PARLIAMENT OF KENYA

NATIONAL ASSEMBLY

A REPORT OF THE DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING AND TRADE ON THE CONSIDERATION OF THE COUNTY GOVERNMENT (AMMENDMENTS) BILL 2014 (BILL NO. 1 OF 2014)

NOVEMBER, 2014

PREFACE

Mr. Speaker, Sir

The Committee on Finance, planning & Trade is one of the Departmental Committees of the National Assembly established under Standing Order 216 and mandated to, inter alia; **'to study and review all legislations referred to it'.**

Mr. Speaker, Sir

The Committee on Finance, Planning & Trade was constituted by the House on Thursday 16th May, 2013 comprising of the following members:

1. The Hon. Benjamin Langat, MP **(Chairman)**
2. The Hon. Nelson Gaichuhie, MP **(vice Chairman)**
3. The Hon. Jones M Mlolwa, MP
4. The Hon. Anyanga, Andrew Toboso, MP
5. The Hon. Timothy M .E. Bosire, MP
6. The Hon. Ahmed Shakeel Shabbir Ahmed, MP
7. The Hon. Joash Olum, MP
8. The Hon. Dr. Oburu Oginga, MP
9. The Hon. Patrick Makau King'ola, MP
10. The Hon. Abdullswamad Sheriff, MP
11. The Hon. Sumra Irshadali, MP
12. The Hon. Ogendo Rose Nyamunga, MP
13. The Hon. Iringo Cyprian Kubai, MP
14. The Hon. Dennis Waweru, MP
15. The Hon. Tiras N. Ngahu, MP
16. The Hon. Sakaja Johnson, MP
17. The Hon. Jimmy Nuru Angwenyi, MP
18. The Hon. Ronald Tonui, MP
19. The Hon. Mary Emase, MP
20. The Hon. Joseph Limo, MP
21. The Hon. Lati Lelelit, MP
22. The Hon. Kirwa Stephen Bitok, MP
23. The Hon. Sammy Mwaita, MP
24. The Hon. Daniel E. Nanok, MP
25. The Hon. Eng. Shadrack Manga, MP
26. The Hon. Abdul Rahim Dawood, MP
27. The Hon. Sakwa John Bunyasi, MP
28. The Hon. Alfred W. Sambu, MP
29. The Hon. Sammy Koech, MP

Mr. Speaker, Sir,

On 28th February 2014, the County Governments (Amendment) Bill, 2014 (Senate Bill No.1) was published and was duly processed and passed by the Senate on 6th August, 2014. The Bill was thereafter forwarded to the National Assembly for processing Pursuant to standing Order 143.

Mr. Speaker, Sir,

On 20th August 2014, you informed the House that you had received the County Governments (Amendment) Bill, 2014 (Senate Bill No.1) from the Senate and directed that the Departmental Committee on Finance, Planning and Trade considers it in line with the provisions of Articles 114 & 188 and Standing Order 126.

Mr. Speaker, Sir,

In processing the Bill, the Committee invited views from the Ministry of Devolution and Planning, the Attorney General, the Commission on Implementation of the Constitution and the Transition Authority. In their comments, the Attorney General and the Transition Authority opposed the enactment of this Bill indicating that it is the mandate of the Country Governments to decide on the self governance of counties as envisaged in objects of devolution it Article 174 of the Constitution, a view the Committee concurs with.

Mr. Speaker, Sir,

The Committee is thankful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee wishes to thank all the stakeholders for their participation in scrutinizing the Bill. Finally, I wish to express my appreciation to the Honourable Members of the Committee who sacrificed their time to participate in the activities of the Committee and preparation of this report.

Mr. Speaker, Sir,

It is therefore my pleasant duty and privilege, on behalf of the Departmental Committee on Finance, Planning & Trade, to table its report in the House on the consideration of the County Governments (Amendment) Senate Bills No.1 of 2014 for consideration Pursuant to Standing Order 127

Signed ....Date 12th NOV. 2014

(HON. BENJAMIN LANGAT, MP)

CHAIRPERSON,

DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE

CONSIDERATION OF THE COUNTY GOVERNMENT (AMENDMENTS) BILL 2014 (BILL NO. 1 OF 2014) ON COUNTY GOVERNMENT HEADQUARTERS

1.0 INTRODUCTION

i. The Bill proposes to introduce **a *new clause 6A***, which provides for the physical location in which the headquarters of each county government shall be situated.

ii. It further provides that a County Assembly may by the resolution of **at least two thirds** of the members of the Assembly and with **the approval of the Senate transfer the County Government Headquarters** from the physical location specified in the Third Schedule to such other physical location as it may consider appropriate.

iii. It emphasizes on Public Participation to be undertaken by the County Assembly before passing the resolution to transfer the physical location of the County Government Headquarter.

