



**REPUBLIC OF KENYA**

**ELEVENTH PARLIAMENT – FOURTH SESSION**

**NATIONAL ASSEMBLY**

**VOTES AND PROCEEDINGS**

**TUESDAY, MARCH 29, 2016**

1. The House assembled at thirty minutes past Two O'clock
2. The Proceedings were opened with Prayer
3. **Presiding** - the Speaker
4. **COMMUNICATION FROM THE CHAIR ON THE MANNER FOR CONSIDERATION OF ANNUAL REPORTS SUBMITTED TO PARLIAMENT BY CONSTITUTIONAL COMMISSIONS AND INDEPENDENT OFFICES**

The Speaker conveyed the following Communication –

"Honourable Members,

You may recall that on Thursday, March 10, 2016, the Honourable Member for Rarieda, (Eng.) Nicolas Gumbo, M.P., on a point of Order, sought the Speaker's direction on how the House should address itself to annual reports submitted to Parliament by constitutional commissions and independent offices in accordance with Article 254(1) of the Constitution. The commissions and independent offices contemplated above are established and listed under Article 248(2) and (3) of the Constitution, respectively. In his submissions, the Hon. (Eng.) Gumbo underscored that the reports contain matters that concern the people of Kenya and that in keeping with the mandate of the National Assembly to deliberate and resolve such matters as envisaged under Article 95(2) of the Constitution, and there is need for direction on how to deal with such reports. Hon. Gumbo added that whereas the Constitution provides that such reports ought to be tabled, it is silent on how the House should express itself on the reports and the manner in which such reports ought to be considered.

Honourable Members, the matters of accountability raised by Eng. Gumbo resonates well with the spirit of the Constitution of Kenya, 2010, which sets high benchmarks for financial probity, accountability and transparency. Indeed Article 254(1) of the Constitution obligates constitutional commissions and independent offices to submit their annual reports to the President and Parliament. As a matter of fact, the constitutional commissions and independent offices occupy a central role in architecture of government. Indeed Article 249(1) of the Constitution envisions the objects of those Commissions and independent

offices as being: *to protect the sovereignty of the people; secure the observance by all State organs of democratic values and principles; and promote constitutionalism.* A reflection on the weighty nature of the spirit and intent by which constitutional commissions and independent offices are anchored in the Constitution, I agree with the Hon. (Eng.) Gumbo that reports generated and presented to Parliament by these bodies ought not be wished away. There is indeed an urgent necessity to put in place a framework on how to consider such reports.

Honourable Members, the Constitution is alive to the fact that Parliament, as the representative institution in democratic governance is responsible for, and must at all times pronounce itself on any matters(s) as and whenever submitted to the House. Whereas Article 254(1) of the Constitution is silent on the how Parliament should address itself to the reports submitted by Constitutional Commissions and Independent Offices, the manner of consideration and the timeline within which consideration of such reports should be concluded, a parallel can be drawn from the provisions relating to consideration of other forms of reports submitted to Parliament, particularly audit reports. Article 229 of the Constitution states, and I quote –

*(8) "Within three months after receiving an audit report, Parliament or the county assembly shall debate and consider the report and take appropriate action"*

On the same thread, honourable Members, it has been the practice of this House that whenever a report(s) is tabled before the House, the Speaker has either outrightly or on discretion referred the report to a relevant Committee of the House for consideration. Thereafter, the House has always considered the report in light of the observations and/or recommendation(s) of the Committee to which the matter was delegated. It is on this backdrop that even-though Article 229 of the Constitution does not expressly commit financial reports presented to Parliament by the Auditor-General to the Public Accounts Committee for consideration, the Committee continues to dutifully scrutinize the said reports on behalf of the House as and when referred to the Committee.

Honourable Members, in view of the foregoing, annual reports submitted by constitutional commissions and independent offices undoubtedly require thorough scrutiny by the House. If I were to invoke the provisions of Standing Order 1 and apply the provisions of Article 229 it would then follow that the House should consider the reports submitted by constitutional commissions and independent offices and take appropriate action, taking into account the observations and recommendations contained in the reports being tabled in the House by relevant Committees House after scrutinizing the reports submitted by the commissions and independent offices. For avoidance of doubt, I wish to guide the House as follows -

- (i) **THAT**, the annual Reports from Constitutional Commissions and Independent Offices, upon being tabled in the House, shall stand referred to the relevant Departmental Committee within whose purview the mandate of the Constitutional Commissions and/or Independent Offices fall. The Departmental Committees of the House will then consider the reports according to their respective mandates. Nothing shall preclude the Departmental Committees from setting up sub-committees for expedient disposal of such reports; and
- (ii) **THAT**, for purposes of the future practice in respect to such reports, I direct in accordance with Standing Order 1 that consideration of the said reports shall proceed in a manner similar to that accorded to consideration of audit reports by the Public Accounts Committee and within the timelines stipulated under Article 229(8)

of the Constitution, which is three months. Thereafter, the House will debate and consider the reports of the Departmental Committees and take appropriate action".

5. **PAPERS LAID**

The following Papers were laid on the Table –

The Reports of the Auditor-General on the Financial Statements in respect of the following institutions for the year ended 30<sup>th</sup> June, 2015 and the certificates therein:-

- (i) Pwani University;
- (ii) Coast Water Services Board;
- (iii) Railway Development Levy Fund;
- (iv) National Cohesion and Integration Commission;
- (v) Micro and Small Enterprises Authority (MSEA);
- (vi) Medical Practitioners and Dentists Board;
- (vii) Machakos University College;
- (viii) National Crime Research Centre;
- (ix) State Department for Coordination of National Government – Revenue Statement; and
- (x) Kenya Medical Research Institute (KEMRI).

*(The Leader of the Majority Party)*

6. **THE VETTING OF JUDGES AND MAGISTRATES (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO.5 OF 2016)**

Order for Second Reading read;

Motion made and Question proposed –

THAT, the Vetting of Judges and Magistrates (Amendment) Bill (National Assembly Bill No.5 of 2016) be now read a Second Time

*(Chairperson, Departmental Committee on Justice and Legal Affairs – 24.03.2016)*

Debate on the Motion having been concluded on Thursday, March 24, 2016 (Afternoon Sitting);

Question put and agreed to;

Bill read a Second Time and committed to the Committee of the whole House tomorrow.

