



REPUBLIC OF KENYA

ELEVENTH PARLIAMENT – (FIFTH SESSION)

THE NATIONAL ASSEMBLY

VOTES AND PROCEEDINGS

TUESDAY, MAY 30, 2017

1. The House assembled at thirty minutes past Two O'clock
2. The Proceedings were opened with Prayer
3. **Presiding – the Speaker**
4. **MESSAGE FROM THE SENATE**

The Speaker conveyed the following Message from the Senate –

Report of the Joint Parliamentary Select Committee on the Election of Members to the East African Legislative Assembly (EALA)

“Honourable Members, Standing Order 41 relating to Messages requires the Speaker to expeditiously report to the House any Message received from the Senate. In this regard, I wish to convey that today, Tuesday, 30th May, 2017, I received a Message from the Senate regarding the **Senate’s approval of the Report of the Joint Select Parliamentary Select Committee on the Election of Members to the East African Legislative Assembly (EALA).**

Honourable Members, the Message state in part, and I quote, that “... The Senate on Thursday, May 25, 2017 debated and adopted the Report of the Joint Select Parliamentary Committee on the Election of Members to the East African Legislative Assembly (EALA) **without amendments.**”

Honourable Members, as you may recall the end of the term of the current Assembly is 4th June, 2017. Therefore, considering the limited time left within which the election process ought to be concluded, I implore upon this House to also expeditiously consider the said report for possible adoption so as to pave way for the other processes relating to election of members to EALA in the shortest time possible.

I thank you!”

5. **PAPERS LAID**

The following Papers were laid on the Table –

- (i) The Annual Report on Devolving Land Governance from the National Land Commission;
- (ii) Reports and Financial Statements of the Agricultural Finance Corporation for the financial year ended 30th June, 2014;
- (iii) The Reports of the Auditor-General on the Financial Statements in respect of the following institutions for the year ended 30th June, 2016 and the certificates therein:-
 - (a) Judiciary;
 - (b) National Council for Law Reporting;
 - (c) Garissa University College;
 - (d) State Department for Water and Irrigation;
 - (e) National Crime Research Centre;
 - (f) Jomo Kenyatta Foundation;
 - (g) Kenya Maritime Authority; and
 - (h) National Government Constituencies Development Fund – Msambweni Constituency.

(The Leader of the Majority Party)

- (iv) Report of the Departmental Committee on Environment and Natural Resources on the Petition by Kenya Association of Manufacturers on the Ban on the Use, Manufacture and Importation of Plastic Bags.

(Chairperson, Departmental Committee on Environment and Natural Resources)

6. **MOTION – REPORT OF THE COMMITTEE OF THE WHOLE HOUSE ON THE INSURANCE (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 17 OF 2017)**

Motion made and Question proposed –

THAT, this House do agree with the Report of the Committee of the Whole House on its consideration of the Insurance (Amendment) Bill (National Assembly Bill No. 17 of 2017).

(The Leader of the Majority Party)

Question put and agreed to;

Motion made and Question proposed-

THAT, the Insurance (Amendment) Bill (National Assembly Bill No. 17 of 2017) be now read a Third Time

(The Leader of the Majority Party)

Question put and agreed to;

Bill read a Third Time and **passed.**

7. **GUIDE ON THE CONSIDERATION OF THE FINANCE BILL, 2017 IN COMMITTEE OF THE WHOLE HOUSE**

The Speaker guided the House in the following manner in regard to the Finance Bill, 2017 –

“Honourable Members,

Before we proceed to the next order to consider possible recommitment of some clauses in the Finance Bill, 2017, I wish to remind the House of what had been done previously. On Thursday last week, the House had concluded with the Bill at Committee stage. However, the Leader of the Majority Party sought to recommit Clauses 20, 26, 27, 28 and 29. However, there was no quorum to put the question on agreement with the proposed recommitment.

Honourable Members,

At that point, some of the Committee’s proposals had been rejected and the status quo as in the published Finance Bill maintained. Today, we are therefore seeking the approval of the House to consider these Clauses afresh. I have since received word from the Leader of the Majority Party and the Chairperson of the Finance, Planning and Trade Committee that they wish that the House also to recommit Clauses 9, 10, 16 and 24. I have reviewed the proposed amendments, and approved them for circulation.

