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REPUBLIC OF KENYA



TWELFTH PARLIAMENT – THIRD SESSION – 2019

THE NATIONAL ASSEMBLY

THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

.....

REPORT ON THE CONSIDERATION OF SENATE AMENDMENTS TO THE PUBLIC
PRIVATE PARTNERSHIPS (AMENDMENT) BILL, 2017

CLERKS CHAMBERS
DIRECTORATE OF COMMITTEE SERVICES
PARLIAMENT BUILDINGS
NAIROBI

APRIL, 2019

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ACRONYMS

ODM	-	Orange Democratic Movement
FORD-K	-	Forum for the Restoration of Democracy-Kenya
CCU	-	Chama Cha Uzalendo
MCC	-	Maendeleo Chap Chap
WDM-K	-	Wiper Democratic Movement-Kenya

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CHAIRPERSON'S FOREWORD

This report contains the Committee's proceedings of its consideration of the Senate amendments to the Public Private Partnerships (Amendment) Bill, 2017. The Public Private Partnerships (Amendment) Bill, 2017 was passed by the National Assembly on **31st July, 2018** and thereafter conveyed to the Senate in accordance with the provisions of Article 110(4) of the Constitution. Subsequently, the Senate considered the Bill and passed it with amendments on **Wednesday, 20th February, 2019**. The amendments were thereafter conveyed to the Departmental Committee on Finance and National Planning on **5th March, 2019**. The Committee subsequently considered the amendments on 28th March, 2019 as contained in this report.

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 the consideration of 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.

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 Senate amendments to the Public Private Partnerships (Amendment) Bill, 2017.

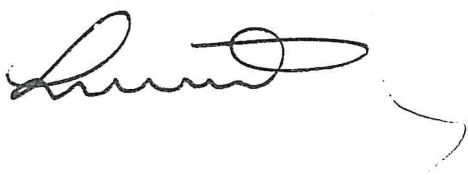


EXECUTIVE SUMMARY

The Public Private Partnerships (Amendment) Bill, 2017 was considered and passed with amendments by the Senate on **Wednesday, 20th February, 2019**. The amendments were then sent to the National Assembly for consideration vide a message from the Speaker of the Senate to the Speaker of the National Assembly. The amendments were then committed to the Departmental Committee on Finance and National Planning for consideration on **5th March, 2019**.

The Bill seeks to amend the Public Private Partnerships Act, 2013, to recognize county governments as distinct contracting authorities for public-private partnerships projects. To achieve this, the Bill makes provisions for guidelines to be made by the Cabinet Secretary to facilitate the manner in which county governments may deal with public-private partnerships arrangements.

The Bill regulates the process through which contracting entities engage with private entities in the provision of services and the establishment of facilities through public private partnership agreements. If enacted, the Bill will regulate the manner in which county governments carry out public private partnerships.

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1.0 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:
 - a) 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;
 - b) To study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation;
 - c) **To study and review all the legislation referred to it;**
 - d) 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;
 - e) 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;
 - f) 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);
 - g) To examine treaties, agreements and conventions;
 - h) To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
 - i) To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
 - j) 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.

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3. In executing its mandate, the Committee oversees the following government Ministries/ Commissions

1. The National Treasury and Ministry of Planning
2. Ministry of Devolution
3. Commission for Revenue Allocation
4. Office of the Controller of Budget
5. Salaries and Remuneration Commission