2.0 SITUATIONAL ANALYSIS

i. Devolution of power and resources from the National to County levels of governments under the Constitution of Kenya 2010 is a measure designed to promote access to resources and services by Kenyans.

ii. The relationship between National Government and County Governments has provoked debate, not least the implications for the ongoing the transfer of County Government Headquarters.

iii. The County Executive Committee has the powers to transfer its headquarters provided the move is set as a motion to the Senate.

iv. Disputes over the constitution and administration of Counties are causing tension in several locations. In some areas, groups are locked in debates over the best location for the County Headquarters.

2.1 DISPUTES OVER LOCATION FOR COUNTY HEADQUARTERS

Reasons for disputes over location for County Headquarters include:

i. The fear of marginalization if the headquarter is far from one's community.

   This has manifested in Bungoma County, where the Sabaot in Mt Elgon district prefer to have the headquarters close to their homeland (in Webuye or Kimilili) in contrast to the planned location in Bungoma town.

ii. There is also the fear that there will be unequal distribution of resources within Counties based on the physical location of the County Headquarters.

iii. There is also conflict over the delineation of political and administrative boundaries. There are fears that some constituencies will be carved out to advantage particular political leaders and/or parties and ethnic groups.

iv. Counties run the risk of perpetuating identity-based divisions as local politicians seek ethnic alliances to propel them to County seats from where County Headquarters are located.

v. Other Counties which have had issues with the location of the County Headquarter include: **Baringo, Tharaka Nithi, Kiambu, Laikipia, Nyamira, Nyandarua and Meru among others.**

2.2 COMMENTS FROM STAKEHOLDERS ON THE AMENDMENTS

A. The **Office of the Attorney General** had the following comments:

i. The Office opposes the amendment since a County Government is a body corporate which may enter into a contract and acquire, purchase or lease any land pursuant to section 6 of the Act. As a legal person having the said powers, it has the right to decide its residence or physical location. Except for Nairobi, Mombasa and Kisumu which are a capital city and cities respectively (***Sections 6 and 60 of the Urban Areas and Cities Act)*** the rest of physical locations specified in the Schedule are currently not urban Areas since they are not yet classified as such under the Urban Areas and Cities Act.

ii. Section 2 of the Urban Areas and Cities Act, 2011, defines an Urban Area to mean a municipality or town. Section 9 and 10 of the same Act further provides for the criteria for eligibility for an urban area to be classified as a municipality or a town. For an area to be classified as an Urban Area, it must have been conferred with the status of a municipality or town upon satisfying the criteria set out in the Act.

iii. Transition Authority has the responsibility (***Section 54 of the Urban Areas and Cities Act, 2011***) to classify Urban Areas and Cities during the transition period. However, there is no such conferment that has been done since most areas do not meet the criteria set out under the Act.

iv. The government has initiated the process of amending Sections 9 and 10 of the Urban areas and Cities Act to enable many areas to satisfy the criteria and be classified accordingly.

v. Determination of the physical location of a county government should be left to the respective County governments corporate. Where any dispute arises, the Senate which represents the counties and serves to protect the interests of the counties and their governments as provided under Article 96, should then be the one to decide on the dispute.

vi. It is the view of the Office of the Attorney General that the amendments that would been useful are the ones providing for the criteria which county governments should consider while determining the physical locations of their respective county governments and that reference should be made to the provisions of ***Articles 188 (2)*** of the Constitution which provides for the factors to take into consideration when altering the boundaries of a county. Such factors could, with necessary modifications, be provided for under the County Governments Act, 2012 for purposes of guiding the county governments when determining the physical locations of county governments.

B. Comments from the Transition Authority.

The Authority expressed reservations on the Bill submitting that determination of a the physical location of County Governments headquarters is the mandate of the County Governments as envisaged in Article 174 of the Constitution:

i. *To give powers of self-governance to the people and enhance the participation of the people in the exercise of the powers of the state and in making decisions affecting them.*

ii. *To recognize the right of communities to manage their own affairs and to further their development.*

iii. *To promote social and economic development and the provision of proximate, easily accessible thought Kenya.*

iv. *Each County should have the liberty to decide for itself the seat of its Government.*

3.0 COMMITTEE OBSERVATIONS

i. Although the spirit of the Amendments proposed to the ***County Governments Act, 2012, Bill No. 1*** is to give certainty to residents of counties and other stakeholders on the physical location of the County Governments and on where they may seek services offered by the County Governments, it contravenes the Constitution and the spirit of devolution as mentioned by the Key relevant stakeholders.

