



REPUBLIC OF KENYA

TWELFTH PARLIAMENT – THIRD SESSION

THE SENATE

VOTES AND PROCEEDINGS

THURSDAY, JULY 25, 2019 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 Speaker.
3. **COMMUNICATIONS FROM THE CHAIR**

The Speaker conveyed the following Communications from the Chair: -

a) Visiting Students and Teachers from St. Angels Academy from Bungoma County

“Honourable Senators,

I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting students and teachers from St. Angels Academy School, Bungoma County.

On behalf of the Senate, and on my own behalf, I welcome them to the Senate and wish them well for the remainder of their stay.

I thank you.”

b) Visiting Students and Teachers from St. Catherine Girls from Bomet County

“Honourable Senators,

I would like to acknowledge the presence, in the Speaker’s Gallery this afternoon, students and teachers from St. Catherine Girls from Bomet County Assembly.

On behalf of the Senate, and on my own behalf, I welcome them to the Senate and wish them well for the remainder of their stay.

I thank you.

c) Visiting Students and Teachers from Rukika D.E.B Primary School, Embu County.

“Honourable Senators,

I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting pupils and teachers from Rukika D.E.B Primary School, Kajiado County.

On behalf of the Senate, and on my own behalf, I welcome them to the Senate and wish them well for the remainder of their stay.

I thank you.”

d) Visiting Students and Teachers from Arnenssens Primary School, Uasin Gishu County.

“Honourable Senators,

I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting pupils and teachers from Arnenssens Primary School, Uasin Gishu County.

On behalf of the Senate, and on my own behalf, I welcome them to the Senate and wish them well for the remainder of their stay.

I thank you.”

e) Visiting Students and Teachers from Osoit Topmark Primary School, Kajiado County

“Honourable Senators,

I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting pupils and teachers from Osoit Topmark Primary School, Kajiado County.

On behalf of the Senate, and on my own behalf, I welcome them to the Senate and wish them well for the remainder of their stay.

I thank you.”

f) Visiting Students and Teachers from Narok Great Agape Primary School, Narok County

“Honourable Senators,

I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting pupils and teachers from Narok Great Agape Primary School, Narok County.

On behalf of the Senate, and on my own behalf, I welcome them to the Senate and wish them well for the remainder of their stay.

I thank you.”

g) Visiting Students and Teachers from Arunda Primary School, Homa Bay County

“Honourable Senators,

I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting pupils and teachers from Arunda Primary School, Homa Bay County.

On behalf of the Senate, and on my own behalf, I welcome them to the Senate and wish them well for the remainder of their stay.

I thank you.”

h) Visiting Students and Teachers from Inyokoni Secondary School, Makueni County.

“Honourable Senators,

I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting pupils and teachers from Inyokoni Secondary School, Makueni County.

On behalf of the Senate, and on my own behalf, I welcome them to the Senate and wish them well for the remainder of their stay.

I thank you.”

4. **PAPERS**

The following Papers were laid on the Table of the Senate: -

- a) Report of the Ad hoc Committee inquiring into the challenges facing the tea sector in Kenya;

(Chairperson of the Ad Hoc Committee (Sen. Aaron Cheruiyot, MP))

- b) Report of the Parliament of Kenya Delegation to the United Nations Conference on Climate Change (COP 24) held in Katowice, Poland, from 3rd to 14th December, 2018;

(Sen. (Dr.) Abdullahi Ali, MP)

- c) Statement on the business of the Senate for the week commencing Tuesday, 30th July, 2019.

(The Deputy Senate Majority Leader)

5. **NOTICE OF MOTION** - (Chairperson, Ad Hoc Committee on Tea)

THAT, the Senate adopts the Report of the Ad hoc Committee inquiring into the challenges facing the tea sector in Kenya, laid on the Table of the Senate on Thursday, 25th July, 2019.

6. **NOTICE OF MOTION** - (Sen. (Dr.) Abdullahi Ali, MP)

THAT, the Senate notes the Report of the Parliament of Kenya Delegation to the United Nations Conference on Climate Change (COP 24) held in Katowice, Poland, from 3rd to 14th December, 2018, laid on the Table of the Senate on Thursday, 25th July, 2019.

