

(No. 059)



(665)

REPUBLIC OF KENYA

TWELFTH PARLIAMENT – (FIFTH SESSION)

THE NATIONAL ASSEMBLY

ORDERS OF THE DAY

TUESDAY, JUNE 22, 2021 AT 2.30 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 APPROPRIATION BILL (NATIONAL ASSEMBLY BILL NO. 31 OF 2021)

(The Chairperson, Budget and Appropriations Committee)

First Reading

9*. THE APPROPRIATION BILL (NATIONAL ASSEMBLY BILL NO. 31 OF 2021)

(The Chairperson, Budget and Appropriations Committee)

Second Reading

10*. THE FINANCE BILL (NATIONAL ASSEMBLY BILL NO. 18 OF 2021)

(The Chairperson, Departmental Committee on Finance and National Planning)

Second Reading

11*. COMMITTEE OF THE WHOLE HOUSE

The Public Private Partnerships Bill (National Assembly Bill No. 6 of 2021)

(The Leader of the Majority Party)

...../12*

- 12*. THE WAQF BILL (NATIONAL ASSEMBLY BILL NO. 73 OF 2019)
(The Leader of the Majority Party)

Second Reading

- 13*. MOTION - REPORT OF THE AUDITOR - GENERAL ON THE
FINANCIAL STATEMENTS OF THE NATIONAL
GOVERNMENT FOR THE FINANCIAL YEAR
2017/2018
(The Chairperson, Public Accounts Committee)

THAT, this House **adopts** the Report of the Public Accounts Committee on the Examination of the Report of the Auditor - General on the Financial Statements of the National Government for the Financial Year 2017/2018 (Volumes I & II), *laid on the Table of the House on Tuesday, March 23, 2021.*

(Resumption of debate interrupted on Tuesday, June 8, 2021)

*** Denotes Orders of the Day**

...../Notices*

N O T I C E S

I. THE PUBLIC PRIVATE PARTNERSHIPS BILL **(NATIONAL ASSEMBLY BILL NO. 6 OF 2021)**

- 1) Notice is given that the Chairperson of the Departmental Committee on Finance and National Planning intends to move the following amendments to the Public Private Partnerships Bill, 2021 at the Committee Stage-

CLAUSE 4

THAT, the Bill be amended in clause 4 by inserting the following new subsection immediately after subsection (2)-

“(3) Without prejudice to the generality of subsection (2), the provisions of the Public Procurement and Assets Disposal Act, 2015 shall-

- (a) not apply to a public private partnership project, if all the monies for the project are from the private party;
- (b) apply if there is counterpart funding that is, including public funds, for the public private partnership project.

CLAUSE 6

THAT, the Bill be amended in clause 6 by-

- (a) deleting paragraph (c) of sub-section (1);
- (b) deleting the word “one “appearing in paragraph (f) of subsection (1) and substituting therefor the word “two”;
- (c) inserting the following new subsections immediately after subsection 1-
 - (1A) The Committee shall co-opt the Principal Secretary responsible for the contracting authority whose public private partnership project is the subject of discussion at a meeting.
 - (1B) The Committee may co-opt any person or public officer whose knowledge or experience is necessary for the public private partnership under discussion.
 - (1C) A person who is co-opted shall not vote at a meeting and shall only be a member of the Committee for a period not exceeding one year.

CLAUSE 9

THAT, the Bill be amended in clause 9 in subsection (1) by –

(a) deleting paragraph (b) and substituting therefor the following new paragraphs-

(b) is removed from office for breach of the provisions of chapter six of the Constitution;

(ba) is deregistered by a professional body for professional misconduct;

(b) inserting the following new paragraph immediately after paragraph (d)-

(da) is convicted of an offence under section 78 of this Act;

CLAUSE 16

THAT, the Bill be amended in clause 16 -

(a) in subsection (1) by inserting the following new paragraphs immediately after paragraph (c) -

(ca) engineering;

(cb) project management;

(b) in subsection (1) by deleting the words “as the Cabinet Secretary may determine.” appearing in paragraph (d);

(c) by inserting the following subsection immediately after sub-section (1)-

(1A) The Director General shall be competitively recruited and appointed by the Public Service Commission.

CLAUSE 17

THAT, the Bill be amended in section 17 by deleting –

(a) the word “The” appearing in subsection (1) and substituting therefor the words “Subject to section 31 and 37 of the Public Service Commission Act,2017 the”.

