

Approved for tabling

REPUBLIC OF KENYA




Bat
SNA
17/3/2020

THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT (FOURTH SESSION)

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

REPORT ON THE CONSIDERATION OF THE PARLIAMENTARY PENSIONS
(AMENDMENT) (NO. 3) BILL (N.A. BILL NO. 57 OF 2019)

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE:	17 MAR 2020
	DAY: TODAY
TABLED BY:	Hon Lemu Joseph Chairperson
CLERK-AT-THE-TABLE:	Lemuo Mosey.

CLERKS CHAMBERS

DIRECTORATE OF COMMITTEE SERVICES

PARLIAMENT BUILDINGS

NAIROBI

MARCH, 2020

TABLE OF CONTENTS

CHAIRPERSON'S FOREWORD.....	3
CHAPTER ONE.....	4
1 PREFACE.....	4
1.1 Establishment of the Committee.....	4
1.2 Mandate of the Committee.....	4
1.3 Committee Membership.....	5
1.4 Committee Secretariat.....	6
CHAPTER TWO.....	7
2 PARLIAMENTARY PENSIONS (AMENDMENT) (NO. 3) BILL (NATIONAL ASSEMBLY BILL NO. 57 OF 2019).....	7
CHAPTER THREE.....	10
3 PUBLIC PARTICIPATION/STAKEHOLDER CONSULTATION.....	10
3.1 NATIONAL TREASURY.....	10
CHAPTER FOUR.....	11
4 COMMITTEE'S OBSERVATION.....	11
CHAPTER FIVE.....	12
5 COMMITTEE'S RECOMMENDATION.....	12
CHAPTER SIX.....	13
6 SCHEDULE OF COMMITTEE'S PROPOSED AMENDMENTS.....	13

CHAIRPERSON'S FOREWORD

This report contains the Committee's proceedings on the consideration of the Parliamentary Pensions (Amendment) (No. 3) Bill (N.A. Bills No. 2019), which was published on 9th July, 2019 and read a first time on **24th July, 2019** pursuant to Standing Order 127.

The Bill has seventeen (17) clauses and it seeks to amend the Parliamentary Pensions Act, Cap. 196 to bring it into conformity with the provisions of the Constitution of Kenya, 2010 and provide for the Act to apply to Members of both Houses of Parliament. The Bill further seeks to bring Cap. 196 into conformity with the directions of the Salaries and Remuneration Commission with regards to the retirement benefits due to Members of Parliament. The Salaries and Remuneration Commission is established under Article 230 of the Constitution and is empowered under Article 230(4) to set and regularly review the remuneration and benefits of all State Officers.

One of the key amendments that the Bill seeks to propose is that a Member of Parliament will at the beginning of the term of a newly elected Parliament elected to be paid either a pension or gratuity in accordance with the Parliamentary Pensions Act. If a Member elects to be pensionable, there shall be deducted from each payment of pensionable emolument made to the member, a sum calculated at the rate of twelve point six (12.6) percent. On the other hand, if a Member elects to be paid gratuity, he or she shall not be subjected to monthly deductions and as such at the end of his or her term, will be paid a one off lump sum computed at the rate of thirty one percent of the basic salary for all the months served.

In processing the Bill, the Clerk of the National Assembly invited comments from the public by placing advertisements in the print media on **Thursday, 1st August, 2019** pursuant to Article 118 of the Constitution. At the end of the period of submission of memoranda, the Committee had not received any memorandum on the Bill. Pursuant to Article 114, the Committee held a meeting with the National Treasury on Thursday, 5th March, 2020 to seek their comments on the Bill. The deliberations of the said meeting formed part of the Committee's proposed amendments,

On behalf of the Departmental Committee on Finance and National Planning and pursuant to provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the Parliamentary Pensions (Amendment) (No. 3) Bill (N.A. Bills No. 57 of 2019).

The Committee is grateful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee further wishes to thank Hon. Andrew Mwadime, M.P for proposing such a progressive Bill. The Committee wishes to also acknowledge the National Treasury for their participation in scrutinizing the Bill. Finally, I wish to express my appreciation to the Honorable Members of the Committee who made useful contributions towards the preparation and production of this report.

It is my pleasure to report that the Committee has considered the Public Finance Management (Amendment) (No. 4) Bill (N.A. Bills No. 78 of 2019) and have the honour to report back to the National Assembly with the recommendation that the Bill should be **approved with amendments**.

Hon. Joseph Limo, M.P.

Chairperson, Departmental Committee on Finance and National Planning

CHAPTER ONE

1 PREFACE

1.1 Establishment of the Committee

1. The Departmental Committee on Finance & National Planning is one of the fifteen Departmental Committees of the National Assembly established under *Standing Order 216* whose mandates pursuant to the *Standing Order 216 (5)* are as follows:
 - i. To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
 - ii. To study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation;
 - iii. **To study and review all the legislation referred to it;**
 - iv. To study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
 - v. To investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;
 - vi. To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No. 204 (Committee on appointments);
 - vii. To examine treaties, agreements and conventions;
 - viii. To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
 - ix. To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
 - x. To examine any questions raised by Members on a matter within its mandate.

