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TABLED BY	Sen. Muriuki Kilonzo
COMMITTEE	Finance & Trade
CLERK AT THE TABLE	Kawata Mugoje

REPUBLIC OF KENYA



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TWELFTH PARLIAMENT

REPORT OF THE STANDING COMMITTEE ON FINANCE AND  
BUDGET

ON

THE PROMPT PAYMENT BILL (SENATE BILLS NO. 16 OF 2021)

CLERK CHAMBERS  
THE SENATE  
PARLIAMENT OF KENYA  
NAIROBI

*Rt. Hon. Speaker  
You may approve for  
tabling.  
22/07/21*

JULY 2021

*COS  
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## PREFACE

### Mandate and Functions of the Committee

Article 124 of the Constitution of Kenya, provides for the establishment of Committees by either House of Parliament. Committees are central to the workings, roles and functions of Parliament as set out in Article 94 and more specifically in Article 96 of the Constitution as regards the Senate.

Parliamentary Committees consider policy issues, scrutinize the workings and expenditure of the national and county governments and examine proposals for legislation. The end result of any process in Committees is the report, which is tabled in the House for consideration.

*The Standing Committee on Finance and Budget is established pursuant to Standing Order 218(3) of the Senate Standing Order and is mandated --*

- a) To investigate, inquire into and report on all matters relating to coordination, control and monitoring of the county budgets and to examine --*
- 1. the Budget Policy Statement presented to the Senate;*
  - 2. report on the Budget allocated to Constitutional Commissions and independent offices;*
  - 3. the Division of Revenue Bill, County Allocation of Revenue Bill, and cash disbursement schedule for county governments.*
  - 4. to consider all matters related to resolutions and Bills for appropriations, share of national revenue amongst the counties and all matters concerning the National Budget, including public finance and monetary policies and public debt, planning and development policy; and*
- b) To pursuant to Article 228 (6) of the Constitution, to examine the report of the Controller of Budget on the implementation of the budgets of county governments.*

### **Membership of the Committee**

The Standing Committee on Finance and Budget was constituted by the House on Thursday 14<sup>th</sup> December, 2017 during the First Session of the Twelfth Parliament. The Committee was later reconstituted on Wednesday, 24<sup>th</sup> June, 2020, during the Fourth Session of the Twelfth (12<sup>th</sup>) Parliament. The Committee as currently constituted, comprises the following Members-

1. Sen. Charles Kibiru, M.P. - Chairperson
2. Sen. (Dr.) Ochillo Ayako, EGH, MP - Vice Chairperson
3. Sen. Wetang'ula Moses Masika, EGH, MP - Member
4. Sen. Mutula Kilonzo Junior, CBS, MP - Member
5. Sen. Aaron Cheruiyot, MP - Member
6. Sen. Kimani Wamatangi, MP - Member
7. Sen. Rose Nyamunga, CBS, MP - Member
8. Sen. CPA Farhiya Haji, CBS, MP - Member
9. Sen. Milicent Omanga, MP - Member

## **BACKGROUND AND EXECUTIVE SUMMARY**

The main object of the Bill is to put in place a legal framework to facilitate prompt payment for supply of goods, works and services procured by government entities both at the national and county level.

Prudent management of public funds includes the meeting of financial obligations by procuring entities both at the national and county governments. The Bill further recognizes that apart from giving effect to the principles of public finance, prompt settlement of bills promotes trade and industry and by extension supports the robust growth of the economy.

### **Committee's Recommendations**

The Committee recommends that the Bill be approved with amendments.

## **Acknowledgements**

The Committee acknowledges the contribution made by all the public and private institutions that submitted their memorandum on the Bill. Further, the Committee thanks the Offices of the Speaker and Clerk of the Senate for the support extended to the Committee in execution of its mandate.

Appreciations to all Members of the Committee for their patience, sacrifice and commitment to public service, which enabled the Committee complete the assigned task within the stipulated time.

It is now my pleasant duty and privilege, on behalf of the Standing Committee on Finance and Budget, to present to the Senate, this Report of the Committee on the Prompt Payment Bill (Senate Bills No. 16 of 2021).