1.3 COMMITTEE MEMBERSHIP

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

1. The Hon. Joseph K. Limo, MP – **Chairperson** – Kipkelion East Constituency – Jubilee Party
2. The Hon. Isaac W. Ndirangu – **Vice-Chairperson** – Roysambu Constituency – Jubilee Party
3. The Hon. Jimmy O. Angwenyi, MP – Kitutu Chache North Constituency – Jubilee Party
4. The Hon. Christopher Omulele, MP – Luanda Constituency – ODM Party
5. The Hon. Dr. Enoch Kibunguchy, MP – Likuyani Constituency – FORD-K
6. The Hon. Shakeel Shabbir Ahmed, MP – Kisumu Town East – Independent
7. The Hon. Abdul Rahim Dawood, MP – North Imenti Constituency – Jubilee Party
8. The Hon. Daniel E. Nanok, MP – Turkana West Constituency – Jubilee Party
9. The Hon. Andrew A. Okuome, MP – Karachuonyo Constituency – ODM Party
10. The Hon. David M. Mboni, MP – Kitui Rural Constituency – CCU Party
11. The Hon. Francis K. Kimani, MP – Molo Constituency – Jubilee Party
12. The Hon. Joseph M. Oyula, MP – Butula Constituency – ODM Party
13. The Hon. Joshua C. Kandie, MP – Baringo Central Constituency – MCC Party
14. The Hon. Lydia H. Mizighi, MP – Taita Taveta County – Jubilee Party
15. The Hon. Mohamed A. Mohamed, MP – Nyali Constituency – Independent
16. The Hon. Purity W. Ngirici, MP – Kirinyaga County – Jubilee Party
17. The Hon. Samuel Atandi, MP – Alego Usonga Constituency – ODM Party
18. The Hon. Stanley M. Muthama, MP – Lamu West Constituency – MCC Party
19. The Hon. Edith Nyenze, MP – Kitui West Constituency – WDM-K



1.4 COMMITTEE SECRETARIAT

5. The Committee is facilitated by the following staff -

- 1. Ms. Leah W. Mwaura - **Senior Clerk Assistant/Lead Clerk**
- 2. Ms. Jennifer Ndeto - **Principal Legal Counsel I**
- 3. Ms. Lauren Wesonga - **Clerk Assistant III**
- 4. Mr. Josephat Motonu - **Fiscal Analyst I**
- 5. Mr. Chelang'a Maiyo - **Research Assistant III**
- 6. Mr. John Njoro - **Serjeant-At-Arms**
- 7. Mr. Robert Rop - **Audio Officer**

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2.0 COMMITTEE CONSIDERATION OF THE SENATE AMENDMENTS TO THE PUBLIC PRIVATE PARTNERSHIPS (AMENDMENT) BILL, 2017

2.1 BACKGROUND INFORMATION

6. The Public Private Partnerships (Amendment) Bill, 2017 was considered and passed with amendments by the Senate on Wednesday, 20th February, 2019. The amendments were then sent to the National Assembly for consideration vide a message from the Speaker of the Senate to the Speaker of the National Assembly. The amendments were then committed to the Departmental Committee on Finance and National Planning for consideration on 5th March, 2019.

2.2 SENATE AMENDMENTS TO THE PUBLIC PRIVATE PARTNERSHIPS (AMENDMENT) BILL, 2017

Clause 2

7. That Clause 2 of the Bill be amended:-

- a. in paragraph (a) in the proposed new definition of the term “contracting authority” by deleting the word “corporation” appearing immediately after the words “government or county” in sub-paragraph (ii) and substituting therefor the word “entity”;
- b. by deleting paragraph (b);
- c. inserting the following new paragraph immediately after paragraph (b)-
(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

Clause 7

8. That the Bill is amended by deleting Clause 7.

Clause 8

9. That Clause 8 of the Bill be amended-

- a. in paragraph (a) by deleting the words “county government” appearing immediately after the words “approval by the” in the proposed new proviso and substituting therefor the words “county assembly”;
- b. by inserting the following new paragraph immediately after paragraph (b)-
 - (c) in subsection (3) by inserting the words “in consultation with the Council of County Governors” immediately after the words “the Cabinet Secretary shall”.

Clause 12

10. That Clause 12 of the Bill be amended-

In the proposed new subsection (1) by deleting the words “in consistence” appearing immediately after the words “this Act and” and substituting therefore the word “consistent”.

Clause 16

11. That Clause 16 of the Bill be amended-

- (a) in the proposed new section 54A by deleting subsection (2) and substituting therefore the following new subsection-

(2) where a county government intends to enter into a public private partnership agreement, it shall cause its user department or county entity, as the case may be to prepare a project proposal

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for approval by the respective county assembly, setting out the strategic and operational benefits of entering into such an agreement.