7. **MOTION – ADOPTION OF THE REPORT ON THE MEDIATED VERSION OF THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) (NO.2) BILL, 2013**

Motion made and Question proposed -

**THAT**, pursuant to the provisions of Article 113 (2) of the Constitution and Standing Order 150, this House adopts the Report of the Mediation Committee on the Statute Law (Miscellaneous Amendments) (No.2) Bill, laid on the Table of the House on Thursday, 24<sup>th</sup> March 2016, and **approves** the mediated version of the Statute Law (Miscellaneous Amendments) (No.2) Bill (National Assembly Bill No. 33 of 2013)

*(The Vice Chairperson, Mediation Committee on the Statute Law (Miscellaneous Amendments) (No.2) Bill, 2013)*

There being no debate arising;

Question put and agreed to.

8. **COMMITTEE OF THE WHOLE HOUSE**

Order for Committee read;

**IN THE CHAIR**

The First Chairperson in the Chair

(i) **The Division of Revenue Bill (National Assembly Bill No.4 of 2016)**

Clause 3 - agreed to

Clause 4 - agreed to

Clause 5 - agreed to

Schedule - agreed to

Clause 2 - agreed to

Clause 1 - agreed to

Title - agreed to

Bill to be reported without amendments;

(ii) **The Health Bill (National Assembly Bill No.14 of 2015)**

***Resumption of consideration interrupted on Thursday, March, 2016 (Afternoon Sitting)***

Clause 55- amendment proposed –

**THAT**, the Bill be amended by deleting Clause 55 and substituting therefor the following:-

Bank account.

**“55 (1)** The National Treasury shall, facilitate the opening and maintenance of bank accounts by the county treasuries, for purposes of operationalizing disbursements of conditional grants, donations and any other monies designated for health as may be prescribed, in accordance with the provisions of the Constitution and the Public Finance Management Act.

Act No. 18 of 2012.

(2) Funds identified and designated for health in sub-section (1) shall not be appropriated for any other purpose.”

*(Chairperson, Departmental Committee on Health)*

Question of the amendment proposed –

Debate arising;

Question put and agreed to;

Clause 55 - as amended agreed to.

Clause 56 - amendment proposed –

**THAT**, clause 56 be amended in sub clause (1) by inserting the words “and regulation” immediately after the words “development”.

*(Chairperson, Departmental Committee on Health)*

Question of the amendment proposed –

Debate arising;

Question put and agreed to;

Clause 56 - as amended agreed to.

Clauses 57 and 58: - agreed to.

Clause 59 - amendment proposed –

**THAT**, the Bill be amended by deleting Clause 59 and substituting therefor the following:-

“Duty of licensees.

**59.** (1) Institutions licensed under section 57 and private health workers licensed under section 58 shall irrespective of any specific conditions attached to such a licence be bound -

(a) to permit and facilitate inspection at any time by the Authority and regulatory bodies;

(b) to provide emergency services in their field of expertise required or requested either by individuals, population groups or institutions, without regard to the prospect or otherwise of direct financial reimbursement.

(2) Institutions and private health workers shall nevertheless be entitled to compensation under similar terms as contemplated under section 7 of this Act.”

*(Chairperson, Departmental Committee on Health)*

Question of the amendment proposed –

Debate arising;

Question put and agreed to;

Clause 59 - as amended agreed to.

Clause 60 - agreed to

Clause 61 - amendment proposed –

**THAT**, clause 61 be amended—

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

“(1) There shall be established by the Cabinet Secretary, a National Health Research Committee which shall be a technical committee”.

(b) by deleting the marginal note and substituting therefor the following new marginal note—

“Establishment of the National Health Research Committee”.

*(Chairperson, Departmental Committee on Health)*

Question of the amendment proposed –

Debate arising;

Question put and agreed to;

Clause 61 - as amended agreed to.

Clause 62 and 63 - agreed to

Clause 64 - amendment proposed –

**THAT**, clause 64 of the Bill be amended in sub clause (3) by inserting the following new paragraph immediately after paragraph (f)—

“(fa) set up a national research database”

*(Chairperson, Departmental Committee on Health)*

Question of the amendment proposed –

Debate arising;

Question put and agreed to;

Clause 64 - as amended agreed to.

Clause 65 - agreed to.

Clause 66 - amendment proposed –

**THAT**, clause 66 of the Bill be amended by deleting the words “Third Schedule” and substituting therefor the words “Fourth Schedule”

*(Chairperson, Departmental Committee on Health)*

Question of the amendment proposed –

Debate arising;

Question put and agreed to;

Clause 66 - as amended agreed to.

Clauses 67, 68, 69, 70 and 71 - agreed to.

Clause 72 - amendment proposed –

**THAT**, clause 72 of the Bill be amended by deleting the opening statement, and substituting therefor the following new opening statement —

“The Cabinet Secretary shall, within three years of the operation of this Act, ensure the enactment of legislation that provides for among other things”

*(Chairperson, Departmental Committee on Health)*

Question of the amendment proposed –

Debate arising;

Question put and agreed to;

Clause 72 - as amended agreed to.

Clause 73 - amendment proposed –

**THAT**, clause 73 of the Bill be amended—

(a) in sub clause (1), by inserting the word ‘integrated’ immediately after the word “comprehensive”;

(b) in sub clause (2), by inserting the words “ in consultation with the Director General,” immediately after the word “ Cabinet Secretary” .

(c) by inserting the following new sub clause immediately after sub clause (2) —

“(2A) The Cabinet Secretary shall, in consultation with the Director General, prescribe policy guidelines for the establishment of an integrated comprehensive health information management system, which shall include—

(a) an integrated comprehensive health information system relating to the national government health functions;

(b) an integrated comprehensive health information system relating to every county and in respect of county functions; and

(c) the consolidation and harmonization of health information obtained under subsection (a) and subsection (b) ;

- (a) the minimum standards applicable for establishment and maintenance of health information systems;
- (b) a guide on the minimum indices to be captured by each county health information system;
- (c) the mechanism for ensuring inter-connectivity between each county information system and the national system;
- (d) the guiding principles for management and administration of health information banks; and
- (e) any other information on health services, including sources of health financing, human resources available in the health sector."

