



REPUBLIC OF KENYA

ELEVENTH PARLIAMENT – (THIRD SESSION)

THE NATIONAL ASSEMBLY

ORDERS OF THE DAY

SPECIAL SITTING

TUESDAY, MAY 26, 2015 AT 2.30 P.M.

ORDER OF BUSINESS

PRAYERS

1. Administration of Oath
2. Communication from the Chair
3. Messages
4. Petitions
5. Papers
6. Notices of Motion
7. Statements

- 8*. **MOTION - THE PUBLIC AUDIT BILL (NATIONAL ASSEMBLY BILL NO. 38 OF 2014)**
(The Leader of the Majority Party)

THAT, the Senate Amendments to the Public Audit Bill (National Assembly Bill No. 38 of 2014), be now considered.

- 9*. **MOTION - THE PUBLIC PROCUREMENT AND ASSET DISPOSAL BILL (NATIONAL ASSEMBLY BILL NO. 40 OF 2014)**
(The Leader of the Majority Party)

THAT, the Senate Amendments to the Public Procurement and Asset Disposal Bill (National Assembly Bill No. 40 of 2014), be now considered.

- 10*. **MOTION - THE FAIR ADMINISTRATIVE ACTION BILL (NATIONAL ASSEMBLY BILL NO. 10 OF 2015)**
(The Leader of the Majority Party)

THAT, the Senate Amendments to the Fair Administrative Action Bill (National Assembly Bill No. 10 of 2015) be now considered.

11*. COMMITTEE OF THE WHOLE HOUSEIN THE COMMITTEE

- i) Consideration of the **Senate Amendments** to the Public Audit Bill (National Assembly Bill No. 38 of 2014)
(The Leader of the Majority Party)
- ii) Consideration of the **Senate Amendments** to the Public Procurement and Asset Disposal Bill (National Assembly Bill No. 40 of 2014)
(The Leader of the Majority Party)
- iii) Consideration of the **Senate Amendments** to the Fair Administrative Action Bill (National Assembly Bill No. 10 of 2015)
(The Leader of the Majority Party)

* Denotes Orders of the Day

N O T I C E S

I. SENATE AMENDMENTS TO THE PUBLIC AUDIT BILL (NATIONAL ASSEMBLY BILL NO. 38 OF 2014)

(As passed by the Senate on Wednesday, 20th May, 2015)

CLAUSE 5

Senate Amendment

THAT clause 5 be amended in-

- (a) paragraph (b) by deleting the words "Article 229" appearing immediately after the words "specified in" and substituting therefor the words "Article 229(2)"; and
- (b) paragraph (c) by inserting the words "post graduate" immediately after the words "holds a".

CLAUSE 11

Senate Amendment

THAT clause 11 be amended by inserting the following new sub-clause immediately after sub-clause (5)-

- (5A) The members of the selection panel appointed under subsection (5) shall elect a chairperson from among themselves.

CLAUSE 19

Senate Amendment

THAT clause 19 be amended in sub-section (2) by deleting the words "review and" appearing immediately after the words "each year for" at the end of the paragraph.

CLAUSE 24

Senate Amendment

THAT clause 24 be amended in-

- (a) paragraph (a) of sub-section (1), by inserting the words "who shall be the chairperson" at the end of the paragraph; and
- (b) sub-section (3) by deleting the words "shall appoint a chairperson from among the persons under subsection (1) above and" appearing immediately after the words "the Auditor-General".

CLAUSE 26**Senate Amendment**

THAT the Bill be amended by deleting clause 26 and substituting therefor the following new clause-

Functions of the Audit
Advisory Board.

26.(1) Subject to section 10, the principal function of the Audit Advisory Board shall be to advise the Auditor-General on the exercise of his or her powers and the performance of his or her functions under the Constitution and this Act.

(2) Subject to the generality of subsection (1) the Board shall, in addition to any other function that may be conferred by this Act or any other law, advise the Auditor-General on-

(a) the recruitment of senior managers into the Office of the Auditor-General;

(b) the development and review of organizational development issues

(c) the budget estimates and plans of the office of the Auditor-General;

(d) the remuneration and other terms of appointment of the staff of the Office of the Auditor-General in consultation with the Salaries and Remuneration Commission; and

(e) any other matter that the Auditor-General may refer to the Board from time to time.

CLAUSE 32**Senate Amendment**

THAT clause 32 be amended in sub-clause (1) by deleting the word "may" appearing immediately after the words "public entity" and substituting therefor the word "shall".