ii. Most of the proposed county government headquarters are classified as urban areas whereas some do not meet the threshold to be urban areas according to standards set in the **Urban Areas and Cities Act, 2011**.

iii. Urban area" means a municipality or a town and should have infrastructural facilities, including but not limited to roads, street lighting, markets and fire stations, and an adequate capacity for disaster management which the urban areas don't have

4.0 COMMITTEE RECOMMENDATION

Having considered the views of the stakeholders and analyzed the Bill, the Committee is of a considered opinion that County governments have the right and should be left to decide its residence or physical location except for the City Counties (***Sections 6 and 60 of the Urban Areas and Cities Act)***. The amendments proposed in the Bill negate the spirit of Devolution and **therefore the Bill should not be read a second time.** The Committee therefore proposes the following amendments:

CLAUSE 3
THAT, clause 3 be deleted

CLAUSE 4
THAT, clause 4 be deleted

CLAUSE 2
THAT, clause 2 be deleted

CLAUSE 1
THAT, clause 1 be deleted

LONG TITLE

THAT, the Long title be deleted

TITLE
THAT, the title be deleted.

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MINUTES OF THE 55TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE HELD ON THURSDAY 16th OCTOBER, 2014 IN THE COMMITTEE ROOM 4TH FLOOR CONTINENTAL HOUSE PARLIARMENT BUILDINGS, AT 10.00AM

Present

1. Hon. Benjamin Langat, MP - **Chairperson**
2. Hon. Nelson Gaichuhie, MP - **Vice-Chairperson**
3. Hon. Dr. Oburu Oginga, MP
4. Hon. Jimmy Nuru Angwenyi, MP
5. Hon. Eng. Shadrack Manga, MP
6. Hon. Shakeel Shabbir Ahmed, MP
7. Hon. Sammy Mwaita, MP
8. Hon. Anyanga Andrew Toboso, MP
9. Hon. Abdul Rahim Dawood ,MP
10. Hon. Daniel Epuyo Nanok, MP
11. Hon. Iringo Cyprian Kubai, MP
12. Hon. Kirwa Stephen Bitok, MP
13. Hon. Joseph Limo, MP
14. Hon. Lati Lelelit, MP
15. Hon. Ogendo Rose Nyamunga, MP
16. Hon. Ronald Tonui, MP
17. Hon. Timothy Bosire, MP
18. Hon. Mary Emase, MP
19. Hon. Patrick Makau King'ola, MP

Absent with Apologies

1. Hon. Alfred Sambu, MP
2. Hon. Tiras Ngahu, MP
3. Hon. Joash Olum, MP
4. Hon. Dennis Waweru, MP
5. Hon. Sammy Koech, MP
6. Hon. Sakaja Johnson, MP
7. Hon. Sumra Irshadali, MP
8. Hon. Abdullswamad Shariff, MP
9. Hon. Jones Mlolwa, MP
10. Hon. Sakwa John Bunyasi, MP

IN ATTENDANCE

1. Ms. Esther Nginyo Third Clerk Assistant
2. Mr. Fredrick Otieno Third Clerk Assistant

3. Mr. Joash Kosiba	Fiscal Analyst
4. Ms. Catherine Burure	Fiscal Analyst
5. Mr. Alex Kanyi	Fiscal Analyst
6. Mr. Charles Atamba	Research Officer

MIN.NO. DCF/257 2014 PRELIMINARIES

The Vice Chairperson called the meeting to order at 10:30AM followed with a word of prayer.

MIN.NO. DCF/258/2014: PRE-PUBLICATION SCRUTITY OF THE PENSION (AMENDMENT) BILL, 2014.

The Parliamentary Budget Office presented the following on the legislative proposal:

I. Overview of the Draft Bill.

1. The legislative proposal seeks to amend the Pensions Act such that the retirement age of all public officers is reduced from sixty (60) years to fifty five (55) years
2. The proposal provides that :
   (i) The Public officers with the exception of doctors and lecturers/professors will be required to retire upon attaining the age of fifty five (55) years.
   (ii) The Public officers will be able to choose to retire upon attaining fifty (50) years.
3. The Bill seeks to amend the relevant sections of the Pensions Act, Parliamentary Service Act, the Judicial Service Commission Act, the National Police Service Act and the Public Service Superannuation Act to reduce the retirement age to fifty five (55) years. This is provided for in Clauses 2 and 3 of the draft Bill
4. The proposal provides that the Public officers who have already attained the age of fifty five (55) and above will not be affected by the amendments.

II. Situational Analysis

(a) Civil Service Pension Scheme in Kenya

5. The civil service pension scheme in Kenya is a membership pension scheme that provides periodic monthly pension payment to its members upon meeting some qualifying conditions one of them being normal retirement age for the length of the time the member shall live after retirement until death.
6. The scheme does offer a death in service payment in cases of the untimely death of members. The civil service is designed as a defined benefits (DB) scheme which predefines the amount of benefits a member will earn at any one time upon retirement using a set and known formula.

