



**REPUBLIC OF KENYA**

**ELEVENTH PARLIAMENT – THIRD SESSION**

**NATIONAL ASSEMBLY**

**VOTES AND PROCEEDINGS**

**THURSDAY, APRIL 23, 2015**

1. The House assembled at thirty minutes past Nine O'clock
2. The Proceedings were opened with Prayer
3. **PRESIDING** – the Speaker
4. **PETITION**

The Nominated Member (Hon. Sunjeev Birdi) presented a Petition on behalf of Kenya Long Distance Truck Drivers and Allied Workers Union on alleged harrassment of Truck Drivers by the Kenya National Highways Authority (KeNHA) officials and weighbridge managers.

Petition referred to the relevant Departmental Committee pursuant to Standing Order 227(1).

5. **PAPERS LAID**

The following Papers were laid on the Table –

- (i) The Report of the Departmental Committee on Environment and Natural Resources on Senate Amendments to the Environmental Management and Co-ordination (Amendment) Bill, 2014; and,

*(The Chairperson, Departmental Committee on Environment & Natural Resources)*

- (ii) The Report of the Departmental Committee on Justice and Legal Affairs on the Fair Administrative Action Bill , 2015)

*(The Chairperson, Departmental Committee on Justice and Legal Affairs)*

6. **MOTION - THE PUBLIC SERVICE (VALUES AND PRINCIPLES) BILL (NATIONAL ASSEMBLY BILL NO. 29 OF 2014)**

Motion made and Question proposed –

THAT, the Senate Amendments to the Public Service (Values and Principles) Bill (National Assembly Bill No. 29 of 2014) be now considered.

*(Majority Party Whip)*

There being no Member willing to debate;

Question put and agreed to.

7. **MOTION - THE ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO.31 OF 2014)**

Motion made and Question proposed –

**THAT**, the Senate Amendments to the Environmental Management and Co-Ordination (Amendment) Bill (National Assembly Bill No.31 of 2014) be now considered

*(The Chairperson, Departmental Committee on Environment & Natural Resources)*

Debate arising;

Question put and agreed to.

8. **COMMITTEE OF THE WHOLE HOUSE**

Order for Committee read;

**IN THE COMMITTEE**

First Chairperson of Committees in the Chair

i) **Consideration of the Senate Amendments to the Public Service (Values and Principles) Bill (National Assembly Bill No. 29 of 2014)**

Clause 7– Senate amendment –

THAT clause 7 of the Bill be amended by deleting sub-clause (6) and substituting therefor the following new sub-clause-

- (6) Every public institution shall –
  - (a) develop standards for the responsive, prompt, effective, impartial and equitable provision of services;
  - (b) facilitate the introduction of modern and innovative procedures, technologies and systems for the delivery of its services;
  - (c) simplify its procedures and ease formalities related to access and delivery of its services;
  - (d) ensure the adaptability of public services to the needs of the public;
  - (e) ensure that its services are delivered closer to the users of the services; and
  - (f) develop mechanisms for monitoring and evaluating the effectiveness of public service delivery.

*(Majority Party Whip)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Senate amendment to Clause 7 - agreed to

Clause 8 - Senate amendment -

**THAT** Clause 8 of the Bill be amended in sub-clause (2) by inserting the words "and accountability" at the end of the sub-clause

*(Majority Party Whip)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Senate amendment to Clause 8 - agreed to

Clause 13 - Senate amendment -

**THAT** clause 13 of the Bill be amended-

(a) by inserting the following new sub-clauses immediately after sub-clause (3)-

- (i) (3A) If after three months a service Commission has not investigated and determined a complaint, the officer responsible for handling the complaint shall give the complainant satisfactory reasons, in writing, for non-compliance
- (ii) (3B) Appropriate disciplinary action shall be taken against any officer who is found to have unreasonably delayed in handling a complaint made to the service Commission.