**SIGNATURE:** \_\_\_\_\_

**SEN. CHARLES KIBIRU, MP.**

**(CHAIRPERSON, STANDING COMMITTEE ON FINANCE AND BUDGET)**

**DATE:** 22<sup>nd</sup> July, 2021

## CHAPTER ONE

### HIGHLIGHTS OF THE PROMPT PAYMENT BILL, (SENATE BILLS. NO. 16 OF 2021)

1. The Prompt Payment Bill (Senate Bills No. 16 of 2021) was read a First Time in the Senate on 11<sup>th</sup> May, 2021. Thereafter the Bill was committed to the Standing Committee on Finance and Budget for consideration, facilitation of public participation and subsequently tabling of a report.
2. The main object of the Bill is to put in place a legal framework to facilitate prompt payment for supply of goods, works and services procured by government entities both at the national and county level.
3. Article 201 (d) and (c) of the Constitution provides for public finance principles including a requirement that public money shall be used in a prudent and responsible manner.
4. Prudent management of public funds includes the meeting of financial obligations by procuring entities both at the national and county governments. The Bill further recognizes that apart from giving effect to the principles of public finance, prompt settlement of bills promotes trade and industry and by extension supports the robust growth of the economy.
5. Thus, at micro level, the Bill seeks to solve a problem of late payments to the suppliers of goods and services and at a macro level to act as an impetus for growth of business and economic development.

#### **Salient provisions of the Bill**

6. The Bill proposes that a procuring entity in the national or county government pays a supplier by the prescribed payment date. Where a procuring entity fails to pay a

supplier by the prescribed payment date, the Bill provides that the procuring entity shall pay interest to the supplier in accordance with this section on the amount due under the contract for the supply of goods, works, or services. The Bill provides that the maximum interest rate chargeable shall be based on the base rate set and published by the Central Bank of Kenya;

7. The Bill proposes to place an obligation on a procuring entity to ensure that priority is given to the payment of any outstanding debts for the supply of goods and services. It provides that in determining which debts shall be given priority a procuring entity shall have regard to the dates upon which payment fell due and shall pay debts in chronological order;
8. The Bill acknowledges the fact that delayed payments for public contracts is usually compounded by disputes on the terms of the contract, and it proposes that where a procuring entity disputes an invoice, the procuring entity shall, within fourteen days, return the invoice to the supplier and identify in writing any defects in the invoice and require the supplier to correct the defects.
9. The Bill further provides that where a procuring entity disputes an invoice, it shall pay the supplier at least fifty percent of the amount due or as the procuring entity and the supplier may agree.
10. The Bill also provides that a supplier who receives a disputed invoice from a procuring entity shall, within fourteen days, deliver a corrected invoice to the procuring entity. Interest shall accrue upon the expiration of fourteen days after the receipt by the procuring entity of a corrected invoice or after the prescribed payment date, whichever is the later;
11. To ensure implementation of the provisions of the law, the Bill provides that where a supplier has delivered an invoice to the procuring entity and the accounting officer



or the responsible officer of the procuring entity negligently, maliciously or without reasonable cause fails to return the invoice as provided for rectification or pay the amount due commits an offence and is liable, on conviction, to a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years or to both;

12. The Bill delegates legislative powers to the Cabinet Secretary to make regulations generally for the better carrying into effect of any provisions.

## CHAPTER TWO

### 2.0 SUBMISSIONS FROM STAKEHOLDERS

13. This Chapter presents the submission to the Committee from various stakeholders. It highlights the views and recommendations submitted to the Committee.

#### 2.1 SUBMISSION BY THE NATIONAL TREASURY

14. The Cabinet Secretary for National Treasury and Planning submitted the following comments on the Prompt Payment Bill (Senate Bill No. 16 of 2021)-

- i. **Disputed Payments:** Section 6 of the Bill provides for the process of addressing disputes in invoices arising from defects in an invoice. However, there were no clear processes for addressing disputed payment where a supplier presents an invoice for disputed works or services. The Bill should therefore provide that until a dispute was resolved, there should not be any accrual of interest or penalties.
- ii. **Cash Flow Challenges:** the bill does not provide exemption clauses, especially where non-payment for goods and services was caused by reasons beyond the control of an accounting officer. That was especially where there were delayed disbursements of funds to entities due to poor revenue performance or for any other justifiable reason. The bill should only be applicable where accounting officers deliberately delay payments; and
- iii. **Commencement Clause:** The Bill did not provide for clear commencement date of the Bill. That was important to ensure that only pending payments incurred after the enactment of the Bill were subjected to the provisions of the Bill to avoid it abuse.