7. **STATEMENTS**

a) Statements pursuant to Standing Order 48(1)

i) The Nominated Senator (Sen. Mary Seneta, MP) sought a statement from the Standing Committee on Health regarding the sale of meat laced with dangerous chemicals in butcheries in Kenya; and

ii) The Senator for Isiolo County (Sen. Fatuma Dullo, MP) sought a statement from the Standing Committee on Finance and Budget regarding the problems experienced by Counties while using the Integrated Financial Management Information System (IFMIS).

b) Statement pursuant to Standing Order 51(1)(b)

The Chairperson, Standing Committee on Roads and Transportation issued a Statement relating to the activities of the Committee for the period 1st January to 30th June, 2019.

c) Statement pursuant to Standing Order 52(1)

The Deputy Senate Majority Leader issued a statement regarding the business of the Senate for the week commencing Tuesday, 30th July, 2019.

8. **WITHDRAWAL OF A BILL PURSUANT TO STANDING ORDER 154**

Pursuant to Standing Order 154, the co-sponsor of the Persons with Disabilities (Amendment) Bill (Senate Bills No. 1 of 2019) (*Sen. Aaron Cheruiyot, MP*) claimed to withdraw the Bill.

And the Speaker acceding to the request, allowed the Senator to withdraw the Bill.

Bill withdrawn.

9. **COMMITTEE OF THE WHOLE**

Order for Committee read;

IN THE COMMITTEE

(The Acting Chairperson of Committees (Sen. Judith Pareno) – in the Chair)

The County Government Retirement Scheme Bill (National Assembly Bills No. 10 of 2018)

Clause 3 – amendment proposed.

THAT Clause 3 of the Bill be amended by inserting the following new paragraph immediately after paragraph (e)—

(f) protect the benefits of the members of the Scheme.

(Chairperson, Standing Committee on Labour and Social Welfare)

Clause 3 – vote deferred.

Clause 4 – amendment proposed.

THAT Clause 4 of the Bill be amended in subclause (3) by inserting the following new paragraph immediately after paragraph (c)—

(ca) gratuity; and

(Chairperson, Standing Committee on Labour and Social Welfare)

Clause 4 – vote deferred.

Clause 5

Motion made and Question proposed;

THAT Clause 5 be part of the Bill.

Clause 5 – vote deferred.

Clause 6 – amendment proposed.

THAT the Bill be amended by deleting Clause 6 and substituting therefor the following new clause—

Board of 6 (1) The management of the Scheme shall vest in a
Trustees of Board of Trustees of the Scheme.
the Scheme.

(2) The Board shall consist of—

- (a) the chairperson elected by the Trustees from among the members under paragraph (c), (d), (e) and (f);
 - (b) the Principal Secretary responsible for matters relating to finance or a representative;
 - (c) a person nominated by Council of County Governors;
 - (d) a person nominated by County Public Service Boards;
 - (e) a person nominated by County Assembly Service Boards;
 - (f) five persons nominated by most representative trade unions representing employees of county governments of whom at least two shall not be of the same gender as follows—
 - (i) four persons from trade unions representing the employees within the county executive; and
 - (ii) a person from trade unions representing the employees within the county assemblies' service; and
 - (g) the chief executive officer who shall be an ex officio member and the secretary to the Board with no voting rights.
- (3) The vice-chairperson of the Board shall be elected by the Trustees from among their number.
- (4) The chairperson and vice- chairperson shall be of the opposite gender.
- (5) The Cabinet Secretary shall ensure that not more than two thirds of the members of the Board are of the same gender.
- (6) The Cabinet Secretary shall appoint the persons nominated under subsection (2) by notice in the *gazette*.
- (7) The procedure for nomination and appointment of Trustees under subsection (2) shall be as prescribed in the regulations.

(Chairperson, Standing Committee on Labour and Social Welfare)

Clause 6 – vote deferred.

