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REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – FOURTH SESSION – 2020

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING
.....

REPORT ON THE CONSIDERATION OF THE PRESIDENT'S MEMORANDUM ON THE
PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL, 2020

CLERKS CHAMBERS
DIRECTORATE OF COMMITTEE SERVICES
PARLIAMENT BUILDINGS
NAIROBI

JULY, 2020

TABLE OF CONTENTS

CHAIRPERSON'S FOREWARD	3
1 PREFACE	4
1.1 ESTABLISHMENT OF THE COMMITTEE	4
1.2 MANDATE OF THE COMMITTEE	4
1.3 Committee Membership	5
1.4 Committee Secretariat	6
2 THE PRESIDENT'S RESERVATIONS TO THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL, 2020	7
2.1 REASONS FOR REFUSAL TO ASSENT TO THE BILL	7
2.2 RECOMMENDATION	7
3 CONSIDERATION OF THE PRESIDENT'S MEMORANDUM ON THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL, 2020	8
4 COMMITTEE RECOMMENDATION	8

CHAIRPERSON'S FOREWARD

The Public Finance Management (Amendment) Bill, 2020 was passed by the National Assembly on **Wednesday, 6th May, 2020**. The Bill was seeking to amend the Public Finance Management Act, 2012 to empower the Parliamentary Service Commission to establish a fund for Parliament or a House of Parliament. It also sought to amend the Act to require the approval of the National Assembly on borrowing and guaranteeing of loans by the National Government.

In line with the powers conferred by Article 115 of the Constitution, H.E. the President expressed his reservation to assent to the Public Finance Management (Amendment) Bill, 2020. Consequently, the Memorandum was sent to the National Assembly on **Thursday, 11th June, 2020** detailing the reasons for his reservations. Thereafter, H.E. the President's Memorandum was referred to the Departmental Committee on Finance and National Planning for consideration.

H.E. the President recommended the **deletion of section 2A** of the Bill as proposed by the House and replacing it with the following new section, **“(2A) Notwithstanding the provisions of subsection (1), the Parliamentary Service Commission may, with the approval of the National Assembly, establish the following public funds; (a) Parliamentary Mortgage (Members) Scheme Fund; (b) Parliamentary Mortgage (Staff) Scheme Fund; (c) Parliamentary Car Loan (Members) Scheme Fund; (d) Parliamentary Car Loan (Staff) Scheme Fund; and (e) Parliamentary Catering Fund; for purposes of Parliament or a House of Parliament.”**

The Committee proceeded to consider H.E. the President's Memorandum during a meeting held on Wednesday, 1st July, 2020. The deliberations formed the basis on which the Committee made its decision.

The Committee thanks the Offices of the Speaker and the Clerk of the National Assembly for the technical support extended to it in the process of considering the President's reservations to the Public Finance Management (Amendment) Bill, 2020. In addition, I thank Members of the Committee and the Secretariat for their sacrifice and commitment in considering the reservations to the Public Finance Management (Amendment) Bill, 2020.

Hon. Speaker, the Committee having considered H.E. the President's Memorandum and recommendations therein **ADOPTS** the reservations to the Public Finance Management (Amendment) Bill, 2020.

Hon. Joseph Limo, MP

Chairperson, Departmental Committee on Finance and National Planning

1 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:
 - i. 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;
 - ii. To study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation;
 - iii. **To study and review all the legislation referred to it;**
 - iv. 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;
 - v. 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;
 - vi. 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);
 - vii. To examine treaties, agreements and conventions;
 - viii. To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
 - ix. To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
 - x. 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.
3. In executing its mandate, the Committee oversees the following government Ministries and departments:
 - a. The National Treasury and Ministry of Planning
 - b. Ministry of Devolution and ASAL
 - c. The Commission on Revenue Allocation
 - d. Office of the Controller of Budget
 - e. Salaries and Remuneration Commission

1.3 Committee Membership

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

Hon. Joseph K. Limo, MP (**Chairperson**)
MP for Kipkelion East Constituency
Jubilee Party