Honourable Members,

Just for your information, should the House reject the question on recommitment, the Clauses as shown in the Bill will remain as amended. If the House agrees to the recommitment, we shall immediately proceed to Committee of the whole House on the Finance Bill, as shown on the Order Paper.

I thank you.”

8. **MOTION – REPORT OF THE COMMITTEE OF THE WHOLE HOUSE ON THE FINANCE BILL (NATIONAL ASSEMBLY BILL NO. 16 OF 2017)**

Motion made and Question proposed –

THAT, this House do agree with the Report of the Committee of the Whole House on its consideration of the Finance Bill (National Assembly Bill No. 16 of 2017), “subject to re-commitment of Clauses 20, 26, 27, 28 and 29.”

(The Leader of the Majority Party)

Further amendment proposed –

THAT, the Motion for re-commitment of clauses 20, 26, 27, 28 and 29 be further amended by inserting additional Clauses 9, 10, 16 and 24 accordingly.

(Hon. Nelson Gaichuhie)

Debate arising;

Question put and agreed to;

Rising on a point of order, the Member for Kipkelion East (Hon. Joseph Limo) sought the guidance of the Speaker on the admissibility of proposed amendments to the recommitted Clauses. Upon subsequent debate, the Speaker ruled that the amendments proposed by the Leader of Majority Party were to be expunged from the Order Paper.

Consequently, the only clauses that proceeded for recommittal were those proposed by Hon. Nelson Gaichuhie.

8. **COMMITTEE OF THE WHOLE HOUSE**

Order for Committee read;

IN THE COMMITTEE

The Deputy Speaker in the Chair

(i) **The Finance Bill (National Assembly Bill No. 16 of 2017)**

Clause 9 - amendment proposed -

THAT, clause 9(a) be further amended-

(a) in paragraph 39(3) by deleting item tariff no. 9619.00.90 on diapers

(b) by inserting the following new subparagraph immediately after subparagraph (ii)-

“(iiA) by deleting paragraph 42.”

(c) in subparagraph (iv) by inserting the following new paragraph immediately after the proposed paragraph 93-

“94. Materials for the construction of grain storage, upon recommendation by the Cabinet Secretary for the time being responsible for agriculture.”

(Hon. Nelson Gaichuhie)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 9 - as amended agreed to

Clause 10 - amendment proposed -

THAT, clause 10(a) be further amended in subparagraph (ii) by inserting the following new paragraph immediately after the proposed new paragraph 14-

“15. Milk and cream, not concentrated nor containing added sugar or other sweetening matter, of tariff numbers-

0401.10.00 – of a fat content, by weight, not exceeding 1%;

0401.20.00 – of a fat content, by weight, exceeding 1% but not exceeding 6%;

0401.40.00 – of a fat content, by weight, exceeding 6% but not exceeding 10%;

0401.50.00 – of a fat content, by weight, exceeding 10%.”

(Hon. Nelson Gaichuhie)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 10 - as amended agreed to

Clause 16 - amendment proposed

THAT clause 16 of the Bill be amended by inserting the following new paragraph immediately after the proposed new paragraph 24C—

Capital expenditure on buildings and machinery for use in a Special Economic Zone outside Nairobi and Mombasa counties.

24D. Subject to this Schedule, where capital expenditure is incurred on the construction of a building or on the purchase and installation of machinery by or for a Special Economic Zone Enterprise located outside Nairobi and Mombasa counties, for use by the enterprise in carrying out the business activities for which it was licensed, the enterprise shall be entitled to an investment deduction, equal to one hundred and fifty percent of the capital expenditure, against the gains or profits of that enterprise in the year in which the building or machinery is first used.

(Hon. Nelson Gaichuhie)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 16 - as amended agreed to

Clause 24 - amendment proposed-

THAT, clause 24 be further amended by inserting the following new paragraph immediately after paragraph (b)-

“(c) deleting the proviso appearing after paragraph (b) and substituting therefor the following new proviso-

“Provided that-

- (a) this section shall not apply in respect of any tax where the person who should have paid the tax-
 - (i) has been assessed in respect of the tax or any matter relating to the tax; or
 - (ii) is under audit or investigation in respect of the undisclosed income or any matter relating to the undisclosed income;
- (b) where no funds have been transferred within the period of the amnesty, there shall be a five-year period for remittance but a penalty of 10% shall be levied on the remittance.”