1.2 Mandate of the Committee

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider, public finance, monetary policies, public debt, financial institutions (excluding those in securities exchange), investment and divestiture policies, pricing policies, banking, insurance, population revenue policies including taxation and national planning and development.
3. In executing its mandate, the Committee oversees the following government Ministries and departments;
 - a. The National Treasury and Ministry of Planning
 - b. Ministry of Devolution and ASAL
 - c. The Commission on Revenue Allocation
 - d. Office of the Controller of Budget
 - e. Salaries and Remuneration Commission

1.3 Committee Membership

4. The Departmental Committee on Finance and National Planning was constituted by the House in December, 2017 and comprises of the following Members:-

Chairperson

Hon. Joseph K. Limo, MP
MP for Kipkelion East Constituency

Jubilee Party

Vice-Chairperson

Hon. Isaac W. Ndirangu
M.P for Roysambu Constituency

Jubilee Party

Members

Hon. Jimmy O. Angwenyi, MP
MP for Kitutu Chache North
Constituency
Jubilee Party

Hon. Christopher Omulele, MP
MP for Luanda Constituency
ODM Party

Hon. Dr. Enoch Kibunguchy, MP
MP for Likuyani Constituency
FORD-K

Hon. Shakeel Shabbir Ahmed, MP
MP for Kisumu Town East
Independent Member

Hon. Abdul Rahim Dawood, MP
MP for North Imenti Constituency
Jubilee Party

Hon. Daniel E. Nanok, MP
MP for Turkana West Constituency
Jubilee Party

Hon. Andrew A. Okuome, MP
MP for Karachuonyo Constituency
ODM Party

Hon. David M. Mboni, MP
MP for Kitui Rural Constituency
CCU Party

Hon. Francis K. Kimani, MP

M.P. Molo Constituency
Jubilee Party

Hon. Joseph M. Oyula, MP
MP for Butula Constituency
ODM Party

Hon. Joshua C. Kandie, MP
MP for Baringo Central Constituency
MCC Party

The Hon. Lydia H. Mizighi, MP
MP for Taita Taveta County
Jubilee Party

Hon. Mohamed A. Mohamed, MP
MP for Nyali Constituency
Independent Member

Hon. Purity W. Ngirici, MP
MP for Kirinyaga County
Jubilee Party

Hon. Samuel Atandi, MP
MP for Alego Usonga Constituency
ODM Party

Hon. Stanley M. Muthama, MP
MP for Lamu West Constituency
MCC Party

The Hon. Edith Nyenze, MP
MP for Kitui West Constituency
WDM-K

1.4 Committee Secretariat

5. The Committee is facilitated by the following Secretariat:-

Ms. Leah W. Mwaura
Senior Clerk Assistant/ Head of Secretariat

Ms. Jennifer Ndeto
Principal Legal Counsel 1

Mr. Chelang'a Maiyo
Research Officer II

Ms. Laureen Wesonga
Clerk Assistant II

Mr. John Njoro
Serjeant-At-Arms

Mr. Josephat Motonu
Fiscal Analyst I

Ms. Euridice Nzioka
Audio Officer

CHAPTER TWO

2 PARLIAMENTARY PENSIONS (AMENDMENT) (NO. 3) BILL (NATIONAL ASSEMBLY BILL NO. 57 OF 2019)

2.1 Situation Analysis

6. Parliamentary Pensions scheme is a contributory scheme governed by the Parliamentary Pensions Act (Cap 196). The scheme is a Defined Benefit (DB) plan where the employer promises a specified pension payment, lump-sum or combination thereof on retirement that is predetermined by a formula based on the employee's earnings history, tenure of service, among others rather than depending directly on individual investment returns. Such a scheme is not based on the performance of the scheme.
7. Currently, serving Members of Parliament contribute at the rate of 12.6% of their pensionable emoluments while the Government contributes at the rate of 25.4% which is nearly twice the rate of Members contribution.
8. Section 8 of the Parliamentary Pensions Act provides that a Member shall receive a pension having fulfilled among other conditions, aggregate period of reckonable service being two terms of parliament and has attained the age of forty-five years.
9. The annual amount of pension payable to a person being a sum equal to one three hundredth (1/300) of his pensionable emoluments for each completed month of his aggregate period of reckonable service, a member having fulfilled the above conditions is entitled to a minimum monthly pension of KSh. 127,800 having earned a lump sum of KSh. 7.7 Million. The computation is based on a monthly pensionable emolument of KSh. 426, 000.
10. In view of the foregoing, the Parliamentary Pensions (Amendment) (No.3) Bill, 2019 is proposing to introduce gratuity as an option where if a Member serves for only one term he or she would be entitled to gratuity (thirty one percent (31%) of annual basic salary of all the years served). In this case at the beginning of every term of Parliament, a Member would be required to either elect to receive gratuity or pension in which the conditions set out in section 8 of the Parliamentary Pensions Act shall apply.

2.2 Overview of the Bill

The objective of this Bill is to amend the Parliamentary Pensions Act, Cap. 196 to align it to the Constitution of Kenya and the directions of the Salaries and Remuneration Commission. The structure of the Bill is as follows:-

11. **Clauses 1** of the Bill provides for the Short Title;
12. **Clause 2** of the Bill seeks to amend section 2 of the Act to conform to the Constitution which provides for a Parliament that consists of the National Assembly and the Senate;
13. **Clause 3** of the Bill amends various definitions in section 3 of the Principal Act in line with the Constitution which provides the definition of 'child' to mean a person under the age of eighteen

years. It also seeks to provide for the definition of Member of Parliament to mean both Members of the National Assembly and the Senate;