Clause 19

12. That 19 of the Bill be amended-

- a. in paragraph (a)(ii) by inserting the word “relevant” immediately after the words “persons with such” in the proposed new paragraph (b);
- b. in paragraph (a)(ii) by inserting the words “having relevant experience and knowledge” immediately after the words “opposite gender” in the proposed new paragraph (ba).

New Clause 4A

13. That the Bill be amended by inserting the following new Clause immediately after Clause 4-

4A. 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 “two”;
- c) inserting the words “and infrastructure” immediately after the words “responsible for transport” in paragraph (i); and
- d) deleting paragraph (j).

New Clause 5A

14. 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.

New Clause 20

15. **THAT** the Bill be amended by inserting the following new Clause immediately after Clause 19-

20. The Principal Act is amended by inserting the following section immediately after section

70-

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) a financial statement with respect to each project;
 - 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 the-
 - a) National Assembly;
 - b) Senate;
 - c) respective county assemblies in which a project is being undertaken under this Act; and
 - d) Controller of Budget.
- 4) Parliament and the County Assemblies to which a report is submitted under subsection (3) 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.



4.0 PROPOSED COMMITTEE STAGE AMENDMENTS

16. The Committee considered the proposed Senate amendments to the Public Private Partnerships (Amendment) Bill, 2017 and proposed further amendments as follows:-

CLAUSE 2

17. THAT, the Senate amendments to section 2 be amended by deleting the proposed amendment to paragraph (b) and substituting therefor the following amendment-

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

Justification

The amendment is intended to retain the definition as was in the Act which was allowing a contracting authority to appoint a transaction advisor. It is also intended to give the Unit a statutory basis for hiring transaction advisors.

NEW CLAUSE 4A

18. THAT, the Senate amendments to section 4 be amended—

- (a) in paragraph (b) by deleting the word “two” and substituting therefor the word “three”
- (b) by deleting paragraphs (c) and (d).

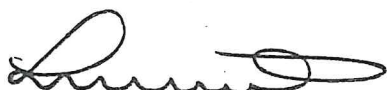
Justification

(a) It is intended to have at least three private sector members in the Public Private Partnership Committee. This will enable the Committee to draw from critical project related professions among them engineers, lawyers and accountants.

(b) The Ministry of Transport, Public Works and Housing has the State Departments of Infrastructure and Housing which are both headed by Principal Secretaries. It is important for both PSs to be members of the Committee.

NEW CLAUSE 5A

19. THAT, the Senate amendments to the proposed Clause 5A be amended by inserting the words “before signing a project agreement” immediately after the word “maintain”.



Justification

The timing of public participation is crucial to the implementation of the Projects. The amendment is intended to ensure that public participation is carried out before the project agreement is signed.

NEW CLAUSE 20

20. THAT, the Senate amendments to proposed section 70A be amended—

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

(c) the financial and other performance indicators of the project during the year under review;

Justification

The responsibility for preparing project financial statements in PPP contracts rests with the private sector partner. Neither the committee nor the National Treasury would have access to financial statement on PPP projects at the end of each financial years. The Committee will, however, have access to financial reports prepared and submitted by project companies periodically.

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

(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.

(c) in subsection (4) by deleting the words “Parliament and the county assemblies to which a report is submitted under subsection (3) shall, in accordance with their respective standing orders-“ and substituting therefor the following words “The National Assembly and the Senate shall, in accordance with their respective standing orders-”

Justification

The proposal by the Senate which had some Executive bodies, that is the Cabinet and the Commission on Revenue Allocation, receiving the report and giving feedback on the report would have created difficulty in terms of harmonizing the same. The amendment provides for only the National Assembly and the Senate to give feedback the Committee .

(d) in subsection (5) be deleting the words “take into account” and substitute therefor the word “consider”.



Justification

The requirement to take into account makes it mandatory for the Committee to adopt the recommendations of either the National Assembly or the Senate.

SIGNED.......... DATE.....*2/2/19*.....