Clauses 7 - 9

Motion made and Question proposed;

THAT Clauses 7-9 be part of the Bill.

Clauses 7- 9 – vote deferred.

Clause 10 – amendment proposed.

THAT Clause 10 of the Bill be amended in subclause (1) by deleting the word “three” appearing immediately after the words “absence from” appearing in paragraph (e) and substituting therefor the word “two”.

(Chairperson, Standing Committee on Labour and Social Welfare)

Clause 10 – vote deferred.

Clauses 11-15

Motion made and Question proposed;

THAT Clauses 11-15 be part of the Bill.

Clauses 11-15 – vote deferred.

Clause 16 – amendment proposed.

THAT the Bill be amended by deleting Clause 16 and substituting therefor the following new clause—

Remuneration 16. The Trustees shall be paid such remuneration as the of Trustees. Authority may determine in accordance with the Retirement Benefits Act.

(Chairperson, Standing Committee on Labour and Social Welfare)

Further Amendment

THAT Clause 16 of the Bill be amended by deleting the words “remuneration or” appearing immediately after the words “paid such” and substituting therefor the word “sitting allowance”.

(Sen. Farhiya Ali Haji)

Further Amendment withdrawn by the Mover;

Clause 16 – vote deferred.

Clause 17

Motion made and Question proposed;

THAT Clause 17 be part of the Bill.

Clause 17 – vote deferred.

Clause 18 – amendment proposed.

THAT Clause 18 of the Bill be amended by inserting the following new subclause immediately after subclause (4)—

(4a) The chief executive officer shall hold office for a term of three years and may be eligible for re-appointment for a further final term of three years.

(Chairperson, Standing Committee on Labour and Social Welfare)

Clause 18 – vote deferred.

Clauses 19 – 20

Motion made and Question proposed;

THAT Clauses 19 - 20 be part of the Bill.

Clauses 19 - 20 – vote deferred.

Clause 21 – amendment proposed.

THAT Clause 21 of the Bill be amended in paragraph (d) by deleting the words “provide regular information” appearing immediately before the words “on investment strategy” and substituting the words “submit reports on a quarterly basis”.

(Sen. Farhiya Ali Haji)

Clause 21 – vote deferred.

Clause 22 – amendment proposed.

THAT Clause 22 of the Bill be amended in subclause (1) by inserting the following new paragraph immediately paragraph (f)-

(fa) submit to the Board a report on a quarterly basis, of the reconciliations with respect to the funds held by the Custodian;

(Sen. Farhiya Ali Haji)

Clause 22 – vote deferred.

Clause 23 – amendment proposed.

THAT Clause 23 of the Bill be amended in subclause (2) by deleting the word “shall” appearing immediately after the word “administrator” and substituting therefor with the word “may”.

(Chairperson, Standing Committee on Labour and Social Welfare)

Amendment withdrawn by the Mover;

Further Amendment

THAT Clause 23 of the Bill be amended in subclause (2) by-

- (a) inserting the words “at least on a quarterly basis” immediately after the words “including access” in paragraph (d);
- (b) inserting the following new paragraph immediately after paragraph (d)-
 - (da) keep and maintain proper books of accounts of the scheme.

(Sen. Farhiya Ali Haji)

Clause 23 - vote deferred.

Clause 24 - amendment proposed.

THAT Clause 24 of the Bill be amended by deleting subclause (1) and substituting therefor the following new subclause –

- (1) A member shall, so long as the member remains in the employment of a sponsor, contribute not less than twelve percent of that member’s pensionable emoluments to the Scheme.

(Chairperson, Standing Committee on Labour and Social Welfare)

Further Amendment

THAT Clause 24 of the Bill be amended –

- (a) in subclause (1) by inserting the word “member” immediately after the words “long as the”;
- (b) in subclause (2) by inserting the words “not less than” immediately after the words “contribute to the scheme”.
- (c) in subclause (5) by deleting the words “on each occasion” appearing immediately after the words “salary of the contributor” and substituting therefor the words “in each month”.

(Sen. Farhiya Ali Haji)

Part (a) of the Amendment withdrawn by the Mover;

Clause 24 – vote deferred.

