JETUSIPLETING RUTTO  
CECM-FINANCE AND ECONOMIC PLANNING  
**COUNTY GOVERNMENT OF UASIN GISHU**



**REPUBLIC OF KENYA**



**COUNTY GOVERNMENT OF UASIN GISHU**

**MEMORANDUM ON THE PUBLIC PRIVATE PARTNERSHIP  
(AMENDMEND BILL), 2017**

**TO: SENATE ASSEMBLY**

**FROM: COUNTY GOVERNMENT OF UASIN GISHU**



## **Legislative memorandum on public private partnership Bill 2017**

In recognition of Article 6(2) that governments at the National and County levels are distinct and aware of the need for co-ordination and consultation between the National Government and County Governments: The County Government of Uasin Gishu request the following inclusion in the bill:

- Simplify the process of PPP to enable Counties undertake projects under PPP
- Revolution of PPP committees and PPP units to county levels
- Training of personnel on PPP management and negotiation.
- The act should take advantage of PPP models e.g. BOT, OBFM,BOO,DBFMO and OMT

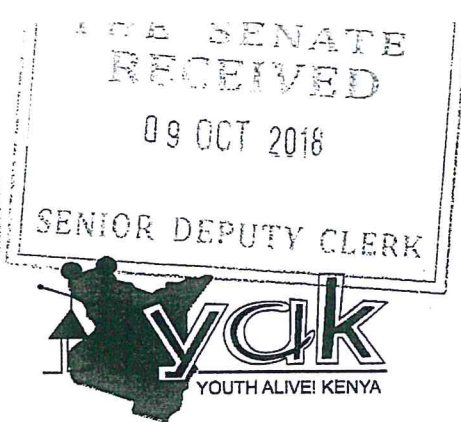




Please deal.  
G. Ndeda, Fw: SAC - CA  
11/10/18

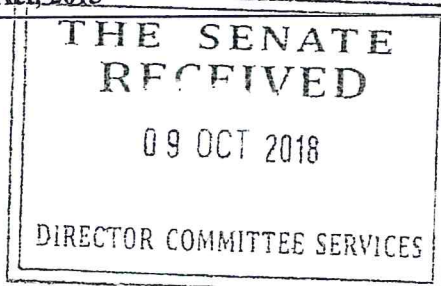


The Institute for Social Accountability



**Memorandum on the Public Private Partnerships (Amendment) Bill 2017 (No. 52 of 2017) and Review of the Public Private Partnerships Act, 2013**

**To:**  
Jeremiah Nyegenye,  
Clerk of the Senate,  
Main Parliament Building,  
P. O. Box 41842 – 00100,  
Nairobi.



① Mr. Kenani Shikhi  
Please deal  
11/10/18  
② Ms. Emily Gitonga  
Please deal  
12/00/18

**Cc:**  
Chairperson,  
Senate Standing Committee on Finance and Budget,  
Main Parliament Building,  
P. O. Box 41842 – 00100,  
Nairobi.

5<sup>th</sup> October 2018

**Introduction**

Public Private Partnerships offer a convenient resource base for financing infrastructure projects and service delivery, and thus PPP arrangements must accord with Constitutional principles including the objects of devolution as provided in *Article 174* and, to the extent that is applicable, Public Finance as provided in *Article 201*. Whereas the bill is progressive in that it seeks to make provisions for the recognition of County Governments as distinct authorities for public private partnerships, and also requires contracting authorities to reserve certain projects for disadvantaged groups, the *Public Private Partnerships Act, 2013* requires further review in order to provide for the following additional issues:

**1. Public Participation and access to information (disclosure requirements for PPPs) in Public Private Partnership**

**a. Access to information**

Because there is no consideration for public input in PPP process and arrangements, the provisions for information are tokenistic and insufficient in view of *Article 35* of the Constitution. *Article 235* of the Constitution also provides for transparency and provision of accurate information to the public as among the values and principles of public service. There must be access to information provisions in the PPP implementation cycle depending on the stage of PPP project proposal and subsequent consideration, from the PPP Committee, Unit and nodes as well as from the negotiating committee to ensure that the public informed as a measure of accountability.

## **b. Public Participation**

It is noteworthy that the principal Act has no provisions for public participation in matters concerning Public Private Partnerships. This is contrary to *Article (1)* that provides all sovereign power belong to the people of Kenya, *Article 10 (2) (a)* on Public participation as among the national values and principles of governance, *Article 69* on participation on matters concerning the environment. *Article 174 (c)* and *(d)* outline the objects of devolution to include enabling participation of the people in the exercise of state powers and recognizing the right of communities to manage their own affairs respectively. *Article 184* provides for the participation of residents in urban areas and cities and *Article 201* provides for public participation in financial matters. *Article 232* provides for the participation of the people in policymaking and accountability for administrative acts.

Consequently, Public Participation in Public Private Partnership is an unequivocal right and the *PPP Act* should make the necessary provisions to enable meaningful public engagement in the PPP implementation cycle including but not limited to:

- ✓ **Public Participation in the development and finalization of project priority list at the National and County government level to be financed by way of PPP arrangements**

In the principal Act provisions should be made for public participation in the development of priority lists for PPPs at both the National, and County level.

Public participation is crucial because

- a. Public participation forums ought to educate the citizens on the contracting authority/government contribution to the PPP venture, contribution of the private entity, provide a brief on value for money considerations that inform the PPP and any other consideration depending on the nature of the PPP venture and agreement between the government and the private entity.
- b. The Public must also be informed on any arrangements for revenue share between the national and or county government and the private entity on user fees collected from the operation and maintenance of the project/service as applicable.
  - i. In relation to the above, the public must also be informed on arrangements taken to ensure that any user fees to be paid by the public are predictable and constrained in a manner that ensures private interest will not override the public interest considerations in view of operation and maintenance arrangements of projects. Such arrangements may include a requirement of user fee compliance to consumer price index or any other index as applicable.