7. The retirement age of Public officers is presently set at sixty (60) years. This is provided for by Section 27 of the Public Service Superannuation Scheme Act, 2012. However, the Public officers have the option of retiring upon attaining the age 50 years. This came to effect on 1st April 2009 after the amendment of the Pensions Act, which originally provided for the retirement age to be at 55 years old with the option of one leaving five years earlier. The retirement age used to be 55 years and was raised to 60 years in order to align it with the East African Community member countries and as well as to tame the increasing number of pensioners and pension liabilities.
8. The pension scheme in Kenya is on a Pay As You Go (PAYG) basis, whereby, an employee's benefits are defined and are paid out upon their retirement. The scheme for the public officers in the National and the county governments is non-contributory. However, parastatals have a contributory scheme whereby the employees contribute a predetermined percentage of their basic salary monthly to the pension kitty.
9. The legal provisions of the Pensions Act, Cap 189 provides that the retiree may be paid out benefits in form of a lump sum and an annuity calculated by an actuary on the basis of the expected life span of the retiree. The pension payable to the retiree is computed in proportions of their basic salary and the time period they have served in the civil service.
10. According to Economic Survey 2014, the total number of employees in the public sector is currently 688,500 comprised of 232,000 in the National Government; 277,700 in the Teachers Service Commission; 92,500 in the parastatal bodies; 44,500 in the institutions majorly controlled by Government and 41,600 in the County governments.

11. Currently, there are approximately a total of 220,917 pensioners in Kenya. These include 162,217 live pensioners and 58,700 dependants. It is estimated that an average of 20,000 public officers retire annually.

12. Considering the civil service only: The table shows the number of employees in the Civil service and the amount of salaries pegged to each age profile.

Table 1: Number of employees in the Mainstream Civil service

AGE	NUMBERS
19	32
20-30	53,841
31-40	66,191

41-50	61,538
51-55	36,894
56-60	16,524
61-70	37
71-90	6

Data Source: Directorate of Personnel management.

According to table 1, approximately 53,418 employees in the civil service are expected to retire in five years time if the Bill is enacted. And this excludes other government employees in other sectors such as parastatal bodies.

III. International Comparison

(a) Rwanda

13. In Rwanda, the retirement age is at sixty five (65) years and one can opt to retire upon reaching sixty (60) years. The payments are dependent on the length of service of the employee and the amount of salary they are paid in their last three years of service. If one has 15 years' of service, then the pension will be 30% of your higher average salary in the last 3 or 5 years. If one has more than 15 years' of service, then they earn an additional 2% for each additional year for the rest of their lives. However, one qualifies for the monthly payment only if they have contributed to the scheme for more than 15 years.
14. For the retirees who have contributed to the scheme for lesser years i.e. 15 years and below, they are entitled to a lump sum computed as:

    X* no. of years of service, whereby, **X**= the monthly salary for the retiree in the last three (3) years.

    - In the East Africa Community, the member countries i.e. Uganda, Tanzania and Burundi have the retirement age of the public officers

(b) South Africa

15. There is no formal retirement age in South Africa; however, to become eligible for a state, as of April 2010, the pension age is Sixty (60) years. Currently pension funds pay out a third of the retirement interest in lump sum form and the rest, two-thirds is converted to an annuity. The pensions in South Africa are regulated by the Pension Fund Act, 1956.

(C) Others

16. Other countries such as United Kingdom, United States of America and Belgium have their normal retirement ages set at 68,67 and 65 years respectively. However, one can opt for earlier retirement at the ages of 65, 62 and 60 years. However, Cambodia's public officers retirement age is at 55 years with the option of retiring at 50 years.

IV. Basis for Determining the Financial and Economic Implications/ Assumptions.

17. The following are the assumptions that have been applied in the determination of the Legislative Proposal.

a) The pension is payable in lump sum and hence forth as an annuity as stipulated in Provisions of the Pensions Act, Cap 189.

b) An average of 20,000 employees retire annually and by reducing the retirement age to 55 years the number of retirees will be approximately 40,000 or more.

c) The employees' pensionable pay is determined by the average of the amount of salaries payable to an employee in their last three (3) years of service.

d) Upon the death of the retiree, the pension is paid out to his wife and children (who have not attained the age of twenty four years) i.e. dependents.

e) The reduction of the retirement age to fifty five (55) years will increase the number of retirees in the medium term i.e. the employees who are fifty two (52) years to fifty four (54) years will have retired by the end financial year 2017/18.

f) Due to population increase, the number of retirees is likely to be approximately 30,000 annually after the sixth year. This is a shift from the present 20,000 that retires yearly.