#### SUBMISSION BY THE NATIONAL GENDER AND EQUALITY COMMISSION (NGEC)

15. The Commission Secretary/Chief Executive Officer for the National Gender and Equality Commission (NGEC) submitted the following comments on the Prompt Payment Bill (Senate Bill No. 16 of 2021).

PROVISIONS	PROPOSED AMENDMENTS	REMARKS/PROPOSAL
<p>Memorandum OF Objects AND reasons provides as follows-; Clauses 4 to 6 of the Bill</p> <p><b>Clause 7</b></p>	<p>Public Procurement and Disposals Act Part v ----- Internal Organisation of Procuring Entities 44. Responsibilities of the accounting officer a) An accounting officer of a public entity shall be primarily responsible for ensuring that the public entity complies with the Act. b) In the performance of the responsibility under subsection (1), an accounting officer shall--- (a) ensure that procurements of goods, works and services of the public entity are within approved budget of that entity; (b) constitute all procurement and asset disposal committees within a procuring entity in accordance with the Act; (c) ensure procurement plans are prepared in conformity with the medium term fiscal framework and fiscal policy objectives and, subject to subsection (3), submit them to the National Treasury; (d) ensure proper documentation of procurement proceedings and safe custody of all procurement records in accordance with the Act (e) ensure compliance with sections 68, 147, 148 and 149 of</p>	<p>The Commission considered the proposals in the proposed Prompt Payment Bill that require prompt payments and the sanctions attached to non-compliance and read together with provisions in Section 44 of the Public Procurement and Disposals Act on the Responsibilities of an Accounting officer and presented the following comments-;</p> <ol style="list-style-type: none"> <li>i. The proposals in the Bill were beneficial to the suppliers and especially Persons with disability, women and youth who would be assured of prompt pay once they supply the goods/works and services.</li> <li>ii. However, on the other hand, the Commission as a public entity noted that the provisions may not be favourable especially considering the fact that most times allocation of funds from the National Treasury may take longer than anticipated even after compliance with Section 44.</li> <li>iii. Public Entities do not have provision for interest or fines in their budgetary allocations.</li> <li>iv. So any interest imposed will still be from the exchequer because public entities do not generate their own revenue and rely on the National Treasury.</li> <li>v. In summary the intention of the Bill is noble but the crucial party who</li> </ol>

	<p>the Public Finance Management Act, 2012 (No. 18 of 2012);</p> <p>(f) approve and sign all contracts of the procuring entity;</p> <p>(g) ensure the procurement and asset disposal process of the public entity shall comply with this Act;</p> <p>(h) ensure that the procurement processes are handled by different professional offices in respect of procurements, initiation, processing and receipt of goods, works and services;</p> <p>(i) submit to the Authority the part in its procurement plan demonstrating application of preference and reservations schemes in relation to the procurement budget within sixty days after commencement of the financial year; and</p> <p>(j) ensure compliance with any other responsibilities assigned by this Act or any other Act of Parliament or as may be prescribed in Regulations.</p> <p><b>Proposal</b></p> <p>Amend Sub clause 4(3) by substituting the words “procuring entity” with the following “The Accounting officer responsible for failure to pay or National Treasury”.</p>	<p>will determine its success is timely release of the funds as per the procurement plan submitted by the National Treasury.</p> <p>vi. And in the event that Treasury does not release the funds as per plan then it should pay the interest which will still be drawn from taxes by the intended beneficiaries.</p> <p>vii. If the failure to pay is due to the negligence of the Accounting Officer, then the officer should be liable personally for the interest payable and not the entity.</p> <p>viii. There is a need for further consultation and agreement with the National Treasury and commitment to release the funds as planned.</p> <p><b>Rationale</b></p> <p>Liability should be attached only to the Accounting Officer or the National Treasury depending on who is liable and not the Entity which does not have an allocation of “interest” and will also protect the entities from multiple cases by suppliers.</p>
Clause 8	Proposed that this clause be deleted.	<p>The penalty imposed on the Accounting Officer in clause 8 for failure to pay without a reasonable cause of one million or to a term of five years is excessive and disproportionate.</p> <p>The Accounting officer is a Public Officer and there are codes that regulate</p>