- ✓ **Public participation prior a determination is made on feasibility studies by National and County governments of potential PPP projects**

Section 33 of the principal Act provides that a contracting authority in conjunction with the Unit to undertake a feasibility study on the PPP project the authority intend to implement under a public private partnership. Section 34 of the Act thereafter provides that the authority shall proceed to develop a report in a prescribed form.

The report format should ensure that sufficient information is provided to enable the public form informed opinions on the feasibility of proposed PPP projects.

Further, the Unit must undertake civic education and public participation based on the feasibility study report, include the views of the people, and transmit public views to the committee together with the feasibility study report for their consideration.

The Act should mandate the committee to make a determination on the sufficiency of the degree of public participation and access to information conducted by the Unit.

## **2. Linkages between PPP projects and the Budget Policy Statement (BPS) and the County Fiscal Strategy Paper**

To make certain that PPP projects are aligned to National and County government planning process, the principal Act should specifically mandate the PPP Unit to ensure that PPPs approved for implementation are reflected in the BPS and the CFSP.

## **3. PPP Committee**

The proposed amendments to the PPP Act that seek to reduce the role of the Public Private Partnership Committee in the PPP process undermine horizontal accountability in the National Government in matters concerning Public Private Partnerships specifically the replacement of the PPP Committee with the PPP Unit in project identification, selection and prioritization.

### **In conclusion**

Whereas the bill seeks to strengthen the principal Act in view of the recognition of County Governments in undertaking public private partnerships, the lack of provisions for public participation in the Act underpins questions on the Constitutionality of the Act.

The Government of Kenya Policy Statement on Public Private Partnerships (November 2011) further emphasizes that public entities should consult stakeholders throughout the project cycle to ensure that the PPP projects addresses their needs. The policy identifies key stakeholders in PPP as trade unions, the public, local communities, sectoral interest groups the people who will use the assets and services provided.

In addition to the above, the policy recognizes the fact that the success of a PPP program requires widespread public support thus the need for the development of a communication and awareness strategy for each PPP project particularly information on the economic and social benefits, implementing private party, financing structure and duration.

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For further information, please contact us at

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Tel: +254 20 4443676  
[www.tisa.or.ke](http://www.tisa.or.ke)

[info@youthalivekenya.org](mailto:info@youthalivekenya.org)  
Tel: +254 20 2052494  
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Submissions on the PPP laws amendment, NA Bill no. 52 of 2017

From : Daniel Mutegi Giti <mutegigiti@gmail.com>  
Subject : Submissions on the PPP laws amendment, NA Bill no. 52 of 2017  
To : csenate@parliament.go.ke

Fri, 21 Sep, 2018 11:32  
1 attachment

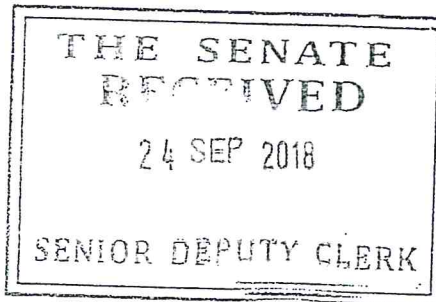
I am Daniel Mutegi Giti and hereby submit my written submissions on the above bill. Thank you so much for offering a chance for public participation on the same.

—  
Daniel Mutegi Giti  
PHD Candidate in Urban Management, University of Nairobi  
Senior Housing Officer,  
Ministry of Transport, Infrastructure, Housing and Urban Development  
Tel; +254726295038  
E-mail: [mutegigiti@gmail.com](mailto:mutegigiti@gmail.com)

① DCom  
For the Committee.

Submissions to the Senate of Kenya on the PPP laws amendments 2018.pdf  
2 MB

EP  
25/09/18



@P/Clerk Assist - Finance & Budget  
Please bring to the attention of the  
Committee  
25/09/18



**SUBMISSIONS TO THE SENATE ON THE PUBLIC PRIVATE PARTNERSHIP, NATIONAL ASSEMBLY BILL. NO .52 OF 2017:**

**I support the ongoing efforts by Parliament to make PPPs applicable in Kenya in all sectors of the economy.**

**Introduction:**

The private sector all over the world has participated in many public infrastructure projects over the last three decades or so. Private sector participation in such programmes has also been called Private Finance Initiative (PFI) and Public Private Partnership (PPP) but the latter is the more commonly used term when referring to such arrangements. These ventures are built on the expertise of each of the partner that best meets the clearly defined public needs. This is done through the appropriate allocation of resources as per needs, risks and rewards. Kenya has a long history of attracting private developers in many sectors of the economy since 1950's, when the Nyali Bridge was done as the 1<sup>st</sup> PPP project.

Private sector has since time immemorial participated in many public infrastructure projects. Private Sector was responsible for the development of infrastructure and other services in the Babylonian, Mede-Persian, Roman, Greek, British Empires since 1700's B.C. Governments have been using traditional procurement methods of contracting private parties for such undertakings, which limits private party to project design and construction. Through PPPs private contractors go beyond design and construction to cover management and maintenance aspects which are critical in the life of an infrastructural facility.

**What are the advantages of PPPs?**

Governments all over the world are faced with challenges of scarce public funds to meet the increasing demand for modern infrastructure facilities; while at the same time performing other duties expected of modern welfare governments. There arose the need to engage the private sector in providing infrastructure for public services for a variety of reasons: Lack of public funds to finance the wide array of such services; Application of modern technology





in infrastructure provision; introduction of efficient and effective management skills in the public infrastructure facilities; focus of the government entities shifts from concentration on the process or the inputs to the outcomes and hence services availability to citizens; risk transfer to private parties which incentivizes the private party to be innovative, factor in maintenance of infrastructure during design and construction hence reducing cost of maintenance and hence services are offered longer than in normal procurement systems; PPP projects are contracted as one bundle involving design, finance, construction, operation and maintenance, which offers room for innovative designs and implementation methods which eliminates lots of wastages, ensures assets are fully utilized and that there are cost savings. PPPs lead to improved quality and quantity of infrastructure services.

