

(No. 07)



(034)

REPUBLIC OF KENYA

TWELFTH PARLIAMENT – (FIFTH SESSION)

THE NATIONAL ASSEMBLY

ORDERS OF THE DAY

TUESDAY, FEBRUARY 16, 2021 AT 7.00 P.M.

ORDER OF BUSINESS

PRAYERS

1. Administration of Oath
2. Communication from the Chair
3. Messages
4. Petitions
5. Papers
6. Notices of Motion
7. Questions and Statements

8*. THE REFERENDUM (No.2) BILL (NATIONAL ASSEMBLY BILL NO. 14 OF 2020)

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

Second Reading

(Resumption of debate interrupted on Thursday, February 11, 2021 – Evening Sitting)

9*. THE CONSTITUTION OF KENYA (AMENDMENT) (No.3) BILL (NATIONAL ASSEMBLY BILL NO. 53 OF 2019)

(The Hon. Gladys Boss Shollei, M.P.)

Second Reading

10*. THE COUNTY STATUTORY INSTRUMENTS BILL (SENATE BILL NO. 21 OF 2018)

(The Chairperson, Committee on Delegated Legislation)

Second Reading

11*. THE IMPEACHMENT PROCEDURE BILL (SENATE BILL NO. 15 OF 2018)

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

Second Reading

12*. THE COUNTY LAW COMPLIANCE AND ENFORCEMENT BILL (SENATE BILL NO. 25 OF 2018)

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

Second Reading

13*. MOTION – REPORT ON THE MEDIATED VERSION OF THE PUBLIC PRIVATE PARTNERSHIPS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 52 OF 2017)

(The Chairperson, Mediation Committee – Hon. George Peter Kaluma, M.P.)

THAT, pursuant to the provisions of Article 113 (2) of the Constitution and Standing Order 150, this House **adopts** the Report of the Mediation Committee on the Public Private Partnerships (Amendment) Bill (National Assembly Bill No. 52 of 2017), *laid on the Table of the House on Thursday, December 03, 2020*, and **approves** the Mediated Version of the Public Private Partnerships (Amendment) Bill (National Assembly Bill No. 52 of 2017).

(The Mediated version of the Bill is appended as Notice I)

*** Denotes Orders of the Day**

NOTICES**I. MEDIATED VERSION OF THE PUBLIC PRIVATE PARTNERSHIPS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 52 OF 2017)**

A Bill for
AN ACT of Parliament to amend the Public Private Partnerships Act, 2013

ENACTED by the Parliament of Kenya, as follows—

Short title

1. This Act may be cited as the Public Private Partnerships (Amendment) Act, 2017.

Amendment of section 2 of
No. 15 of 2013

2. Section 2 of the Public Private Partnerships Act, 2013 in this to as the “principal Act”, is amended by—

(a) deleting the definition of the term “contracting authority” and substituting therefor the following new definition –

“contracting authority” means —

(i) at the national government level, a state department, agency or state corporation which intends to have its functions undertaken by a private party; or

(ii) at the county government level, the county government or county entity which intends to have its functions undertaken by a private party;

(b) deleting the definition of the term “transaction advisor” and substituting therefor the following new definition –

“transaction advisor” means a person appointed in writing by a contracting authority or the unit who has the appropriate skill and experience to assist and advise the contracting authority or the unit on matters related to a public private partnership, including the preparation, accession and conclusion of a project and the financial close;”.

(c) inserting the following new definition immediately before the definition of the word “affordability”-

“accounting officer” means in the case of-

- (a) a national government entity, the person designated as an accounting officer by the Cabinet Secretary responsible for finance in accordance with the provisions of the Public Finance Management Act;
- (b) the Parliamentary Service Commission, the Clerk of the Senate;
- (c) the National Assembly, the Clerk of the National Assembly;
- (d) a Constitutional Commission, institution or Independent Office the person responsible for the administration of the Commission or institution or Independent Office in accordance with the provisions of the Public Finance Management Act;
- (e) a county government entity, the person responsible for the administration of the county government entity in accordance with the provisions of the Public Finance Management Act;
- (f) a county assembly, the clerk of the county assembly; and
- (g) the Judiciary, the Chief Registrar of the Judiciary.

Amendment of section 3 of No. 15 of 2013.

3. The principal Act is amended by repealing section 3 and replacing it with the following new section—

Application.