Hon. Isaac W. Ndirangu (**Vice-Chairperson**)
MP for Roysambu Constituency
Jubilee Party

Hon. Jimmy O. Angwenyi, MP
MP for Kitutu Chache North Constituency
Jubilee Party

Hon. Joseph M. Oyula, MP
MP for Butula Constituency
ODM Party

Hon. Christopher Omulele, MP
MP for Luanda Constituency
ODM Party

Hon. Joshua C. Kandie, MP
MP for Baringo Central Constituency
MCC Party

Hon. Dr. Enoch Kibunguchy, MP
MP for Likuyani Constituency
FORD-K

The Hon. Lydia H. Mizighi, MP
MP for Taita Taveta County
Jubilee Party

Hon. Shakeel Shabbir Ahmed, MP
MP for Kisumu Town East
Independent Member

Hon. Mohamed A. Mohamed, MP
MP for Nyali Constituency
Independent Member

Hon. Abdul Rahim Dawood, MP
MP for North Imenti Constituency
Jubilee Party

Hon. Purity W. Ngirici, MP
MP for Kirinyaga County
Jubilee Party

Hon. Daniel E. Nanok, MP
MP for Turkana West Constituency
Jubilee Party

Hon. Samuel Atandi, MP
MP for Alego Usonga Constituency
ODM Party

Hon. Andrew A. Okuome, MP
MP for Karachuonyo Constituency
ODM Party

Hon. Stanley M. Muthama, MP
MP for Lamu West Constituency
MCC Party

Hon. David M. Mboni, MP
MP for Kitui Rural Constituency
CCU Party

The Hon. Edith Nyenze, MP
MP for Kitui West Constituency
WDM-K

Hon. Francis K. Kimani, MP
MP Molo Constituency
Jubilee Party

1.4 Committee Secretariat

5. The Committee is facilitated by the following Secretariat:-

Ms. Leah W. Mwaura
Senior Clerk Assistant/Head of the Secretariat

Ms. Jennifer Ndeto
Principal Legal Counsel 1

Ms. Laureen Wesonga
Clerk Assistant II

Mr. Josephat Motonu
Fiscal Analyst I

Mr. Chelang'a Maiyo
Research Officer II

Mr. John Njoro
Serjeant-At-Arms

Ms. Euridice Nzioka
Audio Officer

2 THE PRESIDENT'S RESERVATIONS TO THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL, 2020

In his Memorandum, H.E the President submitted that:-

2.1 REASONS FOR REFUSAL TO ASSENT TO THE BILL

6. Clause 2 of the Bill was seeking to amend section 24 of the Public Finance Management Act, 2012 as passed by the House was inserting the following subsection-
 - 2A. Notwithstanding the provisions of subsection (1), the Parliamentary Service Commission may, with the approval of the National Assembly, establish any other fund for the purpose of Parliament or a House of Parliament.

7. When the Bill was referred to the H.E the President for assent, he declined to assent based on the fact that the said section 24(1) of the Public Finance Management Act, 2012 establishes a Parliamentary Fund, while section 24(4) empowers the Cabinet Secretary for the National Treasury to establish public funds with the approval of the National Assembly. As such the proposed subsection (2A) would amount to duplication of funds for Parliament since one has already been established. Furthermore, the proposed amendment, if enacted in its current form would lead to the duplication of roles with respect to the creation of public funds leading to an adverse impact on the principal of separation of powers between the Executive and the Legislature regarding their respective roles in the management of public monies.

2.2 RECOMMENDATION

8. For the foregoing reasons, H.E. the President recommended that the Bill should be amended in clause 2 by deleting the proposed section 2A and substituting therefor the following new section:-
 - (2A) Notwithstanding the provisions of subsection (1), the Parliamentary Service Commission may, with the approval of the National Assembly, establish the following public funds-
 - (a) Parliamentary Mortgage (Members) Scheme Fund;
 - (b) Parliamentary Mortgage (Staff) Scheme Fund;
 - (c) Parliamentary Car Loan (Members) Scheme Fund
 - (d) Parliamentary Car Loan (Staff) Scheme Fund; and
 - (e) Parliamentary Catering Fund,for purposes of Parliament or a House of Parliament.