PPPs will lead to better project outcomes; it brings a wide range of actors together in a framework that leads to provision of infrastructure; PPPs help governments to leverage on nontraditional sources of capital, expertise and market based approaches of the private sector; and finally, PPPs are a panacea for financing and construction of major infrastructure projects. The Private sector has a rich managerial, efficiency, financial, technological and structuring of projects knowhow that government can leverage. The public sector can offer incentives and an enabling environment for private sector engagement.

Developed nations have embraced PPPs because of the need for development of a myriad of projects. Public entities would work with the private entities in developing, managing and providing public services to the people. Private entities participation in the country will reduce the burden on government funds that are mostly inadequate. The PPPs may apply the Build Own Operate Transfer (BOOT) Model in such a project or as may be decided from the many models applicable. The Private sector comes in to bridge the government financing gap using a variety of PPP models. In simple terms, PPPs are an answer for the state budgetary constraints.



### **What is the business case for PPPs in Kenya?**

Kenya has established and made the right economic, political and institutional arrangements to operationalize PPPs. From the 2005 passage of the Privatization Act that allowed the legal participation of the private sector in service provisions; enactment of the Public Procurement (Public Private Partnerships) Regulations 2009 that operationalized Public Private Partnerships in the country; in 2011, the Government came up with the Public Private Partnerships Policy that for the first time showed its commitment to the use of PPPs to deliver critical and vital services to the citizenry. In the Policy, the government was telling the private sector that contracts will be honoured, services rendered will be compensated and there is political will and support for PPPs. In 2013, the Public Private Partnerships Act, 2013 institutionalized and anchored PPPs in the law and capped efforts of the government to tap into private sector. County Governments Public Private Partnerships regulations 2014 have been enacted. The other laws like Urban Areas and Cities Act, 2011 and County Governments Act, 2012 among other laws have embedded PPPs provisions.

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~~What is needed to update some of these laws and make them respond to the~~  
ever evolving international and national development contexts. The amendment of the PPP law by the Senate is therefore timely as new information and legislation processes will lead to better outcomes in implementing PPPs for our betterment.

### **Why PPPs and not Privatization?**

PPPs arrangements are not equivalent to the privatization. Privatization doctrines have been with the world for a while and it was realized that privatization made governments to lose total control of national assets. Privatization has in many respects been scaled down and PPPs have been embraced, because under PPP models, do not lose control of such national assets.



## **Proposals for consideration in this Act by Senate:**

### **Proposals on the main PPP Act, 2013**

1. The PPP unit established by part III of the Act should have its capacity built to handle many PPP projects which are anticipated under the new regimes. The qualifications of the Director PPP unit in s.12 (3) should be broadened to include professionals from the Built Environment; the functions of the PPP unit in s. 14 should include to “conduct project viability analysis; and also undertake social worthiness and rationale for any proposed project”; the sector diagnostic study anticipated by s.20 should also address project viability and social rationale for proposed projects.

- Projects submitted and entered into the PPP project pipeline at the national level should be exposed to some level of public debates, comments should be obtained from the public. State departments should prepare green and white papers on the likely PPP projects to provoke discussions on the same. This will ensure projects have wide acceptance.

b. Part X on the Financial Provisions should be broadened as regards sources of funds; for adequate and long term execution of projects, the government should set up a PPP facilitation fund which is bigger than the annuity funds for example or the project facilitation fund launched in 2017. This PPP project funds should have a 1% of the annual budget dedicated to effective operationalization of PPPs in all sectors. The sources of funds can in addition include contributions from Charity, High net worth individuals, International PPP supporting programmes. This will allow for the government to plan on long term basis for PPP projects.

- Part of the monies appropriated to counties should be retained, in consultation with counties, at the National Treasury to be factored into county PPP programmes of those counties. This means this fund can grow such that within 4 years of existence, it can fund any proposed project.



2. We need to have a section to deal with building capacity of the contracting authorities and counties. The PPP laws are in place but capacity to transact or implement the PPP projects is the major challenge.
3. The PPP policy of 2011 should be reviewed to conform with the Constitution of Kenya 2010;

**Proposals on the National Assembly Bill 2017:**

The proposals in the bill are perfect with some modifications as exemplified herein

1. Section 54A should also include a section where the Senate can have a say on the PPP projects pipeline since it represents the interests of counties. This will ensure counties submit reasonable projects with a wider coverage at the county level, and which have undergone a thorough public debate before submission. Counties should prepare local green and white papers on the likely PPP projects for the public inputs and comments;
2. Section 54A (2), Counties should form a county PPP unit to articulate county PPP issues

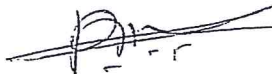
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3. ~~Section 54A (6), in making regulations for county PPPs implementation,~~  
the CS should consult the Council of Governors and Senate for inputs
  4. The PPP unit based at the National treasury should come up with strategies, programmes and budgets for PPP capacity building in the counties, which should be shared with Senate and Council of Governors.

Thank you in advance,

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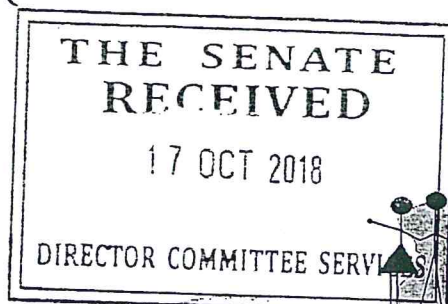
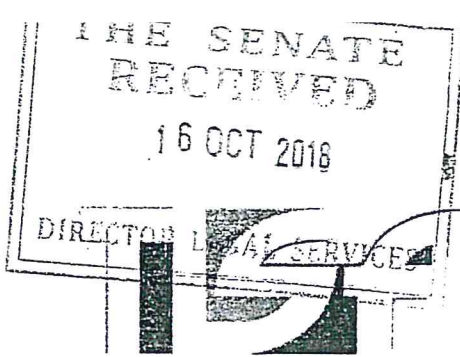
**Contacts:**