*(Chairperson, Departmental Committee on Health)*

Question of the amendment proposed –

Debate arising;

Question put and agreed to;

Clause 73 - as amended agreed to.

Clause 74 - amendment proposed –

**THAT**, the Bill be amended by deleting clause 74 and substituting therefor following

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Collaboration. "74.(1) While the Cabinet Secretary responsible for health shall bear primary responsibility for the implementation of this Act, the respective levels of government and other agencies of government shall collaborate, consult and enter into agreements for the better carrying out of the provisions of this Act.

(2) Without prejudice to sub section (1), the respective levels of government shall collaborate in the implementation of this Act, development of regulations and where necessary in the adaptation of legislation.

*(Chairperson, Departmental Committee on Health)*

Question of the amendment proposed –

Debate arising;

Question put and agreed to;

Clause 74 - as amended agreed to.

Clause 75 - agreed to.



Clause 76 - amendment proposed –

**THAT**, clause 76 of the Bill be amended by deleting paragraph (a) and substituting therefor the following new paragraph -

“(a) health workers welfare”;

*(Chairperson, Departmental Committee on Health)*

Question of the amendment proposed –

Debate arising;

Question put and agreed to;

Clause 76 - as amended agreed to.

Clause 77 and 78 - agreed to.

Clause 79 - amendment proposed –

**THAT**, clause 79 of the Bill be amended in the opening statement, by inserting the words “in consultation with the Director General” immediately after the words “Cabinet Secretary”.

*(Chairperson, Departmental Committee on Health)*

Question of the amendment proposed –

Debate arising;

Question put and agreed to;

Clause 79 - as amended agreed to.

### **NEW CLAUSES**

### **NEW PARTs IIIA & IIIB**

**THAT**, the Bill be amended by inserting the following new parts immediately after clause 26—

#### **“PART IIIA – KENYA HEALTH SECTOR INTER-GOVERNMENTAL CONSULTATIVE FORUM**

Establishment of  
Forum.  
No.2 of 2012

**26A.** (1) There is established a Health Sector Inter-Governmental Consultative Forum, in line with the provisions of the Inter-Governmental Relations Act, and any applicable law.

Composition of the  
Forum.

(2) The Forum shall comprise of –

(a) the Director-General for health or a designated representative; and

(b) each County Director of Health or a designated representative.

Purpose of the  
Forum.

**26B.** (1) The Forum shall –

(a) develop criteria and framework for determining matters requiring intergovernmental consultation; and

(b) develop inter-governmental agreements for joint implementation of any activities for health service delivery.

Meetings of the  
Forum.

**26C.** (1) The Forum shall meet at least twice a year.

(2) The Forum shall regulate the procedures of its meetings.

Conduct of  
business.

**26D.** (1) The Forum shall regulate the conduct and regulation of the business and affairs of the Forum.

Motion made and question proposed-

**THAT**, the new part IIIA including New Clauses 26A, 26B, 26C and 26D be read a Second Time

*(Chairperson, Departmental Committee on Health)*

Debate arising;

Question put and agreed to;

Motion made and Question proposed;

**THAT**, the new part IIIA including New Clauses 26A, 26B, 26C and 26D be part of the Bill

Question put and agreed to;

New Part IIIA, New Clauses 26A, 26B, 26C and 26D - agreed to.

New PART IIIB - amendments proposed

**THAT**, the Bill be amended by inserting the following new parts immediately after clause 26—

**“PART IIIB – ESTABLISHMENT OF THE KENYA HEALTH  
HUMAN RESOURCE ADVISORY COUNCIL**

Establishment of  
the Council.

**26E.** (1) There is established a Kenya Health Human Resource Advisory Council which shall consist of –

(a) a chairperson, who shall be appointed by the President;

(b) the Principal Secretary for the time being responsible for matters relating to health or a representative designated by the Principal Secretary;

(c) one person who holds a master’s degree in public health nominated by the Council of Governors;

(d) the Attorney General or a representative designated by the Attorney General;

- (e) the Director-General for health or a representative designated by the Director-General;
- (f) one representative nominated by the Public Service Commission;
- (g) one person nominated by the Intergovernmental Consultative Council;
- (h) one person nominated by the County Public Service Boards;
- (i) three persons nominated by public universities, private universities and mid-level institutions; and
- (k) the Chief Executive Officer.

(2) The Council shall be a body corporate with perpetual succession and a common seal, and shall in its corporate name be capable of—

- (a) suing and being sued;
- (b) acquiring , holding and disposing of movable and immovable property; and
- (c) doing or performing all such other things or acts as may be lawfully done by a body corporate.

Functions of the Council.

**26F.** (1) The Council shall review policy and establish uniform norms and standards for –

- (i) posting of interns to National Government and County Government facilities;
- (ii) inter county transfer of healthcare professionals;
- (iii) transfer of healthcare professionals from one level of Government to another;
- (iv) the scheme of service for health professionals;
- (v) management and rotation of specialists; and
- (vi) the maintenance of a master register for all health practitioners in the counties.

Powers of the Council.

**26G.** The Council shall have all powers necessary for the proper performance of its functions under this Act and in particular, but without prejudice to the generality of the foregoing, the Council shall have power to—

- (a) control, supervise and administer the assets of the Council in such manner and for such purpose as best promotes the purpose for which the Council is established;

- (b) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Council;
- (c) receive any grants, gifts, donations or endowments and make legitimate disbursements therefrom;
- (d) enter into association with other bodies or organizations within or outside Kenya as the Council may consider desirable or appropriate and in furtherance of the purpose for which the Council is established;
- (e) open a banking account or banking accounts for the funds of the Council; and
- (f) invest any funds of the Council not immediately required for its purposes as may be permitted by law for the time being in force.

Chief Executive  
Officer.