CLAUSE 39**Senate Amendment**

THAT clause 39 be amended-

(a) by deleting sub-clause (1);

(b) by deleting sub-clause (2) and substituting therefor with the following new sub-clause-

(2) Sections of the audit reports on national security organs may remain confidential to the Auditor-General but may, on demand, be submitted to Parliament; and

c) by deleting sub-clause (3).

CLAUSE 40**Senate Amendment**

THAT clause 40 be amended in sub-clause (2) by deleting the words "Article 206(1)(b)" appearing immediately after the words "accordance with" and substituting therefor the words "Article 206(1)".

CLAUSE 41**Senate Amendment**

THAT clause 41 be amended in paragraph (e) of sub-clause (2), by inserting the words "including statements on processes and systems audit" immediately after the words "of the Auditor-General".

II. SENATE AMENDMENTS TO THE PUBLIC PROCUREMENT
AND ASSET DISPOSAL BILL (NATIONAL ASSEMBLY BILL
NO. 40 OF 2014)

(As passed by the Senate on Wednesday, 20th May, 2015)

CLAUSE 33**Senate Amendment**

THAT clause 33 be amended in sub-clause (2) by inserting the following new paragraph immediately after paragraph (f)-

(fa) promote preference and reservation schemes for residents of the county to ensure a minimum of twenty percent in public procurement at the county.

CLAUSE 51**Senate Amendment**

THAT clause 51 be amended in sub-clause (3) by deleting the words "and licensed" appearing immediately after the words "agents registered".

CLAUSE 124**Senate Amendment**

THAT clause 124 be amended by inserting the following new sub-clause immediately after sub-clause (3)-

(3A) In evaluation of tenders by public entities, the financial and technical capability of the tenderers shall be given equal weight.

CLAUSE 165**Senate Amendment**

THAT clause 165 be amended in sub-clause (1) by deleting paragraph (d).

CLAUSE 176**Senate Amendment**

THAT clause 176 of the Bill be amended by inserting the following new sub clauses immediately after sub clause (4)-

(5) A procuring entity may lodge a complaint with the relevant professional body for the institution of disciplinary proceedings against a contractor who is a member of a professional body and who contravenes the provisions of this Act.

(6) The penalties imposed by a professional body pursuant to a complaint lodged under subsection (5) shall apply in addition to any penalties that may be imposed under this Act.

III. SENATE AMENDMENTS TO THE FAIR ADMINISTRATIVE ACTION BILL (NATIONAL ASSEMBLY BILL NO. 10 OF 2015)

(As passed by the Senate on Wednesday, 20th May, 2015)

CLAUSE 4**Senate Amendment**

THAT clause 4 of the Bill be amended-

(a) in sub-clause (3)-

(i) in the introductory phrase by deleting the words "decision making authority" appearing immediately before the words "freedom of any person" and substituting therefor the word "administrator";

(ii) in paragraph (c) by inserting the word "an" immediately before the words "administrative decision"; and

(iii) in paragraph (f) of sub-clause (3) by: deleting the word "or" appearing immediately before the words "where applicable";

(b) in sub-clause (4) by deleting the words "decision making body" appearing immediately after the word "the" at the beginning of the sub-clause and substituting therefor the word "administrator";

(c) by deleting sub-clause (6) and substituting therefor the following new sub-clause-

(6)Where the administrator is empowered by any written law to follow a procedure which conforms to the principles set out in Article 47 of the Constitution, the administrator may

CLAUSE 5
Senate Amendment

THAT clause 5 of the Bill amended by in sub-clause (2) by deleting paragraph (a) and substituting therefor the following new paragraph-

- (a) challenge any administrative action or decision in accordance with the procedure set out under the Commission of Administrative Justice Act, 2011 or any successor to the Commission on Administrative Justice under section 55 of the Commission in Administrative Justice Act"

CLAUSE 6
Senate Amendment

THAT clause 6 of the Bill amended by inserting the following new sub-clauses immediately after sub-clause (2)-

- (3) The administrator to whom a request is made under subsection (1), shall, within thirty days after receiving the request, furnish the applicant, in writing, the reasons for the administrative action.
- (4) Subject to subsection (5), if an administrator fails to furnish the applicant with the reasons for the administrative decision or action, the administrative action or decision shall, in any proceedings for review of such action or decision and in the absence of proof to the contrary, be presumed to have been taken without good reason.
- (5) An administrator may depart from the requirement to furnish adequate reasons if it is reasonable and justifiable in the circumstances, and shall inform the person making the request of such departure.