Daniel Mutegi Giti, PhD Candidate in Urban Management, University of Nairobi, (Thesis title: applicability of PPPs in down market urban housing in Kenya), PPP expert.  
Mobile: 0726295038  
Email: [mutegigiti@gmail.com](mailto:mutegigiti@gmail.com)



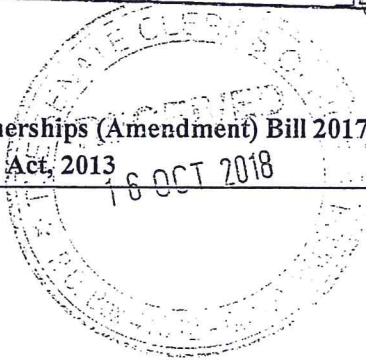






The Institute for Social Accountability

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Jeremiah Nyegenye,  
Clerk of the Senate,  
Main Parliament Building,  
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Cc:  
Chairperson,  
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5<sup>th</sup> October 2018

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① Dcom  
DLS  
Not and deal.  
16/10/18  
② Clerk Assistant  
Finance Committee  
please deal  
17/10/18



#### **b. Public Participation**

It is noteworthy that the principal Act has no provisions for public participation in matters concerning Public Private Partnerships. This is contrary to *Article (1)* that provides all sovereign power belong to the people of Kenya, *Article 10 (2) (a)* on Public participation as among the national values and principles of governance, *Article 69* on participation on matters concerning the environment. *Article 174 (c)* and *(d)* outline the objects of devolution to include enabling participation of the people in the exercise of state powers and recognizing the right of communities to manage their own affairs respectively. *Article 184* provides for the participation of residents in urban areas and cities and *Article 201* provides for public participation in financial matters. *Article 232* provides for the participation of the people in policymaking and accountability for administrative acts.

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### **In conclusion**

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**MINUTES OF THE 54<sup>TH</sup> MEETING OF THE SENATE STANDING COMMITTEE ON FINANCE & BUDGET HELD ON THURSDAY, 27<sup>TH</sup> SEPTEMBER, 2018 AT TOWN HALL, UASIN GISHU COUNTY EXECUTIVE HEADQUARTERS, ELDORET AT 10.00 AM.**

**PRESENT**

1. Sen. (Eng) Mohamed M. Mahamud, CBS, MP - Chairperson
2. Sen. CPA Farhiya Haji, MP - Member
3. Sen. Aaron Cheruiyot, MP - Member
4. Sen. (Dr) Rose Nyamunga, MP - Member
5. Sen. Boniface Mutinda Kabaka, MP - Member

**ABSENT WITH APOLOGY**

1. Sen. (Dr) Isaac Mwaura, CBS, MP - Vice Chairperson
2. Sen. (Dr) Ali Abdullahi Ibrahim, CBS, MP - Member
3. Sen. Mutula Kilonzo Junior, MP - Member
4. Sen. Wetang'ula Moses Masika, EGH, MP - Member

**IN-ATTENDANCE**

**SENATE SECRETARIAT**

1. Mr. Christopher Gitonga - Clerk Assistant
2. Ms. Lucy Radoli - Legal Counsel
3. Ms. Julie Mwithiga - PBO
4. Mr. Gorod Abdi - PBO
5. Ms. Winnie Atieno - Audio Officer

**IN-ATTENDANCE** - List Attached.

- a) Uasin Gishu County Executive
- b) Uasin Gishu County Assembly Committees
- c) Kenya Association of Manufacturers
- d) Members of Public

**MIN. NO. 256/9/2018:**

**PRELIMINARIES**

The Chairperson called the meeting to order at 10.20 am and there followed a word of prayer.

**MIN.NO. 257/9/2018:**

**ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted after it was proposed by Sen. CPA Farhiya Haji and seconded by Sen Aaron Cheruiyot.

**MIN. NO. 258/9/2018: PUBLIC HEARING ON THE PUBLIC PRIVATE PARTNERSHIP (AMENDMENT) BILL, 2017**

The Chair welcomed the participants to the meeting. He thereafter, briefed on the purpose of the bill.

**Council of governors – Represented by Gov. Mandago – Governor Uasin Gishu County**

He made presentations as follows:

- a) There was need to differentiate county governments' and national government's PPPs processes.
- b) 54A(2) should be amended by deleting the statement after the word unit- this is because there was an already established system of approval of PPP projects under the PPP Act.
- c) 54(5) (b) should be deleted to eliminate ambiguity since PPP engagements must show value for money there and there was no need for considering affordability.
- d) 54(6) –amend to provide that the CS shall make regulations in consultations with county governments- the spirit of Article 6(2) of the Constitution.

Addition proposals to amend the Act

- a) Amend section 24(3) by adding 'in consultation with the county governments through the Council of Governors' immediately after the Cabinet Secretary...
- b) Section 4- the composition of PPP Committee does not include representation from the county governments. It should be amended to reflect the two levels of government
- c) The Act should be amended to separate the approval of County PPPs from the National Governments PPPs. A case similar to PFM act.

**Uasin Gishu County Executive – Represented by CPA Julius Kipletting– CECM Finance and Economic Planning**

He made a presentation that the bill should be amended as follows-

- a) Simplify the process of PPP to enable counties undertake projects under PPP
- b) Revolution/ decentralisation of PPP committees and PPP units to county levels
- c) Training of personnel on PPP management and negotiation
- d) County assembly should be involved in approval of PPP projects.
- e) The bill should take advantage of PPP models like BOT, OBFM, BOO, DFMO and OMT.



- f) There was need for measures on which the government may support waiver and concessions.
- g) The composition of the PPP committee should reflect the two levels of governments.
- h) The CS should consult county governments when making PPP regulations.
- i) There was need to have a law that will protect the investors especially at the point of transition of county governments.