Clauses 25 - 35

Motion made and Question proposed;

THAT Clauses 25 - 35 be part of the Bill.

Clauses 25 - 35 – vote deferred.

Clause 36 – amendment proposed.

THAT Clause 36 of the Bill be amended in paragraph (a) by deleting the words “except where a member works on a contractual basis for the sponsor after their resignation or early retirement” appearing immediately after the words “a sponsor”.

(Sen. Farhiya Ali Haji)

Amendment withdrawn by the Mover;

Motion made and Question proposed;

THAT Clause 36 be part of the Bill.

Clause 36 – vote deferred.

Clauses 37 - 43

Motion made and Question proposed;

THAT, Clauses 37 - 43 be part of the Bill.

Clauses 37 - 43 – vote deferred.

Clause 44 – amendment proposed.

THAT Clause 44 of the Bill be amended by deleting subclause (1) and substituting therefor the following new subclause-

(1) The scheme shall be reviewed by an actuary appointed by the Board as provided for in the Retirement Benefits Act.

(Sen. Farhiya Ali Haji)

Clause 44 – vote deferred.

Clause 45

Motion made and Question proposed;

THAT Clause 45 be part of the Bill.

Clause 45 – vote deferred.

Clause 46 – amendment proposed.

THAT Clause 46 of the Bill be amended in the introductory phrase in subclause (2) by inserting the word “actuary” immediately after the words “fund Manager”.

(Sen. Farhiya Ali Haji)

Clause 46 – vote deferred.

Clause 47

Motion made and Question proposed;

THAT Clause 47 be part of the Bill.

Clause 47 – vote deferred.

Clause 48 – amendment proposed.

THAT Clause 48 of the Bill be amended in subclause (1) by deleting the words “two years” appearing immediately after the words “imprisonment for a term not exceeding” at the end of subclause and substituting therefor the words “five years.”

(Chairperson, Standing Committee on Labour and Social Welfare)

Further Amendment

THAT Clause 48 of the Bill be amended by inserting the following new subclause immediately after subclause (2)-

(3) A person who is convicted of an offence under subsection (1) (c) shall, in addition to any fine that may be imposed, refund to the scheme three times the value of any loss that may be incurred by the scheme by reason of the commission of the offence.

(Sen. Farhiya Ali Haji)

Clause 48 – vote deferred.

Clauses 49 - 54

Motion made and Question proposed;

THAT Clauses 49 - 54 be part of the Bill.

Clause 49 - 54 – vote deferred.

Clause 55 – amendment proposed.

THAT Clause 55 of the Bill be amended by inserting the following new subclauses immediately after subclause (6)—

(7) The Auditor General shall cause an actuarial audit and valuation to be carried out with respect to the closed schemes within six months upon the commencement of this Act to ascertain the following for the purpose of transitional management—

- (a) assets acquired by the schemes;
- (b) liabilities accrued by the schemes; and
- (c) employees of the schemes.

(8) The Auditor General shall submit a report on the findings of the audit and valuation to the Board, the Senate and the National Assembly within three months of carrying out of the audit under subsection (7).

(Chairperson, Standing Committee on Labour and Social Welfare)

Clause 55 – vote deferred.

Clause 56 – amendment proposed.

THAT Clause 56 of the Bill be amended by deleting subclause (6) and substituting the following new subclause—

(6) The Retirement Benefits Authority shall, within five years from the commencement of this Act, ensure the implementation of this section.

(Chairperson, Standing Committee on Labour and Social Welfare)

Clause 56 – vote deferred.

Clauses 57 - 58

Motion made and Question proposed;

THAT Clauses 57 - 58 be part of the Bill.

Clause 57 - 58 – vote deferred.

New Clause 59 – insertion of new clause proposed

THAT the Bill be amended by inserting the following new clause immediately after clause 58—

Amendment of 59. The County Governments Act is amended by deleting section 132 of Act section 132.
No. 17 of 2012

(Chairperson, Standing Committee on Labour and Social Welfare)

New Clause 59 – vote deferred.

