



REPUBLIC OF KENYA  
TWELFTH PARLIAMENT - (THIRD SESSION)

THE SENATE

**ORDER PAPER**

THURSDAY, FEBRUARY 21, 2019 AT 2.30 PM

**PRAYERS**

1. Administration of Oath
2. Communication from the Chair
3. Messages
4. Petitions (as listed in the Appendix)
5. Papers (as listed in the Appendix)
6. Notices of Motion (as listed in the Appendix)
7. Statements (as listed in the Appendix)
8. **MOTION - THE REPORT OF THE AD-HOC COMMITTEE ON THE MAIZE CRISIS IN KENYA.**  
(Chairperson, Ad-Hoc Committee on Maize)

**THAT**, this House adopts The Report of the Ad-hoc Committee on the Maize crisis in Kenya laid on the Table of the House on Tuesday, 27<sup>th</sup> November, 2018.

*(Resumption of debate interrupted on Wednesday, 20<sup>th</sup> February, 2019)*

9. **MOTION - NATIONAL ASSEMBLY AMENDMENTS TO THE WARE HOUSE RECEIPTS SYSTEM BILL (SENATE BILLS NO. 10 OF 2017)**  
(The Senate Majority Leader)  
**THAT** the amendments by the National Assembly to the Warehouse Receipts System Bill (Senate Bills No. 10 of 2017) be now considered.
10. **MOTION - REPORT OF THE STANDING COMMITTEE ON FINANCE AND BUDGET ON THE COUNTY GOVERNMENTS' INFRASTRUCTURE PROJECTS**  
(Chairperson, Standing Committee on Finance and Budget)

**THAT**, this House adopts the Report of the Standing Committee on Finance and Budget on the County Governments' infrastructure projects comprising County Executive Headquarter offices, Assembly Chambers and offices and County State officers' residences, laid on the Table of the Senate on Thursday, 29<sup>th</sup> November, 2018.

...../Motion

11. **MOTION - CREATION OF DISABILITY INCLUSIVE SCHOOL CLUBS IN ALL PUBLIC SCHOOLS**

(Sen. (Dr.) Getrude Musuruve, MP)

**THAT, WHEREAS** Article 19 of the Convention on the Rights of Persons with Disabilities (CRPD) affirms the equal right of all persons with disabilities to live in a community, with choices equal to others, equal access to services and facilities that are responsive to their needs;

**AWARE THAT** societal perception of disability is negative, mainly due to lack of socialization and integration during the formative years,;

**COGNIZANT THAT** participation in school clubs provides important life skills that prepare children holistically for their future and plays a major role in transforming students' lives as they transit to various professions in adulthood;

**CONCERNED THAT** no policy exists addressing inclusivity in school clubs for persons with disability in the public school system;

**NOW THEREFORE** the Senate calls upon the coordinated effort of the National Government through the Ministry of Education, and the County Governments through the Council of Governors to develop policy that would ensure inclusiveness of special needs learners in school clubs in public schools beginning at the Early Childhood Development (ECD) level up to and including Secondary School level.

12. **MOTION - THE REALIZATION OF GENDER EQUITY IN ELECTIVE AND APPOINTIVE POSITIONS IN KENYA**

(Sen. (Canon) Naomi Waqo Jilo, MP)

**AWARE THAT**, the Constitution of Kenya recognizes dignity, economic, social and cultural rights, education, housing and the right to health including reproductive health; and that the principle of equality and non-discrimination is established as a core value of leadership and the national values and principles of governance include human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of marginalized groups, among others;

**FURTHER AWARE THAT**, the Constitution of Kenya has very progressive articles that indicate commitment to the international and regional obligations arising from treaties and conventions and other Commitments signed or ratified;

**COGNIZANT** that Kenya has ratified the Convention on Elimination of all forms of discrimination against Women and the Protocol to the African Charter on Human and People's Rights of the Right of Women which are international instruments that are key to promoting women's rights;

**RECALLING** that policy framework to enhance gender equality has also been developed, and include the National Gender and Development Policy 2000, the Kenya Vision 2030, Sessional paper No. 2, of 2006, the National Land Policy, the National Policy for Response to Gender Based Violence, and the National Policy for the Abandonment of Female Genital Mutilation;