(b) subsection (2).

CLAUSE 19

THAT, the Bill be amended in section 19 by -

(a) deleting paragraph (c) appearing in subsection (1) and substituting therefor the following new paragraphs-

(c) guiding and advising contracting authorities in project structuring, procurement and tender evaluations;

(ca) leading contracting authorities in contract negotiations and deal closure;

(b) inserting the following subsection immediately after subsection (2)-

(2A) The Directorate shall issue standard bidding documents for use by contracting authorities.

CLAUSE 21

THAT, the Bill be amended in clause 21 by-

(a) renumbering the existing provision as subsection (1);

(b) inserting the following new subsection immediately after the new subsection (1)-

(2) Without prejudice to the periods specified under the Second Schedule, a contracting authority shall not enter into a public private partnership arrangement for a period exceeding thirty years.

CLAUSE 22

THAT, the Bill be amended in clause 22 (1) by inserting the following paragraph immediately after paragraph (j)-

(ja) ensure there is public participation on a project;

CLAUSE 25

THAT, the Bill be amended in clause 25 –

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

(2) A contracting authority shall not submit a project list unless the projects are part of the national development agenda.

(b) in subsection (4) by deleting the word “periodically” and substituting therefor the words “bi-annually”.

CLAUSE 26

THAT, the Bill be amended in clause 26 by inserting the following new subsection immediately after subsection (1) -

(1A) Subject to subsection (1), the national list shall be published on the Directorate's website and the contracting authority's website.

CLAUSE 33

THAT, the Bill be amended in clause 33 by inserting the following new subsection immediately after subsection (1)-

(1A) The Directorate shall submit an evaluation report together with its recommendations to the Committee.

CLAUSE 37

THAT, the Bill be amended in clause 37 by inserting the following -

(a) new paragraph immediately after subsection (1) (c)-

“(d) restricted bidding.”

(b) new subsection immediately after subsection (2)-

(2A) A contracting authority shall use standard bidding documents issued by the Directorate in all public private partnership procurements.

NEW CLAUSE

THAT, the Bill be amended by inserting the following new clause immediately after clause 44-

Restricted
tendering

Restricted tendering

44A. (1) A contracting authority may use restricted tendering if any of the following conditions are satisfied-

- (a) competition for contract, because of the complex or specialized nature of the works and services is restricted to prequalified tenderers;
- (b) the time and cost required to examine and evaluate a large number of tenders would be disproportionate to the value of the works or services to be procured;

- (c) if there is evidence to the effect that there are only a few known suppliers of the whole market of the works or services;
 - (d) an advertisement is placed, where applicable, on the procuring entity website regarding the intention to procure through limited tender.
- (2) A contracting authority may engage in procurement by means of restricted tendering in such manner as may be prescribed.

CLAUSE 56

THAT, the Bill be amended in clause 56 by deleting the numbers “38,40 or 45” appearing in subsection (1) (a) and substituting therefor the following numbers “38,40, 44A or 45”;

CLAUSE 60

THAT, the Bill be amended in clause 60 by –

- (a) renumbering the existing provision as subsection (1);
- (b) inserting the following new subsections immediately after the existing subsection-
 - (2) A private party that executes a contract under subsection (1) shall commence the project within twelve months from the date of execution of the contract.
 - (3) If the private party fails to commence the project in accordance with subsection (2), the contracting authority shall terminate the contract and no liability shall be attached to the contracting authority or the Government.

CLAUSE 65

THAT, the Bill be amended in clause 65 by-

- (a) renumbering the existing provision as (1);
- (b) inserting the words “for inclusion in the published national list of projects under section 26” at the end of subsection (1);
- (c) inserting the following new subsection immediately after subsection (1)-
 - (2) A county government or county corporation shall not submit a project list unless the projects are part of the County Integrated Development Plan.

CLAUSE 69

THAT, the Bill be amended section 69 by inserting the following subsection immediately after subsection (1)-

“(1A) Notwithstanding subsection (1), every project agreement shall make provision for the revenue sharing mechanisms and thresholds between a private party and the Government, where a project’s revenue performance meets and exceeds the target return on investment negotiated under a project agreement.”