V. Financial Estimates of the legislative proposal.

18. If enacted, the number of retirees is likely to double, for instance if currently the average number of public officers that retire per financial year are 20,000 the number will rise to approximately 40,000.

19. Table 2 shows the estimates of funds allocated to the pension funds in the medium term.

Table 2- Amount of funds allocated for pensions in Ksh Billions

Type of pension	FY 2012/13	2013/14	2014/15	2015/16	2016/17
Ordinary	18.396	18.715	22.271	24.05	24.05
Commuted	9.53	9.21	9.858	25.08	41.78
Other Pension Schemes	0.221	0.221	0.227	0.227	0.227
Total	**28.147**	**28.146**	**32.356**	**49.357**	**66.057**

Source: Printed Estimates 2014/2015.

According to Table 2, the amount of funds allocated has been increasing gradually by approximately Ksh 16 Billion yearly due to economic factors and the increased number of retirees since financial year 2013/14 for instance the amount of funds allocated for pensions in the financial year 2014/15 if approximately Ksh 16 billion more than the amount that was allocated in 2015/16

20. Given that the number of employees retiring will double up the table 3 below shows the amount of funds that the government will be expected to spend on pensions.

Table 3: Financial implication of the Legislative proposal (Billions)

	Base Year	Estimates				
Type of pension	**FY 2013/14**	**FY 2014/15**	**FY 2015/16**	**FY 2017/18**	**FY 2018/19**	**FY 2019/20**
Ordinary	18.715	22.271	24.05	24.05	28.1	30
Commuted	9.21	9.858	25.08	41.78	53.78	67.8
Other Pension schemes	0.112	0.112	0.112	0.112	0.112	0.11
Total (Baseline)	**28.037**	**32.241**	**49.242**	**65.942**	**81.9**	**98**
Impact of additional 20,000 retires		*32.241*	*49.242*	*65.942*	*81.9*	*98*
Total Estimated Pension for the 40,000 retirees per year	**28.037**	**64.482**	**98.484**	**131.884**	**163.9**	**196**
Age categories to retire		54,59	53,58	52,57	51,56	50,55

Source: Treasury, DPM, TSC & Pensions Department.

NB: The figures exclude the refund of pension to the UK Government.

- From the above estimates it estimated that the Government will be required to spend an estimated additional of Ksh 32 billion shillings on pensions to cater for the additional 20,000 retirees. This will raise the amount allocated for pensions from approximately Ksh 64.482 billion to Ksh 98.484 billion.
- This increment is likely to occur in the subsequent financial years and this will result to an estimated total of additional Ksh 327.314 billion in the next five years.

Benefits:

The number of employees being paid by the government will reduce substantially.

VI. Observations.

21. The Bill excludes the employees who are fifty five (55) years and above. This means a fifty-two year old public officer will be required to retire two years before a fifty-five year old public officer this is in contravention of the Bill of rights. The bill may raise some discriminatory issues.

22. It is noted that the Bill categorically excludes other professionals i.e. Doctors, Professors and Lecturers. There is no clear justification for this.

23. The fully pension liabilities could require detailed actuarial analysis to further determine the impact of the provisions of fiscal sustainability.

24. The amount of funds/ tax contributed to the government in form of PAYE and National social security services will reduce gradually as the number of employees contributing to the scheme will reduce substantially. The reduction of retirement age has a negative economic impact as the number of people to be catered for by the pension scheme will be very high and this will put more strain on the few resources available

25. A reduction in the retirement age may further affect the public servants' saving and investment plans which could have a negative impact on their consumption patterns.

26. Given the higher pension expenditures upon enactment of this Bill, the government will not likely step up new employment which then will not solve the problem of youth unemployment at least in the medium term.

27. The number of dependants will increase and the economy growth rate will stagnate, In Kenya, the labour force composed of people between ages of 16-64 years; and with a retirement at 55 years the country will have a huge number of retirees out of work.

28. Apart from the impact on the government there could be other economic impacts such as those arising when individuals retire early relative to if they were allowed to work. This will have a negative impact on the social-economic aspect of the country due to increased crime rates as a result of increase unemployment rate.

