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PARLIAMENT OF KENYA



13<sup>TH</sup> PARLIAMENT | 4<sup>TH</sup> SENATE | SECOND SESSION

STANDING COMMITTEE ON ENERGY

REPORT ON THE ENERGY (AMMENDMENT) BILL, 2023 (SENATE BILLS NO 42 OF 2023)

PAPERS LAID	
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TABLED BY	Chair
COM. MITTEE	Energy
CLERK AT THE TABLE	Lawrence M.

Hon. Speaker  
You may approve for  
tabling. *[Signature]*  
30/11/23

*[Red Signature]*  
30/11/23

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NAIROBI

APPROVED  
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AMASON J. KINCI

November, 2023

CBS  
This is forwarded and recommended  
for approval for tabling  
*[Signature]* 30/11/2023

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## **LIST OF ABBREVIATIONS AND ACRONYMS**

<b>HFO</b>	Heavy Fuel Oil
<b>IPP</b>	Independent Power Producers
<b>KENGEN</b>	Kenya Electricity Generating Company
<b>LNG</b>	Liquefied Natural Gas

## **PRELIMINARIES**

The Senate Standing Committee on Energy is established under standing order 228(3) of the Senate Standing Orders. Pursuant to the provisions of the Fourth Schedule of the Standing Orders the Standing Committee on Energy is assigned to consider all matters related to fossil fuels exploration, development, production, maintenance and regulation of energy.

### **Mandate of the Committee**

The Standing Order 228(4)(a) assigns the Standing Committee to investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration and operations of the assigned Ministries and departments. In executing its mandate, the Standing Committee on Energy oversees the Ministry of Energy and Petroleum and the following semi-autonomous government agencies-

1. Energy and Petroleum Regulatory Authority
2. Kenya Power & Lighting Company Limited
3. Kenya Electricity Generating Company Limited
4. Kenya Electricity Transmission Company Limited
5. Rural Electrification and Renewable Energy Company
6. Nuclear Power and Energy Agency
7. Geothermal Development Company.

### **Membership of the Committee**

The Committee is composed of the following members-

- |  |                           |
|--|---------------------------|
| 1. Sen. Wamatinga Wahome, MP           | - <b>Chairperson</b>      |
| 2. Sen. William Kisang' Kipkemoi, MP   | - <b>Vice-Chairperson</b> |
| 3. Sen. (Dr.) Boni Khalwale, CBS, MP   | - Member                  |
| 4. Sen. Ledama Olekina, MP             | - Member                  |
| 5. Sen. (Dr.) Oburu Oginga, MGH, MP    | - Member                  |
| 6. Sen. James Lomenen Ekomwa, MP       | - Member                  |
| 7. Sen. Danson Buya Mungatana, MGH, MP | - Member                  |
| 8. Sen. Abass Sheikh Mohamed, MP       | - Member                  |
| 9. Sen. Edwine Watanya Sifuna, MP      | - Member                  |

## CHAIRPERSON'S FOREWORD

**Mr. Speaker Sir,**

The Energy (Amendment) Bill (Senate Bills No 42 of 2023) is a Bill for an act of Parliament to amend the Energy ACT to make provision for energy purchase agreements; and for connected purposes.

The Principal object of the Bill is to amend the Energy Act, 2019 to provide for transparency in energy purchase agreements. The rationale for disclosure of the beneficial ownership information is to create an accurate public disclosure regime that provides transparency in the beneficial ownership and control structures of companies. This aids in not only promoting investor confidence and good corporate governance practices but also in uncovering tax evasion schemes, money laundering practices, corruption schemes, and other illegal activity involving either one or more companies.

The Bill intends to amend section 134 of the Energy Act, 2019 through enhancing the regulation of energy purchase agreements through reinforcements of the constitutional requirements of transparency and accountability.

It proposes this by ensuring that a generating entity shall sell energy to a licensed entity listed in the Third Schedule of the Energy Act 2019.

Currently most independent power producers (IPP's) have beneficial owners listed as corporations that are in other jurisdictions. During the inquiry into the high cost of electricity that was conducted by the Committee, it was noted that IPP's had ownership listed as companies that are registered in other countries. This revelation informed this amendment in an aim of providing transparency.

Additionally, during the inquiry on the high cost of electricity in the country, it was determined that the highest cost of electricity came from IPP's generating electricity using heavy fuel oil (HFO). In its report to the Senate, the Senate Standing Committee on Energy proposed that IPP's generating electricity using HFO should switch to Liquefied Natural Gas (LNG) and also recommended that the IPP's producing electricity using renewable energy should be given priority during the dispatch of electricity.