CLAUSE 72

THAT, the Bill be amended in clause 72 (1) (e) by deleting the word “periodic” and substituting therefor the word “bi-annual”.

CLAUSE 76

THAT, the Bill be amended in clause 76 by inserting the following new subsections immediately after subsection (2)-

(2A) The Auditor General shall audit the accounts of a project company, where there is counterpart funding for a project including public funds.

(2B) Where all the monies for a project are provided by a private party, the accounts of the project company shall be audited annually by a reputable audit firm, appointed in consultation with the National Treasury.

CLAUSE 82

THAT, the Bill be amended in clause 82 by-

(a) inserting the following paragraph in subsection (2) immediately after paragraph (g)-

(ga) the financial reports of projects which have been completed and are being operated by a private party;

(b) inserting the following subsection immediately after subsection (2)-

(3) The Cabinet Secretary shall submit a copy of the annual report to Parliament.

SECOND SCHEDULE

THAT, the Bill be amended in the Second Schedule –

- (a) by inserting the words “for a specified period of time not exceeding thirty years” at the end of item 4;
- (b) in item 8 by inserting the words “not exceeding thirty years” immediately after the words “specified period”;
- (c) by inserting the words “for a specified period not exceeding thirty years” at the end of item 9;
- (d) by inserting the words “for a specified period not exceeding twenty years” at the end of item 10;
- (e) in item 12 by inserting the words “not exceeding 30 years” immediately after the words “specified period”;
- (f) in item 14 by inserting the words “not exceeding 30 years” immediately after the words “specified period of time”;
- (g) in item 16 by inserting the words “but not exceeding thirty years” immediately after the words “over time”.

2) Notice is given that the Member for Kikuyu (Hon. Kimani Ichung’wah) intends to move the following amendments to the Public Private Partnerships Bill, 2021 at the Committee Stage-

NEW CLAUSE

THAT, the Bill be amended by inserting the following new clause immediately after clause 21-

Attorney General to certify proposed projects.

21A. (1) Subject to the provisions of Part III and Part VI, the Attorney General shall have power to determine whether a proposed project concerns county government.

(2) A contracting authority or county government which intends to enter into a public private partnership shall apply to the Attorney General for a determination as to whether the proposed project concerns a county government.

(3) The Attorney General shall issue a certificate of the determination in accordance with this section.

NEW CLAUSE

THAT, the Bill be amended by inserting the following new clause immediately after clause 59-

Approval by **59A.** (1) Subject to certificate issued under section 21A, a contracting
National of authority shall seek and obtain the approval of the National
Assembly of Assembly prior to execution of a project agreement.
National
Government
Projects.

(2) The contracting authority shall submit a copy of the public private partnership agreement, together with the certificate issued under section 21A and, the project financial and risk assessment reports to the National Assembly.

(3) The National Assembly shall consider and approve or reject the project agreement within ninety days.

(4) The approval by the National Assembly may include its reservations or recommendations.

(5) If the National Assembly does not make a decision on the project agreement within the ninety days, it shall be deemed to have been approved.

(6) The parties to a public private partnership shall review the Project agreement to take into consideration any reservations or recommendations made by the National Assembly before execution.

(7) The Clerk of the National Assembly shall—

(a) keep a register of all public private partnership agreements submitted; and

(b) cause a list of all public private partnerships to be published on Parliament's website.

NEW CLAUSE

THAT, the Bill be amended by inserting the following new clause immediately after clause 65-

Approval by **65A.** (1) Subject to certificate issued under section 21A and
the Senate of section 64, a county government shall seek and obtain the approval
county of the Senate prior to execution of a project agreement.
government
Projects.

(2) The Senate shall consider and approve or reject the project agreement within ninety days.

(3) The approval by the Senate may include its reservations or recommendations.

(4) The county government shall submit a copy of the public private partnership agreement, together with the certificate issued under section 21A and, the project financial and risk assessment reports to the Senate.

(5) If the Senate does not make a decision on the project agreement within the ninety days, it shall be deemed to have been approved.

(6) The parties to a public private partnership shall review the Project agreement to take into consideration any reservations or recommendations made by the Senate before execution.

(7) The Clerk of the Senate shall—

(a) keep a register of all public private partnership agreements submitted; and

(b) cause a list of all public private partnerships to be published on Parliament’s website.