THE HON. JOSEPH LIMO, MP

CHAIRPERSON

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

REPUBLIC OF KENYA



NATIONAL ASSEMBLY

DEPARTMENTAL COMMITTEE ON FINANCE & NATIONAL PLANNING
ADOPTION SCHEDULE FOR THE REPORT ON THE CONSIDERATION OF SENATE
AMENDMENTS TO THE PUBLIC PRIVATE PARTNERSHIPS (AMENDMENT) BILL, 2017

DATE: 2ND APRIL, 2019

NAME	SIGNATURE
1. HON. JOSEPH K. LIMO, MP – CHAIRMAN	
2. HON. ISAAC W. NDIRANGU – VICE-CHAIRMAN	
3. HON. JIMMY O. ANGWENYI, MGH, MP	
4. HON. CHRISTOPHER OMULELE, MP	
5. HON. ENOCH KIBUNGUCHY, MP	
6. HON. SHAKEEL SHABBIR AHMED, CBS, 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	

MINUTES OF THE 16TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
FINANCE AND NATIONAL PLANNING HELD ON TUESDAY, 2ND APRIL, 2019 AT
THE MEDIA CENTRE 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. Shakeel Shabbir Ahmed, CBS, MP
6. Hon. Abdul Rahim Dawood, MP
7. Hon. Daniel E. Nanok, MP
8. Hon. David M. Mboni, MP
9. Hon. Joseph M. Oyula, 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. Andrew A. Okuome, MP
2. Hon. Joshua C. Kandie, MP
3. Hon. Lydia H. Mizighi, MP

ABSENT

1. Hon. Dr. Enoch Kibunguchy, MP
2. Hon. Stanley M. Muthama, MP
3. Hon. Francis K. Kimani, MP

INATTENDANCE – COMMITTEE SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Ms. Leah Mwaura | - | Senior Clerk/Lead Clerk |
| 2. Ms. Jennifer Ndeto | - | Principal Legal Counsel |
| 3. Ms. Laureen Wesonga | - | Third Clerk Assistant |
| 4. Mr. Josephat Motonu | - | Fiscal Analyst |
| 5. Mr. Chelang'a Maiyo | - | Research Assistant |
| 6. Mr. Robert Rop | - | Audio Officer |
| 7. Mr. Vitalis Augo | - | Office Assistant |

AGENDA

1. Prayers
2. Preliminaries/Introductions
3. Communication from the Chair
4. Confirmation of Minutes
5. Matters Arising
6. **Meeting to:-**
 - i. **Adopt the report on the consideration of the Senate amendments to the Public Private Partnerships (Amendment) Bill, 2017**
 - ii. **Consider the Public Petition regarding the Zero Rating of Textbooks, Journals and Periodicals by Mr. Njoroge Waweru**
 - iii. **Consider the Parliamentary Pensions (Amendment) Legislative Proposal, 2018 by Hon. Wangari Mwaniki, MP**
7. Adjournment/ Date of the next meeting

MIN.NO.NA/F&NP/2019/088: PRELIMINARIES/COMMUNICATION FROM THE CHAIRPERSON

The Chairperson called the meeting to order at 10.20 am and a prayer was said. Agenda of the day was adopted having been proposed by Hon. Daniel Nanok, MP and seconded by Hon. Samuel Atandi, MP.

MIN.NO.NA/F&NP/2019/089: CONFIRMATION OF MINUTES

Minutes of the following sittings were confirmed:-

1. 10th sitting after being proposed and seconded by Hon. Rahim Dawood, MP and Hon. Daniel Nanok, MP respectively.
2. 11th sitting after being proposed and seconded by Hon. Joseph Oyula, MP and Hon. David Mboni, MP respectively.
3. 12th sitting after being proposed and seconded by Hon. Shakeel Shabbir, MP and Hon. David Mboni, MP respectively.
4. 13th sitting after being proposed and seconded by Hon. David Mboni, MP and Hon. Joseph Oyula, MP respectively.
5. 14th sitting after being proposed and seconded by Hon. Purity Ngirici, MP and Hon. Joseph Oyula, MP respectively.
6. 15th sitting after being proposed and seconded by Hon. David Mboni, MP and Hon. Purity Ngirici, MP respectively.

MIN.NO.NA/F&NP/2019/090: MATTERS ARISING

The following matter arose from the confirmed minutes:-

Under minutes of the 14th Sitting

It was noted that Hon. Shakeel Shabbir Ahmed, MP's name had been recorded twice.