**Uasin Gishu County Assembly – Represented by Chairman, Budget and Appropriations Committee**

He made presentation as follows:

- a) Clause 8 – the process is long and tedious: requires to be shortened. Further, there was need to separate the county PPPs from national PPPs.
- b) Clause 14- the term ‘Accounting officer’ was not defined in clause 2.
- c) Clause 16 – 54(A)
  - (3) the person responsible for task was not indicated
  - (5)(b) Accessing CS National Treasury for approval will be difficult and may create a barrier to PPP engagements

**Kenya National Chamber of Commerce and Industry (KNCCI) – Uasin Gishu county Chapter.**

The Vice Chair informed the Committee that-

- a) The bill does not provide any preference to local investors who wish to engage in PPP Projects.
- b) The local investors had difficulties in accessing information on PPPs yet the law did not provide mechanisms on how such information may be availed to business community.
- c) The approval process was lengthy; yet there was need to have pro-business legislations to ensure attraction of investors.
- d) There should be a threshold on which PPP projects the county governments may make a decision while the rest may be left to the national government.
- e) The PPP Committee should have a member representing the business community.


**Uasin Gishu County Welfare Association**

- a) The County CIDP had flagship projects which were expensive for the county government to implement in short run. Thus, PPPs would be useful in achieving such projects.

- b) There should be a threshold on which PPP projects county governments may engage in while very expensive projects would be left for the national government to engage.

**MIN. NO. 259/9/2018: ADJOURNMENT DATE OF THE NEXT MEETING**

There being no other business the meeting was adjourned at 12:56 pm.

SIGNATURE.....  
(CHAIRPERSON: SEN. (ENG) MOHAMED MAALIM MAHAMUD)

DATE.....

## LIST OF IN ATTENDANCE

NO.	NAME	DESIGNATION
1.	Hon. Jackson Mandago	Governor, Uasin Gishu County
2.	Ms. Rose Mulongo	Asst. Dean Kaiboi Teachers Training Institute (K.T.T.I)
3.	Ms. Grace Chirchir	Student Leader, K.T.I.
4.	Mr.Korir Dominic Kimutai	Student Leader , Kaiboi T.T.I.
5.	Mr.Silvester Kimutai	Student Leader , Kaiboi T.T.I.
6.	Ms Linah Otieno	Student Leader , Kaiboi T.T.I.
7.	Mr.Njoroge P. Mwaura	D.President, Kaiboi T.T.I.
8.	Mr.Rotich K. Felix	S.G. Kaiboi T.T.I.
9.	Mr.Edwin Kimeli	Student Leader , Kaiboi T.T.I.
10.	Mr.Njenga Eliud	Student Leader , Kaiboi T.T.I.
11.	Mr.Kelvin Kiama	Student Leader , Kaiboi T.T.I.
12.	Mr.Victor Odhiambo	Student, University of Eldoret
13.	Mr.Emmanuel Metto	Student , University of Eldoret
14.	Mr.Kipkemboi Goodwill	Egerton University
15.	Mr.Richard Opar Onduto	Secretary General, Uasin Gishu County Jua Kali Associations
16.	Mr.Obed A. Omwinoh	KNCCI, CEO
17.	Mr.George Kibet	KNCCI
18.	Mr.Kenei Willy	V. Chair, KNCCI
19.	Mr.Kimutai Arap Sum	KNCCI
20.	Mr.Isaiah Kemei	KNCCI
21.	Mr.Halastious M. Obaga	TYSI
22.	Mr.Michael K. Ksgei	KNCCI
23.	Mr.Joseph K. Cherop	Josrene Ent.Ltd
24.	Mr.Philip Baruo	CSO, Uasin Gishu County
25.	Rev. Nyaundi Orabe	KARA

26.	Pst. Gideon Mutai	EGMA
27.	Mr.Benson J. Akumu	Civil Society
28.	Mr.Peter Mukania	I.T. Expert
29.	Mr.Philip K. Lagat	PA Governor
30.	Mr.John Loech	Asst.to Governor
31.	Mr.David Metto	Farmer
32.	Mr.Nduo Munno	Farmer
33.	Mr.Aaron Murunga	Tax Consultant
34.	Mr.Michael Ndolo	Senior Economist
35.	Mr.Charles Mosili	Planning Officer
36.	Ms. Charles Ruth	Economist
37.	Mr.David Nyongesa	Kokwo Radio
38.	Ms.Stella Kiratum	Accountant
39.	Mr.Tum Caleb	Technician
40.	Mr.Felix Kipchrchir	Kokwo
41.	Mr.Edwin K. Metch	Valuer – Uasin Gishu County
42.	Mr.Benjamin Maiyo	Structural Engineer, Uasin Gishu County
43.	Mr.David Rop	ICT
44.	Mr.Kennedy Okurano	Director, Supply
45.	Mr.Martin Rono	ICT
46.	Ms Peres Omollo	ICT OFFICER
47.	Mr.James Kibisu	Chair E. Jua Kali Association
48.	Mr.Sammy Kiptoo	Trade Officer
49.	Ms.Ruth Arusei	Comm. Officer
50.	Mr.Kebenei Mercy	Comm. Officer
51.	Mr.Lijoodi Tai Moses	Student
52.	Mr.David Sumowow	Member Of The Public

53.	Mr.David Ngetich	Member Of The Public
54.	Ms.Beritar Kiplombe	
55.	Mr.Joseph Chepkongoi	Community Leader
56.	Hon. Fosea Lamai	DS/MCA
57.	Hon.Amos Kiptanui	MCA
58.	Mr.Jackton Kiprop	Ag. CO-OP & Ud
59.	Ms. Victoria Tarus	Chief Officer
60.	Mr.Isaac Langat	Ag. Chief Coops Officer
61.	Mr.Samuel Yego	UGC –CEC – Agriculture
62.	CPA Julius Rutto	CECM – Finance
63.	CPA Millicent Okonjo	UG County AG.CEC – Planning
64.	Mr. Nelson K. Martim	UGCA – CEC, Land & Housing
65.	Dr. Emily Koros	CECM – ICT, Trade & Industrialization
66.	Hon. Josphat Lorias	MCA/ Leader of Minority
67.	Dr. Jones Cheruiyot	AG. CO Health
68.	Ms. Evelyne Rotich	CECM – Health Serve County Govern. of Uasin Gishu County Assembly
69.	Ms. Roselyne A. Rae	AG.County CO-OP. Commissioner
70.	Mr. Isaac Kosgei	P.A. To Governor
71.	Mr. Wilson K. Sawe	C.O. Administration , Uasin Gishu County
72.	Mr. Richard Amdany	Trade Officer
73.	Mr. Wycliffee Wasonga	Senior Trade Development Officer
74.	Mr.James N. Kaburi	Inspector-UGC
75.	Mr.Kenneth K. Mutai	Principal Legal Officer
76.	Mr.Tito Chepkilot	CGU – Legal Officer
77.	Mr.John K. Ngetich	Stake Holder
78.	Mr.Thomas K. Boen	Farmer
79.	Mr.Paul Samoei Sugut	Farmer