(b) by deleting sub-clause (4) and substituting therefor the following new clause-

(4) A person aggrieved by the decision of a service Commission may seek judicial redress.

*(Majority Party Whip)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Senate amendment to Clause 13-      agreed to.

Clause 15 – Senate amendment -

**THAT** clause 15 of the Bill be amended-

(a) in sub-clause (1) by deleting the word “satisfactory” appearing immediately after the words ‘a public officer to be’ and substituting therefor the words “exemplary, outstanding or innovative”; and

(b) in paragraph (b) of sub-clause (2) by deleting the word “satisfactory” appearing immediately after the words ‘public officers who offer’ and substituting therefor the words ‘exemplary, outstanding or innovative’.

*(The Chairperson, Departmental Committee on Environment & Natural Resources)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Senate amendment o Clause 15 - agreed to.

Consideration of Senate amendments to be reported without amendments.

ii)      **Consideration of the Senate Amendments to the Environmental Management and Co-ordination (Amendment) Bill (National Assembly Bill No. 31 of 2014)**

Clause 9      -      Senate amendment –

**THAT** clause 9 of the Bill be amended in paragraph (a), in the proposed new paragraph (ba), by inserting the words “and their utilization and conservation”, immediately after the words in Kenya”.

*(The Chairperson, Departmental Committee on Environment & Natural Resources)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Senate amendment to Clause 9 - agreed to

Clause 10      -      Senate amendment –

**THAT**, clause 10 of the Bill be amended in paragraph (d), by deleting the proposed new subsection (1)(f) and substituting therefor the following new subsection-

(1)(f) one person nominated by the Council of County Governors.

*(The Chairperson, Departmental Committee on Environment & Natural Resources)*

Question of the amendment proposed;

Debate arising;

Question put and negatived.

Senate amendment to Clause 10 - negatived

Clause 12 - Senate amendment -

**THAT**, clause 12 of the Bill be amended in the marginal note of the proposed new section 14 by deleting the word "Board" appearing immediately after the words "of the" and substituting therefor the word "Director-General and Directors".

*(The Chairperson, Departmental Committee on Environment & Natural Resources)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Senate amendment to Clause 12- agreed to

Clause 20 - Senate amendment -

**THAT** clause 20 of the Bill be deleted and substituted therefor with the following clause-

**20.** The principal Act is amended in subsection (1) of section 31-

- (a) by deleting the words "Public complaints Committee" wherever it appears and substituting therefor the words "National Environmental Complaints Committee";
- (b) by deleting the words "two members" appearing at the beginning of paragraph(f) and substituting therefor the words "one member"; and
- (c) by inserting the following new paragraph immediately after paragraph(f) -
  - (g) one person who has demonstrated competence in environmental matters, nominated by the Council of County Governors.

*(The Chairperson, Departmental Committee on Environment & Natural Resources)*

Question of the amendment proposed;

Debate arising;

Senate amendment in respect of paragraph (a) of Clause 20 - agreed to

Senate amendment in respect of paragraphs (b) and (c) of Clause 20 - negatived

Clause 23 - Senate amendment –

**THAT** clause 23 of the Bill be amended in the proposed newsection 37-

- (a) by deleting the word "three" appearing immediately after the words "shall, within", in subsection (1), and substituting therefor the word "two"; and
- (b) by deleting the word "six" appearing immediately after the words "Plan every", in subsection (5), and substituting therefor the word "three".

*(The Chairperson, Departmental Committee on Environment & Natural Resources)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Senate amendment to Clause 23- agreed to

Clause 25 - Senate amendment –

**THAT** clause 25 of the Bill be amended in the proposed new section 40-

- (a) by deleting subsection (1) and substituting therefor the following new subsection-
  - (1) Every County Environment Committee shall within one year of the commencement of this Act and every three years thereafter, prepare a county environment action plan in respect of the county for consideration and adoption by the County Assembly"; and
- (b) by deleting the word "Cabinet Secretary" appearing immediately after the words "subsection (1) to the," in subsection (3), and substituting therefor the word "Authority".