CLAUSE 7
Senate Amendment

THAT Clause 7 of the Bill be deleted and substituted therefor with the following Clauses:-

PART III – REVIEW OF ADMINISTRATIVE ACTION

Institution of
proceedings.

- 7.** (1) Any person who is aggrieved by an administrative action or decision may apply for review of the administrative action or decision to-
- (a) a court in accordance with section 8; or
 - (b) a tribunal in exercise of its jurisdiction conferred in that regard under any written law.

(2) A court or tribunal under subsection (1) may review an administrative action or decision, if-

- (a) the person who made the decision-
 - (i) was not authorized to do so by the empowering provision;
 - (ii) acted in excess of jurisdiction or power conferred under any written law;
 - (iii) acted pursuant to delegated power in contravention of any law prohibiting such delegation;
 - (iv) was biased or may reasonably be suspected of bias; or
 - (v) denied the person to whom the administrative action or decision relates, a reasonable opportunity to state the person's case;
- (b) a mandatory and material procedure or condition prescribed by an empowering provision was not complied with;
- (c) the action or decision was procedurally unfair;
- (d) the action or decision was materially influenced by an error of law;
- (e) the administrative action or decision in issue was taken with an ulterior motive or purpose calculated to prejudice the legal rights of the applicant;
- (f) the administrator failed to take into account relevant considerations;
- (g) the administrator acted on the direction of a person or body not authorised or empowered by any written law to give such directions;
- (h) the administrative action or decision was made in bad faith;
- (i) the administrative action or decision is not rationally connected to-
 - (i) the purpose for which it was taken;
 - (ii) the purpose of the empowering provision;
 - (iii) the information before the administrator; or
 - (iv) the reasons given for it by the administrator;
- (j) there was an abuse of discretion, unreasonable delay or failure to act in discharge of a duty imposed under any written law;
- (k) the administrative action or decision is unreasonable;
- (l) the administrative action or decision is not proportionate to the interests or rights affected;
- (m) the administrative action or decision violates the legitimate expectations of the

(n) the administrative action or decision is unfair; or

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

(3) The court or tribunal shall not consider an application for the review of an administrative action or decision premised on the ground of unreasonable delay unless the court is satisfied that-

(a) the administrator is under duty to act in relation to the matter in issue;

(b) the action or decision is required to be undertaken within a period specified under such law; and

(c) the administrator has refused, failed or neglected to take action within the prescribed period.

Period for
determination
of applications
and appeals

7A. An application for the review of an administrative action or an appeal under this Act shall be determined within ninety days of filing the application.

CLAUSE 8

Senate Amendment

THAT Clause 8 of the Bill be deleted and substituted therefor with the following Clause:-

PART IIIA – JUDICIAL REVIEW

Procedure for judicial
review.

8. (1) Subject to subsection (2), a person who is aggrieved by an administrative action may, without unreasonable delay, apply for judicial review of any administrative action to the High Court or to a subordinate court upon which original jurisdiction is conferred pursuant to Article 22(3) of the Constitution.

(2) The High Court or a subordinate court under sub-section (1) shall not review an administrative action or decision under this Act unless the mechanisms including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted.

(3) The High Court or a subordinate Court shall, if it is not satisfied that the remedies referred to in subsection (2) have been exhausted, direct that applicant shall first exhaust such remedy before instituting proceedings under sub-section (1).

(4) Notwithstanding subsection (3), the High Court or a subordinate Court may, in exceptional circumstances and on application by the applicant, exempt such person from the obligation to exhaust any remedy if the court considers such exemption to be in the interest of justice.

(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.

CLAUSE 9

Senate Amendment

THAT Clause 9 of the Bill be deleted and substituted therefor with the following Clause:-

Rules.

9. (1) An application for judicial review shall be heard and determined without undue regard to procedural technicalities.

(2) The Chief Justice may make rules of practice for regulating the procedure and practice in matters relating to judicial review of administrative action.

CLAUSE 10

Senate Amendment

THAT Clause 10 of the Bill be deleted and substituted therefor with the following Clauses:-

Orders in
proceedings for
judicial review.