VII. Policy Options.

Option	Implication
Accept	▪ The retirement age will be reduced and this will occasion additional cost of approximately Ksh 32 billion to exchequer each financial year. ▪ It is evident that the effect of reducing retirement age will have a substantial budgetary implication. ▪ The actual fiscal costs could exceed these amounts.
Pass with amendments	▪ Some pension schemes of public officers are non-contributory and there may be need to implement the pending Public Service Superannuation Act, 2012 which is still pending

	▪ The estimates elaborated in the table do not capture the full pension liabilities of the public service in Kenya. This suggests that there may be need to have a full actuarial analysis of the effect of the proposal on long-term sustainability on the economy.
Reject	▪ Leave the current practice with the possibility that the Public Service Superannuation scheme, 2012 will be implemented and will solve the problems of the pension system in Kenya.

MIN.NO. DCF/259 2014: COMMITTEE'S OBSERVATIONS

The Committee made the following observation on the Legislative Proposal that;

i. By reducing the retirement age from 60 to 55 years, Kenya will be the only country in the East African Region with the retirement age pegged at 55 years even as the Partner States to seek harmony for purposes of regional integration. It will therefore be inconsistent with the general practice in the East African Region.

ii. Reduction of the retirement age will increase substantially liability to government which currently stands at Kshs. 900 billion. This will be necessitated by the fact that the number of retirees will double as those who will be attaining age 55 and 60 years respectively will be retiring at the same time. This will result into an additional expenses to the exchequer.

iii. The reduction of retirement age will increase the ratio of dependency on the country as most people at 55 years have many dependants. The resultant effect will be stagnation in the country economy leading to a negative socio-economic impact due to social crimes.

iv. Members noted that the legislative proposal should not be published.

MIN.NO. DCF/260/2014: PRE-PUBLICATION SCRUTITY OF THE SALARY AND REMUNERATION COMMISSION (AMENDMENT) BILL, 2014.

The Parliamentary Budget Office made a presentation on the Pre-Publication Scrutiny of the Pension (Amendment) Bill, 2014 as follows;

I. Overview of the Draft Bill.

29. The legislative proposal seeks to amend the Salaries and Remuneration Commission Act to have the Commission prepare and submit a report every **six** (6) months to the National and County Governments on the harmonization of salaries and benefits of all public officers.

30. The Draft Bill provides that the reports prepared by the Commission shall give recommendations to ensure that the Public officers with similar qualifications, with equal number of years in service, in the same profession and performing similar functions are remunerated equally.

31. The proposal provides that the national and county governments shall be required to implement the recommendations of the report within twelve months.

II. Situational Analysis

32. Salaries and Remuneration Commission is an independent body established by Article 230 of the Constitution of Kenya, 2010 and enacted by the Parliament through Salaries and Remuneration Act in July 2011. The mandate the Commission is to:
   a) Set and regularly review the remuneration and benefits of all state officers.
   b) Advise the national and county governments on remuneration and benefits of all other public officers.

33. The salaries and remuneration commission prepares a report **once** every year. The commission's report advises on the harmonization of the salaries and benefits of the state officers as well as the public officer. However, there are no clear timelines on the above.

34. The commission prepares and submits its annual report to the National government and the County governments. However, currently, there is no clear directive on whether the two levels of governments must implement the reports or not.

35. The current wage bill and the number of wage employees in the Kenya is as shown below:

Table 1: The total wage payments in the Public sector (Millions)

Public Sector Items	2009	2010	2011	2012	2013
National Government	57,891.30	64,220.70	73,171.90	88,728.80	102,729.55
Teachers Service Commission	79,699.60	87,844.90	101,859.70	115,276.70	143,456.50
Parastatal Bodies	51,575.40	52,522.30	55,975.60	63,971.40	75,466.90
Majority control by the Government	32,802.70	33,405.00	35,601.40	40,686.80	47,998.10
County governments	10,857.00	11,354.90	11,630.00	12,484.50	19,849.90
Total	232,826.00	249,347.80	278,238.60	321,148.20	389,500.95

Data Source: KNBS Economics survey, 2014.

Table 2: Number of Wage employees in the Public sector (Thousands)

Public sector items	2009	2010	2011	2012	2013
National Government	200.6	212	219.9	222.6	232
Teachers Service Commission	245.4	243	258.7	267.6	277.7
Parastatal Bodies	84.4	84.8	86	90.6	92.5
Majority control by the Government	40.6	40.8	41.4	43.6	44.5
County governments	41	39.2	37.3	37.7	41.6
Total Public officers	**612**	**619.8**	**643.3**	**662.1**	**688.3**

Source: KNBS Economic Survey 2014

III. Basis for Determining the Financial and Economic Implications

36. The employees of similar qualification, equal number of years in the service, in the same profession and performing similar functions are to be paid equally

37. The Wage employment in the Public sector in the year 2013 was approximately 688,500 people.

38. The average Wage earnings per employee in Public Sector in 2013 stood at Kshs 565,755.2. This translates to an average of Ksh 47,147.27 per month per employee in the public sector.