3. The provisions of this Act shall apply to every contract for the design, financing, construction, operation, equipping, management or maintenance of a project or for the provision of public services undertaken as a public private partnership.

Insertion of section 3A in No. 15 of 2013.

4. The principal Act is amended by inserting the following new section immediately after section 3—

Exemption

3A. The provisions of the Public Procurement and Asset Disposal Act, 2015 shall, be exercised subject to the relevant provision of this Act and apply to contracts under this Act only in the event where there is no express provision setting out the applicable procurement procedures under this Act.

Amendment of section 4 of No. 15 of 2013.

5. Section 4 of the principal Act is amended in subsection (1) by-

(a) inserting the following new paragraph immediately after paragraph (f)-

(fa) three persons nominated by the Council of County Governors;

(b) deleting the word “four” appearing immediately before the words “persons not being” in paragraph (g) and substituting therefor the words “three”;

Amendment of section 15 of No. 15 of 2013.

6. Section 15 of the principal Act is amended by inserting the words “the county government or” immediately after the words “Unit with”.

Amendment of section 18 of No. 15 of 2013.

7. Section 18 of the principal Act is amended by inserting the following new subsection immediately after subsection (2) –

(3) A contracting authority under subsection (1) shall ensure that it facilitates public participation on a project that it intends to finance, operate, equip or maintain before signing a project agreement.

Repeal of section 20 of No. 15 of 2013.

8. The principal Act is amended by repealing section 20.

Amendment of section 24 of No. 15 of 2013.

9. Section 24 of the principal Act is amended—

(a) by adding the following proviso at the end of subsection (1)—

Provided that the county priority list shall be subject to approval by the county assembly and be submitted to the Unit for publication alongside the national government priority list.

(b) by deleting subsection (2) and substituting therefor the following subsection—

(2) Upon receipt of the project lists from the national government contracting authorities, the committee shall consider the lists and the recommendations of the Unit and prepare and submit to the Cabinet for approval a national priority list which shall include county approved priority lists of public private partnership projects that have been submitted to the Unit.

(c) in subsection (3) by inserting the words “in consultation with the Council of County Governors” immediately after the words “the Cabinet Secretary shall”.

Amendment of section 31 of No. 15 of 2013.

10. Section 31 of the principal Act is amended in subsection (3) by deleting the word “Committee” and substituting therefor the word “Unit”.

Amendment of section 36 of No. 15 of 2013.

11. (1) Section 36 of the principal Act is amended—

(a) by deleting subsection (1) and replacing it with the following subsection—

(1) The unit shall assess the technical expertise of the contracting authority to procure the development, preparation, procurement, contract negotiation and management of a project under this Act.

(b) by deleting subsection (2) and replacing it with the following subsection—

(2) Where the unit finds that the contracting authority does not have the technical expertise to procure the project under this Act, the contracting authority shall, in consultation with the unit, appoint a transaction advisor to assist the authority in the preparation, procurement, contract negotiations and financial close phase of a project.

Amendment of section 37 of No. 15 of 2013.

12. Section 37 of the principal Act is amended in subsection (1) by deleting the words “upon approval by the Committee”.

Amendment of section 45 of No. 15 of 2013.

13. Section 45 of the Public Private Partnerships Act is amended by deleting subsection (1) and substituting therefor the following new subsection—

45. (1) A contracting authority may, in consultation with the unit, hold a competitive dialogue with each bidder to define the technical or financial aspects of the project in the manner prescribed under this Act and consistent with any policy guidance issued by the Committee from time to time.

Amendment of section 49 of No. 15 of 2013.

14. Section 49 of the principal Act is amended in subsection (2) by deleting the words “Committee for approval” and substituting therefor the words “unit for concurrence”.

Amendment of section 51 of No. 15 of 2013.

15. Section 51 of the principal Act is amended by renumbering the existing provision as subsection (1) and inserting the following new subsections —

(2) A proposal evaluation team may reject all submissions by bidders where all bidders do not comply with the conditions and requirements specified in the tender documents or the rules made under section 44.

(3) Where a proposal evaluation team rejects a submission under this section, the proposal evaluation team shall prepare and submit to the accounting officer a report setting out the reasons for the rejection.

(4) The accounting officer shall inform the bidder of the decision of the contracting authority to reject the bid within fourteen days of receiving the report under subsection (3).