3) Notice is given that the Member for Garissa Township (Hon. Aden Duale) intends to move the following amendments to the Public Private Partnerships Bill, 2021 at the Committee Stage-

CLAUSE 62

THAT, the Bill be amended in clause 62 by-

(a) renumbering the existing provision as (1);

(b) by inserting the following new subsection (2)-

(2) Without prejudice to the generality of sub-section (1), the Cabinet Secretary responsible for a contracting authority that enters into a power producing agreement with a private party under this Act shall submit the agreement to the National Assembly for approval.

CLAUSE 76

THAT, the Bill be amended in clause 76 by inserting the following new subsection immediately after subsection (4)-

(5) Pursuant to Section 7(1) (g) of the Public Audit Act, the Auditor General shall undertake an annual performance audit on all engagements under power purchase agreements, existing ones and new ones, to –

(a) examine the economy, efficiency and effectiveness with which public money has been expended pursuant to Article 229 of the Constitution; and,

(b) evaluate, whether the citizen has gotten value for money in the power purchase framework or engagement and submit reports to the National Assembly.

CLAUSE 86

THAT, the Bill be amended in clause 86 by inserting the following new subsection immediately after sub-section (4)-

(5) Any power producing agreement that had been entered into between a contracting authority and the companies listed in the Fourth Schedule, before the commencement of this Act shall be submitted to the National Assembly for approval within nine months of coming into force of this Act.

(6) Subject to sub-section (5) any agreement which is not submitted shall become void by attrition of time.

(7) The Speaker shall notify the House in accordance with its Standing Orders, whenever an agreement is submitted.

(8) The National Assembly shall consider and make a decision within ninety days from the date of tabling of the agreement in the House, failure to which the agreement shall be deemed to have been approved.

(9) The House may in accordance with the Standing Orders extend the period under sub section (8) by a further period of thirty days.

NEW CLAUSE

THAT, the Bill be amended by inserting the following new schedule immediately after the Third Schedule-

FOURTH SCHEDULE

(Section 86)

LIST OF INDEPENDENT POWER PRODUCING COMPANIES

1. Iberafrica
2. Mumias Sugar Company
3. Orpower4-Plant I
4. Orpower4-Plant II
5. Orpower4-Plant III
6. Tsavo Power
7. Rabai Power
8. Imenti Tea-Hydro
9. Thika Power
10. Gikira Hydro Power

11. Gulf Power
 12. Triumph Power
 13. Orpower4- Plant IV
 14. Biojoule
 15. Regen Terem
 16. Chania-KTDA
 17. Gura-KTDA
 18. Strathmore Solar
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LIMITATION OF DEBATE

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 Reports of Audit Committees

- III. THAT**, notwithstanding the provisions of Standing Order 97(4), this House orders that, each speech in debate on **Reports of Audit Committees (PIC, PAC & SFAC)** shall be limited as follows:- A maximum of sixty (60) minutes for the Mover in moving and thirty (30) minutes in replying, 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 (15) minutes each; and that priority 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*

NOTICE PAPER

Tentative business for

Tuesday (Evening), June 22, 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 Tuesday (Evening), June 22, 2021-

A. COMMITTEE OF THE WHOLE HOUSE

The Appropriation Bill (National Assembly Bill No. 31 of 2021)
(The Chairperson, Budget and Appropriations Committee)

B. THE FINANCE BILL (NATIONAL ASSEMBLY BILL NO. 18 OF 2021)

(The Chairperson, Departmental Committee on Finance and National Planning)

Second Reading

(If not concluded on Tuesday, June 22, 2021 – Afternoon sitting)

C. MOTION REPORT ON THE SECOND SUPPLEMENTARY ESTIMATES FOR FY 2020/2021

(The Chairperson, Budget and Appropriations Committee)

(Subject to Notice of Motion being given on Tuesday, June 22, 2021 – Afternoon sitting)

D. MOTION - INSPECTION VISITS TO ASCERTAIN THE IMPACT OF REVENUE ENHANCEMENT INITIATIVES ON REVENUE COLLECTION

(The Chairperson, Departmental Committee on Finance and National Planning)

E. THE KENYA NATIONAL BLOOD TRANSFUSION SERVICE BILL (NATIONAL ASSEMBLY BILL NO. 6 OF 2020)

(The Chairperson, Departmental Committee on Health)

Second Reading

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

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

Second Reading

G. THE NATIONAL COHESION AND PEACE BUILDING BILL (SENATE BILL NO. 35 OF 2018)

(The Chairperson, Committee on National Cohesion and Equal Opportunity)

Second Reading

*...../Appendix**

APPENDIX

ORDER NO.7 - QUESTIONS

Pursuant to the provisions of Standing Order 42A (5) the following Members will ask **questions** for reply before the specified Departmental Committees-

QUE NO.