MIN.NO.NA/F&NP/2019/091: ADOPTION OF THE REPORT ON THE
CONSIDERATION OF THE SENATE AMENDMENTS
TO THE PUBLIC PRIVATE PARTNERSHIPS
(AMENDMENT) BILL, 2017

The report on the consideration of the Senate amendments to the Public Private Partnerships (Amendment) Bill, 2017 was adopted after being proposed and seconded by Hon. Abdul Rahim Dawood, MP and Hon. Samuel Atandi, MP respectively. The Committee agreed on the following proposed amendments:-

CLAUSE 2

THAT, the Senate amendments to section 2 be amended by deleting the proposed amendment to paragraph (b) and substituting therefor the following amendment-

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

Justification

The amendment is intended to retain the definition as was in the Act which was allowing a contracting authority to appoint a transaction advisor. It is also intended to give the Unit a statutory basis for hiring transaction advisors.

NEW CLAUSE 4A

THAT, the Senate amendments to section 4 be amended—

- (a) in paragraph (b) by deleting the word “two” and substituting therefor the word “three”
- (b) by deleting paragraphs (c) and (d).

Justification

- (a) It is intended to have at least three private sector members in the Public Private Partnership Committee. This will enable the Committee to draw from critical project related professions among them engineers, lawyers and accountants.
- (b) The Ministry of Transport, Public Works and Housing has the State Departments of Infrastructure and Housing which are both headed by Principal Secretaries. It is important for both PSs to be members of the Committee.

NEW CLAUSE 5A

THAT, the Senate amendments to the proposed Clause 5A be amended by inserting the words “before signing a project agreement” immediately after the word “maintain”.

Justification

The timing of public participation is crucial to the implementation of the Projects. The amendment is intended to ensure that public participation is carried out before the project agreement is signed.

NEW CLAUSE 20

THAT, the Senate amendments to proposed section 70A be amended—

- (a) in subsection (2) by deleting paragraph (c) and substituting therefor the following new paragraph-
 - (c) the financial and other performance indicators of the project during the year under review;

Justification

The responsibility for preparing project financial statements in PPP contracts rests with the private sector partner. Neither the committee nor the National Treasury would have access to financial statement on PPP projects at the end of each financial years. The Committee will, however, have access to financial reports prepared and submitted by project companies periodically.

- (b) by deleting subsection (2) and substituting therefor the following new subsection-
 - (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.
- (c) in subsection (4) by deleting the words “Parliament and the county assemblies to which a report is submitted under subsection (3) shall, in accordance with their respective standing orders- “and substituting therefor the following words “The National Assembly and the Senate shall, in accordance with their respective standing orders-”

Justification

The proposal by the Senate which had some Executive bodies, that is the Cabinet and the Commission on Revenue Allocation, receiving the report and giving feedback on the report would have created difficulty in terms of harmonizing the same. The amendment provides for only the National Assembly and the Senate to give feedback the Committee.

- (d) in subsection (5) be deleting the words “take into account” and substitute therefor the word “consider”.

Justification

The requirement to take into account makes it mandatory for the Committee to adopt the recommendations of either the National Assembly or the Senate.

MIN.NO.NA/F&NP/2019/092: CONSIDERATION OF THE PUBLIC PETITION REGARDING THE ZERO RATING OF TEXTBOOKS, JOURNALS AND PERIODICALS BY MR. NJOROGE WAWERU

The Committee went through the Public Petition in which the Petitioner provides the following grounds in support of the Value Added Tax, Zero Rating of textbooks, journals and periodicals:-

- i) That Value Added Tax is premised on the real value of products – goods and services – and not necessarily the pricing. Therefore, the value of books is not quantifiable in monetary terms for both the publishers and the Kenya Revenue Authority (KRA).
- ii) The need for promotion of education and lifelong learning on the populace should prompt the government to grant the tax incentive so as to encourage the reading culture in the country.
- iii) The natures of distribution channels of books sometimes follow a non-conventional value chain. For instance, there are cases where books are donated to anonymous people to satisfy the passion for reading; learning institutions in the first world donating books to their counterparts in Kenya where there is low scholarly publishing acumen; and children from cities donating books to their counterparts in the rural and other far flung areas.
- iv) The Value Added Tax is applicable to both old and new text books at the standard 16% which is a deviation from norm in terms of the value associated with the two categories.
- v) The petition avers that Kenya and indeed world over, there is no Value Added taxation of books and journals sold online. This, he claims, is discrimination against printed text books which are sold to people in rural areas where there is no access to internet.

