



REPUBLIC OF KENYA

TWELFTH PARLIAMENT – FOURTH SESSION

THE NATIONAL ASSEMBLY

VOTES AND PROCEEDINGS

THURSDAY, SEPTEMBER 24, 2020

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

**GUIDANCE ON THE CONSIDERATION OF AMENDMENTS TO THE MOTION ON
THE SPECIAL AUDIT REPORT ON PROCUREMENT OF PRE-EXPORT VERIFICATION
OF CONFORMITY TO STANDARD SERVICES**

“Honourable Members,

I have received a number of amendments to the Motion appearing as Order No. 15 on the Supplementary Order Paper, that is, the Motion for adoption of the Report of the Public Investments Committee (PIC) on the *Special Audit Report on Procurement of Pre-Export Verification of Conformity to Standard Services by the Kenya Bureau of Standards (KEBS)*. These amendments, are proposed by the Member for Homa Bay Town (The Hon. Peter Kaluma, MP) and the Member for Makueni (The Hon. Daniel Maanzo, MP) and are published as *Notices* in the Supplementary Order Paper.

Honourable Members, my Guidance relates to part of the amendments proposed by the Member for Makueni (The Hon. Daniel Maanzo, MP). To begin with, the proposed amendments by the Hon. Maanzo were in two parts, being (a) and (b). Having considered the proposals and found the first part of the proposed amendments as being **admissible**, I approved its inclusion in the Supplementary Order Paper for this Sitting.

However, I found the second part of the proposed amendments as being **inadmissible** and therefore declined to that part for consideration by the House. For the information of House, the said second part of the proposed amendments read as follows–

“THAT, the House recommends that the Ethics and Anti-Corruption Commission should investigate the circumstances leading to the Special Audit on the Procurement of Pre-Export Verification of Conformity Standard Services for Used Motor Vehicles, Mobile Equipment and Used Spare Parts by the Kenya Bureau of Standards, and more specifically whether QISJ invited and facilitated visa processing, travel and accommodation for Mr. Fredrick Odhiambo (OAG), Ms. Catherine Mwasho (KEBS), Mr. Brian Thuku (KEBS) and

Dr. John Ng'eno (KEBS) towards the audit and to report findings to the Director of Public Prosecutions and the National Assembly within 90 days for appropriate action.

Honourable Members, the named officers are staff of the Office of the Auditor-General and KEBS who led in carrying out the Special Audit. I found the proposed recommendations inadmissible for the following reasons–

- (i) The matter contained in the proposed amendment was conclusively canvassed by the Committee as evidenced in the Report of the Committee on pages 59 and 60; and,
- (ii) The power of the Auditor General to undertake Audits, including Special Audits of public entities, is provided for under Article 229 of the Constitution, and sections 7 and 49 of the Public Audit Act, 2015.

It would therefore be unlawful and very unusual for Parliament to seem to want to punish or cause investigations on the Auditor-General for exercising his powers under the law.

For these reasons, this part of the proposed amendments has not been included in the Supplementary Order Paper and will therefore not be considered by the House. The House is accordingly guided.

I thank you.”

5. PETITIONS

The following Petitions were presented to the House –

- (i) Petition by the Member for Embakasi South (Hon. George Theuri) on behalf of the people of Embakasi West Constituency regarding administrative and jurisdictional boundaries in Embakasi West Constituency;
- (ii) Petition by the Member for Igembe South (Hon. John Paul Mwirigi) on behalf of the National Chairman of the Nyambene Miraa Trade Association (NYAMITA), a registered Association fronting the interests of Khat (Miraa) crop and industry stakeholders regarding development of Miraa farming and marketing.

Both Petitions referred to the relevant Departmental Committees pursuant to Standing Order 227(1).