(5) A bidder whose bid has been rejected under this section shall not be entitled to compensation.

(6) Where all bids have been rejected under this section, the contracting authority may start the tender process a new.

Amendment of section 54 of No. 15 of 2013.

16. Section 54 of the principal Act is amended—

(a) by deleting subsection (2) and substituting therefor the following subsection—

(2) The Committee shall consider the reports submitted to it under subsection (1) and, if satisfied, approve the execution of the public private partnership agreement with the successful bidder.

(b) by deleting subsection (3).

Insertion of new sections in No. 15 of 2013.

17. The principal Act is amended by inserting the following new section immediately after section 54—

Procedure for
county government
public private
partnership
projects.

54A. (1) A county government may enter into a public private partnership agreement and shall be responsible for the administration of the overall project development cycle in accordance with this section.

(2) Where a county government intends to enter into a public private partnership arrangement, it shall cause its user departments or county entity, as the case may be, to prepare a project proposals for approval by the respective county assembly, setting out the strategic and operational benefits of entering into such an arrangement.

(3) Where the county approves that a project may be undertaken as a public private partnership, it shall cause the project to be subjected to detailed feasibility study assessment in accordance with section 33.

(4) The County Contracting Authority may liaise with t as necessary in developing the PPP Feasibility Study.

(5) A Feasibility Study completed pursuant to sub-section (3) shall be approved by the County Government, prior to initiation of procurement processes for the project, provided that:

- (a) where such studies show that the project will require national government support measures or any other project specific guarantees that cannot be granted by the County Government or
- (b) exceeds the thresholds that have been prescribed by the Cabinet Secretary, the county government contracting authority shall obtain the approval of the National Treasury prior to commencement of the tender processes

County Government Contracting Authority to seek approval.

54B. (1) Subject to sub-section 54(A) (5) (b), a County Government Contracting Authority shall seek and obtain the approval from the county assembly where no national government support measures are required for the project prior to the execution of a project agreement at the county level, the contracting authority.

Amendment of section 56 of No. 15 of 2013.

18. Section 56 of the principal Act is amended by-

(a) deleting subsection (1) and substituting therefor the following subsection—

(1) The Committee shall, within a period of thirty days from the date of its decision of approving the project and financial risk assessment report, inform the contracting authority of its decision.

(b) deleting subsection (2) and substituting therefor the following subsection—

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(2) Where the Committee approves an undertaking of a project, the contracting authority shall finalise the project agreement for execution by the parties to the project.

(c) deleting the words “Cabinet or Parliament as the case may be,” appearing in subsection (3) and substituting therefor the word “Committee”.

Amendment of section 57 of No. 15 of 2013.

19. The principal Act is amended by repealing section 57 and substituting therefor the following new section—

Execution of contract. **57.** After the approval of the project and financial risk report under section 56, the contracting authority shall contract awarded to that bidder.

Amendment of section 67 of No. 15 of 2013.

20. Section 67 of the principal Act is amended —

(a) in subsection (2)—

(i) by inserting the words “appointed by the Cabinet Secretary” immediately after the words “Kenya” appearing in paragraph (a);

(ii) by deleting paragraph (b) and substituting therefor the following new paragraph—

(b) six other persons with such relevant knowledge and experience as the Cabinet Secretary shall, in consultation with the Unit, consider appropriate;

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

(ba) two persons of the opposite gender having relevant experience and knowledge appointed by the Council of Governors.

(iv) by deleting paragraph (c);

(b) in subsection (3) by deleting the words “and shall be eligible” and substituting therefor the words “and may be eligible”;

(c) by deleting subsection (5) and substituting therefor the following new subsection—

(5) A person aggrieved by the decision of the Committee may appeal to the High Court within seven days from the date of the Committee’s decision.

Insertion of new of new section 70A in No. 15 of 2013.

21. The principal Act is amended by inserting the following section immediately after section 70 –

Report of the
Committee.

70A. (1) Within three months after the end of each financial year, the Committee shall prepare a report on project agreements entered into by all contracting authorities in that financial year.

(2) The Committee shall, in preparing the report under subsection (1), set out the following information –

- (a) the status of implementation of every project agreement that is under implementation by each contracting authority including the outputs of each project as against the projected targets;
- (b) any challenges or deviations in the implementation and estimated completion of the project and the reasons for such deviation or delay;
- (c) the financial and other performance indicators of the project during the year under review;
- (d) a risk assessment including information of any change in circumstances that may have an impact on the implementation of a project; and
- (e) such other information as the Committee and the Cabinet Secretary may consider necessary.