The Committee Secretariat gave an analysis of the Petition and advised the Committee to either consider the Petition and resolve to address the matter as a Committee or resolve to advise the Petitioner to submit the Petition to the National Treasury for consideration and inclusion into the tax measures in the FY 2019/20.

Members' Deliberations

The Secretariat was directed to:-

1. write to the National Treasury, Kenya Revenue Authority and the Kenya Publishers' Association seeking for their comments on the Petition;
2. invite the Petitioner for a meeting with the Committee to consider the Petition;
3. find out from the National Treasury how much has been collected from the Value Added Tax on books and how many tax exemptions have been given from 2013 to date and to whom; and
4. write to the Speaker requesting for more time to consider the Petition.

MIN.NO.NA/F&NP/2019/093: CONSIDERATION OF THE PARLIAMENTARY PENSIONS (AMENDMENT) LEGISLATIVE PROPOSAL, 2018 BY HON. WANGARI MWANIKI, MP

Hon. Mwaniki informed the Committee that former Members of Parliament had presented their grievances to the Budget and Appropriations Committee from where she decided to take up the matter and seek for a solution to their problems hence the drafting of the proposed the Bill.

From her interaction with former Members of Parliament, it was clear that the most of former MPs were living in squalor conditions since they were either earning very low pension or no pension at all. She noted that the former MPs had diligently served this country and hence should not be left to suffer. She observed that everyone is entitled to a decent livelihood after retirement and MPs are not an exception.

Members' Deliberations

1. Members noted that it was important for MPs who serve for one term to also be entitled to monthly pension.
2. Members noted that former MPs were not state officers since they served before the enactment of the new Constitution and therefore, their pension should not be set by the Salaries and Remuneration Commission.
3. The Secretariat was directed to:-
 - i. whether former MPs' pension is taxed and
 - ii. find out how the pension of Cabinet Secretaries is computed.

MIN.NO.NA/F&NP/2019/094: ANY OTHER BUSINESS



Hon. Shakeel Shabbir, MP informed the meeting that the Lake Basin Development Authority had given a Chinese Developer their title deed with which the developer took a loan. The matter is now under investigation by the Ethics and Anti-Corruption Commission. The secretariat was tasked to go through the Committee's records and find out the deliberations that the Committee had on the matter so that the Committee can prepare a response if required by the EACC.

MIN.NO.NA/F&NP/2019/094: ADJOURNMENT

There being no other business to deliberate on, the meeting was adjourned at 12.30 p.m. The next meeting will be held on Thursday, 4th April, 2019.

HON. JOSEPH K. LIMO, MP

(CHAIRPERSON)

SIGNED.....DATE..........

MINUTES OF THE 15TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
FINANCE AND NATIONAL PLANNING HELD ON THURSDAY, 28TH MARCH, 2019
IN 11TH FLOOR PROTECTION HOUSE AT 10.00 AM

PRESENT

1. Hon. Isaac W. Ndirangu, MP- Vice Chairperson
2. Hon. Jimmy O. Angwenyi, MGH, MP
3. Hon. Abdul Rahim Dawood, MP
4. Hon. Daniel E. Nanok, MP
5. Hon. David M. Mboni, MP
6. Hon. Andrew A. Okuome, MP
7. Hon. Joseph M. Oyula, MP
8. Hon. Mohamed A. Mohamed, MP
9. Hon. Stanley M. Muthama, MP
10. Hon. Purity Ngirici, MP
11. Hon. Samuel Atandi, MP
12. Hon. Lydia H. Mizighi, MP