		<p>the conduct of public servants. The negligence in failure to pay is a gross misconduct and so should be considered as such and not as an offence.</p> <p>The clause should therefore be deleted because section 44(j) of the Public Procurement and Asset Disposal Act has imposed on the officer the duty of compliance and such an Officer should be dealt within the provisions of Employment and Labour laws, and we have also proposed that they will be personally liable for the interest payable.</p>
<p><b>Clause 3.</b></p>	<p><b>Proposal</b>  The Commission proposes the clause to be amended by deleting the balance of the sentence from the word “the national Government ...” and substituting it with the following words “...all public entities making a procurement to which the Public Procurement and Asset Disposal Act applies.”</p>	<p>The clause as provided includes private entities and also limits the public entities to only National and County Government while the Public Procurement Act lists all of the public entities.</p>

**SUBMISSIONS BY KENYA ASSOCIATION OF MANUFACTURERS (KAM)**

16. Ms. Phyllis Wakiaga, the Chief Executive for Kenya Association of Manufacturers (KAM) submitted the following comments on the Prompt Payment Bill (Senate Bill No. 16 of 2021).

<b>CLAUSE</b>	<b>PROPOSAL</b>	<b>JUSTIFICATION</b>
Clause 4(2)	<p>Proposal to amend the clause by adding the words “the Principal amount plus” after the word “pay” to read as follows;</p> <p><i>“A procuring entity who fails to pay a supplier by the proscribed payment date shall, unless otherwise agreed to ad subject to section 5 and 6 pay <b>the principal amount plus</b> an interest to the supplier in accordance with this section the amount due under the contract for the supply of goods, works or services”</i></p>	<p>By adding the principal amount, that removes the possibility of paying the interest only and seeks to protect suppliers.</p>
Clause 4(4)	<p>Proposal to amend the clause by adding the word “<b>full</b>” before the word “amount” in sub clause (a), (b), and (c) to read as follows;</p> <p><i>(4) for purposes of subsection (3) payment shall be taken to have been made when-</i></p> <p><i>(a) the <b>full</b> amount due is received by the supplier</i></p> <p><i>(b) the full amount due is credited by on behalf of or at the direction of the procuring entity to an account nominated by the supplier; or</i></p> <p><i>(c) the supplier is put in a position by the procuring entity to be able by the supplier's own actions to credit the full amount due to such an account”</i></p>	<p>This creates strong ownership of the entire procured goods, works or services.</p> <p>It also ensures that budgeting and procurement are done with integrity and responsibility.</p>
Clause 4 (5)	<p>Proposal to amend the clause by deleting the words “<b>without demand for its payment being made by the</b></p>	<p>This will ensure that the payments by a procuring entity are paid in full, that is the primary amount and the interest. By including the</p>

	<p><b>supplier”</b> after the word services to read as follows;</p> <p><i>“an interest shall not be waived by the supplier and shall be included with the amount due for the supply of goods, works or services”</i></p>	<p>statement “without demand for its payment being made by the supplier” it could lead to a situation where a supplier does not have a means of redress where a procuring entity makes the late payment for the primary amount of supply of goods, works or services but does not make the payment on the interest.</p>
<p>Clause 4 Prompt payment of accounts</p>	<p>Proposal to amend by adding a new clause to read as follows: <i>(6) the supplier shall retain the title and ownership of the goods until such time when the payment are made in full”</i></p>	<p>This will ensure that the interest of the supplier was protected in the law.</p>
<p>Clause 5 (1)</p>	<p>Proposal to amend the clause by adding the words by <b>the due date without fail”</b> after the word “entity” to read as follows; <i>“notwithstanding the provisions of section 4, a procuring entity shall ensure that priority is given to the payment of any outstanding debts for the supply of goods and services to the procuring entity by due dates without fail”</i></p>	<p>This will ensure that procuring and accounting officers remained committed to all the terms of the contracts and supply and therefore a strong calvb nvv gyfv l for their direct involvement in ensuring the whole process was credible and tied to budget.</p>
<p>Clause 5(2)</p>	<p>Proposal to amend the clause by adding the words <b>“while strictly adhering to the due dates”</b> after the word “first-out” to read as follows; <i>“in determining which dates shall be given priority under subsection (1), a procuring entity shall have regard to the dates upon which payment fell due and shall pay debts in the basis of first-in, first-out, while strictly adhering to the due dates”</i></p>	<p>The addition of adhering to the due dates removes the possibility of procuring entities not observing payment terms.</p> <p>When suppliers are paid as per terms, the overall economy of the country remains on an upward growth path.</p>
<p>Clause 6 Return of invoice</p>	<p>Proposal to amend the clause by deleting the word “fourteen” and replacing with the word “five” after the word “within” to read as follows:</p>	<p>This is to provide for a short period of time to handle the disputed invoice</p>

	<i>"a procuring entity who disputed an invoice may within five days of receipt of the invoice- "</i>	
Transition clause	The application of this act shall extend to all the payment due for all goods, works and service.	This ensures that suppliers with payments due before the passing of the bill shall were paid without fail.