**NOTING THAT**, despite there being sound constitutional provisions and elaborate policy framework to realise gender equity, both national government and county governments have not done enough to realise the achievement of gender equality;

...../Motion

**CONCERNED** that women in Kenya experience hardships when it comes to elective offices, and are underrated by society with most opportunities for elective and appointive offices being awarded to men;

**NOW THEREFORE THE SENATE RESOLVES**

- 1) that Parliament fast track the enactment of the law that shall give effect to the one third gender rule; and,
- 2) that pursuant to Article 81 of the Constitution both the National and County governments observe the principle of equality, and empowers the female gender by increasing the appointive position to at least fifty per cent.

13. **MOTION - REPORT OF THE PARLIAMENT OF KENYA DELEGATION TO THE 49<sup>TH</sup> COMMONWEALTH PARLIAMENTARY ASSOCIATION (CPA) AFRICA REGION CONFERENCE**

(Sen. Petronilla Were, MP)

**THAT** this House notes the Report of the Parliament of Kenya delegation to the 49<sup>th</sup> Commonwealth Parliamentary Association (CPA) Africa Region Conference held in Gaborone, Botswana, 13<sup>th</sup> – 22<sup>nd</sup> August, 2018 laid on the Table of the House on Wednesday, 20<sup>th</sup> February, 2019.

14. **\*THE PRESERVATION OF HUMAN DIGNITY AND ENFORCEMENT OF ECONOMIC AND SOCIAL RIGHTS BILL (SENATE BILLS NO 27 OF 2018)**

(Sen. Abshiro Halake, MP)

*(Second Reading)*

*(Resumption of debate interrupted on Tuesday, 19<sup>th</sup> February, 2019)*

15. **\*\*THE COUNTY STATUTORY INSTRUMENTS BILL (SENATE BILLS NO. 21 OF 2018)**

(Chairperson, Sessional Committee on Delegated Legislation)

*(Second Reading)*

16. **\*THE COUNTY OVERSIGHT AND ACCOUNTABILITY BILL (SENATE BILLS NO. 28 OF 2018)**

(Sen. Ledama Olekina, MP)

*(Second Reading)*

17. **\*THE DETERMINATION OF THE NATURE OF BILLS (PROCEDURE) BILL (SENATE BILLS NO. 30 OF 2018)**

(Sen. Mutula Kilonzo Jnr, MP and Sen. Sakaja Johnson, MP)

*(Second Reading)*

18. **\*THE NATURAL RESOURCES (BENEFIT SHARING) BILL (SENATE BILLS NO 31 OF 2018)**

(Sen. (Dr.) Agnes Zani, MP)

*(Second Reading)*

19. **\*THE MENTAL HEALTH (AMENDMENT) BILL (SENATE BILLS NO. 32 OF 2018)**

(Sen. (Arch.) Sylvia Kasanga, MP)

*(Second Reading)*

...../Bill

- 20. **\*THE ELECTION LAWS (AMENDMENT) BILL (SENATE BILLS NO. 33 OF 2018)**  
(Sen. Ledama Olekina, MP)

*(Second Reading)*

**NOTICE**

The Senate resolved on 13<sup>th</sup> February, 2019 as follows:-

**THAT**, pursuant to Standing Order 106 (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.

**KEY**

**\*\*\*\*** ■ Denotes a Majority /Minority Party Bill

**\*\*\*** ■ Denotes a National Assembly Bill

**\*\*** ■ Denotes a Committee Bill

**\*** ■ Denotes any other Bill

A. \*\*\*\*THE WAREHOUSE RECEIPTS SYSTEM BILL (SENATE BILLS NO. 10 OF 2017)

(The Senate Majority Leader)

*Schedule of Amendments as passed By the National Assembly to the Bill on Tuesday, 27<sup>th</sup> November, 2018*

**CLAUSE 2**

Clause 2 of the Bill amended—

- (a) in the definition of "holder" by deleting the words "who is in possession of the receipt" appearing immediately after the words "warehouse receipts";
- (b) by deleting the definition of "owner";
- (c) by deleting the definition of the word "warehouse operator" and substituting thereof the following new definition—

"warehouse operator" means a person engaging in the business of hiring out space for storing goods and issuance of warehouse receipts;

- (d) in the definition of the term "warehouse receipt system" by deleting the word "receipts" appearing immediately after the words "the management of the transfer of the" and substituting therefor the term "receipt"; and

- (e) by inserting the following new definition in its proper alphabetical sequence—

"inspector" means an officer of the Council or an authorized officer appointed by the Council in the *gazette*, to carry out inspections under this Act.