APOLOGY

1. Hon. Joseph K. Limo, MP - Chairperson
2. Hon. Shakeel Shabbir Ahmed, CBS, MP
3. Hon. Christopher Omulele, MP
4. Hon. Joshua C. Kandie, MP
5. Hon. Edith Nyenze, MP
6. Hon. Francis K. Kimani, MP

ABSENT

Hon. Dr. Enoch Kibunguchy, MP

INATTENDANCE – COMMITTEE SECRETARIAT

- | | | |
|------------------------|---|---------------------------|
| 1. Ms. Laureen Wesonga | - | Third Clerk Assistant |
| 2. Ms. Jennifer Ndeto | - | Principal Legal Counsel I |
| 3. Mr. Chelang'a Maiyo | - | Research Officer III |
| 4. Mr. Robert Rop | - | Audio Officer |
| 5. Mr. John Njoro | - | Serjeant-At-Arms |
| 6. Mr. Vitalis Augo | - | Office Assistant |

AGENDA

1. Prayers
2. Preliminaries/Introductions
3. Communication from the Chair
4. Confirmation of Minutes
5. Matters Arising
6. **Meeting to consider:-**
 - i. **the report on consideration of County Statistics Bill (Senate Bill No. 9 of 2018);**
 - ii. **the report on the consideration of the proposed Public Procurement and Asset Disposal (Amendment) Bill, 2018 by Hon. Florence Mutua-Waingah, MP**
 - iii. **Senate amendments to the Public Private Partnerships (Amendment) Bill, 2017**
7. Adjournment/ Date of the next meeting

MIN.NO.NA/F&NP/2019/082: PRELIMINARIES/COMMUNICATION FROM THE CHAIRPERSON

The Chairperson called the meeting to order at 10.22 am and prayed. He then introduced the day's agenda and welcomed the Committee for a fruitful deliberation. Adoption of the agenda

MIN.NO.NA/F&NP/2019/083: CONFIRMATION OF MINUTES

Agenda deferred

MIN.NO.NA/F&NP/2019/084: ADOPTION OF THE REPORT ON THE CONSIDERATION OF THE COUNTY STATISTICS BILL (SENATE BILL NO. 9 OF 2018)

The report on the consideration of the County Statistics Bill (Senate Bill No. 9 of 2018) was considered paragraph by paragraph and adopted after being proposed and seconded by Hon. Abdul Rahim Dawood, MP and Hon. Joseph Oyula, MP respectively. The Committee agreed on the following proposed amendments:-

CLAUSE 2

THAT, Clause 2 of the Bill be amended by deleting the definition of the term "Fund".

Justification

The word is not used in the Bill.

CLAUSE 4

THAT, Clause 4 (1) of the Bill be amended –

- (a) in paragraph (d) by deleting the word "all";
- (b) in paragraph (h) by inserting the word "county" immediately before the word "statistics"

Justification

To ensure clarity of functions of Kenya National Bureau of Statistics and County Statistics Office.

CLAUSE 8

THAT, the Bill be amended in subsection (4) by deleting the word “it” and substituting therefor the words “the technical committee”

Justification

It is a clean-up.

CLAUSE 11

THAT, the Bill be amended in clause 11 by deleting-

- (a) the words “consult and” appearing in subsection (1);
- (b) the word “that” appearing immediately after the word “ensure” in subsection (2).

Justification

- (a) This is to foster independence and interdependence between the two levels of government.
- (b) The word that has been repeated.

CLAUSE 12

THAT, clause 12 of the Bill be amended in subsection (3) by deleting the word “it” appearing in paragraph (a).

Justification

It is a clean-up.

CLAUSE 16

THAT, the Bill be amended by inserting the word “statistical” immediately before the word “information”.

Justification

This is to specify the kind of information to be sought from the county statistician.

CLAUSE 19

THAT, the Bill be amended in Clause 19 by deleting the words “one hundred thousand” and substituting therefor the words “five hundred thousand”.

Justification

Kshs. 100,000 is low considering the severity of the offences that touch on data.