6. PAPERS LAID

The following Papers were laid on the Table of the House –

- (i) Legal Notice No. 184 relating to the Public Finance Management (Parliamentary Car Loan (Members) Scheme Fund (Amendment) Regulations, 2020 and the Explanatory Memorandum from the Parliamentary Service Commission;
- (ii) Legal Notice No. 185 relating to the Public Finance Management (Parliamentary Mortgage (Members) Scheme Fund (Amendment) Regulations, 2020 and the Explanatory Memorandum from the Parliamentary Service Commission;

- (iii) Legal Notice No. 186 relating to the Public Finance Management (Parliamentary Car Loan (Staff) Scheme Fund (Amendment) Regulations, 2020 and the Explanatory Memorandum from the Parliamentary Service Commission;
- (iv) Legal Notice No. 187 relating to the Public Finance Management (Parliamentary Mortgage (Staff) Scheme Fund (Amendment) Regulations, 2020 and the Explanatory Memorandum from the Parliamentary Service Commission;
- (v) Sessional Paper No. 02 of 2020 on the National Cooperative Policy from the Ministry of Agriculture, Livestock, Fisheries and Cooperatives;
- (vi) National Government Budget Implementation Review Report for the FY2019/20 from the Office of the Controller of Budget;
- (vii) The Reports of the Auditor-General and Financial Statements in respect of the following Institutions for the year ended 30th June, 2019 and the certificates therein:-
 - (a) Kimira Oluch Smallholder Farm Improvement Project – ADF Loan No. 210015001296 from the State Department for Regional and Northern Corridor Development; and
 - (b) East African Portland Cement PLC.

(Leader of the Majority Party)

7. QUESTIONS

(a) The following Questions were asked –

- (i) Question by Private Notice No.27/2020 by the Member for Kuresoi South (Hon. Moses K. Cheboi) regarding the ownership status of *Kabianga Apple* Farm, L.R. number 10694/3 in *Kamara* location in Kuresoi South Constituency and the related title deeds.

(To be replied by the Cabinet Secretary for Lands and Physical Planning before the Departmental Committee on Lands)

- (ii) Question No.209/2020 by the Member for Igembe South (Hon. John Paul Mwirigi) regarding public institutions in Igembe South Constituency, including some dispensaries and primary schools, being connected to the National Power Grid.

(To be replied by the Cabinet Secretary for Energy before the Departmental Committee on Energy)

- (iii) Question No.221/2020 by the Member for Sigowet/Soin (Hon. Kipsengeret Koros) regarding status of leases for police vehicles being used for policing operations in the Country, distribution of the police vehicles and facilitation of the Officer Commanding Police Division in Sigowet/Soin Sub-County.

(To be replied by the Cabinet Secretary for Interior and Coordination of National Government before the Departmental Committee on Administration and National Security)

- (iv) Question No.224/2020 by the Member for Igembe Central (Hon. Kubai Iringo) regarding marketing of *Miraa* by the Ministry in the country, Somalia, the Eastern African region and European Markets, and measures in place to cushion farmers from losses resulting from lack of market.

(To be replied by the Cabinet Secretary for Industry, Trade and Co-operatives before the Departmental Committee on Trade, Industry and Co-operatives)

- (v) Question No.225/2020 by the Member for Laisamis (Hon. Arbelle Marselino Malimo) regarding the closure of two primary schools in Laisamis subcounty, and measures to curb rising cases of indiscipline among students and teachers in schools in Laisamis Constituency.

(To be replied by the Cabinet Secretary for Education before the Departmental Committee on Education and Research)

- (vi) Question No.241/2020 by the Member for Subukia (Hon. Samuel Gachobe) regarding the interruption and disconnection of electricity supply by Kenya Power & Lighting Company for customers in Subukia Constituency without prior notice.

(To be replied by the Cabinet Secretary for Energy before the Departmental Committee on Energy)

- (vii) Question No.242/2020 by the Member for Garissa Township (Hon. Aden Duale) regarding categories of local and international scholarships accessible to students through the Ministries of Education and Foreign Affairs, and how many students from pastoralist communities benefitted from these scholarships from 2013 to date.