**26H.** (1) The Public Service Commission shall, through an open, transparent process, recruit a Chief Executive Officer who shall be appointed by the Council.

(3) A person is qualified for appointment as the Chief Executive Officer to the Council if the person—

- (a) holds at least a degree in medicine from a university recognized in Kenya, and is registered by the Kenya Medical Practitioners and Dentist Board;
- (b) has at least ten years' experience in the practice of medicine, five of which shall be experience at senior management level; and
- (c) meets the requirements of Chapter Six of the Constitution;

(4) The Chief Executive Officer shall serve the Council for a term of five years and shall be eligible, subject to satisfactory performance of his or her functions, for reappointment for one further term.

(5) A person shall not be appointed as the Chief Executive Officer or an officer of the Council if such person has any direct or indirect interest in the health sector.

(6) The Chief Executive Officer may be removed from office for gross misconduct, violation of the Constitution or any other law or on any other ground as may be provided for in the contract of employment.

(7) The Chief Executive Officer shall be responsible for the day to day operations of the Council.

Conduct of  
business and  
affairs of the  
Council.

**26J.** (1) The conduct and regulation of the business and affairs of the Council shall be as provided in the Second Schedule.

(2) Except as provided in the Second Schedule, the Council may regulate its own procedure.

Delegation by the  
Council.

**26K.** The Council may, by resolution generally or in any particular case, delegate to any committee of the Council or to any member, officer, employee or an agent of the Council, the exercise of any of the powers or the performance of any of the functions or duties of the Council under this Act.

Tenure of office.

**26L.** (1) The chairperson and the members of the Council , other than *ex-officio* members, shall hold office for a term of five years and shall be eligible for re-appointment for one further term.

(2) The members of the Council shall be appointed in such a manner that the respective expiry dates of their terms of office fall at different times.

Staff of the  
Council.

**26M.** (1) The Council may competitively appoint suitably qualified staff as may be necessary for the efficient performance of the functions of the Council.

(2) In the appointment of the staff of the Council, the Council shall comply with the values and principles set out in the Constitution and in particular—

(a) afford adequate and equal opportunities for appointment and advancement at all levels, of men and women, members of all ethnic groups and persons with disabilities;

(b) exercise transparency in the recruitment process; and

(c) ensure competitive recruitment and selection on the basis of personal integrity, competence and suitability.

Terms and  
conditions of  
service.

**26N.** The staff of the Council shall serve on such terms of service as the Council, on recommendation of the Salaries and Remuneration Commission may determine.

Protection from of  
liability.

**26O.** (1) A member of the Council or any person working under the instructions of the Council shall not be personally liable for any act or default of the Council done or omitted to be done in good faith in the course of carrying on the functions of, or exercising of powers conferred upon the Council under this Act.

(2) Despite subsection (1), the Council shall not be relieved of its liability to pay compensation to any person for any injury to him or her, his or her property or to any of his or her interest caused by the exercise of any power conferred by this Act or by failure, whether wholly or partially, of any works.

Funds of the  
Council.

**26P.** The funds of the Council shall comprise—

- (a) such funds as may be appropriated by the Parliament;
- (b) such moneys or assets as may accrue to or vest in the Council in the performance of its functions or the exercise of its powers under this Act or any other written law; and
- (c) all moneys from any other source provided for, donated or lent to the Council.

Financial year.

**26Q.** The financial year of the Council shall be the period of twelve months ending on the thirtieth day of June in every year.

Annual estimates.

**26R.**(1) The Council shall, at least three months before the commencement of each financial year, cause to be prepared estimates of revenue and expenditure of the Council for that financial year.

(2) The annual estimates shall make provision for all the estimated expenditure of the Council for the financial year concerned and in particular shall provide for the—

- (a) payment of salaries, allowances and other charges in respect of the members of staff or agents of the Council;
- (b) payment of pensions, gratuities and other charges in respect of members and other staff of the Council;
- (c) proper maintenance of buildings and grounds of the Council;
- (d) acquisition, maintenance, repair and replacement of the equipment and other movable property of the Council; and
- (e) funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other matter as the Council may deem appropriate.

(3) The annual estimates shall be approved by the Council before the commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary for approval and after approval, the Council shall not increase annual estimates without the consent of the Cabinet Secretary.

(4) No expenditure shall be incurred for the purposes of the Council except in accordance with the annual estimates approved under subsection (3), or in pursuance of an authorization by the Cabinet Secretary.

Accounts and  
audit.

**26S.** (1) The Council shall cause to be kept all proper books and records of accounts of the income, expenditure, assets and liabilities of the Council.

No. 12 of 2003

(2) The accounts of the Council shall be audited and reported upon in accordance with the provisions of the Public Audit Act.

(3) The Council shall, within three months from the end of the financial year to which the accounts relate, submit to the Auditor-General the accounts of the Council together with—

- (a) a statement of income and expenditure during the year;
- (b) a statement of the assets and liabilities of the Council as of the last day of that year;
- (c) a cash flow statement for the financial year; and
- (d) any other statements and accounts that may be necessary to fully disclose the financial position of the Council.

Investment of  
funds.

**26T.** The Council may, subject to the approval of the Cabinet Secretary for the time being responsible for matters relating to finance invest any of the funds of the Council in securities in which, for the time being, trustees may by law invest funds or in any other securities which the Treasury may, from time to time, approve for that purpose.

Motion made and question proposed-

**THAT**, the new part IIIB including New Clauses 26E, 26F, 26G, 26H, 26J, 26K, 26L, 26M, 26N, 26O, 26P, 26Q, 26R, 26S and 26T be read a Second Time

*(Chairperson, Departmental Committee on Health)*

Debate arising;

Question put and agreed to;

Motion made and Question proposed;

**THAT**, the new part IIIB including New Clauses 26E, 26F, 26G, 26H, 26J, 26K, 26L, 26M, 26N, 26O, 26P, 26Q, 26R, 26S and 26T be part of the Bill

Question put and agreed to;

New Part IIIB, New Clauses 26E, 26F, 26G, 26H, 26J, 26K, 26L, 26M, 26N, 26O, 26P, 26Q, 26R, 26S and 26T - agreed to.