(Hon. Nelson Gaichuhie)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 24 - as amended agreed to

Clause 26- amendment proposed -

THAT clause 26 of the Bill be deleted.

(Hon. Nelson Gaichuhie)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 26- deleted

Clause 27- amendment proposed -

THAT clause 27 of the Bill be deleted.

(Hon. Nelson Gaichuhie)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 27- deleted

Clause 28- amendment proposed -

THAT clause 28 of the Bill be deleted.

(Hon. Nelson Gaichuhie)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 28- deleted

Clause 29- amendment proposed –

THAT clause 29 of the Bill be deleted.

(Hon. Nelson Gaichuhie)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 29- deleted

New Clause 20A proposed -

THAT, the following new clause be inserted after clause 20-

THAT, clause 20 of the Bill be further amended by inserting the following closing statement immediately after paragraph (c)-

“shall apply to the Commissioner to be registered”.

(Hon. Nelson Gaichuhie)

Motion made and Question proposed –

THAT, the New Clause 20A be read a Second Time

Question put and agreed to;

Motion made and Question proposed –

THAT, the New Clause 20A be part of the Bill

Question put and agreed to;

Bill to be reported with amendments.

(ii) **The Division of Revenue (No.2) Bill (National Assembly Bill No.22 of 2017)**

Clauses 3, 4 & 5 - agreed to

Schedule – amendment proposed -

THAT, the Schedule be amended—

(a) in the second column, by—

- (i) deleting the figure “20,416,400,000” appearing against the item “Additional County Conditional Allocations (not part of sharable revenue)” in the first column, and substituting therefor the figure “31,476,018,499”;
- (ii) deleting the figure “7,875,000,000” appearing against the item “Allocation from fuel levy (15%)” in the first column, and substituting therefor the figure “11,068,192,369”;
- (iii) deleting the figure “12,541,400,000” appearing against the item “Conditional Allocations (loans & grants)” in the first column, and substituting therefor the figure “20,407,826,130”;
- (iv) deleting the figure “323,757,560,000” appearing against the item “Total County Allocations (D+E)” in the first column, and substituting therefor the figure “334,817,178,499”;

(b) in the third column, by deleting the expression “34.60%” appearing against the item “Total County Allocations (D+E)” in the first column, and substituting therefor the expression “35.78%”.

(Chairperson, Budget and Appropriations Committee)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Schedule - as amended agreed to;

Appendix – amendment proposed -

THAT, the Appendix be amended, in paragraph 7, under the part entitled “Additional County Conditional Allocation (Not Part of Sharable Revenue)”, by—

(a) deleting the paragraph on “Conditional Grant from the Road Maintenance Fuel Levy Fund of Ksh.7.9 billion” and substituting therefor the following—

“Conditional Grant from the Road Maintenance Fuel Levy Fund of Ksh. 11.1 billion. This conditional grant which is in its third year of allocation has been increased from an allocation Ksh. 4.3 billion in the 2016/17 FY to Ksh. 11.1 billion in FY 2017/2018. This amount includes an additional Ksh. 3.2 billion, which results from an adjustment of the fuel levy in July, 2016, from Ksh. 12.00 to Ksh. 18.00. This grant is meant to further enhance County Governments’ capacity to repair and maintain roads and is equivalent to 15 percent of the Road Maintenance Fuel Levy Fund”;

- (b) deleting the paragraph on “KDSP County Capacity Building (“level 1”) Grant” and substituting therefor the following—

“KDSP County Capacity Building (“level 1”) Grant. This is a conditional grant financed by a World Bank credit to support county capacity building under the Kenya Devolution Support Program (KDSP) amounting to Ksh. 2.1 billion. This grant includes Kshs. 1.5 billion allocated for the financial year 2017/18 together with Ksh 648 million that was allocated for the financial year 2016/17 but not disbursed. The grant is intended to support capacity building initiatives in the counties in the following areas:

- Strengthening public financial management (PFM) systems;
- Strengthening county human resource management;
- Improving county planning and Monitoring & Evaluation systems;
- Improving civic education and public participation; and,
- Strengthening Intergovernmental relations”;