(To be replied by the Cabinet Secretary for Education before the Departmental Committee on Education and Research)

(b) The following Questions were deferred –

- (i) Question No.223/2020 by the Member for Runyenjes (Hon. Eric Muchangi) regarding construction of *Tuchi* Dam in *Iriari* sub-location along Runyenjes and Chuka-Igambang'ombe Constituencies;
- (ii) Question No.226/2020 by the Member for Kabondo Kasipul (Hon. Eve Obara) regarding complaints against Kenya Power & Lighting Company relating to loose hanging power lines, frequent power outages, faulty transformers, among other things.

(c) The following Question was dropped –

- (i) Question No.239/2020 by the Member for Mosop (Hon. Vincent Tuwei) regarding construction of *Kaiboi – Chepterwai – Kapkatembu – Kipkaren River Road* in Mosop Constituency.

8. STATEMENTS

The following Statements were issued:

- (i) The Member for Mvita (Hon. Abdullswamad Shariff Nassir) sought a Statement regarding the alleged merger of Kenya Ports Authority, Kenya Railways and Kenya Pipeline Corporations.
- (ii) Pursuant to the provisions of Standing Order 44(2)(c), the Leader of the Majority Party issued a Statement regarding the Business of the House for the week commencing Tuesday, September 29, 2020.

9. SPECIAL MOTION- APPROVAL OF THE THIRD BASIS FOR SHARING OF NATIONAL REVENUE ALLOCATED TO COUNTIES

Motion made and Question proposed –

THAT, pursuant to the provisions of Article 217(1) and (4) of the Constitution on Allocation of the Share of National Revenue among the Counties, this House **concurs** with the Senate and **approves** the Third Basis for the Annual Allocation of the Share of National Revenue to the county level of government for the Financial Years 2020/2021 to 2024/2025, which shall consist of the Allocation *Ratio* and the *Formula*, where-

- (i) **Allocation Ratio**= the shareable revenue allocated to the counties in the financial year 2019/2020.
- (ii) **Formula** = $0.18 * \text{Population Index}_i + 0.17 * \text{Health Index}_i + 0.10 * \text{Agriculture Index}_i + 0.05 * \text{Urban Index}_i + 0.14 * \text{Poverty Index}_i + 0.08 * \text{Land Area Index}_i^1 + 0.08 * \text{Roads Index}_i + 0.20 * \text{Basic Share Index}_i^2$

¹ Land Area capped at 7%

²The formula will use the 2019 population and 2015/16 KIHBS poverty statistics

Where,

Parameter	Indicator of Expenditure Need
Health services	<p>Health index- health facility-gaps (20%), three years average number of primary health care visits to levels 2 and 3 health facilities (60%) and three years average in-patient days in levels 4 and 5 hospitals (20%)</p> $\text{Facility gap factor}_i = \frac{\text{Facility gap funding in county } i}{\sum_{i=1}^{47} \text{facility gap funding in county } i}$ $\text{Primary health care factor}_i = \frac{\text{No. of primary health care visits in county } i}{\sum_{i=1}^{47} \text{No. of primary health care visits in county } i}$ $\text{In – patient days factor}_i = \frac{\text{No. of in – patient days in county } i}{\sum_{i=1}^{47} \text{No. of in – patient days in county } i}$
Agriculture services	$\text{Agriculture Index}_i = 0.005 * \text{Minimum Share index} + 0.095 * \frac{\text{Rural households in county } i}{\sum_{i=1}^{47} \text{Rural households in county } i}$
Other county services	$\text{Population index}_i = \frac{\text{Population in county } i}{\sum_{i=1}^{47} \text{Population in county } i}$
Minimum share	<p>Basic share index</p> $= 0.19 * \text{Equal Share index} + 0.01 * \frac{\text{inverse of population in county } i}{\sum_{i=1}^{47} \text{inverse of population in county } i}$

Land	$\text{Land area index}_i = \frac{\text{Land area in county } i}{\sum_i^{47} \text{Land area in county } i}$
Roads	$\text{Roads index}_i = \frac{\text{Rural access index in county } i}{\sum_{i=1}^{47} \text{Rural access index in county } i}$
Poverty level	$\text{Poverty index}_i = \frac{\text{No. of poor people in county } i}{\sum_{i=1}^{47} \text{No. of poor people in county } i}$
Urban service	$\text{UrbanIndex}_i = \frac{\text{urban household in county } i}{\sum_{i=1}^{47} \text{Urban Household in County } i}$

AND FURTHER RESOLVES THAT, the Third Basis for allocating among the counties the share of national revenue that is annually allocated to the county level of government for the financial years 2020/2021 to 2024/2025 shall be applied as follows-

(a) Equitable Share for 2020/2021

County Allocation = Allocation Ratio + 0(Formula).