39. The salaries and benefits of all public officers increase annually. This is shown n the Table 3.

Table 3: Average wage earnings per employee per annum.

Public Sector Items	2009	2010	2011	2012	2013
National Government	288,590.60	302,927.70	332,750.90	386,601.80	442,462.00
Teachers Service Commission	324,814.20	361,457.10	393,736.70	430,779.80	516,593.80
Parastatal Bodies	611,130.70	619,689.50	705,717.60	705,717.60	815,809.50
Majority control by the Government	807,862.20	819,172.30	9,328,988.00	932,898.00	1,078,430.00
County governments	264,800.60	289,691.90	331,342.10	331,342.10	477,448.60

Source: KNBS Economic Survey 2014

40. The table above shows the average salaries of all wage employees in the public sector. Taking the year 2013, the average monthly salary for the employees for the National government, Teachers Service Commission, Parastatal Bodies, Institutions with majority control by governments and county government is Kshs. 36,871.33, Kshs. 43,049.33, Kshs. 67,984.13, Kshs. 89,869.17 and Kshs. 39,787.33 respectively.

41. The need to harmonize salaries and benefits of pubic officers will cause a shift of the low-income earners i.e. those at Kshs. 36,871.33 to a higher level.

42. The salaries and benefits of public officers at the higher cadre cannot be lowered as this may attract legal challenges/ avalanche or protracted legal battles as well due to the depreciation in the value of the shilling (inflation)

IV. Financial estimates of the Legislative proposal.

43. Taking into account the average salaries, the average of averages of the salaries per employee per month is as shown in the table below:

Table 4: The weighted average benefits of employees

Public Sector items	Weighted averages.
National Government	36,871.33
Teachers Service Commission	43,049.33
Parastatal Bodies	67,984.13
Majority control by the Government	89,869.17
County governments	39,787.33
Weighted sum	277,561.29
Weighted average	**55,512.26**

Source: KNBS Economic survey, 2014.

44. From the above table, it is shown that on average an employee should be paid Ksh 55,512.26 per month.

For this to apply there will have to be a shift of benefits of the public officers

Assumption used:

a) The salaries of the public officers at the lower cadre are to be benchmarked against Ksh 55,512.26 in order to harmonize their earnings with those at a higher cadre.

b) The public officers earning Ksh 55,512.26 +1 will experience no decrement (due to anticipated legal challenges/ contractual agreements) neither will their benefits be increased

Economically, wages are said to be sticky downwards due to factors like inflation.

Table 5: The variance in the salaries and benefits of the public officers of different institutions.

Public Sector items	Base Year 2013- Average monthly benefits of public officers	Positive deviation of Earnings from the mean Ksh 55,512.26	Total Number of employees earning below the average	Estimated Total amount of funds required to be harmonise the benefits to be the mean of Ksh 55,512.26
National Government	36,871.33	18,640.93	232,200	4,328,423,946.00
Teachers Service Commission	43,049.33	12,462.93	277,700	3,460,955,661.00
Parastatal Bodies	67,984.13	0	-	0
Majority control by the Government	89,869.17	0	-	0
County governments	39,787.33	15,724.93	41,600	654,157,088.00
Total additional benefits per month		**46,828.79**	**551,500**	**8,443,536,695.00**

Source: KNBS Economic Survey, 2014.

45. From the above table, If the recommendation of the SRC reports suggests the need to harmonize public officers' wages and if that means raising the wages of the lowly paid officers to atleast the weighted mean then its implementation will force the government to incur an additional Ksh 101.3 billion in the base year 2013/2014

46. Assuming that the annual increment of benefits is 5% to curb the inflation levels the benefits payable to the public officers in the medium term is as shown in table 5.

Table 6: The estimated total amount of additional funds in the medium term- Monthly

	Estimated additional cost			
	Baseline FY 2013	FY 2015/16 (5% increase)	FY 2016/17(5% increase)	FY 2017/18(5% increase)
Total additional amounts	8,443,536,695.00	8,865,713,529.75	9,309,000,000	9,774,449,166.5
Per year	101,322,440,340.00	106,388,562,357.00	111,708,000,000.00	117,293,389,998.6

From the above table, it is noted that the Government will have to incur an additional Ksh 8.87 billion shillings in order to harmonize the salaries of the public officers. These will result to an additional Ksh 27.8 billion of funds in the medium term spent on compensation of public officers in the medium term monthly. This translates to approximately Ksh 335.4 billion.

V. Observations.

47. The grading of Jobs and the type of job description vary from one organization. For example, the job description and definition of an Economist in parastatal body X differs from that of an Economist in Ministry X.

