



REPUBLIC OF KENYA

TWELFTH PARLIAMENT – SECOND SESSION

THE NATIONAL ASSEMBLY

VOTES AND PROCEEDINGS

THURSDAY, SEPTEMBER 20, 2018

(SPECIAL SITTING, AFTERNOON)

1. The House assembled at thirty minutes past Two O'clock
2. The Proceedings were opened with Prayer
3. **Presiding** – the Honourable Speaker
4. **DIRECTION ON ORDER OF PROCEEDINGS**

The Speaker drew the attention of the House to the Supplementary Order Paper;

Pursuant to the provisions of Standing Order 40(2)(*sequence of proceedings*), the Speaker ordered that the business appearing as Order Nos.8, 9, 10 and 11(i) being business relating to the Supplementary Appropriations (No.2) Bill, (National Assembly Bill No. 23 of 2018) be deferred until conclusion of Order No. 11(ii) (Consideration of the President's Reservations to the Finance Bill (National Assembly Bill No. 20 of 2018).

5. **COMMITTEE OF THE WHOLE HOUSE**

Order for Committee read;

IN THE COMMITTEE

The First Chairperson of Committees in the Chair

THE PRESIDENT'S RESERVATIONS TO THE FINANCE BILL (NATIONAL ASSEMBLY BILL NO. 20 OF 2018)

Clause 2:

Point of Order: Sequence to be observed in Committee

Rising in his place, the Member for Ruaraka Constituency (Hon. T. J. Kajwang) drew the attention of the First Chairperson of Committees to the provisions of standing Order No. 132(e) in respect of the proposed definition of the word “winnings” in Clause 2;

And the Chairperson acceding to the claim;

Consideration of the proposed amendment to Clause 2 deferred until conclusion of consideration of the proposed new Clauses in the Committee pursuant to Standing Order 132 (*sequence to be observed in a Bill in Committee*).

Clause 18 - **President’s Reservations: Recommended Amendment proposed –**

THAT, clause 18 of the Bill be amended by deleting paragraph (b).

(The Leader of the Majority Party)

Question of the amendment proposed;

Debate arising;

Question of the amendment put and agreed to;

Question that Clause 18 as amended be part of the Bill put and agreed to;

Clause 18 - as further amended agreed to

[Members claiming to negative the proposed amendment]

[Several Members walk out of the Chamber]

And the chairperson, having drawn the attention of the Committee to the requirement of Article 115 (4)(a) of the Constitution as read together with Standing Order 154(5)(a) relating to thresh-hold required to negative the proposed amendment;

And instance now having occurred which necessitates that a fixed majority of two-thirds of the Members of the National Assembly is necessary to pass a vote to negative the proposed amendment as contemplated under Article 115(4) of the Constitution as read together with Standing Order 154(5)(a);

The Chairperson ordered that the division bell be rung pursuant to the provision of Standing Order 72;

Division Bell rung;

At the end of the ringing of the Bell, Bar drawn and doors closed;

House to proceed to division;

[Members standing in the middle of the chamber, the gangways and aisle]

Electronic Roll-call and Vote

Being the time to take a roll call of the Members present in the Chamber at present by way of electronic roll call pursuant to the provisions of Standing Order 70 (Electronic Voting);

The Chairperson Ordering all Members present in the Chamber to remove and then insert their voting cards into the electronic voting system in order for the electronic system to take a roll call of the Members at the moment present in the Chamber;

Several Members declining to remove and thereafter insert their cards as ordered;

The Chairperson being unable to confirm, by way of electronic roll-call, that the number of Members present in the Committee is equivalent to or more than two-thirds of all Members of the National Assembly so as to proceed to take a vote to confirm a negative resolution;

The Chairperson Ordered the Clerk to take a physical count of all Members present in the Chamber;

Members took seats, ready for physical count as ordered;

The Clerk, having taken a physical vote, made his report to the Chairperson;

The Chairperson **declaring** the Members present in the Chamber now add up to **two-hundred and fifteen (215) Members**, being less than two-thirds of all Members;

[Members take to the middle of the chamber, the gangways and aisle]

Several Members standing in their place raising objection as to the use of the electronic system, and physical county to take a roll-call to confirm the number of Members present;

And the Chairperson admitting the objection as one falling under Standing Order 71 (technical failure, confusion, or error occurring);

The Chairperson Ordered the Committee of the whole House to proceed to a physical Roll-Call Vote pursuant to the provisions of Standing Order 73 (Roll call Voting).