New Clauses 30A, 30B, 30C, 30D, 30E, 30F, 30G, 30H, 30I, 30J, 30K and 30L-

Amendment Proposed

**THAT**, the Bill be amended by inserting the following new clauses immediately after clause 30-

Chief Executive  
Officer.

**30A.** (1) The Public Service Commission shall, through an open, transparent process, recruit a Chief Executive Officer who shall be appointed by the Authority .

(2) A person is qualified for appointment as the Chief Executive Officer to the Authority if the person—

(a) holds at least a degree in medicine from a university recognized in Kenya and is registered by the Kenya Medical Practitioners and Dentist Board.

(b) has at least ten years' experience in the practice of medicine, five of which shall be experience at senior management level; and

(c) meets the requirements of Chapter Six of the Constitution;

(3) The Chief Executive Officer shall serve the Authority for a term of five years and shall be eligible, subject to satisfactory performance of his or her functions, for reappointment for one further term.

(4) A person shall not be appointed as the Chief Executive Officer or an officer of the Authority if such person has any direct or indirect interest in the health sector.

(5) The Chief Executive Officer may be removed from office for gross misconduct, violation of the Constitution or any other law or on any other ground as may be provided for in the contract of employment.

(6) The Chief Executive Officer shall be responsible to the Board for the day to day operations of the Authority.

Conduct of business  
and affairs of the  
Authority.

**30B.** (1) The conduct and regulation of the business and affairs of the Board shall be as provided in the Third Schedule.

(2) Except as provided in the Third Schedule, the Authority may regulate its own procedure.

Delegation by the  
Authority.

**30C.** The Authority may, by resolution generally or in any particular case, delegate to any committee of the Authority or to any member, officer, employee or an agent of the Authority, the exercise of any of the powers or the performance of any of the functions or duties of the Authority under this Act.

Staff of the Authority.

**30D.** (1) The Board may competitively appoint suitably qualified staff as may be necessary for the efficient performance of the functions of the Board.



(2) In the appointment of the staff of the Board, the Board shall comply with the values and principles set out in the Constitution and in particular—

- (a) afford adequate and equal opportunities for appointment and advancement at all levels, of men and women, members of all ethnic groups and persons with disabilities;
- (b) exercise transparency in the recruitment process; and
- (c) ensure competitive recruitment and selection on the basis of personal integrity, competence and suitability.

Terms and conditions of service.

**30E.** The staff of the Board shall serve the Board on such terms of service as the Board, on recommendation of the Salaries and Remuneration Commission may determine.

Protection from Liability.

**30F.** (1) A member of the Board, or an officer, employee or agent of the Authority or any person acting under their direction is not liable for any matter or thing if that matter or thing is done in good faith for executing the functions, powers or duties of the Authority..

(2) Despite subsection (1), the Board shall not be relieved of its liability to pay compensation to any person for any injury to him or her, his or her property or to any of his or her interest caused by the exercise of any power conferred by this Act or by failure, whether wholly or partially, of any works.

Funds of the Authority.

**30G.** The funds of the Authority shall comprise—

- (a) such funds as may be appropriated by the Parliament;
- (b) such moneys or assets as may accrue to or vest in the Authority in the performance of its functions or the exercise of its powers under this Act of any other written law; and
- (c) all moneys from any other source provided for, donated or lent to the Authority.

Financial year.

**30H.** The financial year of the Authority shall be the period of twelve months ending on the thirtieth day of June in every year.

Annual estimates.

**30I.**(1) The Board shall, at least three months before the commencement of each financial year, cause to be prepared estimates of revenue and expenditure of the Authority for that financial year.

(2) The annual estimates shall make provision for all the estimated expenditure of the Authority for the financial year concerned and in particular shall provide for the—

- (a) payment of salaries, allowances and other charges in respect of the members of staff or agents of the Authority;
- (b) payment of pensions, gratuities and other charges in respect of members and other staff of the Authority;
- (c) proper maintenance of buildings and grounds of the Authority;
- (d) acquisition, maintenance, repair and replacement of the equipment and other movable property of the Authority; and
- (e) funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other matter as the Authority may deem appropriate.

(3) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary for approval and after approval, the Authority shall not increase annual estimates without the consent of the Cabinet Secretary.

(4) No expenditure shall be incurred for the purposes of the Authority except in accordance with the annual estimates approved under subsection (3), or in pursuance of an authorization by the Cabinet Secretary.

Investment of funds.

**30J.** The Board may, subject to the approval of the Cabinet Secretary for the time being responsible for matters relating to finance invest any of the funds of the Authority in securities in which, for the time being, trustees may by law invest funds or in any other securities which the Treasury may, from time to time, approve for that purpose.

Accounts and audit.  
No. 12 of 2003

**30K.** (1) The Board shall cause to be kept all proper books and records of accounts of the income, expenditure, assets and liabilities of the Authority.

(2) The accounts of the Authority shall be audited and reported upon in accordance with the provisions of the Public Audit Act

(3) The Board shall, within three months from the end of the financial year to which the accounts relate, submit to the Auditor-General the accounts of the Authority together with—

- (a) a statement of income and expenditure during the year;
- (b) a statement of the assets and liabilities of the Authority as of the last day of that year;
- (c) a cash flow statement for the financial year; and
- (d) any other statements and accounts that may be necessary to fully disclose the financial position of the Authority.

Relationship with  
other  
regulatory bodies.

**30L.** (1) The obligation to inspect, monitor and evaluate the standard of performance in all the services regulated and professionals engaged in the health sector, both public and private shall be undertaken by the respective regulatory bodies provided that they are not in conflict with the functions of the Authority as stipulated in this Act or under any other written law.

(2) For the avoidance of doubt the regulatory bodies referred to in subsection (1) shall include—

Cap.260

- (a) the Clinical officers Authority established under the Clinical Officers Act;

Cap.257

- (b) the Nursing Council of Kenya established under the Nurses Act;

Cap. 253A.