14. **Clause 4** proposes to insert a new section 3A to the Act to enable Members of Parliament to elect to either be paid a pension or gratuity at the end of their term of service;
15. **Clause 5** proposes to amend section 4 of the Act to subject deductions of pension contributions to only Members who elect to be paid pension at the end of their term of service at the rate of twelve and three fifths percent (12.6%);
16. **Clause 6 & 7** of the Bill proposes to amend section 5 & 6 of the Principal Act respectively to conform to the Constitution that provides for a Parliament consisting of the National Assembly and Senate;
17. **Clause 8** seeks to delete and replace section 7 of the Act with a new section to provide for payment of gratuities to Members of Parliament who serve for one term in line with the recommendations of the Salaries and Remuneration Commission with regards to retirement benefits due to Members of Parliament. It also seeks to provide the manner in which a member may join the pensions scheme having been on gratuity on the first term;
18. **Clause 9** seeks to amend section 8 of the Act to confirm to the Constitution which provides for the National Assembly and the Senate. The amendment in part (b) seeks to remove some redundant phrase that was left out following previous amendment of the Principal Act;
19. **Clause 10** seeks to delete and replace section 9 of the Act with a new section to provide for payment of pension to Members who retire on the basis of ill health;
20. **Clause 11** amends section 11 of the Principal Act to conform to the Constitution that provides for Parliament which consists of the National Assembly and the Senate and further provides for payment of one full year's salary to legal representatives of Members who die before they serve a period of twelve months;
21. **Clause 12** seeks to amend section 13 of the Act to provide for payment to widows and widowers of Members of Parliament;
22. **Clause 13** seeks to amend section 16 of the Act to conform to the Constitution which provides for Parliament that consists of the National Assembly and the Senate;
23. **Clause 14** seeks to amend section 19 of the Act by deleting sub-section (1) and replacing it with a new sub-section to provide for membership of the Pensions Management Committee that is representative of both Houses of Parliament. The amendment further purposes to align other provisions of the section with the Constitution that provides for Parliament which consists of the National Assembly and the Senate;
24. **Clause 15** of the Bill seeks to amend section 20 of the Act by deleting sub-section (2) and replacing it with a new sub-section to provide for a Tribunal that is representative of both Houses of Parliament and further for the funds for the administration of the provisions of the Act to be sourced from the Parliamentary Service Commission;
25. **Clause 16** of the Bill amends section 21 of the Principal Act in line with the Constitution that sets up the Office of the Auditor General and the Controller of Budget; and

26. **Clause 17** amends section 22 of the Principal Act in line with the Constitution that sets up the Parliamentary Service Commission. Prior to setting up of the Parliamentary Service Commission which brought about the autonomy of Parliament any review of contributions made and benefits paid out was to be sanctioned by the President. The proposed amendment seeks to buttress the doctrine of separation of powers where the Parliamentary Service Commission has been charged under Article 127 of the constitution to oversee the welfare of Members of Parliament and undertake other services for the efficient running of Parliament.
27. The Bill does not contain any provisions limiting any fundamental rights or freedom.
28. The Bill does not affect the functions of county governments as set out in the Fourth Schedule to the Constitution and is therefore not a Bill concerning counties.
29. The enactment of this Bill may occasion additional expenditure of public funds.

CHAPTER THREE

3 PUBLIC PARTICIPATION/STAKEHOLDER CONSULTATION

30. Following a call for memorandum through placement of advertisements in the print media on 1st August, 2020, the Committee did not receive any memorandum from members of the public. In a bid to carry out public participation as per Article 118 of the Constitution, the Committee held a meeting with the National Treasury on Thursday, 5th March, 2020 to deliberate on the Bill. The Director /Secretary of Pensions, Mr. Michael Kagika submitted that:-

3.1 NATIONAL TREASURY

Clause 8

31. The National Treasury was in support of the proposed amendment noting that the essence of a pension scheme is to afford a member monthly income in retirement thus ensuring that the scheme member is protected against old age poverty. They were of the opinion that it would be easier and practical for members to make the choice to join either the pension scheme or receive a service gratuity at the beginning of the term and once this option is taken it should be irrevocable.
32. On sub-section 7(5), they noted that the net effect of the amendment will be that the Government meets the full cost of contributions since members will not have contributed towards the funding of their pension. This translates into receiving both service gratuity and a pension thus overburdening the taxpayer. They proposed that in such a case, the member should refund the gratuity and make contributions for the entire period of non-contribution
33. **The Committee agreed with the comments by the National Treasury on the clause 8 which touches on the subsection 7 (5) and therefore resolved to propose a deletion of the amendment. This implies that if a Member during his/ her first term elected to be paid gratuity and then during the second term he or she elects to be pensionable, he or she will be required to refund the gratuity paid with interest and then make contributions for the months he or she had not contributed.**

Clause 9

34. The National Treasury supported the amendment because pension benefits are based on the actual service rendered and in the case of parliamentarians the length of service is subject to many factors and therefore it is not a guarantee that a member will serve for two terms unlike in employment where there is defined tenure of office.

Clause 10

35. The National Treasury supports the amendment as it reflects compassion of the employer in terms of employee ill health.

CHAPTER FOUR

4 COMMITTEE'S OBSERVATION

The Committee observed that:-

36. The Bill will ensure that the Parliamentary Pensions Act conforms to the provisions of the Constitution with regards to recognition of both the National Assembly and the Senate in the Act;
37. The Bill will ensure that the Parliamentary Pensions Act conforms to the recommendations of the Salaries and Remuneration Commission with regards to payment of Members of Parliament's pension and gratuity; and
38. The Bill will accord an opportunity for Members to either elect to be paid gratuity or pension at the end of their term of service hence eliminate the controversy that has always existed with regards to qualification of a Member of Parliament to earn pension and gratuity.

CHAPTER FIVE

5 COMMITTEE'S RECOMMENDATION

39. The Committee having considered the Parliamentary Pensions (Amendment) (No. 3) Bill (National Assembly Bill No. 57 of 2019) recommends that the House approves the Bill with amendments as proposed in the schedule.

CHAPTER SIX

6 SCHEDULE OF COMMITTEE'S PROPOSED AMENDMENTS

The Committee proposed the following amendments to be considered in the Committee of the Whole House:-

Clause 2

40. **THAT**, the Bill be amended in clause 2 by deleting the proposed new section 2(2).