Benefits

- The increase in benefits will uplift the purchasing power of most public servants and this will boost the economy of the country. There will be established more industries and more businesses will sprout up.
- There will be ease of transfer of services within organizations/ institutions as benefits variance will have lessened.

Disadvantages

- This will be costly to the country's budget.
- This will likely lead to inflation as the amount of money in circulation will be very high.
- The labor cost will rise up, as the private sector will be forced to counter-react by increasing the benefits of its employees

VIII. Policy Options

The committee may consider the following policy options:

Option	Implication
Accept	This will impact a huge wage Bill on the government that may not be sustainable by the country's overwhelmed budget
Pass with amendments	There may be needed to be considering the fact that different organizations have different job descriptions and types. The huge wage Bill will be tamed by other measures like clearing ghost workers.
Reject	There will be no negative impact on the exchequer

MIN.NO. DCF/261/ 2014 COMMITTEE'S OBSERVATIONS

The Committee made the following observation on the Legislative Proposal that;

i. Harmonization of the salaries will result in increase of salaries for the employees who earn below the average pay. This will culminate into an additional wage expenses to the exchequer.

ii. Harmonization of the salaries will reverse the gains made from performance based reward and therefore render public service less competitive and would hamper productivity.

iii. As the Legislative proposal seek to make SRC prepare and submit a report to the national and county governments on the harmonization of salaries, it would not be practicable to do so twice a year.

iv. In conclusion, Members observed that the Legislative Proposal should not be published.

MIN.NO. DCF/262/2014 PRESENTATION BY PARLIAMENTARY BUDGET OFFICE ON THE COUNTY GOVERNMENT BILL (SENATE BILL NO.1).

The Parliamentary Budget Office made a presentation on the County Governments (Amendment) Bill, 2014 as follows;

1. Brief Overview

The Bill seeks to amend Section 2 (interpretation) of the County Governments Act, 2012 to include the definition of a city in the meaning assigned to it under the Urban Areas and Cities Act, 2011.

In Addition, it seeks to determine the physical location of each county government headquarters; specifying each physical location in a new schedule (Third Schedule) to be inserted and giving the Senate a voice in the process of determining the location.

2. Evaluation

The main provisions in the Bill are the amendment of Section 2 of the County Governments Act to include the definition of a city in the meaning assigned to it under the Urban Areas and Cities Act, 2011 and the determination of the physical location of each government as indicated in the newly inserted schedule.

The provisions of the Bill are generally administrative. The Bill simply seeks to assign the administrative headquarters of each county to a specific city, town or area probably to curb the uncertainty over the location of county offices and for purposes of continuity.

The Bill is not a money Bill since it does not deal with taxes, imposition of charges or waivers on a public fund, appropriation, receipt, custody or investment of public money or any matters to do with loans under Article 114(3). Indeed, the Bill concerns the counties and may therefore not fall under the ambit of the definition of a money Bill.

MIN.NO. DCF/263/ 2014 COMMITTEE'S OBSERVATIONS

The Committee made the following observation on the County Government (Amendment) Bill (Senate Bill No. 1);

i. The decision on the location of the County Government should rest with respective county governments. The Senate should only be an arbiter in cases where there are conflicts.
ii. The Senate can only legislate on criteria and guidelines for determining the location as opposed to legislating on where county government should be located.
iii. There is need to ensure thorough consultation when coming up with legislative proposals to avoid over legislating on issues which otherwise would need gazettement.
iv. The Committee resolved that Bill should not be legislated as counties already have established their headquarters.

MIN.NO. DCF/264/ 2014 ANY OTHER BUSINESS

The following matters were raised under this agenda item that;

i. There is need for the Committee to extensively cover its mandate in a bid to impact on the growth of the country's economy. In this regard, there is need for the Committee to align its program with the programs of the Ministries it oversights to achieve this objective.
ii. The Committee should have a retreat with the Kenya Revenue Authority to deliberate on areas of revenue collection enhancement.
iii. Due to the recent closure by two industries, namely; Cadbury (K) Ltd and Eveready (K) Ltd, there is need for the Committee to engage with Kenya Private Sector Alliance and the Kenya Association of Manufacturers to look into ways of supporting industries to avert closures which are leading to massive job loss and over-reliance on imports.
iv. There is need for the Committee to divide itself into various sub-sector groups with specific areas of focus in order to cover the entire mandate of the Committee. The sub-sector groups should be making their reports to the Committee.
v. The Committee resolved that a request to be made to the Director, Committee Services to allocate 4th Floor Committee Room, Continental House to the Committee on Finance, Planning and Trade.

MIN.NO. DCF/265/2014 ADJOURNMENT

The Chairperson adjourned the meeting at 12:57 PM

Signed...**DATE**....28th Oct 2014

V/ **Chairperson**

Date..