Roll-Call Voting

The Clerk providing the Chairperson with the Alphabetical List of all Members of the National Assembly;

And the Chairperson proceeding to roll-call Voting-

No	NAME	CONSTITUENC Y	PARTY	YES	NO	ABSTAIN	Clerk's Note
1.	Abdi, Yusuf Hassan	Kamukunji	JP				<i>Absent</i>
2.	Abdullahi, Major (Rtd) Bashir S.	Mandera North	JP				

The Hon Abdullahi Bashir standing in his place;

Member declined to declare his vote as required under Standing Order 73(5);

The Chairperson ordered the Clerk to proceed to the Member's place to place a mark or signature as claimed against the desired column of either "Ayes"; "No"; or "Abstain")

And the Member further declining;

Several Members standing in their place, the aisle and gangways, raising objection as to the use of the Roll-Call Vote and claiming that, there need not be a roll-call, physical count or electronic vote in the committee at this stage;

Chairperson further confirming that the number of the Members present in the Chamber is less than two-thirds of all Members of the National Assembly;

Chairperson therefore affirmed that the "**Ayes!**" had it, the amendment to Clause 18 having been considered under Article 115(2)(a) and passed as contemplated under Article 122(1) of the Constitution.

Grave Disorder in the Committee

Grave disorder now occurring in the Committee;

The Speaker resumed the Chair pursuant to the provisions of standing Order 112(2);

Committee of the whole House Resumes *temporarily suspended*.

HOUSE RESUMES

Debate on the proceedings of the Committee and decision therein;

[Speaker guided the House on issues raised regarding resolution on Clause 18]

[Members taking to the middle of the chamber, the gangways and aisle]

Speaker *temporarily suspends* the House to allow Members to consult;

House resuming;

[Speaker guided the procedure in Committee and methodology of ascertaining the two-thirds for those claiming to negative any recommended amendment]

Committee whole House Resumes;

In the Chair- Speaker of the National Assembly

Clause 31 - **President's Reservations: Recommended Amendment proposed -**

THAT clause 31 of the Bill be amended—

(a) in Part 1 subparagraph (iii) by inserting the following new item—

Description	Rate of Excise Duty
Sugar confectionery (including white chocolate) of tariff heading 17.04; chocolate in blocks, slabs or bars of tariff Nos. 1806.31.00, 1806.32.00, 1806.90.00	Shs. 20 per kg

(b) in Part II by inserting the following new subparagraphs—

- (i) by deleting paragraph 1 of the Act and substituting therefor the following new paragraph-
 - 1. Telephone and internet data services shall be charged excise duty at a rate of fifteen percent of their excisable value.
- (ii) by deleting paragraph 2 of the Act and substituting therefor the following new paragraph -
 - 2. Excise duty in fees charged for money transfer services by banks, money transfer agencies and other financial service providers shall be twenty percent of their excisable value.
- (iii) by deleting paragraph 4 of the Act and substituting therefor the following new paragraph-
 - 4. Excise duty on other fees charged by financial institutions shall be twenty percent of their excisable value.

(The Leader of the Majority Party)

Question of the amendment proposed;

Question of the amendment put and agreed to

Question that Clause 31 as further amended be part of the Bill, put and agreed to

Clause 31, as further amended - agreed to

New Clause 18A - **President’s Reservations: Recommended Amendment proposed -**

THAT, the Bill be amended by inserting the following new clause immediately after clause 18-

Amendment of section 5 of No.35 of 2018

18A. Section 5 of the Value Added Tax Act, 2013 is amended in subsection (2) by inserting the following new paragraph immediately after paragraph (a)-

- (aa) in the case of goods listed in section B of Part I of the First Schedule, eight percent of the taxable value ,effective from the date of assent:
Provided that-
 - (i) the taxable value in respect of these goods shall exclude excise duty, fees and other charges; and
 - (ii) despite section 1 of the Finance Act, 2018, this paragraph comes into effect upon enactment of the Supplementary Appropriation Act.