Justification

41. The amendment is intended to remove the retroactive application of this provision. The provision of section 3A requiring that a member elects before the benefits of either gratuity or pension. Further, under Article 116 of the Constitution, ".....an Act of Parliament that confers direct pecuniary interest on members of parliament shall not come into force until the next general election of members of parliament."

Clause 3

42. **THAT**, the Bill be amended in clause 3 (a) by deleting paragraph (ii) and substituting therefor the following paragraph:-

- (ii) deleting paragraph (b) and substituting therefor the following new paragraph-
 - (b) is under twenty-five years of age and is undergoing a course of full-time education;

Justification

43. The amendment is intended to define a child as any child of the deceased member who is under twenty-five but still under-going schooling. The amendment also removes the exclusion of a female child who is married or cohabiting with any person. The previous provision was discriminating against married female children.

Clause 8

44. **THAT**, the Bill be amended in the proposed new section 7 by deleting sub-section (4) and substituting therefor the following sub-section (4) –

- (4) If after receiving gratuity under subsection (2) the Member elects to pay pension contributions under section 4, the Member may if he so desires–
 - a) repay all the gratuity paid to the member plus, interest at the rate of three percent per month for a period of fifteen months, from the date he elects to be pensionable; and
 - b) pay the contributions under section 4 for the entire period of non-contribution to match up with existing contributors.

Justification

45. The amendment is intended to provide that a member who opts to join the pension scheme, then they should pay up pension contributions for the period they did not make contribution.

Clause 11

46. THAT, the Bill be amended in clause 11 (b) in the proposed paragraph (a) by deleting the word “that” appearing immediately after the word “less” and substituting therefor the word “than”.

Justification

47. The amendment is a grammatical correction.

SIGNED.......... DATE.....17/3/2020.....

THE HON. JOSEPH LIMO, MP

CHAIRPERSON

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

MINUTES OF THE 4TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON SATURDAY, 14TH MARCH, 2020 AT HILTON GARDEN INN HOTEL IN MACHAKOS COUNTY AT 2.30 PM

PRESENT

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP - **Vice Chairperson**
3. Hon. Jimmy O. Angwenyi, MGH, MP
4. Hon. Christopher Omulele, MP
5. Hon. Daniel E. Nanok, MP
6. Hon. Andrew A. Okuome, MP
7. Hon. Francis K. Kimani, MP
8. Hon. Joseph M. Oyula, MP
9. Hon. Joshua C. Kandie, MP
10. Hon. Lydiah Mizighi, MP
11. Hon. Mohamed A. Mohamed, MP
12. Hon. Purity Ngirici, MP
13. Hon. Samuel Atandi, MP

ABSENT WITH APOLOGY

1. Hon. Dr. Enoch Kibunguchy, MP
2. Hon. Shakeel Shabbir Ahmed, CBS, MP
3. Hon. Abdul Rahim Dawood, MP
4. Hon. David M. Mboni, MP
5. Hon. Stanley M. Muthama, MP
6. Hon. Edith Nyenze, MP

INATTENDANCE

SECRETARIAT

1. Ms. Leah Mwaura - Senior Clerk Assistant/Head of the Secretariat
2. Ms. Jennifer Ndeto - Principal Legal Counsel I
3. Ms. Laureen Wesonga - Clerk Assistant II
4. Mr. Josephat Motonu - Fiscal Analyst I
5. Mr. Joshua Lenambeti - Serjeant-At-Arms
6. Ms. Euridice Nzioka - Audio Officer
7. Mr. Vitalis Augo - Office Assistant
8. Mr. Faustine Rotich - Intern

AGENDA

1. Prayers
2. Communication from the Chairperson
3. Confirmation of Minutes
4. Matters Arising
5. **Adoption of the Reports on the consideration of the:-**
 - i. **Parliamentary Pensions (Amendment) (No. 3) Bill (N.A. Bills No. 57 of 2019);**
 - ii. **Public Finance Management (Amendment) Bill (Senate Bill No. 3 of 2019);****and**

iii. Public Finance Management (Amendment) (No. 4) Bill (N.A. Bills No. 73 of 2019)

6. Adjournment/ Date of the next meeting

MIN.NO.NA/F&NP/2020/018: COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 2.35pm and a prayer was said. The Chairperson then welcomed the meeting to deliberate the day's agenda.

MIN.NO.NA/F&NP/2020/019: CONFIRMATION OF MINUTES

Agenda deferred

MIN.NO.NA/F&NP/2020/020: ADOPTION OF THE REPORT ON THE CONSIDERATION OF THE PARLIAMENTARY PENSIONS (AMENDMENT) (NO. 3) BILL (N.A. BILLS NO. 57 OF 2019)

The report on the consideration of the Parliamentary Pensions (Amendment) (No. 3) Bill (N.A. Bills No. 57 of 2019) was adopted having been proposed and seconded by Hon. Lydia Mizighi, MP and Hon. Joseph Oyula, MP respectively. The Committee agreed on the following amendments:-

Clause 2

THAT, the Bill be amended in clause 2 by deleting the proposed new section 2 (2).

Justification

The amendment is intended to remove the retroactive application of this provision. The provision of section 3A require that a member elects before the benefits of either gratuity or pension. Further, under Article 116 of the Constitution, ".....an Act of Parliament that confers direct pecuniary interest on members of parliament shall not come into force until the next general election of members of parliament."

Clause 3

THAT, the Bill be amended in clause 3 (a) by deleting paragraph (ii) and substituting therefor the following paragraph-

- (ii) deleting paragraph (b) and substituting therefor the following new paragraph-
- (b) is under twenty-five years of age and is undergoing a course of full-time education;

Justification

The amendment is intended to define a child as any child of the deceased member who is under twenty-five but still under-going schooling. The amendment also removes the exclusion of a female child who is married or cohabiting with any person. The previous provision was discriminating against married female children.

