



**REPUBLIC OF KENYA**

**ELEVENTH PARLIAMENT – FIFTH SESSION**

**THE SENATE**

**VOTES AND PROCEEDINGS**

**WEDNESDAY, FEBRUARY 15, 2017 AT 2.30 P.M.**

1. The Senate assembled at thirty minutes past Two O'clock.
2. The Proceedings were opened with Prayer said by the Deputy Speaker.
3. **MESSAGES FROM THE NATIONAL ASSEMBLY**

The Deputy Speaker issued the following Messages-

**(a) On the decision of the National Assembly on the Health Bill (National Assembly Bill No. 14 of 2015) and the Public Fundraising Appeals Bill (Senate Bill No. 28 of 2014)**

“Honourable Senators,

I wish to report to the Senate that, pursuant to Standing Order 40 (3) and (4), I have received the following Message from the Speaker of the National Assembly regarding the decision of the Assembly on the Health Bill (National Assembly Bill No. 14 of 2015) and the Public Fundraising Appeals Bill (Senate Bill No. 28 of 2014).

**“PURSUANT** to the provisions of standing orders 41 and 142 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly-

**WHEREAS**, the Health Bill (National Assembly Bill No. 14 of 2015) was published *vide* Kenya Gazette Supplement No. 44 of 17<sup>th</sup> August 2015 to align health laws and policy to the provisions of the Fourth Schedule to the Constitution of Kenya, 2010 relating to the respective functions assigned to national and county governments and to provide a framework for coordination between the two levels of government in the provision of health services and management of health facilities;

**WHEREAS**, the said Bill was passed on 30<sup>th</sup> March, 2016 and referred to the Senate for consideration and thereafter returned with amendments by the Senate;

**WHEREAS**, on 23<sup>rd</sup> and 24<sup>th</sup> November, 2016, the National Assembly considered Senate amendments to the Health Bill and **negatived** the Senate's amendments to several clauses, save for the amendments to **clauses 2, 7, 12, 27 and 49** of the Bill that were agreed to;

**AND WHEREAS**, the Public Fundraising Appeals Bill (Senate Bill No. 28 of 2014), published *vide* Kenya Gazette Supplement No. 99 of 27<sup>th</sup> June 2014 as a Bill originating in the Senate was passed by the Senate on Tuesday, 12<sup>th</sup> May, 2015 and referred to the National Assembly for concurrence;

**FURTHER WHEREAS**, the Public Fundraising Appeals Bill (Senate Bill No. 28 of 2014) Bill was lost at Second Reading on 5<sup>th</sup> October, 2016, thereby committing it to a mediation committee;

**NOW THEREFORE**, in accordance with the provisions of Article 112 of the Constitution and Standing Order 149 of the National Assembly Standing Orders, I hereby **convey** the said decisions of the National Assembly to the Senate and seek the appointment of Senators to the Mediation Committees in respect of the two Bills".

Honourable Senators,

Article 112(1) (b) of the Constitution provides that *if one House passes an ordinary Bill concerning counties and the second House passes the Bill in an amended form, it shall be referred back to the originating House for reconsideration*. Further, Article 112(2) (b) of the Constitution provides that *if after the originating House has reconsidered a Bill referred back to it under clause (1) (b), that House rejects the Bill as amended, the Bill shall be referred to a Mediation Committee under Article 113*.

Further, Article 112(1) (a) of the Constitution provides that *if one House passes an ordinary Bill concerning counties and the second House rejects the Bill, it shall be referred to a Mediation Committee appointed under Article 113*.

Honourable Senators,

In the circumstances, I concur with the Speaker of the National Assembly to form mediation committees in accordance with Articles 112 (1) (a), 112(2) (b) and 113 of the Constitution.

I would also like to inform the House that, I have received communication from the National Assembly that the Speaker of the National Assembly has appointed the following Members to represent the Assembly in the respective Mediation Committees that will attempt to develop versions of the said Bills that both Houses will pass-

**Mediation Committee on the Health Bill (National Assembly Bill No.14 of 2015)**

1. The Hon. (Dr.) Rachel Nyamai, M.P.;
2. The Hon. (Dr.) Robert Pukose, M.P.;
3. The Hon. (Dr.) Naomi Shaban, M.P.;
4. The Hon. (Dr.) James Nyikal, M.P.; and
5. The Hon. (Dr.) Enoch Kibunguchy, M.P.