*(The Chairperson, Departmental Committee on Environment & Natural Resources)*

Question of the amendment proposed;

Debate arising;

Question put and negatived;

Senate amendment to Clause 25 - negatived

Clause 40 - Senate amendment –

**THAT** clause 40 of the Bill be amended in the proposed new section 56A, by deleting the words "the Authority" appearing at the beginning of the proposed new section and substituting therefor the words "the Cabinet Secretary".

*(The Chairperson, Departmental Committee on Environment & Natural Resources)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Senate amendment to Clause 40-      agreed to

Consideration of Senate amendments to be reported with amendments.

iii) **The Fair Administrative Action Bill (National Assembly Bill No. 10 of 2015)**

Clause 3      -      amendment proposed –

**THAT**, the Bill be amended by deleting clause 3 and substituting therefor the following newclause–

3. This Act applies to all state and non-state agencies, including any person–

(a) exercising administrative authority;

(b) performing a judicial or quasi-judicial function under the Constitution or any writtenlaw; or

(c ) whose action, omission or decision affects the legal rights or interests of any personto whom such action, omission or decision relates.

*(The Chairperson, Departmental Committee on Justice and Legal Affairs)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 3      -      as amended agreed to

Clause 4      -      amendment proposed –

**THAT**, the Bill be amended by deleting clause 4 and substituting therefor the following newclause —

Administrative action to  
be taken expeditiously,  
efficiently, lawfully e.t.c

**4. (1)** Every person has the right to administrative action which  
isexpeditious, efficient, lawful, reasonable and procedurally fair.

(2) Every person has the right to be given written reasons for any  
administrative action that is taken against him.

(2) Where an administrative action is likely to adversely affect the  
rightsor fundamental freedom of any person, the decision making  
authority shall givethe person affected by the decision—

(a) prior and adequate notice of the nature and reasons for the  
proposed administrative action;

- (b) an opportunity to be heard and to make representations in that regard;
- (c) notice of a right to a review or internal appeal against the administrative decision, where applicable;
- (d) a statement of reasons pursuant to section 6;
- (e) notice of the right to legal representation, where applicable;
- (f) notice of the right to cross-examine or where applicable; and
- (g) information, materials and evidence to be relied upon in making the decision or taking the administrative action.

(4) The decision making body shall accord the person against whom administrative action is taken an opportunity to —

- (a) attend the proceedings, in person or in the company of an expert of his choice;
- (b) to be heard ;
- (c) cross-examine persons who give adverse evidence against him; and
- (d) request for an adjournment of the proceedings, where necessary to ensure a fair hearing.

(5) Nothing in this section, shall have the effect of limiting the right of any person to appear or be represented by a legal representative in judicial or quasi-judicial proceedings.

(6) Where the decision making body is empowered by any written law to follow a procedure which conforms to the principles set out in Article 47 of the Constitution, the decision making body may act in accordance with that different procedure.

*(The Chairperson, Departmental Committee on Justice and Legal Affairs)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 4 - as amended agreed to



Clause 5 - amendment proposed –

**THAT**, clause 5 of the Bill be amended in sub clause (2) by—

(a) deleting the words " the decision of the administrator" appearing immediately after the words "challenge the" in paragraph (a) and substituting therefor the words "any administrative action or decision";

(b) deleting the words " reviews of the administrator's decision" appearing immediately after the words "apply for" in paragraph (b) and substituting therefor the words "review of an administrative action or decision";

*(The Chairperson, Departmental Committee on Justice and Legal Affairs)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 5 - as amended agreed to

Clause 6 - amendment proposed –

**THAT**, clause 6 of the Bill be amended in sub clause (1) by deleting the words "may, pursuant to Article 35 of the Constitution, or any written law relating to freedom of information, require the administrator to supply him or her" and substituting therefor the words "has a right to be supplied".