- (d) the Kenya Medical Laboratory Technicians and Technologists Board established under the Medical Laboratory Technicians and Technologists Act;

Cap.253.

- (e) the Medical Practitioners and Dentists Board established under the Medical Practitioners and Dentists Act;

Cap. 243.

- (f) the Radiation Protection Board established under the Radiation Protection Act;

- (g) the Pharmacy and Poisons Board established under the Pharmacy and Poisons Act;

the Council of the Institute of Nutritionists and Dieticians established under the Nutritionists and Dieticians Act;

Cap.244.

(h) the Public Health Officers and Technicians Council established under the Public Health Officers (Training, Registration and Licensing) Act; and

Cap. 253B.

(i) any other body as may be prescribed by the Cabinet Secretary under this Act."

No. 12 of 2013.

*(Chairperson, Departmental Committee on Health)*

Motion made and question proposed –

**THAT**, the new Clauses 30A, 30B, 30C, 30D, 30E, 30F, 30G, 30H, 30I, 30J, 30K and 30L be read a Second Time -

*(Chairperson, Departmental Committee on Health)*

Debate arising;

Question put and agreed to;

Motion made and Question proposed;

**THAT**, the New Clauses 30A, 30B, 30C, 30D, 30E, 30F, 30G, 30H, 30I, 30J, 30K and 30L be part of the Bill

Question put and agreed to;

New Clauses 30A, 30B, 30C, 30D, 30E, 30F, 30G, 30H, 30I, 30J, 30K and 30L - Agreed to.

New Clauses 41A and 41B -

Amendment proposed

**THAT**, the Bill be amended in **Part VI** by inserting the following new clause immediately after clause 40 —

Lactation  
stations in  
the  
workplace.

**"41A.** (1) All employers shall in the workplace establish lactation stations, which shall be adequately provided with necessary equipment and facilities including handwashing equipment, refrigerators or appropriate cooling facilities, electrical outlets for breast pumps, a small table, comfortable seats the standard of which shall be defined by the Ministry responsible for matters relating to health.

(2) The lactation station shall not be located in the rest rooms.

(3) All employers shall take strict measures to prevent any direct or indirect form of promotion, marketing and or selling of infant formula and or breast substitutes within the lactation stations.

Provision of  
break  
intervals for  
nursing  
employees.

**41B.** (1) An employer shall grant all nursing employees break intervals in addition to the regular times off for meals to breastfeed or express milk.

(2) The time intervals referred to in sub section (1) shall include the time it takes an employee to get to and from the lactation station and shall be counted as compensable hours worked provided that such intervals shall not be more than a total of one hour for every eight hour working period.

*(Chairperson, Departmental Committee on Health)*

Motion made and question proposed –

**THAT**, New Clauses 41A and 41B be read a Second Time –

*(Chairperson, Departmental Committee on Health)*

Debate arising;

Question put and agreed to;

Motion made and Question proposed;

**THAT**, the New Clauses 41A and 41B be part of the Bill

Question put and agreed to;

New Clauses 41A and 41B - Agreed to.

New Clause 78A

-Amendment proposed

**THAT**, the Bill be amended by inserting the following new clause immediately after clause 78-

General  
penalty

**78A.** (1) A person convicted of an offence under this Act for which no penalty is provided shall, on conviction, be liable to a fine not exceeding two million shillings or to imprisonment for a term not three months, or to both.

(2) An act or omission which is an offence under this Act or any regulations made hereunder shall, if done by a body corporate, be deemed to be an offence committed by every director, secretary or manager of the body corporate unless proved that the offence was committed without consent or connivance of the director, secretary or manager and that he or she exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions and the circumstances of the case.

(3) If an offence under this Act or any regulations made hereunder is committed by a partner in a firm, every person who, at the time of the commission of the offence, was a partner in that firm, or was purporting to act in that office shall be deemed to have committed the offence, unless there is proof that the offence was committed without the consent or connivance of

the partner and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions and the circumstances of the case."

*(Chairperson, Departmental Committee on Health)*

Motion made and question proposed –

**THAT**, new Clause 78A be read a Second Time –

*(Chairperson, Departmental Committee on Health)*

Debate arising;

Question put and agreed to;

Motion made and Question proposed;

**THAT**, the New Clause 78A be part of the Bill

Question put and agreed to;

New Clause 78A - Agreed to.

## **SCHEDULES**

**First Schedule** - Amendment proposed

**THAT**, the First Schedule of the Bill be amended—

- (a) in LEVEL 3 by inserting the words 'or medical officer with at least two years managerial experience' immediately after the word "officer."
- (b) in LEVEL 5-
  - (i) by deleting the words "nursing staff and clinical officers" appearing at the end of paragraph (b) and substituting therefor the words "paramedical staff";
  - (ii) by deleting paragraph (d);
- (c) in LEVEL 6-
  - by inserting the words "Research centre, provides" immediately before the word "training" appearing in paragraph (b);
  - (i) by deleting note 2 and substituting therefor the following note-

"2. Level 6 shall be National Referral Hospitals and established in every County."
  - (ii) by inserting the words "or downgraded" immediately after the word "upgraded" appearing in note (3).

*(Chairperson, Departmental Committee on Health)*

Question of the amendment proposed –

Debate arising;

Question put and agreed to;

First Schedule - as amended agreed to.

Second Schedule - Amendment proposed

**THAT**, the Bill be amended by deleting the Second Schedule and substituting therefor the following new Schedule –

### **THIRD SCHEDULE**

**(s. 32)**

#### **PROVISIONS RELATING TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE AUTHORITY**

Meetings.

1. (1) The Authority shall hold at least four meetings in every financial year and not more than four months will elapse between one meeting and the next.

(2) Meetings shall be convened by the Chairperson or in his absence by the vice-chairperson.

(3) Unless three quarters of the members otherwise agree, at least fourteen days' notice of a meeting shall be given to every member.

(4) A meeting shall be presided over by the Chairperson, or in his absence, by the vice-chairperson or in their absences, by a person elected by the Board at the meeting for that purpose.

(5) A decision of the Board shall be by a majority of the members present and voting and, in the case of an equality of votes, the person presiding at the meeting shall have a second or casting vote.