Clause 8

THAT, the Bill be amended in the proposed new section 7 by deleting sub-section (4) and substituting therefor the following sub-section (4) –

- (4) If after receiving gratuity under subsection (2) the Member elects to pay pension contributions under section 4, the Member may if he so desires–

repay all the gratuity paid to the member plus, interest at the rate of three percent per month for a period of fifteen months, from the date he elects to be pensionable; and
pay the contributions under section 4 for the entire period of non-contribution to match up with existing contributors.

Justification

The amendment is intended to provide that a member who opts to join the pension scheme, then they should pay up pension contributions for the period they did not make contribution.

Clause 11

THAT, the Bill be amended in clause 11 (b) in the proposed paragraph (a) by deleting the word “that” appearing immediately after the word “less” and substituting therefor the word “than”.

Justification

The amendment is a grammatical correction.

MIN.NO.NA/F&NP/2020/021: ADOPTION OF THE REPORT ON THE CONSIDERATION OF THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL (SENATE BILLS NO. 3 OF 2019)

The report on the consideration of the Public Finance Management (Amendment) Bill (Senate Bills No. 3 of 2019) was adopted having been proposed and seconded by Hon. Andrew Okuome, MP and Hon. Purity Ngirici, MP respectively. The Committee agreed on the following amendments:-

Clause 2

THAT, clause 2 of the Senate amendments be amended—

- (a) in the proposed new section 160A –
 - (i) by inserting the words “within one year from the coming into force of this Act.”, immediately after the words “collection system” in sub-section (1);

Justification

This is to give timelines for the development of the county revenue collection system.

- (ii) by inserting the following new subsection immediately after subsection (1)
 -
 - (1a) The county revenue collection system shall –
 - (a) be transparent, efficient, effective and verifiable;
 - (b) be simple and easy to use;
 - (c) be easy manage and control to ensure accountability;
 - (d) be adequately secure to prevent and fraud, losses or any other violations;
 - (e) respect and promote the distinctiveness of national government and the county government; and
 - (f) provide for separate accounting and reporting.

Justification

The responsibility to develop the county revenue collection system lies with the Institutions listed in sub-clause (1) and not with the county executive member.

- (iii) by inserting the words “within one year and” immediately after the expression “sub-section (1)” in sub-section (2);

Justification

This is to give timelines for the implementation of the county revenue collection system.

- (iv) by deleting sub-section (3).

Justification

The responsibility to develop the county revenue collection system does not lie with the county executive member but with the institutions listed in sub-clause (1).

(b) in the proposed new section 160B–

- (i) by deleting the words “submit bi-annual statements and an annual report” appearing in sub-section (1) and substituting therefor the words “submit quarterly statements and a quarterly report”;
- (ii) by deleting the words “copies of the bi-annual statements and an annual report” appearing in sub-section (2) and substituting therefor the words “copies of the quarterly statements and quarterly report”;
- (iii) by deleting the words “the bi-annual statements and the annual report” appearing in sub-section (3) and substituting therefor the words “the quarterly statements and the quarterly report”;

Justification

This is to enhance oversight of revenue collection by the county assemblies.

(c) by deleting the proposed section 160C and substituting therefor the following new section–

160C. The National Treasury may, on the recommendation of the Senate, and pursuant to Article 225(3) of the Constitution, stop the transfer of a county’s share of revenue raised by the national government, if the County Treasury fails to–

- (a) implement a county revenue collection system; or
- (b) report on the status of the county revenue collection and performance, as required under this Act.

Justification

The county treasury is only charged with the responsibility to implement the county revenue collection system and not to develop it.

MIN.NO.NA/F&NP/2020/022: ADOPTION OF THE REPORT ON THE CONSIDERATION OF THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) (NO. 4) BILL (N.A. BILLS NO. 78 OF 2019)

The report on the consideration of the Public Finance Management (Amendment) (No. 4) Bill (N.A. Bills No. 78 of 2019) was adopted having been proposed and seconded by Hon. Joshua Kandie, MP and Hon. Jimmy Angwenyi, MP respectively. The Committee agreed on the following amendments:-

CLAUSE 3

THAT, the Bill be amended–

- (a) in paragraph (a) in the proposed new sub-section (3A) by deleting the words “the relevant committee of the National Assembly” and substituting therefor the words “the relevant committee responsible for finance in the national Assembly”;

Justification

This is to specify the Committee of the National Assembly that will review the debt management strategy paper.

- (b) in paragraph (b) by deleting the proposed new sub-section (5) and substituting therefor the following new sub-section (5) –

(5) The Cabinet Secretary shall ensure that –

- (a) the Kenyan government debt register is published on the National Treasury website within three months after the end of the financial year; and
- (b) a notice is published in the two newspapers of nationwide circulation informing the public that the Kenyan government debt register may be accessed on the national treasury website.

Justification

This is because the debt register is a voluminous document and as such the cost of publishing it in the gazette notice and in newspapers would be too high.

NEW CLAUSE 3A

The principal Act is amended in section 50 by inserting the following new sub-section immediately after sub-section (7) –

- (7a) Without prejudice to the provisions of sub-section (7), the Cabinet Secretary shall ensure that any external loan or borrowing by the national government is used for development projects.

Justification

This is to enhance accountability.

MIN.NO.NA/F&NP/2020/023: ANY OTHER BUSINESS

The Chairperson informed the meeting that the Leader of the Majority Party in the National Assembly had congratulated the Committee for being one of the best Committees in terms of considering the business referred to it. The Chairperson thanked Members of the Committee and the Secretariat for the good work that they were doing.