Motion made and Question proposed;

THAT New Clause 59 be now read a Second Time.

New Clause 59 – vote deferred.

The Schedule – amendment proposed.

The schedule is amended in paragraph 2 by deleting subparagraphs (1) and (2) and substituting therefor the following new subparagraphs—

(1) The quorum of a meeting of the Board shall be five Trustees present and voting and shall include at least two Trustees appointed under section 6 (2) (b), (c), (d) or (e) and at least three Trustees appointed under section 6 (2) (f).

(2) For special meetings, the quorum shall be six Trustees present and voting and shall include at least three Trustees appointed under section 6 (2) (b), (c), (d) or (e) and at least four Trustees appointed under section 6 (2) (f).

The Schedule – vote deferred.

Clause 2

Motion made and Question proposed;

THAT, Clause 2 be part of the Bill.

Clause 2 – vote deferred.

The Title and Clause 1

Motion made and Question proposed;

THAT, Title and Clause 1 be part of the Bill.

The Title and Clause 1– vote deferred.

Progress report

Motion made:

That, the Committee of the Whole do report progress on its consideration of the County Governments Retirement Scheme Bill (National Assembly Bills No. 10 of 2018) and seek leave to sit again tomorrow.

(Chairperson, Standing Committee on Labour and Social Welfare on behalf of the Senate Majority Leader)

Before the question was put and pursuant to Standing Order 79, the Acting Chairperson of Committees (Sen. Judith Pareno) ruled that the Question did not affect counties;

Question put and agreed to.

10. **HOUSE RESUMED** – The Temporary Speaker (Sen. (Dr.) Ltumbesi Lelegwe) in the Chair.
11. **THE COUNTY GOVERNMENTS RETIREMENT SCHEME BILL (NATIONAL ASSEMBLY BILLS NO. 10 OF 2018)**

Progress reported;

Motion made and Question Proposed;

That, the House do agree with the Committee in the said report.

(The Deputy Senate Majority Leader)

Debate arising;

There being no other Senator wishing to contribute;

Before the question was put and pursuant to Standing Order 79, the Temporary Speaker (Sen. (Dr.) Ltumbesi Lelegwe) ruled that the Question did not affect counties;

Question put and agreed to.

12. **MOTION - ADOPTION OF THE REPORT OF THE SENATE SESSIONAL COMMITTEE ON COUNTY PUBLIC ACCOUNTS AND INVESTMENTS ON THE FIDUCIARY RISK REPORT ON AUDIT ISSUES BY COUNTY GOVERNMENTS FOR THE FINANCIAL YEARS 2012/13 TO 2015/16**

Order read;

Motion made and Question proposed-

THAT, the Senate adopts the Report of the Senate Sessional Committee on Public Accounts and Investments on the Fiduciary Risk Report on audit issues by County Governments for the Financial Years 2012/13 to 2015/16 laid on the Table of the Senate on Wednesday, 10th July, 2019.

(Chairperson, Sessional Committee on County Public Accounts and Investments – 24.07.2019)

Debate interrupted on Wednesday, 24th July, 2019 resumed;

And there being no other Senator wishing to contribute;

Mover replied;

Raising a point of order, the Mover requested the Temporary Speaker (Sen. (Dr.) Ltumbesi Lelegwe) to defer putting of the Question to a later date pursuant to Standing Order 61 (3).

And the Temporary Speaker (Sen. (Dr.) Ltumbesi Lelegwe) acceding to his request deferred putting of the Question to a later date.