*(The Chairperson, Departmental Committee on Justice and Legal Affairs)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 6 - as amended agreed to

Clause 7 - amendment proposed –

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

*(The Chairperson, Departmental Committee on Justice and Legal Affairs)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 7 - deleted

Clause 8 - amendment proposed –

**THAT**, clause 8 of the Bill be amended—

(a) in sub clause (1) by deleting the words “in the exercise of the Court’s supervisory jurisdiction under Article 165 (7) of the Constitution” appearing immediately after the words “Court in”;

(b) in sub clause (2) by deleting the words “a decision of an administrator” appearing immediately after the words “aggrieved by a” and substituting therefor the words “an administrative action or decision”;

(c) in sub clause (3)—

(i) by deleting the word “administrator” appearing in paragraph (a) and substituting therefor the word “person”;

(ii) by inserting the following new subparagraph immediately after subparagraph (iv)

— (v) denied the person to whom the administrative action relates reasonable opportunity to state his or her case or be heard.

(iii) by deleting the words “or took into account irrelevant considerations to the prejudice of the applicant’s rights” appearing immediately after the word “considerations” in paragraph (g);

(iv) by inserting new paragraphs immediately after paragraph (m) as follows—

(n) the administrative action is unreasonable;

(o) the administrative action is not proportionate to the interests or rights affected;

(p) the administrative action violates the legitimate expectations of the person to whom it relates;

(q) the administrative action is unfair; or

(r) the administrative action is taken or made in abuse of power.

*(The Chairperson, Departmental Committee on Justice and Legal Affairs)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 8 - as amended agreed to

Clause 9 - amendment proposed –

**THAT**, clause 9 of the Bill be amended—

(a) in sub clause (1) by deleting the words “pursuant to section 8” appearing immediately after the word “review”;

(b) in sub clause (2) by deleting the words “or tribunal” appearing immediately after the word “Court”;

(c) by deleting sub clause (3) and substituting therefor the following new sub clauses—

(4) Where the relief sought is an order to quash any judgment, order, conviction, or other proceeding, the date when the grounds of the application first arose shall be taken to be the date of judgment, order, conviction or proceeding.

(5) A person aggrieved by an order made in the exercise of the judicial review jurisdiction of the High Court may appeal to the Court of Appeal.”

*(The Chairperson, Departmental Committee on Justice and Legal Affairs)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 9 - as amended agreed to

Clause 10 - amendment proposed –

**THAT**, clause 10 of the Bill be amended by—

(a) deleting sub clause (1) and substituting therefor the following new sub clause—

(1) An application for judicial review shall be made by notice of motion to the High Court and shall be heard and determined without undue regard to procedural technicalities.

(b) deleting sub clause (3).

*(The Chairperson, Departmental Committee on Justice and Legal Affairs)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 10 - as amended agreed to

Clause 11 - amendment proposed –

**THAT**, clause 11 of the Bill be amended—

(a) in sub clause (1)—

(i) by deleting the words “pursuant to 8(1)” appearing immediately after the word “review”;

(ii) by deleting the words “excess of its jurisdiction or from engaging in an activity beyond the scope of its powers” appearing immediately after the words “acting in” in paragraph (c) and substituting therefor the words “a particular manner”;

(b) in sub clause (2) by inserting the words “and other monetary compensation” immediately after the word “costs” appearing in paragraph (d);

*(The Chairperson, Departmental Committee on Justice and Legal Affairs)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 11 - as amended agreed to

Clause 12 - amendment proposed –

**THAT**, the Bill be amended by deleting clause 12;

*(The Chairperson, Departmental Committee on Justice and Legal Affairs)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 12 - deleted

Clause 13 - amendment proposed –

**THAT**, the Bill be amended by deleting clause 13;

*(The Chairperson, Departmental Committee on Justice and Legal Affairs)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 13 - deleted

Clause 14 - agreed to

New Clause proposed –

**THAT**, the Bill be amended by inserting the following new clause immediately after clause 14—

Repeal of section  
8 and 9 of

Cap. 26

**15.**Section 8 and 9 of the Law Reform Act, Cap. 26 are hereby repealed

*(The Chairperson, Departmental Committee on Justice and Legal Affairs)*

Motion made and Question proposed –

THAT, the New Clause 15 be read a Second Time

Debate arising;

Motion made and Question proposed –

THAT, the New Clause 15 be part of the Bill

Question put and agreed to.