3 CONSIDERATION OF THE PRESIDENT’S MEMORANDUM ON THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL, 2020

9. The Committee held a meeting on **Wednesday, 1st July, 2020** to deliberate on H.E the President’s reservations to the Public Finance Management (Amendment) Bill, 2020. In considering the Memorandum, the Committee noted that the H.E the President’s reasons for refusal to assent the Bill were valid and his recommendations were specifying the Funds that the Parliamentary Service Commission can establish. With that in mind, the Committee agreed to support the recommendation and the reasons advanced therein.

4 COMMITTEE RECOMMENDATION

10. The Committee having considered the H.E the President’s reservations to the Public Finance Management (Amendment) Bill, 2020 and pursuant to Article 115 of the Constitution, recommended that the House fully **adopts** H.E the President’s recommendations as follows:-

THAT, the Bill be amended in Clause 2 by deleting the proposed section 2A and substituting therefor the following new section:-

(2A) Notwithstanding the provisions of subsection (1), the Parliamentary Service Commission may, with the approval of the National Assembly, establish the following public funds;

- (a) Parliamentary Mortgage (Members) Scheme Fund;**
 - (b) Parliamentary Mortgage (Staff) Scheme Fund;**
 - (c) Parliamentary Car Loan (Members) Scheme Fund;**
 - (d) Parliamentary Car Loan (Staff) Scheme Fund; and**
 - (e) Parliamentary Catering Fund;**
- for purposes of Parliament or a House of Parliament.**

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

THE HON. JOSEPH LIMO, MP

CHAIRPERSON

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

**ADOPTION OF THE REPORT ON THE CONSIDERATION OF THE PRESIDENT'S
MEMORANDUM ON THE PUBLIC FINANCE MANAGEMENT (AMENDMENT)
BILL, 2020**

1. The following Members acceded to the Committee's recommendation to be considered by the House having been physically present in the meeting:-

- i. Hon. Joseph Limo, MP – Chairperson
- ii. Hon. Isaac Ndirangu, MP – Vice Chairperson
- iii. Hon. Christopher Omulele, MP
- iv. Hon. Daniel Nanok, MP
- v. Hon. David Mboni, MP
- vi. Hon. Kuria Kimani, MP
- vii. Hon. Joshua Kandie, MP
- viii. Hon. Samuel Atandi, MP
- ix. Hon. Stanley Muthama, MP

2. The following Members acceded to the Committee's recommendation to be considered by the House having been physically present in the meeting:-

- i. Hon. Jimmy Angwenyi, MGH, MP
- ii. Shakeel Shabbir Ahmed, CBS, MP
- iii. Hon. Abdul Rahim Dawood, MP
- iv. Hon. Andrew Okuome, MP
- v. Hon. Joseph Oyula, MP
- vi. Hon. Lydia Mizighi, MP
- vii. Hon. Purity Ngirici, MP
- viii. Hon. Edith Nyenze, MP

MINUTES OF THE 36TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON WEDNESDAY, 1ST JULY, 2020 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 2.30 PM

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. Andrew A. Okuome, MP
9. Hon. David M. Mboni, MP
10. Hon. Francis K. Kimani, MP
11. Hon. Joseph M. Oyula, MP
12. Hon. Joshua C. Kandie, MP
13. Hon. Lydiah Mizighi, MP
14. Hon. Purity Ngirici, MP
15. Hon. Samuel Atandi, MP
16. Hon. Stanley M. Muthama, MP
17. Hon. Edith Nyenze, MP