13. **MOTION - RENAMING OF MURANG'A UNIVERSITY OF TECHNOLOGY TO KENNETH MATIBA UNIVERSITY OF TECHNOLOGY**

Order read;

Motion made and Question proposed-

THAT, AWARE THAT, Murang'a University of Technology (MUT) is a Chartered University established under Section 13 of the Universities Act, 2012, and is positioning itself to develop a distinctive profile as a progressive and international Technical University, growing its enrolment strategically;

FURTHER AWARE that the University is located in Murang'a County, the home County of the late politician Kenneth Njindo Matiba, who died a patriotic and political hero, with numerous achievements spanning four decades;

NOTING THAT, the late Matiba was a prolific industrialist in the hospitality and education sector, and an accomplished public servant having served as the first indigenous African Permanent Secretary for Education in 1963; Permanent Secretary for Commerce; Chairperson of the Kenya Football Federation from 1974-78; a member of parliament for Kiharu constituency; Cabinet Minister for Health; Culture & Social Services; and Transport & Communications;

FURTHER NOTING THAT, the late Matiba was part of the opposition alliance that led the liberation struggle for the restoration of multi-party democracy through the Forum for the Restoration of Democracy (FORD), later founding FORD –Asili under which he ran for presidency in 1992 general election;

COGNIZANT that under the Heroes Act, 2014, the state is obliged to confer recognition to the late statesman for his cardinal contributions to the political and economic growth of this country;

FURTHER COGNIZANT that other patriotic Kenyans like Jomo Kenyatta, Daniel arap Moi, Masinde Muliro, Dedan Kimathi and Jaramogi Oginga Odinga have been accorded such recognition;

NOW THEREFORE, the Senate urges the National Government in remembrance of Matiba's contribution to our Nation, to rename Murang'a University of Technology to Kenneth Matiba University of Technology.

(Sen. Isaac Mwaura, MP – 23.07.2019)

Order deferred.

14. **MOTION - STAFF RATIONALIZATION IN COUNTIES**

Order read;

Motion made-

THAT, AWARE THAT the Senate represents the counties, and serves to protect the interests of the Counties and their governments;

FURTHER AWARE THAT, the launch of the Capacity Assessment and Rationalization of the Public Service (CARPS) Programme was launched by the Inter-Governmental Steering Committee (IGSC) on 14th July 2014 with the objective of transforming the Public Service for efficient and effective service delivery at both levels of Government;

NOTING THAT, the implementation timelines for the CARPS programme of two years specifically with regard to the capacity assessment, workload analysis and staff redeployment and transfers, are of paramount importance in the Counties as the terms of all second term County Governors come to a close in 2022;

CONCERNED THAT, County governments are still engaged in uncontrolled hiring of staff in total violation of applicable laws, exposing a glaring imbalance between money spent on recurrent expenditure, versus budgets for development projects which are the essence of devolution;

CONCERNED FURTHER THAT, contrary to Section 15(2)(b) of the Public Finance Management (PFM) Act, in counties such as Nairobi, Machakos, Garissa, Kisumu, Wajir, Baringo, Narok, Nakuru and Nyamira, staff salaries consumed in excess of 75% of total expenditure, over and above the set limit of 35% as provided in Regulation 25 (1) of the Public Finance Management (County Governments) Regulations, 2015 during the FY 2018/2019;

DEEPLY CONCERNED THAT, although Section 65 of the County Governments Act requires that more than 30% of the vacancies at entry level be given to members of ethnic groups that are not dominant in their precincts, the 2016 Ethnic and Diversity audit launched by the National Cohesion and

Integration Commission revealed that 68% of Counties have hired more than 70% of their staff from one ethnic group;

NOW THEREFORE in exercise of its oversight function, the Senate resolves that the Public Service Commission (PSC), Intergovernmental Relations Technical Committee (IGTRC) and the Council of Governors provide a comprehensive report on:

- 1) the progress and implementation status of the Capacity Assessment and Rationalization of the Public Service (CARPS) Programme indicating the County Governments that are compliant; and
- 2) the number of employees in each County Government showing the amount spent as wage bill vis a vis recurrent expenditure budgeted for FY 2018/2019.

and submit these reports to the Senate within 60 days of this resolution.

(Sen. (Dr.) Agnes Zani, MP – 04.07.2019)

Debate interrupted on Thursday, 4th July, 2019 resumed;

And the time being thirty minutes past Six O'clock, the Temporary Speaker (Sen. (Dr.) Ltumbesi Lelegwe) adjourned the Senate without question put, pursuant to the Standing Orders.

15. **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
Tuesday, July 30, 2019 at 2.30 p.m.*

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