Clause 2 - amendment proposed –

**THAT**, clause 2 of the Bill be amended—

(a) by deleting the definition of the term “administrative action” and substituting therefor the following new definition—

“administrative action” includes

(a) the powers, functions and duties exercised by authorities or quasi-judicial tribunals; or

(b) any act, omission or decision of any person, body or authority that affects the legal rights or interests of any person to whom such action relates;

(b) by deleting the definition of the term “administrator”;

(c) in the definition of the term “decision” by deleting the words “of an administrative nature” appearing immediately after the word “decision”;

(d) by deleting the definition of the expression “disciplined forces”;

(e) in the definition of the expression “empowering provision” by deleting the word “was” appearing immediately after the word “action” and substituting therefor the words “is takenor”;

(f) by deleting the definition of the term "tribunal" and substituting therefor the following new definition–

"tribunal" means a tribunal established under any written law;"

*(The Chairperson, Departmental Committee on Justice and Legal Affairs)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 2 - as amended agreed to

Clause 1 - agreed to

Title - agreed to

Bill to be reported with amendments;

9. **HOUSE RESUMED** - the Fourth Chairperson in the Chair

(i) **Consideration of the Senate Amendments to the Public Service (Values and Principles) Bill (National Assembly Bill No. 29 of 2014)**

Consideration of Senate amendments reported without amendments;

Motion made and Question proposed –

THAT, the House do agreed with the Committee in the said Report

*(Majority Party Whip)*

Question put and agreed to.

(ii) **Consideration of the Senate Amendments to the Environmental Management and Co-Ordination (Amendment) Bill (National Assembly Bill No. 31 of 2014)**

Consideration of Senate amendments reported with amendments;

Motion made and Question proposed –

THAT, the House do agreed with the Committee in the said Report

*(The Chairperson, Departmental Committee on Environment and Natural Resources)*

Question put and agreed to.

Bill referred to Mediation Committee.

(iii) **The Fair Administrative Action Bill (National Assembly Bill No. 10 of 2015)**

Bill reported with amendments;

Motion made and Question proposed –

THAT, the House do agree with the Committee in the said report

*(The Chairperson of the Departmental Committee on Justice and Legal Affairs)*

Question put and agreed to;

Motion made and Question proposed;

THAT, the Fair Administrative Action Bill (National Assembly Bill No. 10 of 2015) be now read a Third Time

*(The Chairperson, Departmental Committee on Justice and Legal Affairs)*

Debate arising;

Question put and agreed to;

Bill read a Third Time, **passed** and referred to the Senate.

10. **MOTION –ADOPTION OF THE SPECIAL REPORT OF THE PUBLIC INVESTMENTS COMMITTEE**

Motion made and Question proposed –

THAT, this House adopts the Special Report of the Public Investments Committee on the Recapitalization and Balance Sheet Restructuring of Telkom Kenya Limited, laid on the Table of the House on Tuesday, April 29, 2014

*(The Chairperson, Public Investments Committee – 24.03.15)*

Debate interrupted on Tuesday, April 21, 2015 resumed;

And the time being One O'clock, the Fourth Chairperson of Committees interrupted the proceedings and adjourned the House without Question put pursuant to the Standing Orders.

11. **HOUSE ROSE** - at One O'clock

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**M E M O R A N D U M**

The Speaker will take the Chair today,  
Thursday, April 23, 2015 at 2.30 p.m.

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