MIN.NO.NA/F&NP/2019/085: ADOPTION OF THE REPORT ON THE CONSIDERATION OF THE PUBLIC PROCUREMENT AND ASSET DISPOSAL (AMENDMENT) LEGISLATIVE PROPOSAL, 2018 BY HON. FLORENCE MUTUA-WAINGAH, MP

The Committee considered and adopted the report after being proposed and seconded by Hon. Jimmy Angwenyi, MP and Hon. Daniel Nanok, MP respectively. They observed and recommended as follows:-

Committee Observations

The Committee observed as follows on the proposed Bill, THAT:-

1. the proposed amendment to section 2 of the Public Procurement and Asset Disposal Act, 2015 will limit the definition of the word products as it will exclude products that are neither plants nor animals.
2. the proposed amendment to Section 155 of the Public Procurement and Asset Disposal Act, 2015 will help in the growth of the local market since it will increase demand for local products.

Committee Recommendations

1. The Committee found merit and supported the proposed amendments to Section 155 of the Public Procurement and Asset Disposal Act, 2015
2. The proposed amendment to Section 2 should be redrafted in a manner that does not exclude general products.

Members' Deliberations

In their submission on the proposed Public Procurement and Asset Disposal (Amendment) Bill, 2018, Kenya Law Reform Commission stated that the current government policy provides that government entities should reserve not less than thirty percent of their annual procurement budget of goods manufactured, mined, extracted, produced or grown in Kenya.

The secretariat was directed to write a letter to the National Treasury and Ministry of Planning requesting them to provide information on:-

- i. status of implementation of the above policy
- ii. status of implementation of the policy which provides that thirty percent of a public entity's annual procurement budget should be allocated to women and youth

MIN.NO.NA/F&NP/2019/086: CONSIDERATION OF SENATE AMENDMENTS TO THE PUBLIC PRIVATE PARTNERSHIPS (AMENDMENT) BILL, 2017

The Committee deliberated on the Senate amendments to the Public Private Partnerships (Amendment) Bill, 2017 and agreed as follows:-

Clause 2

- (a) Agreed to

- (b) Amend by including words “the unit” immediately before the words “contracting authority”

Justification

The amendment is intended to enable the Unit to have a statutory basis for hiring transaction advisors for and on behalf of contracting authorities.

- (c) Agreed to

Clause 7: Agreed to

Clause 8

- (a) Agreed to
- (b) Agreed to

Clause 12: Agreed to

Clause 16: Agreed to

Clause 19

- (a) Agreed to
- (b) Agreed to

New Clause 4A

4A.

- (a) Agreed to
- (b) Amend by deleting the word “two” and substituting with the word “three”

Justification

This will enable the Committee to draw from critical project related professions among them engineers, lawyers and accountants.

- (c) Rejected
- (d) Rejected

Justification

The Ministry of Transport, Public Works and Housing has the State Departments of Infrastructure and Housing which are both headed by Principal Secretaries. It is important for both PSs to be members of the Committee.

New Clause 5A

Amend by adding the words “before signing a project agreement” immediately after the word “maintain”

Justification

This is to give contracting authorities freedom to comply with the requirement but in a manner that supports efficient project delivery.

New Clause 20

70A

- (1) Agreed to
- (2) (a) Agreed to

(b) Agreed to

(c) amend as follows, “the financial and other performance indicators of the project during the year under review”

Justification

The responsibility for preparing project financial statements in PPP contracts rests with the private sector partner. Neither the committee nor the National Treasury would have access to financial statement on PPP projects at the end of each financial years. The Committee will, however, have access to financial reports prepared and submitted by project companies periodically.

(d) Agreed to

(e) Agreed to

(3) (a) National Assembly for National Government projects

(b) Senate for County Government projects

(c) Delete

(d) Agreed to

(4) delete the words “county assemblies”

(a) Agreed to

(b) Agreed to

(c) Agreed to

(5) Redraft

MIN.NO.NA/F&NP/2019/087: ADJOURNMENT/DATE OF THE NEXT MEETING

There being no other business to deliberate on, the meeting was adjourned at 12.25 p.m. The next meeting will be held on Tuesday, 2nd April, 2019.

HON. JOSEPH K. LIMO, MP

(CHAIRPERSON)

SIGNED  DATE..... 2/4/19