- (c) deleting the paragraph on “Conditional allocation financed by other loans and grants received from development partners” and substituting therefor the following—

“Conditional allocation financed by other loans and grants received from development partners and the Government counterpart funding derived from the National Government’s share all totalling Ksh 13.4 billion. These conditional allocations have increased from a total of Ksh. 2.6 billion in the FY 2016/17. Of the conditional allocation from other loans and grants, Ksh 7.2 billion will be transferred to county governments. However, of the conditional allocation from other loans and grants, Ksh. 6.2 billion will not be transferred to County Governments in the financial year 2017/18 but will instead be managed by the National Government because they are tied to financing agreements which entered into prior to the establishment of the county governments. Such funds are tied to on-going contracts with suppliers while the related financing agreements also specify the funds flow modalities which may not be consistent with what is contemplated under the intergovernmental arrangement.

It is therefore expected that the loans and grants under the existing financing agreement will be included in the budget of the National Government, and managed by National Government with involvement of County Governments in Project Steering Committees and Project Implementation Units for each programme/project. In addition, reporting arrangements as well as the conditions attached to the implementation of the programme/project will be clearly spelt out in Project Implementation Frameworks to be agreed with County Governments prior to the release of the funds and implementation of the projects.”

(Chairperson, Budget and Appropriations Committee)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Appendix - as amended agreed to

Clause 2 - agreed to

Title - agreed to

Clause 1 - agreed to

Bill to be reported with amendments;

9. **HOUSE RESUMED** – the Speaker in the Chair

(i) **The Finance Bill (National Assembly Bill No. 16 of 2017)**

Bill reported with amendments;

Motion made and Question proposed-

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

(Chairperson, Departmental Committee of Finance, Planning & Trade)

Question put and agreed to;

Motion made and Question proposed-

THAT, the Finance Bill (National Assembly Bill No.16 of 2017) be now read a Third Time

(Chairperson, Departmental Committee of Finance, Planning & Trade)

Question put and agreed to;

Bill read a Third Time and **passed.**

(ii) **The Division of Revenue (No.2) Bill (National Assembly Bill No.22 of 2017)**

Bill reported with amendments;

Motion made and Question proposed-

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

(Chairperson, Budget and Appropriations Committee)

Question put and agreed to;

Motion made and Question proposed-

THAT, the Division of Revenue (No.2) Bill (National Assembly Bill No.22 of 2017) be now read a Third Time

(Chairperson, Budget and Appropriations Committee)

Question put and agreed to;

Bill read a Third Time and passed.

10. **MOTION – ELECTION OF MEMBERS TO THE EAST AFRICAN LEGISLATIVE ASSEMBLY (EALA)**

Motion made and Question proposed-

THAT, pursuant to Article 50 of the Treaty for the Establishment of the East African Community and Rule 13(5) of the East African Legislative Assembly Elections (Election of Members of the Assembly) Rules, 2017, this House adopts the Report of the Joint Parliamentary Select Committee on the Election of Members to the East African Legislative Assembly on its *consideration of the nominees for election as Members of the East African Legislative Assembly*, laid on the Table of the House on Wednesday, May 17, 2017.

(Co-Chairperson of the Joint Parliamentary Select Committee)

Debate interrupted on Thursday, May 18, 2017 resumed;

Amendment proposed -

THAT, the motion be amended by inserting the following words immediately after the word “2017” –

“subject to the deletion of recommendations 3, 5, 6 and 7 appearing on pages 16 and 17 of the Report.”

(Hon. Thomas Mwadeghu)

Question of the amendment proposed;

Debate arising;

Rising in his place on a point of order pursuant to Standing Orders the Hon. Jared Opiyo claimed that there was no quorum in the House;

Thereupon, the Hon. Speaker ordered for the quorum bell to be rang;

At the conclusion of ten minutes, no quorum was attained, and therefore the House adjourned;

And the time being twenty minutes past five O'clock, the Hon. Speaker interrupted the proceedings and adjourned the House without Question put pursuant to the Standing Orders.

13. **HOUSE ROSE** - at twenty minutes past five O'clock

M E M O R A N D U M

The Speaker will take the Chair on
Wednesday, May 31, 2017 at 9.30 a.m.