ABSENT WITH APOLOGY

1. Hon. Dr. Enoch Kibunguchy, MP
2. Hon. Mohamed A. Mohamed, MP

INATTENDANCE

SECRETARIAT

1. Ms. Leah Mwaura - Senior Clerk Assistant/Head of the Secretariat
2. Ms. Jennifer Ndeto - Principal Legal Counsel I
3. Ms. Laureen Wesonga - Clerk Assistant II
4. Ms. Euridice Nzioka - Audio Officer
5. Mr. Vitalis Augo - Office Attendant

AGENDA

1. Prayers
2. Communication from the Chairperson
3. Confirmation of Minutes
4. Matters Arising
5. **Consideration of H.E the Presidents' reservations to the Public Finance Management (Amendment) Bill, 2020**
6. **Pre-vetting briefing for the nominee to be appointed to the position of Auditor General**
7. Adjournment/Date of the next meeting

MIN.NO.NA/F&NP/2020/167: COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 2.50pm and a prayer was said. The Chairperson informed the Committee that he was in receipt of a letter from the Whip of the Majority party notifying him

of the decision of the Jubilee Party on the intention to discharge him off from his duties as the Chairperson of the Committee. Given that the seven days' notice was lapsing that day, the Chairperson would be chairing that sitting as the last one. Members thanked him for his abilities to steer the Committee to be one of the best Committees whose business formed the bulk of the House's agenda. They observed that his exemplary leadership style allowed the Committee to work harmoniously. He also thanked the Members and the Secretariat for the support accorded to him during his tenure as Chairperson. He then proceeded to officially hand over to the Vice Chairperson to continue chairing Committee meetings until such a time that the position of the Chairperson will be substantially filled. Thereafter, he welcomed the meeting to deliberate on the day's agenda.

MIN.NO.NA/F&NP/2020/168: CONFIRMATION OF MINUTES

Minutes of the following Sittings were confirmed:-

1. 24th Sitting having been proposed and seconded by Hon. Samuel Atandi, MP and Hon. Purity Ngirici, MP respectively;
2. 25th Sitting having been proposed and seconded by Hon. Francis Kimani, MP and Hon. Lydiah Mizighi, MP respectively;
3. 26th Sitting having been proposed and seconded by Hon. Christopher Omulele, MP and Hon. Jimmy Angwenyi, MP respectively;
4. 27th Sitting having been proposed and seconded by Hon. Edith Nyenze, MP and Hon. Andrew Okuome, MP respectively;
5. 28th Sitting having been proposed and seconded by Hon. Joshua Kandie, MP and Hon. Stanley Muthama, MP respectively;
6. 29th Sitting having been proposed and seconded by Hon. Joseph Oyula, MP and Hon. Purity Ngirici, MP respectively;
7. 30th Sitting having been proposed and seconded by Hon. Andrew Okuome, MP and Hon. Joshua Kandie, MP respectively;
8. 31st Sitting having been proposed and seconded by Hon. Samuel Atandi, MP and Hon. Joseph Oyula, MP respectively;
9. 32nd Sitting having been proposed and seconded by Hon. Francis Kimani, MP and Hon. Christopher Omulele, MP respectively;
10. 33rd Sitting having been proposed and seconded by Hon. Abdul Rahim Dawood, MP and Hon. Francis Kimani, MP respectively;
11. 34th Sitting having been proposed and seconded by Hon. David Mboni, MP and Hon. Samuel Atandi, MP respectively; and
12. 35th Sitting having been proposed and seconded by Hon. Stanley Muthama, MP and Hon. Edith Nyenze, MP respectively.

MIN.NO.NA/F&NP/2020/169: MATTERS ARISING

No matters arose from the confirmed minutes.

MIN.NO.NA/F&NP/2020/170: CONSIDERATION OF THE PRESIDENT'S RESERVATIONS TO THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL, 2020

The Legal Counsel took the Committee through the President's Reservations on the Public Finance Management (Amendment) Bill, 2020. The Committee deliberated extensively on the Memorandum and adopted the President's recommendations on the Bill.

The report on the consideration of the President’s Memorandum on the Public Finance Management (Amendment) Bill, 2020 was adopted by the Committee having been proposed and seconded by Hon. Joshua Kandie, MP and Hon. Francis Kimani, MP respectively.