ORDINARY QUESTIONS

199/2021 The Member for Mavoko (Hon. Patrick Makau, MP) to ask the Cabinet Secretary for Energy: -

- (i) Could the Cabinet Secretary explain why despite there being oversupply of electric power to the National Grid, the demand is low?
- (ii) Could the Cabinet Secretary also explain why the cost of electric power in Kenya high compared to other East African Community Countries?
- (iii) Could the Cabinet Secretary further explain why Mavoko Constituency and the larger Machakos County are yet to benefit from the *last mile connectivity programme* and indicate when the programme will be rolled out in the said area?
- (iv) Could the Cabinet Secretary provide a list of all the categories of electric power in the country, indicating the amount of power each category feeds into the national grid?

(To be replied before the Departmental Committee on Energy)

200/2021 The Member for Narok South (Hon. Korei Lemein, MP) to ask the Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development& Public Works: -

- (i) Could the Cabinet Secretary explain the measures if any, to rehabilitate the two-kilometre stretch of the *Junction – Olmekenyu* road which connects *Ololulunga* Sub-County Headquarters and the main highway, which is in a deplorable state?
- (ii) What plans are there by the Ministry to construct the road to bitumen standards given that it is the main access road to *Olulunga* Sub-County headquarters?

(To be replied before the Departmental Committee on Transport, Public Works & Housing)

203/2021 The Member for Emuhaya (Hon. Omboko Milemba, MP) to ask the Cabinet Secretary for Interior and Coordination of National Government: –

- (i) What action is the Ministry taking to curb the increased cases of insecurity in Emuhaya Sub-County, particularly *Ambali, Emakakha, Ebuyangu, Ipali* and *Ebukhaya* areas of Emuhaya Constituency?
- (ii) When will the Ministry provide necessary motor vehicles to *Ambali, Emakakha* and *Ebuyangu* Police Stations and police officers to *Ipali* and *Ebukhaya* Police Posts in Emuhaya Constituency so as to facilitate security operations in these areas?

(To be replied before the Departmental Committee on Administration and National Security)

204/2021 The Member for Kaiti (Hon. Joshua Kimilu, MP) to ask the Cabinet Secretary for Interior and Coordination of National Government:-

- (i) Could the Cabinet Secretary explain the immediate action being taken to address the recent landslide incident in *Nduu sub-location, Kilungu Sub-County*, which resulted in damages to property rendering about thirty families homeless and causing acute food shortage to more than one hundred residents?
- (ii) What interventions has the Ministry put in place in the short-term and long-term to safeguard the lives and livelihoods of the affected residents?

(To be replied before the Departmental Committee on Administration and National Security)

205/2021 The Member for Trans Nzoia County (Hon. Janet Nangabo, MP) to ask the Cabinet Secretary for Health: -

- (i) Could the Cabinet Secretary explain why the National Hospital Insurance Fund (NHIF) is yet to remit funds to the *Linda Mama* Programme since November, 2020?
- (ii) What measures has the Ministry put in place to ensure that funds payable by the NHIF are remitted without further delays to ensure the programme fully benefits the intended beneficiaries?

(To be replied before the Departmental Committee on Health)

The Member for Ol Jorok (Hon. Michael Muchira, MP) to ask the Cabinet Secretary for Foreign Affairs: -

- (i) Could the Cabinet Secretary explain the measures being taken by the Ministry to facilitate the family of the late *Lucy Wambui Ng'ang'a* of *Passport No. A2185564* to repatriate her body to the country for burial following her death which occurred on 22nd December 2020 while working as a domestic worker in Baghdad, Iraq?
- (ii) What actions has the Ministry taken to create awareness on the rising cases of bullying and mistreatment of domestic workers especially those working in countries in the Middle East?
- (iii) What measures has the Government taken to protect Kenyans working in foreign countries, specifically in the Middle East?

(To be replied before the Departmental Committee on Defence and Foreign Relations)