**CLAUSE 3**

Clause 3 of the Bill amended—

- (a) by deleting subclause (3) and substituting therefor the following new subclause—

(3) The Council shall consist of—

- (a) a Chairperson, who shall be appointed by the President;
- (b) the Principal Secretary for the time being responsible for matters related to agriculture or a representative;
- (c) the Principal Secretary for the time being responsible for matters related to finance or a representative;
- (d) one person nominated by the Council of Governors;
- (e) the Director-General of Agriculture and Food Authority or a representative;
- (f) the chief executive officer of the Council who shall be an *ex-officio* member;
- (g) one person nominated by the Kenya Farmers Association;

...../Amendments

- (h) one person nominated by Kenyan members of the Eastern Africa Grain Council;
- (i) one person nominated by Kenya Bankers Association; and
- (j) one person nominated by the Kenya Warehouse Operators Association."

(b) by deleting subclause (5) and substituting thereof with the following subclause—

- (5) A person shall be qualified for appointment as chairperson of the Board if such a person—
- (a) is a citizen of Kenya;
  - (b) meets the requirements of leadership and integrity set out in Chapter 6 of the Constitution;
  - (c) holds relevant academic and professional qualifications including a university degree in a relevant field; and
  - (d) has at least eight years' experience in—
    - (i) agriculture;
    - (ii) finance;
    - (iii) business;
    - (iv) law;
    - (v) procurement; or
    - (vi) administration.

(c) in subclause (9), by—

(i) inserting the words, "in contravention of the Public Officer Ethics Act and any other relevant law" immediately after the word "office" in paragraph (c);

(ii) deleting the words " in the opinion of the Council" appearing in paragraph (e);

(iii) deleting paragraph (g) and substituting therefor with the following paragraph—

"(g) conviction of an offence and sentenced to six months imprisonment without an option of a fine."

**CLAUSE 4**

Clause 4 of the Bill amended—

(a) in paragraph (a) by inserting the word " produced" immediately after the word "commodities";

(b) by inserting the following new paragraphs immediately after paragraph (j)—

(ja) in accordance with the provision of this Act, suspend operations of warehouse operators, inspectors, weighers, graders or other service providers operating under the Act for contravention of the Act;

(jb) issue, suspend or revoke registration or licenses issued under the Act;

**CLAUSE 9**

Clause 9 of the Bill amended in subclause (3) by deleting paragraph (a) and substituting therefor the following new paragraph—

“(a) holds a relevant university degree from a recognized university in Kenya.”

**CLAUSE 10**

Clause 10 of the Bill amended by inserting the words “a company secretary and” immediately after word “employ”.

**CLAUSE 11**

Clause 11 of the Bill amended—

(a) by renumbering the existing clause as subclause (1);

(b) by inserting the following new subclause immediately after subclause (1) —

(2) The Council shall publish the names of persons engaged as experts under subsection (1), in the *gazette*.

**CLAUSE 16**

Clause 16 of the Bill amended in subclause (5) by inserting the word “annual” immediately before the word “report”.

**CLAUSE 17**

Clause 17 of the Bill amended—

(a) by deleting subclause (3) and substituting therefore the following new clause—

“(3) The County Executive Committee member may—

(a) issue a license where the applicant meets all the requirements set out in the prescribed regulations;

(b) decline to issue a license for the conduct of a warehouse where the County Executive Committee member establishes that—

(i) the warehouse is not suitable for the proper storage of agricultural commodities;

(ii) the operator is incompetent to conduct such warehouse in accordance with this Act and the regulations made hereunder; or

(iii) there is any other sufficient reason within the purposes of Act for not issuing such licenses.

(b) by inserting the following new subclause immediately after subclause (4) —

...../Amendments

(4A)A person who operates a warehouse under the Warehouse Receipts System without a license issued by the county executive committee commits an offence.