**Mediation Committee on the Public Fundraising Appeals Bill (Senate Bill No. 28 of 2014):**

1. The Hon. Priscilla Nyokabi, M.P.;
2. The Hon. T.J. Kajwang, M.P.; and
3. The Hon. Stephen Bitok, M.P.

Likewise Hon. Senators, I also hereby appoint the following Senators to represent the Senate in the said Mediation Committees-

**Mediation Committee on the Health Bill (National Assembly Bill No. 14 of 2015)**

1. Sen. (Dr.) Wilfred Machage, M.P.;
2. Sen. (Prof.) Wilfred Lesan, M.P.;
3. Sen. Zipporah Kitonny, M.P.;
4. Sen. (Eng.) Muriuki, M.P.;
5. Sen. Mshenga Mvita, M.P., M.P.;

**Mediation Committee on the Public Fundraising Appeals Bill (Senate Bill No. 28 of 2014):**

1. Sen. (Prof.) Anyang' Nyong'o, M.P.;
2. Sen. (Prof.) John Lonyangapuo, M.P.; and
3. Sen. Martha Wangari, M.P.;

Honourable Senators,

I urge the Mediation Committees to urgently deal with these important assignments and report back within the stipulated timelines.

I thank you.”

**(b) On the passage of the Division of Revenue Bill (National Assembly Bill No. 2 of 2017)**

“Honourable Senators,

I wish to report to the Senate that, pursuant to Standing Order 40 (3) and (4), I have received the following Message from the Speaker of the National Assembly regarding the passage, by the Assembly, of the Division of Revenue Bill (National Assembly Bill No. 2 of 2017).

**“PURSUANT** to the provisions of standing orders 41 and 142 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly-

**WHEREAS**, the Division of Revenue Bill (National Assembly Bill No. 2 of 2017) was published *vide* Kenya Gazette Supplement No. 2 of 6<sup>th</sup> January 2017 to provide for the equitable division of revenue raised nationally between the national and county governments in the 2017/2018 financial year;

**WHEREAS**, on 9<sup>th</sup> and 14<sup>th</sup> February 2017, the National Assembly considered and passed the said Bill without amendments and in the form attached hereto;

**NOW THEREFORE**, in accordance with the provisions of Article 110(4) of the Constitution and Standing Order 41 of the National Assembly Standing Orders, I hereby refer the Bill to the Senate for consideration".

Honourable Senators,

Pursuant to standing order No. 148 which requires that a Bill which originates in the National Assembly be proceeded with by the Senate in the same manner as a Bill introduced in the Senate by way of First Reading in accordance with standing order No. 129, I now direct that the Division of Revenue Bill (National Assembly Bill No. 2 of 2017) be listed for First Reading in the Order Paper of tomorrow, Thursday, 16<sup>th</sup> February, 2017.

I thank you.”

#### 4. **PETITIONS**

- (a) Pursuant to Standing Order 220(1) (a) and 225(2) (b), the Deputy Speaker reported to the Senate that a petition had been received from Mr. Kavemba Mutinda concerning alleged breach of the Constitution and other laws by the Nairobi City County Executive.

Pursuant to Standing Order 226, the Deputy Speaker invited Senators to comment on the Petition and, subsequently, committed the Petition to the Standing Committee on Finance, Commerce and Budget pursuant to Standing Order 227.

- (b) Pursuant to Standing Order 220(1) (a) and 225(2) (b), the Deputy Speaker reported to the Senate that a petition had been received from Mr. Tony Watima on the need to comprehensively address instances of conflict of interest in the public service.

Pursuant to Standing Order 226, the Deputy Speaker invited Senators to comment on the Petition and, subsequently, committed the Petition to the Standing Committee on Legal Affairs and Human Rights pursuant to Standing Order 227.