MIN.NO.NA/F&NP/2020/024: ADJOURNMENT/DATE OF NEXT MEETING

There being no other business to deliberate on, the meeting was adjourned at 4.28p.m. The next meeting will be held on Tuesday, 17th March, 2020 at 10.00 a.m.

HON. JOSEPH K. LIMO, MP

(CHAIRPERSON)

SIGNED..........DATE.....17/3/2020.....

MINUTES OF THE 1ST SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON FRIDAY, 13TH MARCH, 2020 AT HILTON GARDEN INN HOTEL IN MACHAKOS COUNTY AT 09.30 AM

PRESENT

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP - **Vice Chairperson**
3. Hon. Jimmy O. Angwenyi, MGH, MP
4. Hon. Daniel E. Nanok, MP
5. Hon. Andrew A. Okuome, MP
6. Hon. Francis K. Kimani, MP
7. Hon. Joseph M. Oyula, MP
8. Hon. Joshua C. Kandie, MP
9. Hon. Lydiah Mizighi, MP
10. Hon. Mohamed A. Mohamed, MP
11. Hon. Purity Ngirici, MP
12. Hon. Samuel Atandi, MP
13. Hon. Edith Nyenze, MP

ABSENT WITH APOLOGY

1. Hon. Christopher Omulele, MP
2. Hon. Dr. Enoch Kibunguchy, MP
3. Hon. Shakeel Shabbir Ahmed, CBS, MP
4. Hon. Abdul Rahim Dawood, MP
5. Hon. David M. Mboni, MP
6. Hon. Stanley M. Muthama, MP

INATTENDANCE

SECRETARIAT

1. Ms. Leah Mwaura - Senior Clerk Assistant/Head of the Secretariat
2. Ms. Jennifer Ndeto - Principal Legal Counsel I
3. Ms. Lilian Wata - Parliamentary Pensions Department
4. Ms. Lauren Wesonga - Clerk Assistant II
5. Mr. Josephat Motonu - Fiscal Analyst I
6. Mr. Joshua Lenambeti - Serjeant-At-Arms
7. Ms. Euridice Nzioka - Audio Officer
8. Mr. Vitalis Augo - Office Assistant
9. Mr. Faustine Rotich - Intern

COUNCIL OF GOVERNORS

1. Hon. Ndiritu Muriithi - Governor, Laikipia County
2. Ms. Zipporah Muthama - Council of Governors
3. Ms. Mercy Wangui - Council of Governors
4. Mr. Dennis Njeri - Laikipia County
5. Ms. Alice Mbaki - Laikipia County
6. Mr. Kiama Kaara - Laikipia County

COUNTY ASSEMBLIES FORUM

Ms. Judy Oduma

- CEO

AGENDA

1. Prayers
2. Communication from the Chairperson
3. Confirmation of Minutes
4. Matters Arising
5. **Meeting to consider:-**
 - i. **The Parliamentary Pensions (Amendment) (No. 3) Bill (N.A. Bills No. 57 of 2019)**
 - ii. **The National Policy to Support Enhancement of County Governments' Own Source Revenue.**
6. Adjournment/ Date of the next meeting

MIN.NO.NA/F&NP/2020/001: COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 9.40am and a prayer was said. The Chairperson then thanked Members for availing themselves for the retreat. He then called for introduction of those present before inviting Ms. Lilian Wata to explain to the Committee the import of Clause 8 of the Parliamentary Pensions (Amendment) (No. 3) Bill, 2019.

MIN.NO.NA/F&NP/2020/002: CONFIRMATION OF MINUTES

There were no minutes to be confirmed.

MIN.NO.NA/F&NP/2020/003: CONSIDERATION OF THE PARLIAMENTARY PENSIONS (AMENDMENT) (NO. 3) BILL (N.A. BILLS NO. 57 OF 2019)

Ms. Wata, head of the Parliamentary Pensions Department informed the meeting that the amendment seeks to make it possible for MPs to elect on whether to earn a gratuity or pension. Currently, all Members are pensionable hence the need to provide an option to Members who want to be paid gratuity.

From the explanation given by Ms. Wata, the Committee made decisions on the Bill as follows:-

Clause 2

Amend the clause by deleting sub-clause 2(2)

Justification

This is to remove ambiguity with regards to the commencement date.

Clause 8

Amend sub-clause 7(4) by inserting the words 'three percent' immediately before the word 'interest'.

Justification

This is to specify the interest that will be charged on the gratuity that was paid to a Member who elects to change from being paid gratuity to pension.

Amend clause 8 by deleting sub-clause 7(5) and replacing with a clause providing that a Member has to make contributions for the entire period of non-contribution if they opt for pension.

Justification

This will ensure fairness to all Members and also enable the Member to be at par with other Members.

MIN.NO.NA/F&NP/2020/004: MEETING WITH THE COUNCIL OF GOVERNORS TO CONSIDER THE NATIONAL POLICY TO SUPPORT ENHANCEMENT OF COUNTY GOVERNMENTS' OWN SOURCE REVENUE

The Chairperson called for introduction of those present before inviting Governor Ndiritu Muriithi to make submissions on the Policy on behalf of the Council of Governors. Governor Muriithi submitted that:-

The Council of Governor proposed the following policy interventions:-

1. **Harmonisation of county fees and charges:** fees and charges should be harmonized across all counties to create an enabling business environment;
2. **Revenue management system:** the Policy should provide guidelines for revenue automation;
3. **Deploying technology in health revenue management:** there is need to come up with legislation that will make it possible for county assemblies to legislate on ICT application in revenue collection; and
4. **Water, forestry and mining sector:** the Council proposed the following sources of revenue to be considered in the list of revenue streams:-
 - i. Issuance of noise permits – for noise pollution and other public nuisances;
 - ii. Solid waste management which includes garbage collection fees, dumping charges, dumpsite fees, outsources waste collection firms and town cleaning;
 - iii. Issuance of permits for outdoor advertising e.g. posters and fliers;
 - iv. Air pollution permits has been hindered by lack of technical capacity and equipment;
 - v. Investment income – dividend from public funds investment;
 - vi. Land value capture – taxation of marginal increment in land value as a result of Government declaration of projects; and
 - vii. Intellectual property – charges for use of intellectual property like publication, GIF maps etc.