### **SUBMISSION BY CPA SAMUEL OTULO LISEGE**

17. Mr. Samuel Otulo Lisege, a Kenya Citizen submitted the following observations and recommendations to the Committee-

a) Clause 4-6: Processing of Payments

The prompt payments should be electronically done in this digital age to avoid human contact (mode of payment was an important tool for promptness). Each County should set an electronic avenue to enable the same payments, of which a report would be submitted to the Senate and Controller of Budget monthly.

A state agency's payment was due by the 30<sup>th</sup> calendar day after the latest of the following:

- The day the agency received the goods;
- The day the services were completed by the vendor for the agency; or
- The day the agency received the invoice for the goods or services.

b) Clause 10: Penalty on Accounting Officer

- Late payments would automatically have interest calculated and included with the payment.
- Payments for goods and services must be paid no later than 30 days after the latter of (1) the receipt of goods/services or (2) receipt of a completed invoice.
- Emphasis that everything should happen within 30 days:(1) Receipt of invoice and verification within the first ten days (2) Dispute and corrections before the 21<sup>st</sup> and



(3) Electronic settlements within the last 9 days. The promptness of the bill was within the 30 days.

- A set aside rule to follow an Accounting Officer who delays payments under the bill.
- c) Further proposed the recommendation of prompt payment or early payment discount as follows-
- i) The intent of the legislature was that a governmental entity should take advantage of an offer for an early payment discount. A state agency shall when possible negotiate a prompt payment discount with a vendor.
  - ii) A governmental entity may not take an early payment discount a vendor offers unless the governmental entity makes a full payment within the discount period.
  - iii) If a governmental entity takes an early payment discount later, the unpaid balance accrues interest beginning on the date the discount offer expires.

## **CHAPTER THREE**

### **3.0 COMMITTEE OBSERVATIONS AND RECOMMENDATIONS**

#### **3.1 OBSERVATIONS**

The Committee, having considered the bill and the submissions from various stakeholders, made the following observations-

- a) The Bill was republished pursuant to High Court Ruling on Petition No. 284 of 2019. Prior to republication, the Committee had done extensive public participation and the views submitted were incorporated in the Bill.
- b) For clarity, Clause 3, application clause, should be amended to ensure that the Act would apply to national government entities, county government entities, private entities and any other entity which is affected by provisions of Public Procurement and Asset Disposal Act, 2015.
- c) Further, to avoid ambiguity, Clause 4 should be amended to clarify that where payment has delayed the appropriate interest shall apply in addition to the obligation to pay the full contractual price.

#### **3.2 RECOMMENDATIONS**

The Committee recommends that the Bill be approved with the following amendments-

- a) Clause 3 be amended to ensure the law will apply to national government entities, county government entities, private entities and any other entity which is affected by provisions of Public Procurement and Asset Disposal Act, 2015.
- b) Sub-clause 4(2) and sub-clause 4(4)(a), (b) and (c) be amended to ensure where payments are delayed the party shall pay the appropriate interest in addition to the to the full contractual price.

## APPENDIXES

- (a) Committee Stage Amendments
- (b) Minutes of the Committee sittings
- (c) Submission from Public Institutions and Members of Public



**MINUTES OF THE 229<sup>TH</sup> MEETING OF THE SENATE STANDING COMMITTEE ON FINANCE AND BUDGET HELD ON THURSDAY, 8<sup>TH</sup> JULY, 2021 AT 9 AM VIA ZOOM ONLINE PLATFORM**

**PRESENT**

- |  |               |
|--|---------------|
| 1. Sen. Charles Kibiru, MP               | - Chairperson |
| 2. Sen. Rose Nyamunga, CBS, MP           | - Member      |
| 3. Sen. Millicent Omanga, MP             | - Member      |
| 4. Sen. Wetang'ula Moses Masika, EGH, MP | - Member      |
| 5. Sen. CPA Farhiya Haji, CBS, MP        | - Member      |
| 6. Sen. Aaron Cheruiyot, MP              | - Member      |