- (c) Pursuant to Standing Order 220(1) (a) and 225(2) (b), the Deputy Speaker reported to the Senate that a petition had been received from Mr. Julius Masiva Obuga concerning alleged misuse and diversion of public funds by the Vihiga County Government.

Pursuant to Standing Order 226, the Deputy Speaker invited Senators to comment on the Petition and, subsequently, committed the Petition to the Standing Committee on Finance, Commerce and Budget pursuant to Standing Order 227.

- (d) Pursuant to Standing Order 220(1) (a) and 225(2) (b), the Deputy Speaker reported to the Senate that a petition had been received from Mr. Gwada Ogot calling for the decriminalization and legalization of the *Cannabis Sativa* ('*Marijuana*') plant in Kenya.

Pursuant to Standing Order 226, the Deputy Speaker invited Senators to comment on the Petition and, subsequently, committed the Petition to the Standing Committee on Health pursuant to Standing Order 227.

- (e) Pursuant to Standing Order 220(1) (a) and 225(2) (b), the Deputy Speaker reported to the Senate that a petition had been received from Mr. Grobac Magare Omayo on alleged wrongful retirement by the Public Service Commission.

Pursuant to Standing Order 226, the Deputy Speaker invited Senators to comment on the Petition and, subsequently, committed the Petition to the Standing Committee on Labour and Social Welfare pursuant to Standing Order 227.

5. **NOTICE OF MOTION**- (Sen. (Dr.) Wilfred Machage)

**THAT**, notwithstanding the provisions of standing order 249, the Senate resolves to vary the period within which the Procedure and Rules Committee should make its report on the periodic review of Standing Orders to the Senate, from six months to three months before the end of the term.

6. **NOTICE OF MOTION**- (Chairperson, Standing Committee on Land and Natural Resources)

**THAT**, pursuant to Section 7 of the Climate Change Act, 2016, Section 8(1) of the Public Appointments (Parliamentary Approval) Act, 2011 and Senate Standing Order 65, the Senate adopts the Report of the Joint Sitting of the Senate Standing Committee on Land and Natural Resources and the National Assembly Departmental Committee on Environment and Natural Resources on the vetting of nominees for appointment to the National Climate Change Council, laid on the Table of the Senate on Wednesday, December 28, 2016 and approves the recommendations of the Committees as follows:-

- i) Approves the nomination of Messrs. Suresh Patel and John Kioli for appointment to the National Climate Change Council;
- ii) Rejects the nomination of Ms. Cynthia Wechabe and Dr. Jane Mutheu for appointment to the National Climate Change Council; and
- iii) Recommends that the appointing authority submits nominees of the female gender to represent the marginalized communities and Commission for University Education as prescribed by the Public Appointments (Parliamentary Approval) Act.

7. **STATEMENT PURSUANT TO STANDING ORDER 45(2) (b)**

The Senator for Nandi County (Sen. Stephen Sang') sought a statement from the Chairperson of the Sessional Committee on Implementation regarding the plight and welfare of former councilors under Kenya's defunct local authorities.

8. **THE COUNTY BOUNDARIES BILL (SENATE BILL NO.16 OF 2016)**  
(Sen. Mutula Kilonzo Jr.)

Order for First Reading Read;

Bill Read a First Time and Committed to the Standing Committee on Legal Affairs and Human Rights.

9. **THE CARE AND PROTECTION OF CHILD AND PARENTS BILL (SENATE BILL NO. 14 OF 2016)**  
(Sen. Elizabeth Ongoro)

Order for First Reading Read;

Bill Read a First Time and Committed to the Standing Committee on Labour and Social Welfare

10. **THE PUBLIC PARTICIPATION BILL (SENATE BILL NO. 15 OF 2016)**  
(Chairperson, Standing Committee on Legal Affairs and Human Rights)

Order for First Reading Read;

Bill Read a First Time and Committed to the Standing Committee on Legal Affairs and Human Rights.

11. **THE COCONUT INDUSTRY DEVELOPMENT BILL (SENATE BILL NO. 17 OF 2016)**  
(Sen. Elizabeth Ongoro)

Order for first Reading Read;

Bill Read a First Time and Committed to the Standing Committee on Agriculture, Livestock and Fisheries.