This Bill seeks to address that by ensuring that priority is given to IPP's who generate with a sustainable base load and those who generate electricity using renewable energy sources. This will reduce the cost of electricity significantly.

**Mr. Speaker Sir,**

The Energy (Amendment) Bill 2023 (Senate Bills No. 42 of 2023) was published on 1<sup>st</sup> September 2023 and was introduced in the Senate by way of First Reading on Tuesday 17<sup>th</sup> October 2023 and thereafter stood committed to the Senate Standing Committee on Energy for consideration and facilitation of public participation.

In Compliance with the provisions of Article 118 of the Constitution and Standing Order 145(5) of the Senate Standing Orders, the Committee proceeded to undertake public participation on the Bill. In this regard, the Committee published an advertisement in the Daily Nation and Standard newspapers on Thursday, 19<sup>th</sup> October 2023 inviting members of the public to submit written memoranda to the Committee on the Bill by 3<sup>rd</sup> November, 2023.

The Committee received written submissions from one (1) stakeholder namely the Council of Governors of Kenya.

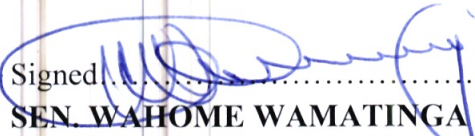
**Mr. Speaker Sir,**

This bill is as a result of the inquiry conducted by the Committee on the high cost of Electricity in the Country. I want to thank Sen. Edwine Watanya Sifuna, MP a member of this Committee, who has sponsored the amendment bill to the Energy Act, 2019. I want to commend the members of the Committee for their devotion and commitment to duty, which made consideration of the Bill successful.

I also want to thank the offices of the Speaker and the Clerk of the Senate for the support extended to the Committee in undertaking this assignment.

**Mr. Speaker Sir,**

It is now my pleasant duty and privilege, on behalf of the Standing Committee on Energy Committee, pursuant to Standing Order 223(6), to present a report on The Energy (Amendment) Bill 2023 (Senate Bills No. 42 of 2023).

Signed..... ..... Date.....

**SEN. WAHOME WAMATINGA MP**  
**CHAIRPERSON, STANDING COMMITTEE ON ENERGY**

## **CHAPTER ONE**

### **1.1. BACKGROUND**

1. The Energy (Amendment) Bill 2023 (Senate Bills No. 42 of 2023) was published on 1<sup>st</sup> September 2023 and was introduced in the Senate by way of First Reading on Tuesday, 17<sup>th</sup> October 2023 and thereafter stood committed to the Senate Standing Committee on Energy for consideration and facilitation of public participation.
2. The principal object of the Bill is to amend the Energy Act, 2019 to provide for transparency in energy purchase agreements. The rationale for disclosure of the beneficial ownership information is to create an accurate public disclosure regime that provides transparency in the beneficial ownership and control structures of companies. This aids in not only promoting investor confidence and good corporate governance practices but also in uncovering tax evasion schemes, money laundering practices, corruption schemes, and other illegal activity involving either one or more companies.

### **1.2.OVERVIEW OF THE BILL**

3. The proposed Bill intends to amend section 134 of the Energy Act, 2019 through enhancing the regulation of energy purchase agreements through reinforcements of the constitutional requirements of transparency and accountability.
4. It proposes this by ensuring that a generating entity shall sell energy to a licensed entity listed in the Third Schedule of the Energy Act 2019.
5. The proposed Bill further proposed the placing obligations on the nature of the energy purchasing agreement through ensuring statutory compliance with Article 201 of the Constitution. The Bill further proposes that the energy purchasing agreement should only be entered into with a generating entity that has disclosed and registered full beneficial ownership in accordance with the Companies Act, 2015.
6. The proposed Bill intends to ensure that a purchasing entity in an energy purchasing agreement shall conduct a feasibility study prior to the procurement. The purpose of the feasibility study is to identify whether there is enough demand for electricity which cannot be met by the existing production.
7. The Bill further proposes that the procurement process shall strictly comply with the procedure of the Public Procurement and Assets Disposal Act and that priority is given to companies dealing with renewable energy.

8. The Bill also proposes that EPRA should not approve an energy purchase agreement that fails to comply with the requirements set out in the Bill.

### **1.3.CONSEQUENCE OF THE BILL**

9. If enacted, the Bill will enhance the legal compliance requirements of energy purchase agreements. It shall further create greater transparency in purchase of electric energy from private generators, thus ensuring that the contracts entered into are financially sound and thus protect consumers from inflated energy prices.