**ABSENT WITH APOLOGY**

- |  |                     |
|--|---------------------|
| 7. Sen. (Dr.) Ochillo Ayaeko, EGH, MP  | - Vice- Chairperson |
| 8. Sen. Mutula Kilonzo Junior, CBS, MP | - Member            |
| 9. Sen. Kimani Wamatangi, MP           | - Member            |

**SECRETARIAT**

- |                            |                       |
|----------------------------|-----------------------|
| 1. Mr. Christopher Gitonga | - Clerk Assistant     |
| 2. Ms. Lucy Radoli         | - Legal Counsel       |
| 3. Ms. Beverlyne Chivadika | - Hansard Officer III |
| 4. Ms Brenda Michira       | - Legal Pupil         |

**MIN. NO. 1187/07/2021:**

**PRELIMINARIES**

The Chairperson called the meeting to order at 9.19 am and thereafter followed a word of prayer. Thereafter, the Chairman welcomed the Members and the guests to the meeting.

**MIN. NO. 1188/07/2021:**

**ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted after it was proposed by Sen. CPA Farhiya Haji, CBS, MP and seconded by Sen. Rose Nyamunga, CBS, MP.

**MIN. NO. 1189/07/2021: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS**

- a) The minutes of the 216<sup>th</sup> meeting held on Friday, 28<sup>th</sup> May, 2021 at 9:00 a.m. were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. CPA Farhiya Haji, MP and seconded by Sen. Charles Kibiru, MP.
- b) The minutes of the 217<sup>th</sup> meeting held on Thursday, 3<sup>rd</sup> June, 2021 at 9:00 a.m. were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Millicent Omanga, MP and seconded by Sen. Moses Wetangula Masika, EGH, MP.

- c) The minutes of the 218<sup>th</sup> meeting held on Tuesday, 8<sup>th</sup> June, 2021 at 9:00 a.m. were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Millicent Omanga, MP and seconded by Sen. Moses Wetangula Masika, EGH, MP.
- d) The minutes of the 219<sup>th</sup> meeting held on Wednesday, 9<sup>th</sup> June, 2021 at 9:00 a.m. were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Millicent Omanga, MP and seconded by Sen. Rose Nyamunga, MP.
- e) The minutes of the 220<sup>th</sup> meeting held on Monday, 14<sup>th</sup> June, 2021 at 10:00 a.m. were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Millicent Omanga, MP and seconded by Sen. Moses Wetangula Masika, EGH, MP.
- f) The minutes of the 221<sup>st</sup> meeting held on Tuesday, 15<sup>th</sup> June, 2021 at 10:00 a.m. were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. CPA Farhiya Haji, MP and seconded by Sen. Millicent Omanga, MP.
- g) The minutes of the 222<sup>nd</sup> meeting held on Thursday, 17<sup>th</sup> June, 2021 at 9:00 a.m. were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Rose Nyamunga, MP and seconded by Sen. CPA Farhiya Haji, MP.
- h) The minutes of the 223<sup>rd</sup> meeting held on Tuesday, 22<sup>nd</sup> June, 2021 at 9:00 a.m. were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Millicent Omanga, MP and seconded by Sen. Moses Wetangula Masika, EGH, MP.
- i) The minutes of the 224<sup>th</sup> meeting held on Wednesday, 23<sup>rd</sup> June, 2021 at 10:00 a.m. were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. CPA Farhiya Haji, MP and seconded by Sen. Millicent Omanga, MP.
- j) The minutes of the 225<sup>th</sup> meeting held on Thursday, 24<sup>th</sup> June, 2021 at 9:00 a.m. were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. CPA Farhiya Haji, MP and seconded by Sen. Millicent Omanga, MP.
- k) The minutes of the 226<sup>th</sup> meeting held on Monday, 28<sup>th</sup> June, 2021 at 2:00 p.m. were confirmed as a true record of the proceedings of the Committee having been

proposed by Sen. Charles Kibiru, MP and seconded by Sen. Moses Wetangula Masika, EGH, MP.