(3) The Committee shall submit the report prepared under subsection (1) to –

(a) the National Assembly, in the case of National Government projects;

(b) the Senate, in the case of county government projects.

(4) The National Assembly and the Senate shall, in accordance with their respective standing orders-

- (a) consider the report within thirty days of receipt of the report;
- (b) table a report together with its recommendations on the implementation of the projects; and

(c) submit their recommendations to the Committee.

(5) The Committee shall, ensure that the contracting authorities take into account the recommendations under subsection (4) in the implementation of a project under this Act.

The House resolved on Wednesday, February 10, 2021 as follows-

Limitation of Debate on Bills sponsored by Parties or Committees

- II. THAT**, each speech in a debate on **Bills sponsored by a Committee, the Leader of the Majority Party or the Leader of the Minority Party** shall be limited as follows:- A maximum of forty five (45) minutes for the Mover, in moving and fifteen minutes (15) in replying, a maximum of thirty (30) minutes for the Chairperson of the relevant Committee (if the Bill is not sponsored by the relevant Committee), and a maximum of ten (10) minutes for any other Member speaking, except the Leader of the Majority Party and the Leader of the Minority Party, who shall be limited to a maximum of fifteen Minutes (15) each (if the Bill is not sponsored by either of them); and that priority in speaking shall be accorded to the Leader of the Majority Party, the Leader of the Minority Party and the Chairperson of the relevant Departmental Committee, in that order.

Limitation of Debate on Individual Members' Bills

- III. THAT**, each speech in a debate on **Bills NOT sponsored by a Committee, the Leader of the Majority Party or the Leader of the Minority Party** shall be limited as follows:- A maximum of three hours and thirty minutes, with not more than thirty (30) minutes for the Mover, in moving and ten (10) minutes in replying, a maximum of thirty (30) minutes for the Chairperson of the relevant Committee and a maximum of ten (10) minutes for any other Member speaking, except the Leader of the Majority Party and the Leader of the Minority Party, who shall be limited to a maximum of fifteen Minutes (15) each; and that priority in speaking shall be accorded to the Leader of the Majority Party, the Leader of the Minority Party and the Chairperson of the relevant Departmental Committee, in that order.

Limitation of Debate on Committee Reports

- IV. THAT**, each speech in a debate on **Committee Reports (except for Reports of Audit Committees)**, including a Report of a Joint Committee of the Houses of Parliament or any other Report submitted to the House for which limitation of time has not been specified, shall be limited as follows:- A maximum of two and a half hours, with not more than twenty (20) minutes for the Mover in moving and five (5) minutes for any other Member speaking, **including** the Leader of the Majority Party and the Leader of the Minority Party and the Chairperson of the relevant Committee (if the Committee Report is not moved by the Chairperson of the relevant Committee), and that ten (10) minutes before the expiry of the time, the Mover shall be called upon to reply; and further that priority in speaking shall be accorded to the Leader of the Majority Party and the Leader of the Minority Party, in that order.
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NOTICE PAPER

Tentative business for

Thursday (Morning), February 18, 2021

(Published pursuant to Standing Order 38(1))

It is notified that the House Business Committee has approved the following *tentative* business to appear in the Order Paper for Thursday (Morning), February 18, 2021-

A. THE CROPS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 25 OF 2019)

(The Hon. Tandaza Kassim Sawa, M.P.)

Second Reading

*(Resumption of debate interrupted on Thursday, February 11, 2021 – Morning Sitting)
(Balance of time – 2hr 15mins)*

B. THE LABOUR RELATIONS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 18 OF 2019)

(The Hon. Kimani Ichung'wah, M.P.)

Second Reading

C. THE CONSTITUTION OF KENYA (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 19 OF 2019)

(The Hon. Florence Mutua, M.P.)

Second Reading

D. THE CONSTITUTION OF KENYA (AMENDMENT) (No.2) BILL (NATIONAL ASSEMBLY BILL NO. 40 OF 2019)

(The Hon. George Kariuki, M.P.)

Second Reading

E. THE KENYA INFORMATION AND COMMUNICATIONS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 20 OF 2019)

(The Hon. Elisha Odhiambo, M.P.)

Second Reading