12. **THE COUNTY GOVERNMENTS (AMENDMENT) (NO.3) BILL (SENATE BILL NO. 18 OF 2016)**

(Sen. Abdirahman Ali Hassan)

Order for First Reading Read;

Bill Read a First Time and Committed to the Standing Committee on Legal Affairs and Human Rights.

13. **WITHDRAWAL OF SEN. (DR.) BONI KHALWALE FROM THE CHAMBER FOR IMPROPER DRESSING**

Raising on a point of order, the Senator for Kilifi County, Sen. Stewart Madzayo claimed that Sen. (Dr.) Boni Khalwale was improperly dressed;

And the Deputy Speaker ascertaining the claim directed Sen. Boni Khalwale to withdraw from the Chamber and only come back when properly dressed as per the Speaker's Rules.

Thereupon, the Senator withdrew from the Chamber.

14. **THE CONSTITUTION OF KENYA (AMENDMENT) (NO.2) BILL (SENATE BILL NO.19 OF 2016)**

(Sen. Kembi - Gitura)

Order for First Reading Read;

Bill Read a First Time and Committed to the Standing Committee on Legal Affairs and Human Rights.

15. **THE COUNTY PENSION SCHEME BILL (SENATE BILL NO. 20 OF 2016)**

(Chairperson, Standing Committee on Labour and Social Welfare)

*(First Reading)*

Order deferred.

16. **SUSPENSION OF A SENATOR PURSUANT TO PROVISIONS OF STANDING ORDER 110**

Pursuant to provisions of Standing Order 110, the Deputy Speaker ordered the Senator for Kakamega County (Sen. Boni Khalwale) to withdraw from the Chamber for being improperly dressed.

Thereupon, the Senator withdrew from the Chamber.

17. **THE LAND VALUE INDEX LAWS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 40 OF 2016)**

(The Senate Majority Leader)

Order for First Reading Read;

Bill Read a First Time and Committed to the Standing Committee on Lands and Natural Resources.

18. **PROCEDURAL MOTION ON THE LIMITATION OF DEBATE ON MOTIONS**

Motion made and Question Proposed;

**THAT**, pursuant to Standing Order 100 (1), the Senate resolves that debate on a Motion not sponsored by the Majority or Minority Party or a Committee shall be limited in the following manner:-

A maximum of three hours with not more than twenty minutes for the Mover, twenty minutes for the Majority Party Official Responder, twenty minutes for the Minority Party Official Responder and fifteen minutes for each other Senator speaking and that fifteen minutes before the time expires, the Mover shall be called upon to reply.

*(The Senate Majority Leader)*

There being no other Senator wishing to contribute;

Before the Question was put, and pursuant to Standing Order No. 72, the Temporary Speaker (Sen. Sang) informed the House that the Motion did not affect Counties.

Question put and **agreed to.**

**RESOLVED ACCORDINGLY-**

**THAT**, pursuant to Standing Order 100 (1), the Senate resolves that debate on a Motion not sponsored by the Majority or Minority Party or a Committee shall be limited in the following manner:-

A maximum of three hours with not more than twenty minutes for the Mover, twenty minutes for the Majority Party Official Responder, twenty minutes for the Minority Party Official Responder and fifteen minutes for each other Senator speaking and that fifteen minutes before the time expires, the Mover shall be called upon to reply.

19. **PROCEDURAL MOTION ON THE LIMITATION OF DEBATE ON ADJOURNMENT MOTION**

Motion made and Question Proposed;

**THAT**, notwithstanding the provisions of Standing Order 100 (4), the debate on any Motion for the adjournment of the Senate to a day other than the next normal sitting day in accordance with the calendar of the Senate shall be limited to a maximum of two hours with not more than fifteen minutes for each Senator speaking after which the Senate shall adjourn without question put;

Provided that when the period of recess proposed by any such Motion does not exceed nine calendar days, the debate shall be limited to a



maximum of thirty (30) minutes, and shall be confined to the question of adjournment.

*(The Senate Majority Leader)*

There being no other Senator wishing to contribute;

Before the Question was put, and pursuant to Standing Order No. 72, the Temporary Speaker (Sen. Sang) informed the House that the Motion did not affect Counties.