**MIN. NO. 1190/07/2021: CONSIDERATION OF SUBMISSIONS FROM THE BUNGOMA COUNTY ASSEMBLY AND EXECUTIVE ON ALLEGED DELIBERATE DENIAL OF FUNDS ALLOCATED TO THE ASSEMBLY**

The Committee was informed that after its intervention, the Assembly had received its funds and the operations were back to normal. The Governor released the money for development as well and the Assembly was now functional.

The Committee resolved to hold a retreat and prepare a comprehensive report on this matter. This report should also serve as a reference point when similar matter of such nature occurs in any other county. The report should intensively deal with the relation between the executive and the assembly on matters of management of public resources.

**MIN. NO. 1191/07/2021: CONSIDERATION OF STAKEHOLDERS' SUBMISSIONS ON THE PROMPT PAYMENT BILL (SENATE BILLS NO. OF 16 OF 2021)**

The Committee considered the stakeholders' submissions and resolved as follows-

- a) Clause 3 on application be amended to read National Governments, county governments, private entities and any other public entity as set out in Section 2 of the Public Procurement and Asset Disposal Act.
- b) Clause 4 (2) be amended by adding the words "the principal amount plus" after the word "pay" to remove the possibility of paying the interest only and protect the suppliers.
- c) Clause 4 (2) (a), (b) and (c) be amended by adding the word "full amount plus interest where applicable" before the word "amount" in sub clause (a), (b) and (c) to ensure that budgeting and procurement are done with integrity and responsibility.
- d) Clause 5 be amended to include the term "due date" in clause (1) and (2) to ensure strict adherence to the terms of the contracts and supply.
- e) Clause 6 of the Bill provides for the process of addressing defective invoices however there is no clear process for addressing disputed payment where a supplier produces an invoice for disputed works or services. The Bill should provide that until such a dispute is resolved, there should be no accrual of interest or penalties.

**MIN. NO. 1192/07/2021: ANY OTHER BUSINESS**

- a) The Committee requested the Chairperson to request Senate Business Committee (SBC) to prioritize the Bill in the House because of its impact in the economy.
- b) It was reported that the Committee second quarterly report pursuant to standing order 51(1)(b) was presented in the House by Sen. CPA Farhiya Haji, CBS, MP

**MIN. NO. 1193/07/2021: ADJOURNMENT**

There being no other business the Chairman adjourned the meeting at 10:46 am.

**SIGNATURE:** \_\_\_\_\_



**(CHAIRPERSON: SEN. CHARLES KIBIRU, MP.)**

**DATE: 22<sup>nd</sup> July, 2021**



**MINUTES OF THE 231<sup>ST</sup> MEETING OF THE SENATE STANDING COMMITTEE ON FINANCE AND BUDGET HELD ON WEDNESDAY, 21<sup>ST</sup> JULY, 2021 AT 9:00 AM VIA ZOOM ONLINE PLATFORM.**

**PRESENT**

- |                                   |               |
|-----------------------------------|---------------|
| 1. Sen. Charles Kibiru, MP        | - Chairperson |
| 2. Sen. CPA Farhiya Haji, CBS, MP | - Member      |
| 3. Sen. Aaron Cheruiyot, MP       | - Member      |
| 4. Sen. Millicent Omanga, MP      | - Member      |
| 5. Sen. Rose Nyamunga, CBS, MP    | - Member      |

**ABSENT WITH APOLOGY**

- |   |                     |
|---|---------------------|
| 6. Sen. (Dr.) Ochillo-Ayacko, EGH, MP   | - Vice- Chairperson |
| 7. Sen. Moses Wctangula Masika, EGH, MP | - Member            |
| 8. Sen. Kimani Wamatangi, MP            | - Member            |
| 9. Sen. Mutula Kilonzo Junior, CBS, MP  | - Member            |

**SECRETARIAT**

- |                            |                    |
|----------------------------|--------------------|
| 1. Mr. Christopher Gitonga | - Clerk Assistant  |
| 2. Ms. Beverlyne Chivadika | - Clerk Assistant  |
| 3. Ms. Lucy Radoli         | - Legal Counsel    |
| 4. Mr. William Wambiru     | - Fiscal Analyst   |
| 5. Ms. Sharon Rotino       | - Research Officer |

**MIN. NO. 1199/07/2021:**

**PRELIMINARIES**

The Chairperson called the meeting to order at 9.25 a.m. and thereafter followed by a word of prayer.