(b) Equitable share for 2021/2022 to 2024/2025 of Kshs.370 billion and above

County Allocation = 0.5 (Allocation Ratio) + (((Equitable Share - 0.5 (Allocation Ratio))*(Formula)).

PROVIDED THAT, for the duration of the operation of the Third Basis for allocating revenue among the counties, no county shall receive in any financial year an amount of shareable revenue that is less than the amount of shareable revenue received by the county in the financial year 2019/2020.

(The Chairperson, Budget & Appropriations Committee)

Debate interrupted on Thursday, September 24, 2020 (Second Morning Sitting) resumed;

Mover replied;

Question put and agreed to.

10. SPECIAL MOTION- APPROVAL OF APPOINTMENT OF THE REGISTRAR AND ASSISTANT REGISTRARS OF POLITICAL PARTIES

Motion made and Question proposed –

THAT, taking into consideration the findings of the Departmental Committee on Justice and Legal Affairs in its Report on the *Vetting of the Nominees for Appointment as Registrar and Assistant Registrars of Political Parties, laid on the Table of the House on*

Thursday, September 24, 2020, and pursuant to the provisions of paragraph 6 of the Sixth Schedule to the Political Parties Act, 2011, this House -

(a) **approves** the appointment of the following persons to the Offices of the Registrar and Assistant Registrars of Political Parties-

- (i) **Ms. Ann Nderitu** - **Registrar of Political Parties;**
- (ii) **Mr. Ali Abdullahi Surraw** - **Assistant Registrar;**
- (iii) **Ms. Florence Tabu Birya** - **Assistant Registrar; and**

(b) **rejects** the appointment of **Mr. Makorre Wilson Mohochi** to the office of Assistant Registrar of Political Parties.

(The Chairperson, Departmental Committee on Justice & Legal Affairs)

Debate arising;

Rising in his place on a Point of Order pursuant to Standing Order 95, the Member for Roysambu (Hon. Waihenya Ndirangu) claimed to move "that the Mover be now called upon to reply";

And the Speaker having acceded to the claim;

Question put and agreed to;

Thereupon, Mover replied;

Question put and agreed to.

11. COMMITTEE OF THE WHOLE HOUSE

Order for Committee read -

IN THE COMMITTEE

The Fourth Chairperson in the Chair

(i) Consideration of the President’s Reservations to the Parliamentary Pensions (Amendment) Bill (National Assembly Bill No. 45 of 2019)

Clause 2 - amendment proposed-

THAT, clause 2 of the Bill be deleted as recommended by H.E. the President.

(The Leader of the Majority Party)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 2 - deleted;

President's Reservations to be reported without amendments.

(ii) The Public Finance Management (Amendment) Bill (Senate Bill No. 3 of 2019)

Clause 2 - amendment proposed-

THAT, clause 2 of the Bill 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);
- (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.
- (iii) by inserting the words "within one year and" immediately after the expression "sub-section (1)" in sub-section (2);
- (iv) by deleting sub-section (3).

(Chairperson, Departmental Committee on Finance and National Planning)

Question of the amendment proposed;

There being no debate arising;

Question put and agreed to;

New section 160A - as amended agreed to;

(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”;

(Chairperson, Departmental Committee on Finance and National Planning)

Question of the amendment proposed;

There being no debate arising;

Question put and agreed to;

New section 160B - as amended agreed to;

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

Failure to implement the revenue collection system.

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.