Question put and **agreed to.**

**RESOLVED ACCORDINGLY-**

**THAT**, pursuant to Standing Order 100 (1), the Senate resolves that debate on a Motion not sponsored by the Majority or Minority Party or a Committee shall be limited in the following manner:

A maximum of three hours with not more than twenty minutes for the Mover, twenty minutes for the Majority Party Official Responder, twenty minutes for the Minority Party Official Responder and fifteen minutes for each other Senator speaking and that fifteen minutes before the time expires, the Mover shall be called upon to reply.

20. **PROCEDURAL MOTION ON THE LIMITATION OF DEBATE ON THE ADDRESS BY THE PRESIDENT**

Motion made and Question Proposed;

**THAT**, pursuant to Standing Order 100 (1), the Senate resolves that the debate on the Motion on the Presidential Address shall be limited to a maximum of three sitting days with not more than fifteen minutes for each Senator speaking, excluding the Mover in moving and replying who shall be limited to thirty minutes in either case and that the Senate Majority Leader and the Senate Minority Leader shall be limited to thirty minutes each.

*(The Senate Majority Leader)*

There being no other Senator wishing to contribute;

Before the Question was put, and pursuant to Standing Order No. 72, the Temporary Speaker (Sen. Sang) informed the House that the Motion did not affect Counties.

Question put and **agreed to.**

**RESOLVED ACCORDINGLY-**

**THAT**, pursuant to Standing Order 100 (1), the Senate resolves that the debate on the Motion on the Presidential Address shall be limited to a maximum of three sitting days with not more than fifteen minutes for each

Senator speaking, excluding the Mover in moving and replying who shall be limited to thirty minutes in either case or that the Senate Majority Leader and the Senate Minority Leader shall be limited to thirty minutes each.

21. **MOTION TO VARY THE PERIOD WITHIN WHICH THE PROCEDURE AND RULES COMMITTEE SHOULD MAKE ITS REPORT ON THE PERIODIC REVIEW OF STANDING ORDERS TO THE SENATE**

Motion made and Question Proposed;

**THAT**, notwithstanding the provisions of standing order 249, the Senate resolves to vary the period within which the Procedure and Rules Committee should make its report on the periodic review of Standing Orders to the Senate, from six months to three months before the end of the term.

*(Sen. (Dr.) Wilfred Machage)*

Debate arising;

There being no other Senator wishing to contribute;

Mover replied;

Before the Question was put, and pursuant to Standing Order No. 72, the Temporary Speaker (Sen. Sang) informed the House that the Motion did not affect Counties.

Question put and **agreed to.**

**RESOLVED ACCORDINGLY-**

**THAT**, notwithstanding the provisions of standing order 249, the Senate resolves to vary the period within which the Procedure and Rules Committee should make its report on the periodic review of Standing Orders to the Senate, from six months to three months before the end of the term.

22. **THE INTERGOVERNMENTAL RELATIONS (AMENDMENT) BILL, (SENATE BILL NO. 9 OF 2014)**

*(Sen. Kipchumba Murkomen)*

Order for Second Reading Deferred.

23. **THE KENYA ROADS BILL (NATIONAL ASSEMBLY BILL NO. 26 OF 2015)**

Order for Second Reading read;

Motion made and Question Proposed

**That**, The Kenya Roads Bill (National Assembly Bill No. 26 of 2015) be now read a Second Time.

*(The Senate Majority Leader)*

Debate arising;

And there being no other Senator wishing to contribute;

Mover replied;

Raising a point of order, pursuant to Standing Order 54 (3), the Senate Majority Leader requested the Temporary Speaker to defer putting of the question to another day;

And the Temporary Speaker (Sen. Sang') acceding to the request, deferred putting of the question to a later date.

And the time being thirty minutes past Six O'clock, the Temporary Speaker (Sen. Sang'), interrupted the proceedings and adjourned the Senate without question put, pursuant to the Standing Orders.

24. **SENATE 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  
Thursday, February 16, 2017 at 2.30 p.m.*

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