**CLAUSE 21**

Clause 21 of the Bill amended—

- (a) in subclause (4) by inserting the words “and shall be liable on conviction to a fine not exceeding a hundred thousand shillings or imprisonment for a term not exceeding three years, or both” immediately after the word “offence”;
- (b) in subclause (5)—
  - (i) by deleting the word “or” appearing immediately before the word “graders”;
  - (ii) by inserting the words “or other service providers” immediately after the word “graders”; and
- (c) by inserting the following new subclause immediately after subclause (8) —

“(8A) The Council shall maintain a database which shall be availed for inspection by any person upon application pursuant to Article 35 of the Constitution.”

**CLAUSE 23**

Clause 23 the Bill amended—

- (a) by deleting the words “Warehouse Receipts Appeals Committee” wherever they appear and substituting therefor the words “Warehouse Receipts System Dispute Resolution Committee”;
- (b) in subclause (1) by inserting the following new paragraph immediately after paragraph (d) —
  - (da) complaints by registered, licensed or other persons operating under this Act;
- (c) in subclause (2) by—
  - (i) deleting paragraph (a) and substituting thereof with the following paragraph—
    - (a) a chairperson appointed by the Cabinet Secretary who shall be an advocate of not less than seven years standing and with experience in dispute resolution; and
  - (ii) deleting the word “ adjudication” in paragraph (b) and substituting thereof with the word “resolution”.
- (d) in subclause (4) by deleting the words “Appeals Committee” and substituting therefor the words “Dispute Resolution Committee”.



**CLAUSE 24**

Clause 24 of the Bill deleted and substituted thereof with the following new clause—

Grading and weighing of agricultural products. **24.** (1) A licensed warehouse operator shall ensure commodities stored in a licensed agricultural warehouse meet the standards published by the Kenya Bureau of Standards and are weighed using equipment certified in accordance with laws related to weights and measures.

(2) The grading of agricultural commodities shall be undertaken by agricultural commodity graders certified by a mandated institution.

(3) The Council shall provide guidelines on the minimum qualifications and competencies required of graders and weighers.

**CLAUSE 25**

Clause 25 of the Bill deleted and substituted thereof with the following new clause—

Inspection of stored products. **25.**(1) The Chief Executive Officer, appointed Council Inspectors or authorized officers of the Council may inspect any agricultural commodity stored in a licensed warehouse and records relating to warehouse receipts where its considered necessary.

(2) The Council shall appoint and gazette inspectors who shall exercise such powers in accordance with regulations made under this Act.

**CLAUSE 27**

Clause 27 of the Bill amended by inserting the words, "insurance contracts, professional indemnities, warehouse receipts registry" immediately after the words "examine all".

**CLAUSE 30**

Clause 30 of the Bill amended by inserting the following new subclause immediately after subclause (1)—

"(1A) The Central Registry shall have the necessary infrastructure to link it with a central depository of a commodities exchange licensed by the Capital Markets Authority."

**CLAUSE 31**

Clause 31 of the Bill amended in—

- (a) subclause (2), by deleting the words “issue a warehouse receipt” and substitute thereof with the words, “ issue a warehouse replacement receipt”;
- (b) subclause (3) by deleting the word “ duplicate” and substituting thereof with the word “replacement”; and
- (c) subclause (4), by deleting the word “deals” immediately after the word “person” and substituting therefor the word “who”.

**CLAUSE 32**

Clause 32 of the Bill amended by deleting the word “duplicate” and substituting with the word “replacement”.

**CLAUSE 39**

Clause 39 of the Bill amended by deleting the phrase “section 35” and substituting therefor with the phrase “section 38”.

**CLAUSE 41**

Clause 41 of the Bill amended—

- (a) by deleting the words “in a case where endorsement is essential for negotiation” appearing in subclause (1);
- (b) in subclause (2) by deleting the words “In a case where it is essential that a warehouse receipt should be endorsed before it is transferred, that” and substituting therefor the word “A” .