(6) The first order of business of the Board shall be to elect a vice-chairperson.

Quorum.

2. The quorum for meeting shall be five members.

Minutes.

3. Minutes of all meetings shall be kept and entered in books kept for that purpose.

Conflict of interest.

4. A member of the Authority who has a direct or indirect personal interest in a matter being considered or to be considered by the Board shall as soon as reasonably practicable after the relevant facts concerning the matter have come to his knowledge, disclose the nature of his interest to the Board.

Disclosure of interest by members of the Board.

5. A disclosure of interest in a matter shall be recorded in the minutes of the meeting of the Board and the member shall not be present while that matter is being dealt with by the Board and shall not take part in any deliberations or vote relating to the matter.

Remuneration of the members of the Board

6. The Authority shall pay the members of the Board such allowances and expenses as shall be determined by the Cabinet Secretary.

*(Chairperson, Departmental Committee on Health)*

Question of the amendment proposed –

Debate arising;

Question put and agreed to:

Second Schedule - as amended agreed to.

Third Schedule - Amendment proposed

**THAT**, the Bill be amended by deleting the proposed Third Schedule and substituting therefor the following new Schedule –

#### **FOURTH SCHEDULE**

**(s. 66)**

#### **PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE COMMITTEE**

Meetings.

1. (1) The Committee shall hold at least four meetings in every financial year and not more than four months will elapse between one meeting and the next.

(2) Meetings shall be convened by the Chairperson or in his absence by the vice-chairperson.

(3) Unless three quarters of the members otherwise agree, at least fourteen days' notice of a meeting shall be given to every member.

(4) The Chairperson shall preside over all the meetings of the Committee or in his absence, the meetings shall be presided over by the vice-chairperson or in both their absences, by a person elected by the Committee at the meeting for that purpose.

(5) A decision of the Committee shall be by a majority of the members present and voting and, in the case of an equality of votes, the person presiding at the meeting shall have a second or casting vote.

(6) The first order of business of the Committee shall be to elect a vice-chairperson.

Quorum.

2. The quorum for meeting shall be five members.

Minutes.

3. Minutes of all meetings shall be kept and entered in books kept for that purpose.

Conflict of interest.

4. A member of the Committee who has a direct or indirect personal interest in a matter being considered or to be considered by the Committee shall as soon as reasonably practicable after the relevant facts concerning the matter have come to his knowledge, disclose the nature of his interest to the Committee.



Disclosure of interest by members of the Committee.

5. A disclosure of interest in a matter shall be recorded in the minutes of the meeting of the Committee and the member shall not be present while that matter is being dealt with by the Committee and shall not take part in any deliberations or vote relating to the matter.

Remuneration of Committee members.

6. The Committee shall pay the members of the Committee such allowances and expenses as shall be determined by the Cabinet Secretary.

*(Chairperson, Departmental Committee on Health)*

Question of the amendment proposed –

Debate arising;

Question put and agreed to;

Third Schedule - as amended agreed to.

### **New Schedules**

New Second Schedule - Amendment proposed

**THAT**, the Bill be amended by inserting the following Schedule immediately after the First Schedule

### **SECOND SCHEDULE**

**(s.26 J)**

### **PROVISIONS RELATING TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE COUNCIL**

Vacation of office.

1. A member other than an *ex-officio* member may—

(a) at any time resign from office by notice in writing, in the case of the Chairperson, to the President, and in the case of any other member, to the Cabinet Secretary;

(b) be removed from office by the President or the Cabinet Secretary, as the case may be, if the member—

(i) has been absent from three consecutive meetings of the Council without the permission of the Council;

(ii) is adjudged bankrupt or enters into a composition scheme or arrangement with his or her creditors;

(iii) is convicted of an offence involving dishonesty or fraud;

(iv) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings;

- (v) is incapacitated by prolonged physical or mental illness;
- (vi) is found to have acted in a manner inconsistent with the aim and objectives of this Act;
- (vii) fails to comply with the provisions of this Act relating to disclosure; or
- (viii) is otherwise unable or unfit to discharge his or her functions as member of the Council.

2. (1) The Council shall hold at least four meetings in every financial year and not more than four months will elapse between one meeting and the next.

(2) Meetings shall be convened by the Chairperson or in his absence by the vice-chairperson.

(3) Unless three quarters of the members otherwise agree, at least fourteen days' notice of a meeting shall be given to every member.

(4) The Chairperson shall preside over all the meetings of the Council or in his absence, the meetings shall be presided over by the vice-chairperson or in both their absences, by a person elected by the Council at the meeting for that purpose.

(5) A decision of the Council shall be by a majority of the members present and voting and, in the case of an equality of votes, the person presiding at the meeting shall have a second or casting vote.

(6) The first order of business of the Council shall be to elect a vice-chairperson.

Quorum.

3. The quorum for the conduct of business of the Council shall be half of the members, and unless a unanimous decision is reached, decisions shall be by a majority vote of the members present, and in the case of an equality of votes, the chairperson or the person presiding shall have a casting vote.

Minutes.

4. Minutes of all meetings shall be kept and entered in books kept for that purpose.

Disclosure of interest.

5. (1) If a member is directly or indirectly interested in any matter before the Council and is present at the meeting of the Council at which the matter is the subject of consideration, he or she shall, at the meeting and as soon as practicable after the commencement, disclose that fact and shall be excluded at the meeting at which the matter is being considered.

(2) A disclosure of interest made under this section shall be recorded in the minutes of the meeting at which it is made.

Allowances of the Council.

6. The Chairperson and members of the Council shall be paid such allowances as the Cabinet Secretary in consultation with the Salaries and Remuneration Commission shall determine.

Powers of the  
Cabinet  
Secretary.

7. (1) The Council shall operate under the supervision of the Cabinet Secretary.

(2) Where the Council fails to maintain any prescribed standard in the fulfilment of its functions under this Act, the Cabinet Secretary may give general or special directions to the Council describing the extent of the failure and stating the steps required to remedy the situation.