10. (1) In proceedings for judicial review under section 8 (1), the court may grant any order that is just and equitable, including an order—

- (a) declaring the rights of the parties in respect of any matter to which the administrative action relates;
- (b) restraining the administrator from acting or continuing to act in breach of duty imposed upon the administrator under any written law or from acting or continuing to act in any manner that is prejudicial to the legal rights of an applicant;
- (c) directing the administrator to give reasons for the administrative action or decision taken by the administrator;
- (d) prohibiting the administrator from acting in a particular manner;
- (e) setting aside the administrative action or decision and remitting the matter for reconsideration by the administrator, with or without directions;
- (f) compelling the performance by an administrator of a public duty owed in law and in respect of which the applicant has a legally enforceable right;
- (g) prohibiting the administrator from acting in a particular manner;
- (h) setting aside the administrative action and remitting the matter for reconsideration by the administrator, with or without directions;
- (i) granting a temporary interdict or other temporary relief; or
- (j) for the award of costs or other pecuniary compensation in appropriate cases.

(2) In proceedings for judicial review relating to failure to take an administrative action, the court may grant any order that is just and equitable, including an order-

- (a) directing the taking that decision;
- (b) declaring the rights of the parties in relation to the taking of the decision;
- (c) directing any of the parties to do, or to refrain from doing, any act or thing the doing, or the refraining from the doing, of which the court or tribunal considers necessary to do justice between the parties ; or
- (d) as to costs and other monetary compensation.

NEW CLAUSE 11A
Senate Amendment

THAT the Bill be amended by inserting the following new clause immediately after clause 11-

Regulations **11A.** (1) The Cabinet Secretary may, in consultation with the Commission on Administrative Justice, make regulations for the better carrying out of the provisions of this Act.

(2) Regulations made under subsection (5) shall, before publication in the *Gazette*, be approved by Parliament.

NEW CLAUSE 12A
Senate Amendment

THAT the Bill be amended by inserting the following new clause immediately after clause 12-

Transition provisions **12A.**(1) In all proceedings pending whether preparatory or incidental to, or consequential upon any proceedings in court at the time of the coming into force of this Act, the provisions of this Act shall apply, but without prejudice to the validity of anything previously done.

(2) Despite subsection (1)-

- (a) if, and in so far as it is impracticable in any proceedings to apply the provisions of this Act, the practice and procedure obtaining before the enactment of this Act shall be followed; and
- (b) in any case of difficulty or doubt the Chief Justice may issue practice notes or directions as to the procedure to be adopted.

CLAUSE 2
Senate Amendment

THAT clause 2 of the Bill be amended by-

- (a) inserting the following new definition after the definition of the word administrative action-

“administrator” means a person who takes an administrative action or who makes an administrative decision;

- (b) in the definition of the word “decision”, by deleting the words “under any written law” appearing after the words “as the case may be”;

The House resolved on Wednesday, February 11, 2015 as follows:-

- IV. **THAT**, notwithstanding the provisions of Standing Order 97(4), each speech in a debate on any **Motion**, including a Special motion be limited in the following manner:- A maximum of three hours with not more than twenty (20) minutes for the Mover and ten (10) minutes for each other Member speaking, except the Leader of the Majority Party and the Leader of the Minority Party, who shall be limited to a maximum of fifteen (15) minutes each, and that ten (10) minutes before the expiry of the time, the Mover shall be called upon to reply; and that priority in speaking be accorded to the Leader of the Majority Party, the Leader of the Minority Party and the Chairperson of the relevant Departmental Committee, in that Order.
- V. **THAT**, notwithstanding the provisions of Standing Order 97(4), each speech in a debate on **Bills sponsored by a Committee, the Leader of the Majority Party or the Leader of the Minority Party** shall be limited as follows:- A maximum of forty five (45) minutes for the Mover, in moving and fifteen minutes (15) in replying, a maximum of thirty (30) minutes for the Chairperson of the relevant Committee (if the Bill is not sponsored by the relevant Committee), and a maximum of ten (10) minutes for any other Member speaking, except the Leader of the Majority Party and the Leader of the Minority Party, who shall be limited to a maximum of fifteen Minutes (15) each (if the Bill is not sponsored by either of them); and that priority in speaking shall be accorded to the Leader of the Majority Party, the Leader of the Minority Party and the Chairperson of the relevant Departmental Committee, in that Order.
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NOTICE PAPER

Tentative business for
Wednesday (Morning), May 27, 2015

It is notified that, in accordance with Standing Order 29, the Speaker of the National Assembly, has notified that the following business will be transacted on Wednesday (Morning), May 27, 2015, including the Afternoon Sitting:-

MOTION - **THE REPORT OF THE BUDGET AND APPROPRIATIONS
COMMITTEE ON THE ESTIMATES OF REVENUE AND
EXPENDITURE FOR THE FINANCIAL YEAR 2015/2016**