MIN.NO.NA/F&NP/2020/171: PRE-VETTING BRIEFING ON THE NOMINEE FOR THE POSITION OF AUDITOR GENERAL

The Committee Clerk briefed the Members on a brief background on Ms. Nancy Janet Kabui Gathungu whose name had been forwarded by H.E. the President for approval by the House for the position of the Auditor General. The summary contained details on her professional and educational background, as well as her professional affiliations. The Committee was also taken through the procedure and the process that was used to arrive at the nominee which was obtained from the report of the Selection Panel.

The Chairperson encouraged Members to avail themselves for the meeting on the approval hearing of the nominee which was scheduled to take place on Friday, 3rd July, 2020 in the Mini Chamber on First Floor, County Hall, Parliament Buildings at 10.00am.

MIN.NO.NA/F&NP/2020/172: ANY OTHER BUSINESS

Hon. David Nanok, MP and Hon. Christopher Omulele, MP thanked Members of the Committee for the support that they had accorded them following the bereavement of their wife and mother respectively.

MIN.NO.NA/F&NP/2020/173: ADJOURNMENT/DATE OF NEXT MEETING

There being no other business to deliberate on, the meeting was adjourned at 5.01p.m. The next meeting will be held on Friday, 3rd July, 2020.

**HON. JOSEPH K. LIMO, MP
(CHAIRPERSON)**

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



THE CONSTITUTION OF KENYA

REFUSAL TO ASSENT TO THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL, 2020

MEMORANDUM

By His Excellency the Honourable
Uhuru Kenyatta, President and
Commander-in-Chief of the Kenya
Defence Forces.

Submitted to the Speaker of the National
Assembly.

WHEREAS a Bill entitled "A Bill for An Act of Parliament to amend the Public Finance Management Act, 2012", the short title of which is "The Public Finance Management (Amendment) Bill, 2020", was passed by the National Assembly on the 6th May, 2020;

AND WHEREAS the Public Finance Management (Amendment) Bill, 2020, was presented to me for

assent in accordance with the provisions of the Constitution, on the 28th May, 2020;

NOW THEREFORE, in exercise of the powers conferred on me by Article 115 (1) (b) of the Constitution, I refuse to assent to the Public Finance Management (Amendment) Bill, 2020, for the reasons set out hereunder:

CLAUSE 2

Clause 2 of the Bill seeks to amend section 24 of the Act by inserting the following new subsection—

(2A) Notwithstanding the provisions of subsection (1), the Parliamentary Service Commission may, with the approval of the National Assembly, establish any other fund for the purpose of parliament or a House of Parliament.

Section 24 (1) of the Public Finance Management Act, 2012, establishes a Parliamentary Fund, while section 24

(4) empowers the Cabinet Secretary for the National Treasury to establish public funds with the approval of the National Assembly. The proposed subsection (2A) shall lead duplication of Funds for Parliament since one has already been established. Furthermore, the proposed amendment, if enacted in its current form, shall lead to the duplication of roles with respect to the creation of public Funds. This shall have an adverse impact on the principle of separation of powers between the Executive and the Legislature regarding their respective roles in the management of public monies.

RECOMMENDATION:

For the foregoing reasons, I recommend that the Bill be amended in clause 2 by deleting proposed section 2A and substituting therefor the following new section—

(2A) Notwithstanding the provisions of subsection (1), the Parliamentary Service Commission may, with the approval of the

National Assembly, establish the following public funds—

- (a) Parliamentary Mortgage (Members) Scheme Fund;**
- (b) Parliamentary Mortgage (Staff) Scheme Fund;**
- (c) Parliamentary Car Loan (Members) scheme Fund;**
- (d) Parliamentary Car Loan (Staff) Scheme Fund; and**
- (e) Parliamentary Catering Fund,**

for purposes of Parliament or a House of Parliament.

Dated the 11th of June, 2020.



**UHURU KENYATTA,
President.**