80.	Mr.Abdul Malik	Lawyer
81.	Mr.Bunei K. Nicholas	Agricultural Officer
82.	Mr.Maonga Hammarton	Moi University Student
83.	Mr.Gilbert Surrum	Director, Culsor
84.	Mr.Maiyo Josphat	Contractor
85.	Mr.Stanley K. Muteu	Opinion Leader
86.	Ms Josephine Chepkirui	Contractor
87.	Ms Margaret Murei	Business Lady
88.	Mr.Reuben Rop	Student
89.	Mr.Gabrapongo	Citizen
90.	Ms Sally Sang	Citizen
91.	Mr.Martin Kamau	Citizen
92.	Mr.Richard Rotara	Citizen
93.	Mr.Richard Cheptorus	Berur Chairman
94.	Mr.Levis K. Boit	Youth Leader, Uasin Gishu
95.	Mr.John Wamwaku	Sacco Leader
96.	Mr.Josphat Gachohi	Sacco Leader
97.	Ms Damaris Mathai	KNCCI
98.	Mr.John S. Mutoro	Businessman
99.	Mr.Duncan K. Mwogoi	Businessman
100.	Ms Hellen Letunale	University of Eldoret (UOE)
101.	Ms. Yvonne Jerotich	Messenger
102.	Mr.Stephen Kiplagat	Businessman
103.	Mr. Wilson Mulwa	
104.	Mr.Joseph Magoi	

MINUTES OF THE 52<sup>ND</sup> MEETING OF THE SENATE STANDING COMMITTEE ON FINANCE & BUDGET HELD ON THURSDAY, 21<sup>ST</sup> SEPTEMBER, 2018 AT COUNTY HALL, GROUND FLOOR BOARDROOM, PARLIAMENT BUILDINGS AT 10.00 AM.

**PRESENT**

1. Sen. (Eng) Mohamed M. Mahamud, CBS, MP - Chairperson
2. Sen. Wetang'ula Moses Masika, EGH, MP - Member
3. Sen. CPA Farhiya Haji, MP - Member
4. Sen. (Dr) Ali Abdullahi Ibrahim, CBS, MP - Member

**ABSENT WITH APOLOGY**

1. Sen. (Dr) Isaac Mwaura, CBS, MP - Vice Chairperson
2. Sen. Mutula Kilonzo Junior, MP - Member
3. Sen. Aaron Cheruiyot, MP - Member
4. Sen. (Dr) Rose Nyamunga, MP - Member
5. Sen. Boniface Mutinda Kabaka, MP - Member

**IN-ATTENDANCE**

**SENATE SECRETARIAT**

1. Mr. Christopher Gitonga - Clerk Assistant
2. Ms. Lucy Radoli - Legal Counsel
3. Ms. Julie Mwithiga - PBO
4. Ms. Joyce Chelang'at - Audio Officer

**MIN. NO. 247/9/2018:**

**PRAYERS**

The Chairperson called the meeting to order at 11.25 a.m and welcomed the members. This was followed with a word of prayer.

**MIN.NO. 248/9/2018:**

**ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted after it was proposed by Sen. CPA Farhiya Haji and seconded by Sen(Dr) Ali Abdullahi Ibrahim with amendments as follows-

1. Preliminaries
  - *Prayer*
2. Adoption of the Agenda
3. Consideration of Public Private Partnerships (PPP) (Amendment) Bill, 2017
4. Meeting with Cabinet Secretary, National Treasury to deliberate on PPP (Amendment) Bill, 2017

5. Any Other Business.
6. Date of Next Meeting and Adjournment.

**MIN. NO. 249/9/2018: CONSIDERATION OF PUBLIC PRIVATE PARTNERSHIPS (AMENDMENT) BILL, 2017**

The Committee continued with consideration of the Bill and noted the following-

- a) Clause 14
  - (2) should be deleted as it was superfluous
  - (3) necessitated the need to define 'Accounting officer' in clause 2
  - (6) require redrafting for clarity purpose.
- b) Clause 16 insertion of 54B was not necessary- should be deleted
- c) Clause 19 should be amended such that-
  - (a)(ii) (b) the six persons should have relevant knowledge, skills and experience.
  - (a)(iii) the two persons should be of either gender with relevant knowledge, skills and experience.
- d) The law should provide the timeframe within which the bidder should commence implementation of the project(s).

The Committee resolved to conduct public hearing on the bill on Thursday, 27<sup>th</sup> September, 2018 in Eldoret, Uasin Gishu County. Further, the following stakeholders were identified for invitation to attend the public hearing-

- a) Council of Governors,
- b) Association of Contractors and Engineers
- c) Kenya Private Sector Alliance
- d) Kenya Association of Manufacturers

**MIN. NO. 250/9/2018: MEETING WITH THE CABINET SECRETARY, NATIONAL TREASURY TO DELIBERATE ON PPP (AMENDMENT) BILL, 2017**

The Committee observed that the CS was supposed to appear before the Committee at 11:00am.

Noting that the thirty-five minutes had lapsed without the Cabinet Secretary appearing before the committee, the Committee resolved to adjourn the meeting.