MEMBERS' DELIBERATIONS

1. Regarding the effectiveness of the land value capture, Governor Muriithi informed the meeting that World Bank had done an extensive study on it and he undertook to avail the report to the Committee;
2. On double taxation, Hon. Muriithi stated that the Policy does not bring out new ideas on how to stop double taxation, however, county governments have the responsibility to ensure that they are not charging a tax similar to that charged by another county on goods on transit;
3. With regards to sealing loopholes in tax collection, the Governor stated that most counties have gone either wholly or partly cashless;

4. On the matter of enacting tax laws for different taxes collected by counties, the Governor informed the meeting that most counties were in the processes of coming up with the laws.

MIN.NO.NA/F&NP/2020/005: MEETING WITH THE COUNTY ASSEMBLIES FORUM TO CONSIDER THE NATIONAL POLICY TO SUPPORT ENHANCEMENT OF COUNTY GOVERNMENTS' OWN SOURCE REVENUE

Ms. Judy Oduma, the CEO of the County Assemblies Forum proposed the following policy interventions on behalf of CAF:-

1. Introduction of new taxes, fees and charges by counties by putting in place legislation to prescribe the process for introduction of new taxes, fees and charges;
2. Regulations on waivers and variations of taxes, fees and charges. County CEC Finance should develop regulations that will ensure clarity on the rationale of waivers, ensuring predictable criteria for waivers and variations;
3. Property rates – Development of new legislation on property taxation to replace the Rating Act of 1963 and the Valuation for Rating Act of 1956;
4. Development and updating of valuation rolls;
5. Contribution in lieu of rates (formerly CILOR) by the National Government;
6. Regulation of the entertainment industry by complying with the Transition Authority resolution on the issue as gazetted in Gazette Notice No. 8753 of 8th September, 2017 and amendment of the Entertainment Tax Act of 1950 and the Betting, Lotteries and Gaming Act of 1966 to reflect the same;
7. Business licensing – Retain the Single Business Permit Model by an Act of Parliament then anchoring it in specific county laws on trade licensing;
8. Liquor licensing – Amendment of the Alcoholic Drinks Control Act, 2010 to recognize the role of county governments in regulating alcoholic drinks and new legislation to be prepared as a contingency for counties without specific laws on the subject;
9. Tourism related charges – Amendment of the Tourism Act to clearly define the role of both levels of government and to clearly define local tourism to avoid double taxation;
10. Establishment of municipal boards and town committees – amendment of the Urban Areas and Cities Act, 2011 to compel the creation of the required urban and city structures by county governments;
11. County governments should develop policies to anchor taxes, fees and charges;
12. Counties should enact tariffs and pricing policies as required by section 120 of the County Governments Act;
13. Counties should develop legislative frameworks to support agriculture produce cess;
14. Outdoor advertising – the County Outdoor Advertising Control Bill, 2015 should be enacted;
15. An assessment of the workload, skills gaps to facilitate training and development of a scheme of service for the revenue function to guide relevant qualification for staff and a competitive salary and incentive system to retain staff in counties with a view to improve efficiency and effectiveness of county revenue human resources;
16. Improving revenue forecasts and incentivizing fiscal effort;
17. ICT and automation in enhancing revenue administration;
18. Structures for revenue administration including internal administration departments or autonomous county revenue authorities/corporation or contracting KRA or contracting private firms and other agents;
19. Designation of receivers of revenues; and

20. M & E feedback mechanisms and review timelines.

MEMBERS' DELIBERATIONS

On what CAF was doing in terms of capacity building of members of county assemblies and staff, Ms. Oduma informed the meeting that the Association had been working with development partners on the same.

MIN.NO.NA/F&NP/2020/006: ADJOURNMENT/DATE OF NEXT MEETING

There being no other business to deliberate on, the meeting was adjourned at 1.30p.m. The next meeting will be held at 02.30 p.m.

HON. JOSEPH K. LIMO, MP

(CHAIRPERSON)

SIGNED..........DATE.....17/3/2020.....

MINUTES OF THE 12TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON THURSDAY, 12TH MARCH, 2020 ON 5TH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10.00 AM

PRESENT

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP - **Vice Chairperson**
3. Hon. Jimmy O. Angwenyi, MGH, MP
4. Hon. Christopher Omulele, MP
5. Hon. Dr. Enoch Kibunguchy, MP
6. Hon. Abdul Rahim Dawood, MP
7. Hon. Daniel E. Nanok, MP
8. Hon. Andrew A. Okuome, MP
9. Hon. David M. Mboni, MP
10. Hon. Francis K. Kimani, MP
11. Hon. Joseph M. Oyula, MP
12. Hon. Joshua C. Kandie, MP
13. Hon. Lydiah Mizighi, MP
14. Hon. Samuel Atandi, MP
15. Hon. Edith Nyenze, MP

ABSENT WITH APOLOGY

1. Hon. Shakeel Shabbir Ahmed, CBS, MP
2. Hon. Mohamed A. Mohamed, MP
3. Hon. Purity Ngirici, MP
4. Hon. Stanley M. Muthama, MP