**CLAUSE 43**

Clause 43 of the Bill deleted and substituted thereof with the following new clause—

Issuing of fraudulent warehouse receipts.      **43.** A warehouse operator, or any officer, agent, or employee of a warehouse operator, who issues or aids in issuing a receipt knowing the goods for which such receipt is issued have not been actually received by such warehouse operator, or are not under his actual control at the time of issuing such receipt, commits an offence and is liable on conviction to a term of imprisonment not exceeding ten years or a fine not exceeding ten million Kenya shillings, or to both.

**CLAUSE 44**

Clause 44 of the Bill deleted and substituted thereof with the following new clause—

Issuing of receipts with false information. **44.** A warehouse operator, or any officer, agent, or employee of a warehouse operator, who fraudulently issues or knowingly facilitates the fraudulent issuing of a receipt for goods based on a false statement or a false statement to the effect that the warehouse is licensed under this Act or the goods are insured if they are not so insured or fails to disclose such fact, commits an offence and is liable on conviction a fine not exceeding ten million Kenya shillings or to a term of imprisonment not exceeding ten years, or both.

**CLAUSE 45**

Clause 45 of the Bill deleted and substituted thereof with the following new clause—

Unlawful issuing of duplicate receipts. **45.** A warehouse operator or any officer, agent, or employee of a warehouse operator, who issues or facilitates the issuing of a duplicate or additional negotiable receipt for goods knowing that a former negotiable receipt for the same goods or any part of them is outstanding and not cancelled, without plainly placing upon the face thereof the word "Replacement", commits an offence and is liable on conviction to a fine not exceeding ten million Kenya shillings or a term of imprisonment not exceeding ten years, or both.

**CLAUSE 48**

Clause 48 of the Bill amended by deleting the word "one" and substituting therefor the word "three".

**CLAUSE 50**

Clause 50 of the Bill amended by deleting the word "shall" and substituting therefor the word "may".

**SCHEDULE**

The Schedule to the Bill amended-

- (a) in paragraph 1 by deleting subparagraph (4) and substituting therefor the following new subparagraph—

...../Amendments

(4) A meeting shall be presided over by the chairperson or in the absence of the chairperson, the members present shall appoint one of their members to preside at the meeting.

(b) in paragraph (2) by deleting the word "three" in sub-paragraph (2) and substituting thereof with the word "five".

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APPENDIX1. PETITION

Petition to the Senate by Residents of Kangemi, Mountain View, Uthiru, 87, Kinoo, Muthiga, Zambezi and Kamandura on compensation and resettlement of persons affected by the rehabilitation and capacity enhancement of James Gichuru Road Junction-Rironi Highway (A104) Project.

*(Sen. Kimani Wamatang'i, MP)*

2. PAPERS

Report on the Sugar Industry Taskforce consultative meeting with Members of Parliament held on 15<sup>th</sup> January, 2019 in Kisumu County.

*(Sen. Cleophas Malalah, MP)*

3. NOTICE OF MOTION - REPORT ON THE GLOBAL SUMMIT ON OPEN GOVERNANCE PARTNERSHIP

(Chairperson, Standing Committee on Justice, Legal Affairs and Human Rights)

**THAT** this House notes the Report on the Global Summit on Open Governance Partnership in Tbilisi, Georgia, 17<sup>th</sup> to 19<sup>th</sup>, July, 2018 laid on the Table of the House on Wednesday, 20<sup>th</sup> February, 2019.

4. STATEMENTS**(i) Statement Pursuant To Standing Order No. 48(1)**

- a) Nominated Senator (Sen. Millicent Omanga, MP) to seek a statement from the Standing Committee on Justice, Legal Affairs and Human Rights on the compulsory management of copyright and other related rights.
- b) The Senator for Taita Taveta County (Sen. Johnes Mwaruma, MP) to seek a statement from the Standing Committee on Land, Environment and Natural Resources regarding the status of Voi Sisal Estate.
- c) The Senator for Kericho County (Sen. Aaron Cheruiyot, MP) to seek a statement from the Standing Committee on National Security, Defense and Foreign Relations regarding the National Integrated Identity Management System (NIIMS).

**(ii) Statement Pursuant to Standing Order No. 52 (1)**

The Senate Majority Leader to issue a statement on the business of the Senate for the week commencing Tuesday, 26<sup>th</sup> February, 2019.

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