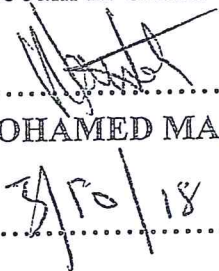
MIN. NO. 251/9/2018: ADJOURNMENT DATE OF THE NEXT MEETING

There being no other business the meeting was adjourned at 11:55 am. Date of the next meeting Tuesday, 25<sup>th</sup> September, 2018 at 9:00am in Uasin Gishu County.

SIGNATURE.....

(CHAIRPERSON: SEN. (ENG) MOHAMED MAALIM MAHAMUD)

DATE.....

Handwritten signature of Sen. (Eng) Mohamed Maalim Mahamud and the date 9/25/18.



**MINUTES OF THE 51<sup>ST</sup> MEETING OF THE SENATE STANDING COMMITTEE ON FINANCE & BUDGET HELD ON WEDNESDAY, 19<sup>TH</sup> SEPTEMBER, 2018 AT COUNTY HALL, GROUND FLOOR BOARDROOM, PARLIAMENT BUILDINGS AT 11.00 AM.**

**PRESENT**

1. Sen. (Eng) Mohamed M. Mahamud, CBS, MP - Chairperson
2. Sen. (Dr) Rose Nyamunga, MP - Member
3. Sen. Wetang'ula Moses Masika, EGH, MP - Member

**ABSENT WITH APOLOGY**

1. Sen. (Dr) Isaac Mwaura, CBS, MP - Vice Chairperson
2. Sen. Mutula Kilonzo Junior, MP - Member
3. Sen. Aaron Cheruiyot, MP - Member
4. Sen. (Dr) Ali Abdullahi Ibrahim, CBS, MP - Member
5. Sen. CPA Farhiya Haji, MP - Member
6. Sen. Boniface Mutinda Kabaka, MP - Member

**IN-ATTENDANCE**

**SENATE SECRETARIAT**

1. Mr. Christopher Gitonga - Clerk Assistant
2. Ms. Lucy Radoli - Legal Counsel
3. Mr. Nimrod Ochieng' - Audio Officer

**MIN. NO. 243/9/2018:**

**PRAYERS**

The Chairperson called the meeting to order at 11.30 a.m and welcomed the members. This was followed with a word of prayer.

**MIN.NO. 244/9/2018:**

**ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted after it was proposed by Sen. Wetang'ula Moses Masika and seconded by Sen. (Dr) Rose Nyamunga with amendments as follows-

1. Preliminaries
  - *Prayer*
2. Adoption of the Agenda
3. Brief on Public Private Partnerships (Amendment) Bill, 2017
4. Any Other Business.
5. Date of Next Meeting and Adjournment.

**MIN. NO. 245/9/2018: BRIEF ON PUBLIC PRIVATE PARTNERSHIPS  
(AMENDMENT) BILL, 2017**

The Committee was briefed by the Secretariat that-

- a) the Bill was meant to amend the Public Private Partnerships (PPP) Act, 2013.
- b) The purpose of the bill among others was to recognise county governments as a contracting authorities and in particular to enable them enter into and implement/ execute PPP agreements
- c) The Bill was referred to the Senate after passage by the National Assembly.
- d) The Bill was read a First Time in the Senate on 12<sup>th</sup> September, 2018. Thereafter, it was committed to the Committee consideration. The Committee had 30 days to conduct public hearing and report back to the Senate.

The Committee deliberated on the bill from clause 1- 13 and noted the following:

- a) Clause 2
  - The definition of contracting authority at county level should refer to county entities and not county corporations.
  - The definition of transaction advisor should be a person appointed in writing 'retain the definition in the Act'.
- b) Clause 5 should be redrafted to avoid ambiguity since the word 'unit' was appearing thrice in the provisions.
- c) Clause 7 further consideration was required on the provisions that 'contracting authority may reserve certain projects for disadvantaged groups'.
- d) Clause 8 should be redrafted to ensure/ reflect clearly the channel of approval of PPP projects. Further, county PPP projects should be subjected to approval of the county executive committee.
- e) Clause 10 should be deleted and amend section 36 to provide that every contracting authority shall engage a technical advisor for every project.
- f) Clause 12 should be redrafted to eliminate grammatical errors.

The Committee resolved to continue with the deliberation on the other clauses on Thursday, 20<sup>th</sup> September, 2018 at 10:00am.

**MIN. NO. 246/9/2018: ADJOURNMENT DATE OF THE NEXT MEETING**

There being no other business the meeting was adjourned at 12:50 pm. Date of the next meeting Thursday, 20<sup>th</sup> September, 2018 at 10:00am.

SIGNATURE.....  
(CHAIRPERSON: SEN. (ENG) MOHAMED MAALIM MAHAMUD)

DATE.....

**MINUTES OF THE 58<sup>TH</sup> MEETING OF THE SENATE STANDING COMMITTEE ON FINANCE & BUDGET HELD ON TUESDAY, 6<sup>TH</sup> NOVEMBER, 2018 AT COUNTY HALL, GROUND FLOOR BOARDROOM, PARLIAMENT BUILDING AT 11.00 AM.**

**PRESENT**

1. Sen. (Eng) Mohamed M. Mahamud, CBS, MP - Chairperson
2. Sen. Mutula Kilonzo Junior, MP - Member
3. Sen. (Dr) Rose Nyamunga, MP - Member
4. Sen. CPA Farhiya Haji, MP - Member
5. Sen. (Dr) Ali Abdullahi Ibrahim, CBS, MP - Member

**ABSENT WITH APOLOGY**

1. Sen. (Dr) Isaac Mwaura, CBS, MP - Vice Chairperson
2. Sen. Aaron Cheruiyot, MP - Member
3. Sen. Wetang'ula Moses Masika, EGH, MP - Member
4. Sen. Boniface Mutinda Kabaka, MP - Member

**IN-ATTENDANCE**

**SENATE SECRETARIAT**

1. Mr. Christopher Gitonga - Clerk Assistant
2. Ms. Josephine Kusinyi - Legal Counsel
3. Ms. Julie Mwithiga - PBO
4. Mr. Elly Atamba - Researcher officer
5. Ms. Winnie Atieno - Audio Officer

**MIN. NO. 279/11/2018:**

**Preliminaries**

The Chairperson called the meeting to order at 11.06 am and there followed a word of prayer.