INATTENDANCE

SECRETARIAT

1. Ms. Leah Mwaura - Senior Clerk Assistant/Head of the Secretariat
2. Ms. Jennifer Ndeto - Principal Legal Counsel I
3. Ms. Laureen Wesonga - Clerk Assistant II
4. Mr. Josephat Motonu - Fiscal Analyst I
5. Mr. Chelang'a Maiyo - Research Assistant II
6. Mr. John Njoro - Serjeant-At-Arms
7. Ms. Euridice Nzioka - Audio Officer
8. Mr. Vitalis Augo - Office Assistant
9. Mr. Faustine Rotich - Intern

AGENDA

1. Prayers
2. Communication from the Chairperson
3. Confirmation of Minutes
4. Matters Arising
5. **Clause by Clause consideration of the Parliamentary Pensions (Amendment) (No. 3) Bill (N.A. Bills No. 57 of 2019)**

6. Meeting with the Cabinet Secretary, National Treasury to consider the following Bills:-

- a. **The Public Finance Management (Amendment) Bill (N.A. Bills No. 22 of 2019)**
- b. **The Parliamentary Pensions (Amendment) Bill (N.A. Bills No. 45 of 2019)**

7. Adjournment/ Date of the next meeting

MIN.NO.NA/F&NP/2020/063: COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 10.30am and a prayer was said. The Chairperson then welcomed the Legal Counsel to take the Committee through the clause by clause consideration of the Parliamentary Pensions (Amendment) (No. 3) Bill (N.A. Bills No. 57 of 2019).

MIN.NO.NA/F&NP/2020/067: CONFIRMATION OF MINUTES

Agenda deferred

MIN.NO.NA/F&NP/2020/068: CLAUSE BY CLAUSE CONSIDERATION OF THE PARLIAMENTARY PENSIONS (AMENDMENT) (NO. 3) BILL (N.A. BILLS NO. 57 OF 2019)

The Committee considered the Bill clause by clause and agreed as follows:-

Clause 2: Agreed to

Clause 3: Amend section 3(b) of the Act by deleting the words 'twenty-one' and replacing with the words 'twenty-five'

Justification

At twenty-five, most people are still pursuing their college/university education and therefore still under the care of their parents.

Clause 4: Agreed to

Clause 5: Agreed to

Clause 6: Agreed to

Clause 7: Agreed to

Clause 8: The Committee noted that there was need to consult further on the clause. The meeting therefore resolved to invite an officer from the Parliamentary Pensions Department to the Committee retreat that will be held at Hilton Garden Inn Hotel on Friday, 14th March, 2020 to explain the intent/effect of the clause.

Clause 9: Agreed to

Clause 10: Agreed to

Clause 11: Agreed to

Clause 12: Agreed to

Clause 13: Agreed to

Clause 14: Agreed to

Clause 15: Agreed to

Clause 16: Agreed to

Clause 17: Agreed to

MIN.NO.NA/F&NP/2020/069: MEETING WITH THE CABINET SECRETARY, NATIONAL TREASURY TO CONSIDER THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL (N.A. BILLS NO. 22 OF 2019) AND THE PARLIAMENTARY PENSIONS (AMENDMENT) BILL (N.A. BILLS NO. 45 OF 2019)

The meeting noted that the Cabinet Secretary had sent Officers from National Treasury to represent him in the meeting. In that regard, the meeting resolved that:-

1. they would not meet anyone besides the Cabinet Secretary or Principal Secretary on the two Bills as a conclusive decision on the Bills could only come from them; and
2. the Secretariat was directed to write a letter to the National Treasury informing them that the Cabinet Secretary or Principal Secretary should appear before the Committee on or before Thursday, 19th March 2020 failure to which the Committee will make a decision on the Parliamentary Pensions (Amendment) Bill, 2019 based on the memorandum that they had submitted earlier and on the Public Finance Management (Amendment) Bill, 2019 without their input.

MIN.NO.NA/F&NP/2020/070: ADJOURNMENT/DATE OF NEXT MEETING

There being no other business to deliberate on, the meeting was adjourned at 1.13p.m. The next meeting will be held on Friday, 13th March, 2020 at 09.30 a.m.

HON. JOSEPH K. LIMO, MP

(CHAIRPERSON)

SIGNED..........DATE...17/3/2020.....

REPUBLIC OF KENYA



NATIONAL ASSEMBLY
DEPARTMENTAL COMMITTEE ON FINANCE & NATIONAL PLANNING
ADOPTION SCHEDULE

ADOPTION SCHEDULE FOR THE REPORT ON THE CONSIDERATION OF ON THE PARLIAMENTARY PENSIONS (AMENDMENT) (NO. 3) BILL (N.A. BILLS NO. 57 OF 2019)

DATE: 14TH MARCH, 2020

NAME	SIGNATURE
1. HON. JOSEPH K. LIMO, MP – CHAIRMAN	
2. HON. ISAAC W. NDIRANGU – VICE-CHAIRMAN	
3. HON. JIMMY O. ANGWENYI, MP	
4. HON. CHRISTOPHER OMULELE, MP	
5. HON. SHAKEEL SHABBIR AHMED, MP	
6. HON. DR. ENOCH KIBUNGUCHY, MP	
7. HON. ABDUL RAHIM DAWOOD, MP	
8. HON. DANIEL E. NANOK, MP	
9. HON. ANDREW A. OKUOME, MP	
10. HON. DAVID M. MBONI, MP	
11. HON. KURIA KIMANI, MP	
12. HON. JOSEPH M. OYULA, MP	
13. HON. JOSHUA KANDIE, MP	
14. HON. LYDIA H. MIZIGHI, MP	
15. HON. MOHAMED ALI, MP	
16. HON. PURITY NGIRICI, MP	
17. HON. SAMUEL ATANDI, MP	
18. HON. STANLEY M. MUTHAMA, MP	
19. HON EDITH NYENZE, MP	