(The Leader of the Majority Party)

Motion made and Question that the proposed new Clause 18A be now read a Second Time proposed;

Question that the proposed new Clause 18A be now read a Second Time put and agreed to;

Question that Clause 18A be part of the Bill put and agreed to;

New Clause 18A: Agreed to;

New Clause 48A - **President’s Reservations: Recommended Amendment proposed –**

THAT the following new clause be inserted immediately after clause 48A—

Insertion of section 8A into No. 29 of 2016. **48A.** The Miscellaneous, Fees and Levies Act, 2016 is amended by inserting the following new section 8A immediately after section 8-

Anti-adulteration levy.

8A. (1) There shall be paid a levy to be known as the anti-adulteration levy on all illuminating kerosene imported into the country for home use.

(2) The levy shall be at the rate of eighteen shillings per litre of the customs value of the illuminating kerosene and shall be paid by the importer at the time of entering the illuminating kerosene into the country.

(The Leader of the Majority Party)

Motion made and Question that the proposed new Clause 48A be now read a Second Time proposed;

Question that the proposed new Clause 48A be now read a Second Time put and agreed to;

Question that Clause 48A be part of the Bill put and agreed to;

New Clause 48A: Agreed to;

New Clause 50A - **President’s Reservations: Recommended Amendment proposed –**

THAT, the following new clause be inserted immediately after clause 50—

Amendments to sections 29A, 44A, 55A and 59B of Cap. 131.

50A. The Betting, Lotteries and Gaming Act is amended as follows—

Amendment of Section 29 A of the Betting, Lotteries and Gaming Act is amended in subsection (1) by deleting the expression "thirty-five" and substituting therefor the expression "fifteen".
section 29 A of
Cap. 131.

Amendment of Section 44A of the Betting, Lotteries and Gaming Act is amended in subsection (1) by deleting the expression "thirty-five" and substituting therefor the expression "fifteen".
section 44A of
Cap. 131.

Amendment of Section 55A of the Betting, Lotteries and Gaming Act is amended in subsection (1) by deleting the expression "thirty-five" and substituting therefor the expression "fifteen".
section 55A of
Cap. 131.

Amendment of Section 59B of the Betting, Lotteries and Gaming Act is amended in subsection (1) by deleting the expression "thirty-five" and substituting therefor the expression "fifteen".
section 59B of
Cap. 131.

(The Leader of the Majority Party)

Motion made and Question that the proposed new Clause 50A be now read a Second Time proposed;

Question that the proposed new Clause 50A be now read a Second Time put and agreed to;

Question that Clause 50A be part of the Bill put and agreed to;

New Clause 50A: Agreed to;

New Clause 79 - President’s Reservations: Recommended Amendment proposed -

THAT, the following new clause be inserted immediately after clause 78—

Amendment of section 2 of No. 11 of 2007.

79. The Employment Act, 2007 is amended-

(a) in section 2 by inserting the following new definitions in the proper alphabetical sequence-

"employer contribution" means the employer’s contribution payable into the National Housing Development Fund;

"employee contribution" means a contribution payable under this Act for his or her benefit;

"employee earnings" means the taxable amount determined under the Income Tax Act for purposes of levying income tax on the employee emoluments.

"National Housing Development Fund" means to the Fund established under section 6 of the Housing Act.

(The Leader of the Majority Party)

Motion made and Question that the proposed new Clause 79 be now read a Second Time proposed;

Question that the proposed new Clause 79 be now read a Second Time put and agreed to;

Question that Clause 79 be part of the Bill put and agreed to;

New Clause 79: Agreed to;

New Clause 80 - **President’s Reservations: Recommended Amendment proposed –**

Insertion of new section 31A into No. 11 of 2007

80.The Employment Act is amended by inserting the following new section immediately after section 31-

Payment to the National Housing Development Fund.

31A.(1) An employer shall pay to the National Housing Development Fund in respect of each employee –

- (a) the employer’s contribution at one point five per centum of the employee’s monthly basic salary; and
- (b) the employee’s contribution at one point five per centum of the monthly basic employee’s salary:

Provided that the sum of the employer and employee contributions shall not exceed five thousand shillings a month.