*(Chairperson, Departmental Committee on Health)*

Motion made and question proposed-

**THAT**, the new Second Schedule be read a Second Time

*(Chairperson, Departmental Committee on Health)*

Debate arising;

Question put and agreed to;

Motion made and Question proposed;

**THAT**, the New Second Schedule be part of the Bill

Question put and agreed to;

New Second Schedule - agreed to.

Clause 2 - Amendment proposed

**THAT**, clause 2 if the Bill, be amended-

- (a) by deleting the definition of "abortion" and substituting therefor the following new definition  
"abortion" means termination of a pregnancy before the foetus is viable as an independent life outside the womb;
- (b) by deleting the definition of "alternative medicine" and substituting therefor the following new definition  
"alternative medicine" means complementary medicine and includes a broad set of health care practices that are not part of Kenya's tradition and are not integrated into the dominant health care system";
- (c) by deleting the definition of "e-health" and substituting therefor the following new definition  
— "e-Health" means the combined use of electronic communication and information technology in the health sector including telemedicine";
- (d) by deleting the definition of "therapeutic manipulation" and substituting therefor the following new definition —  
"therapeutic manipulation" means handling of genetic material of zygotic or embryonic cells in order to alter, for therapeutic purposes, the function of cells or tissues";
- (e) by inserting the following new definitions in proper alphabetical sequence—  
"breastfeeding" means the method of feeding an infant directly from the female breast;

"expressing milk" means the act of extracting human from the breast by hand or by pump into a container;

"health care provider" means a person who provides health care services and includes a health care professional";

"health extension worker" means a health care professional working in health centres in rural and medically underserved areas, where they provide emergency treatment and a range of other health services to patients;

"health system" means an organization of people, institutions and resources, that deliver health care services to meet the health needs of the population, in accordance with established policies".

"lactation stations" means private, clean, sanitary and well-ventilated rooms or areas in the workplace where nursing mothers can wash up, breast feed or express their milk and hygienically preserve it;

"public good" means a good or service whose benefits may be provided to a group at no more cost than that required to provide for one person";

"specialist" means a health professional who is specially trained in a certain branch of his or her profession related to specific services or procedures";

*(Chairperson, Departmental Committee on Health)*

Question of the amendment proposed –

Debate arising;

Question put and agreed to;

Clause 2 - as amended agreed to.

Title - agreed to

Clause 1 - agreed to

Bill to be reported with amendments.

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

(i) **The Division of Revenue Bill (National Assembly Bill No. 04 of 2016)**

Bill reported without amendments;

Motion made and Question proposed –

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

*(Hon. Florence Kajuju)*

Question put and agreed to;

Motion made and Question proposed –

THAT, the Division of Revenue Bill (National Assembly Bill No. 04 of 2016) be now read a Third Time

*(Hon. Florence Kajuju)*

Question of the Third Reading deferred to another day

**(ii) The Health Bill (National Assembly Bill No. 14 of 2015)**

Bill reported with amendments.

Motion made and Question proposed –

**THAT**, the House doth agree with the Committee in the said Report.

*(Chairperson, Departmental Committee on Health)*

Amendment proposed-

**THAT**, the Motion for agreement with the Report of the Committee of the Whole House be amended by inserting the words “**subject to re-committal of Clauses 7, 28. 48 and 54**”

*(Hon. George Oner)*

Debate arising;

Question put and agreed to;

10. **COMMITTEE OF THE WHOLE HOUSE**

**IN THE COMMITTEE**

The First Chairperson of the Committees

Clause 7 - amendment proposed

**THAT**, clause 7 be amended by deleting sub-clause (2)-

*(Hon. George Oner)*

Debate arising;

Question put and agreed to;

Clause 7 - as amended agreed to.

Clause 28 - amendment proposed

**THAT**, clause 28 of the Bill be amended—

(a) by inserting the following paragraph immediately after paragraph (e)—

(da) two representatives nominated by the Council of Governors;

- (b) by deleting the word 'two' and substituting therefor the word 'three' immediately after paragraph (e)
- (c) by inserting the words "appointed by the Authority, through a competitive process and shall be the secretary of the Authority." immediately after the words "officer"

*(Chairperson, Departmental Committee on Health)*

Question of the amendment proposed –

Debate arising;

Question put and agreed to;

Clause 28 - as amended agreed to.

Clause 49 - amendment proposed

**THAT**, clause 49 of the Bill be amended in sub-clause (2) by deleting the word "partner" and substituting therefor the word "spouses"

*(Chairperson, Departmental Committee on Health)*

Question of the amendment proposed –

Debate arising;

Question put and agreed to;

Clause 49 - as amended agreed to.

Clause 54 - Amendment proposed

**THAT**, clause 54 of the Bill be amended in sub clause (1) by deleting the words "cabinet secretary" and substituting therefore the word "department"

*Chairperson, Departmental Committee on Health)*

Question of the amendment proposed –

Debate arising;

Question put and agreed to;

Clause 54 - as amended agreed to.

Bill to be reported with amendments.

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

**The Health Bill (National Assembly Bill No. 14 of 2015)**

Bill reported with amendments;

Motion made and Question proposed –

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

*(Chairperson, Departmental Committee on Health)*

Question put and agreed to;

Motion made and Question proposed –

THAT, the Health Bill (National Assembly Bill No. 14 of 2016) be now read a Third Time

*(Chairperson, Departmental Committee on Health)*

Debate arising;

Question of the Third Reading deferred to another day

12. **THE LAND LAWS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 55 OF 2015)**

Order for Second Reading read;

Motion made and Question proposed –

THAT, the Land Laws (Amendment) Bill (National Assembly Bill No. 55 of 2015) be now read a Second Time

*(Chairperson, Departmental Committee on Lands – 09.03.2016)*

Debate adjourned Thursday, March 24, 2016 (Afternoon) resumed;

And the time being thirty minutes past Six O'clock, the Third Chairperson interrupted the proceedings and adjourned the House without Question put pursuant to the Standing Orders.

13. **HOUSE ROSE** - at thirty minutes past Six O'clock

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

The Speaker will take the Chair on  
Wednesday, March 30, 2016 at 9.30 a.m.

--X--