(Chairperson, Departmental Committee on Finance and National Planning)

Question of the amendment proposed;

Debate arising;

Amendment to amendment proposed-

Failure to implement the revenue collection system.

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

(Chairperson, Departmental Committee on Finance and National Planning)

Question of the amendment to amendment proposed;

There being no debate arising;

Question of the amendment to the amendment put and agreed to;

Question on the amendment as amended put and agreed to;

New section 160C - as amended agreed to;

(d) by inserting the following new section immediately after the proposed section 160D—

Funds functions transferred between levels of government.	for	160D. (1) Where a level of government transfers a function to another level of government in accordance with Article 187 of the Constitution—
---	-----	--

(a) the level of government transferring the function shall allocate adequate funds for the duration of the transfer to enable the other level of government to perform the function;

(b) the budget for each function transferred shall be a separate vote;

(c) the Treasury of the level of government to which a function is transferred shall stand authorized to withdraw any funds budgeted for the function from the Consolidated Fund or the County Revenue Fund, as the case may be, with the prior written approval of the Controller of Budget.

(2) The approval of the Controller of Budget to withdraw money from the Consolidated Fund or the County Revenue Fund, together with written instructions from the Treasury of the level of government to which a function has been transferred shall be sufficient authority for—

(a) the Central Bank of Kenya to pay amounts from the National Exchequer Account in accordance with the approval and instructions provided; or

(b) the approved bank where the County Exchequer Account is held to pay amounts from the account in accordance with the approval and the instructions.

(Chairperson, Departmental Committee on Finance and National Planning)

Question of the amendment proposed;

There being no debate arising;

Question put and agreed to;

New section 160D - agreed to;

Clause 2 - as amended agreed to;

Title - agreed to;

Clause 1 - agreed to;

Bill to be reported with amendments.

12. HOUSE RESUMED – the Third Chairperson in the Chair

(i) Consideration of the President’s Reservations to the Parliamentary Pensions (Amendment) Bill (National Assembly Bill No. 45 of 2019)

President’s Reservations reported without amendments;

Motion made and Question proposed –

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

(Leader of the Majority Party)

There being no debate arising;

Question put and agreed to;

(ii) The Public Finance Management (Amendment) Bill (Senate Bill No. 3 of 2019)

Bill reported with amendments;

Motion made and Question proposed –

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

(Chairperson, Departmental Committee on Finance & National Planning)

There being no debate arising;

Question put and agreed to;

Motion made and Question proposed –

THAT, the Public Finance Management (Amendment) Bill (Senate Bill No. 3 of 2019) be now read a Third Time

(Chairperson, Departmental Committee on Finance and National Planning)

There being no debate arising;

Question put and agreed to;

Bill read a Third Time and passed.

13. MOTION - REPORT ON THE STATUS OF IMPLEMENTATION OF LEGISLATIONS, PETITIONS AND RESOLUTIONS

Order deferred to another day.

14. THE PUBLIC PARTICIPATION BILL (NATIONAL ASSEMBLY BILL NO. 69 OF 2019) NO.69 OF 2019)

Order for the Second Reading read;

Order deferred to another day.

15. THE PUBLIC FUNDRAISING APPEALS BILL (NATIONAL ASSEMBLY BILL NO. 66 OF 2019)

Order for Second Reading read;

Order deferred to another day.

16. THE COUNTY GOVERNMENTS (AMENDMENT) BILL (SENATE BILL NO. 13 OF 2018)

Order for Second Reading read;

Order deferred to another day.

17. MOTION - SPECIAL AUDIT REPORT ON PROCUREMENT OF PRE-EXPORT VERIFICATION OF CONFORMITY TO STANDARD SERVICES BY THE KENYA BUREAU OF STANDARDS

Order deferred to another day.

And time being twenty minutes to seven o'clock, the Third Chairperson interrupted the proceedings and adjourned the House without Question put pursuant to the Standing Orders.

18. HOUSE ROSE - at twenty minutes to Seven o'clock

MEMORANDUM

The Speaker will take the Chair on
Tuesday, September 29, 2020 at 2.30 p.m.

---X---