(2) The benefits to an employee shall accrue as follows –

- (a) for employees who qualify for affordable housing, the contributions accrue to the employee and shall be used to finance the purchase of a home under the affordable housing scheme; or
- (b) for employees who are not eligible for affordable housing, upon the expiry of fifteen years from the date of the start of making the contributions, or after the attainment of retirement age, whichever is sooner–
 - (i) a transfer of their contributions to a pension scheme registered with the Retirement Benefits Authority;
 - (ii) a transfer their contributions to any person registered and eligible for affordable housing under the National Housing Development Fund; or

- (iii) a transfer of their contributions to their spouse or dependent children; or
- (iv) to receive their contributions in cash:

Provided that contributions paid out in cash shall be included in the contributor's taxable income for the year and be subjected to tax at the prevailing rates.

(3) All contributions shall get a return based on the return on the Fund.

(4) The employer shall remit both employee and employer contributions to the National Housing Development Fund before the ninth day of the following month.

(5) If the contributions due under this section are not paid on or before the day on which the payments are due, a penalty of five percent of the contributions shall be payable by the employer for each month or part thereof during which the contributions remains unpaid, and any such penalties shall be recoverable as a sum due and payable to the National Housing Development Fund.

(6) This section shall become effective upon the Gazettement of regulations prescribing the requirements for qualification to the scheme by the Cabinet Secretary responsible for housing in consultation with the Cabinet Secretary responsible for finance.

(The Leader of the Majority Party)

Motion made and Question that the proposed new Clause 80 be now read a Second Time proposed;

Question that the proposed new Clause 80 be now read a Second Time put and agreed to;

Question that Clause 80 be part of the Bill put and agreed to;

New Clause 80: Agreed to;

New Clause 2 - President's Reservations: Recommended Amendment proposed -

THAT, the Bill be amended in clause 2 by renumbering the existing provision as (a) and inserting the following paragraph-

(b) by deleting the definition of the word "winnings" and substituting therefor the following definition-

"winnings" includes winnings if any kind and a reference to the amount or to the payment of winnings shall be construed accordingly.

(Leader of the Majority Party)

Question of the amendment proposed;

Question of the amendment put and agreed to;

Question that Clause 2 as amended be part of the Bill put and agreed to;

Clause 2 - as further amended agreed to

CLAUSE 1 - Proposed Amendment

THAT, the Bill be amended in clause 1 by inserting the following paragraph immediately after paragraph (a)-

(ab) section 18A on the date of assent;

(Chairperson, Departmental Committee on Finance and National Planning)

Amendment withdrawn

6. RECONSIDERED ASPECTS OF THE BILL TO BE REPORTED, WITH AMENDMENTS

Motion made and Question proposed -

*THAT, the Committee do report to the House its reconsideration of the Finance Bill (National Assembly Bill No.20 of 2018), and its approval thereof with amendments, **fully** accommodating the President's Reservations;*

(Leader of the Majority Party)

Question put and agreed to;

7. HOUSE RESUMED - the Honourable Speaker in the Chair**Reconsidered Finance Bill (National Assembly Bill No.20 of 2018): Approval of the Reconsidered Clauses of the Bill**

Reconsidered Bill Reported:

THAT, the Committee of the whole House has reconsidered the specified Clauses of the Finance Bill (National Assembly Bill No.20 of 2018), in respect of the Reservations of the President and the recommended amendments thereof and has approved the same **fully** accommodating the President’s Reservations in accordance with the provisions of Article 115(2)(a) of the Constitution and Standing Order 154(5)(b) and now seeks the approval of the House;

(The Hon. Amos Kimunya- on behalf of the Chairperson)

Motion made and Question proposed –

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

And the Speaker having confirmed that there is quorum present in the House;

Question put and agreed to;

Several Members moving into the gangways, aisle and middle of the Chamber and claiming a division;

The Speaker declining to the claim, as offending the provisions of Standing Order 72(b);

The Finance Bill (National Assembly Bill No.20 of 2018), amended in light of the President’s Reservations and passed pursuant to Article 115(2)(a) of the Constitution.

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

8. **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 Tuesday, October 2, 2018 at 2.30 p.m.