**MIN.NO. 280/11/2018:**

**ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted after it was proposed by Sen. Mutula Kilonzo Junior and seconded by CPA Farhiya Haji.

**MIN. NO. 281/11/2018: CONFIRMATION OF MINUTES**

The minutes of the 55<sup>th</sup> meeting of the Committee held on Wednesday, 3<sup>rd</sup> October, 2018 at 11:00 am were confirmed as true proceedings of the meeting having being proposed by Sen. Farhiya Haji and seconded by Sen. Mutula Kilonzo Junior.

The minutes of the 46<sup>th</sup> and 57<sup>th</sup> meetings of the Committee were deferred.

**MIN. NO. 282/11/2018: CONSIDERATION AND ADOPTION OF COMMITTEE  
REPORT ON PUBLIC PRIVATE PARTNERSHIP  
(AMENDMENT) BILL, 2017**

The Committee considered the report and adopt it with recommendations that the bill be approved with amendments as follows-

**CLAUSE 7**

**THAT** the Bill be amended by deleting clause 7.

**CLAUSE 8**

**THAT** clause 8 of the Bill be amended-

- (a) in paragraph (a), in the proposed new proviso, by deleting the words “county government” appearing immediately after the words “approval by the” and substituting therefor the words “county executive committee”;
- (b) by inserting the following new paragraph immediately after paragraph (b)-
  - (c) in subsection (3) by inserting the words “in consultation with the Council of County Governors” immediately after the words “the Cabinet Secretary shall”.

**CLAUSE 12**

**THAT** clause 12 of the Bill be amended in the proposed new subsection (1) by deleting the word “in consistence” appearing immediately after the words “this Act and” and substituting therefor the word “consistent”.

**CLAUSE 16**

**THAT** clause 16 of the Bill be amended -

(a) in the proposed new section 54A-

(i) by deleting subsection (2) and substituting therefor the following new subsection-

(2) Where a county government intends to enter into a public private partnership agreement, it shall cause its user department or county entity, as the case may be, to prepare a project proposal for approval by the respective county executive committee, detailing the strategic and operational benefits of entering into such an arrangement.

- (ii) by deleting the words "County government" appearing immediately after the words "approved by the" and substituting therefor the words "county executive committee or county assembly" appearing in the introductory phrase to subsection 5.

(b) in the proposed new section 54B by deleting subsection (2).

#### CLAUSE 19

THAT clause 19 of the Bill be amended in paragraph (a) by-

- (a) inserting the word "relevant" immediately after the words "persons with such" appearing in the proposed new paragraph (a)subparagraph (ii);
- (b) inserting the word "having relevant experience and knowledge" immediately after the words "opposite gender" appearing in the proposed new paragraph (ba) subparagraph (iii);

#### NEW CLAUSES

THAT the Bill be amended by inserting the following new clause immediately after clause 4-

Amendment  
of section 18  
of No. 15 of  
2013.

4A. Section 4 of the principal Act is amended in subsection (1) by-

- (a) inserting the following new paragraph immediately after paragraph (f)-
  - (fa) three persons nominated by the Council of County Governors;
- (b) deleting the word "four" appearing immediately before the words "persons not being" and substituting therefor the words "two" appearing in paragraph (g);
- (c) insert the words "and infrastructure" immediately after the words "responsible for transport" in paragraph (i); and
- (d) deleting paragraph (j).

5- THAT the Bill be amended by inserting the following new clause immediately after clause

Amendment  
of section 18  
of No. 15 of  
2013.

5A. Section 18 of the principal Act is amended by inserting the following new subsection immediately after subsection (2)-

(3) A contracting authority under subsection (1) shall ensure that it facilitates public participation on a project that it intends to finance, operate, equip or maintain.

## CLAUSE 2

THAT clause 2 of the Bill be amended-

- (a) in paragraph (a) in the proposed new definition of the term “contracting authority” by deleting the word “corporation” appearing immediately after the words “government or county in sub-paragraph (ii) and substituting therefor the word “entity”;
- (b) by deleting paragraph (b);
- (c) inserting the following new definitions in their proper alphabetical sequence-
  - “accounting officer” means in the case of-
    - (a) a national government entity, the person designated as an accounting officer by the Cabinet Secretary responsible for finance in accordance with the provisions of the Public Finance Management Act;
    - (b) the Parliamentary Service Commission, the Clerk of the Senate in accordance with the provisions of the Public Finance Management Act; and
    - (c) the National Assembly, the Clerk of the National Assembly in accordance with the provisions of the Public Finance Management Act; and
    - (d) a Constitutional Commission, institution or Independent Office the person responsible for the administration of the Commission or institution or Independent Office in accordance with the provisions of the Public Finance Management Act.



- (e) a county government entity, the person responsible for the administration of the county government entity in accordance with the provisions of the Public Finance Management Act;
- (f) a county assembly, the clerk of the county assembly in accordance the provisions of the Public Finance Management Act;
- (g) the Judiciary, the Chief Registrar of the Judiciary in accordance with the provisions of the Public Finance Management Act;

**MIN. NO. 283/11/2018: CORRESPONDENCE**

- a) Letter from the National Treasury and Planning requesting for a meeting to deliberate on implementation of second policy and criteria for sharing revenue among marginalised areas by the Equalisation Fund Advisory Board (EFAB)

The Committee considered the letter and resolved that the meeting be held on Tuesday, 20<sup>th</sup> November, 2018 at 10 am.

**MIN. NO. 284/11/2018: DATE OF THE NEXT MEETING**

There being no other business the meeting was adjourned at 12:33 pm.

**SIGNATURE.....**  
**(CHAIRPERSON: SEN. (ENG) MOHAMED MAALIM MAHAMUD)**

**DATE.....**