**MIN. NO.2000 /07/2021:**

**ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted after it was proposed by Sen. CPA Farhiya Haji, CBS, MP and seconded Sen. Rose Nyamunga, CBS, MP.

**MIN. NO. 2001/07/2021:**

**CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS**

- a) The minutes of the 227<sup>th</sup> meeting held on Tuesday, 29<sup>th</sup> June, 2021 at 9:00 a.m. were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Charles Kibiru, MP and seconded by Sen. Rose Nyamunga, CBS, MP.

- b) The minutes of the 228<sup>th</sup> meeting held on Wednesday, 7<sup>th</sup> July, 2021 at 9:00 a.m. were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. CPA Farhiya Haji, CBS, MP and seconded by Sen. Rose Nyamunga, CBS, MP.
- c) The minutes of the 229<sup>th</sup> meeting held on Thursday, 8<sup>th</sup> July, 2021 at 9:00 a.m. were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. CPA Farhiya Haji, CBS, MP and seconded by Sen. Rose Nyamunga, CBS, MP.
- d) The minutes of the 230<sup>th</sup> meeting held on Wednesday, 14<sup>th</sup> July, 2021 at 9:00 a.m. were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. CPA Farhiya Haji, CBS, MP and seconded by Sen. Rose Nyamunga, CBS, MP.

**MIN. NO. 2002/07/2021:                    CONSIDERATION AND ADOPTION OF THE  
REPORT ON THE PROMPT PAYMENT BILL  
(SENATE BILLS NO. 16 OF 2021)**

The Committee considered the report on the Prompt Payment Bill (Senate Bills No. 16 of 2021). The report included the highlights of the Bill, Salient provisions of the Bill, and submission from various stakeholders.

The Committee made the following observations-

- a) The Bill was republished pursuant to High Court Ruling on Petition No. 284 of 2019. Prior to republication, the Committee had done extensive public participation and the views submitted were incorporated in the Bill.
- b) For clarity, Clause 3, application clause, should be amended to ensure that the Act would apply to national government entities, county government entities, private entities and any other entity which is affected by provisions of Public Procurement and Asset Disposal Act, 2015.
- c) Further, to avoid ambiguity, Clause 4 should be amended to clarify that where payment has delayed the appropriate interest shall apply in addition to the obligation to pay the full contractual price.

The Committee recommended that the Bill be approved with the following amendments-

- a) Clause 3 be amended to ensure the law will apply to national government entities, county government entities, private entities and any other entity which is affected by provisions of Public Procurement and Asset Disposal Act, 2015.
- b) Sub-clause 4(2) and sub-clause 4(4)(a), (b) and (c) be amended to ensure where payments are delayed the party shall pay the appropriate interest in addition to the to the full contractual price.

The Committee unanimously adopted the report on the Bill after being proposed by Sen. CPA Farhiya Haji, CBS, MP and seconded by Sen. Aaron Cheruiyot, MP.

**MIN.NO. 2003/07/2021: ANY OTHER BUSINESS**

- a) The Committee inquired whether meeting with Vihiga County Government to deliberate on the matter of suspension of implementation of FY 2021/2022 Budget would be held online. The Chairperson informed the Committee that after the Committee failed to travel to Vihiga on Monday, 19<sup>th</sup> July, 2021, he consulted the Chairperson of the Committee on Devolution and Intergovernmental Relations, and agreed that the committees would hold a joint virtual meeting with the county government of Vihiga. Thereafter, the Committees would conduct a visit to the County.
- b) The Committee resolved to hold a retreat in the first week of August to consider-
  - i) Pending matters raised by the County Assembly of Bungoma,
  - ii) submissions on the efficacy of IFMIS and its applications in disbursement of funds.
  - iii) Submissions on County Governments Grants Bill.

**MIN.NO.2004/07/2021: ADJOURNMENT**

The time being 10. 01 am the Chairperson adjourned the meeting.

**SIGNATURE:** \_\_\_\_\_

**(CHAIRPERSON: SEN. CHARLES KIBIRU, MP.)**

**DATE: 22<sup>nd</sup> July, 2021**



21<sup>st</sup> July, 2021

The Clerk of the Senate  
Parliament Buildings  
NAIROBI

**RE: COMMITTEE STAGE AMENDMENTS TO THE PROMPT PAYMENT  
BILL, SENATE BILLS NO. 16 OF 2021.**

---

**NOTICE** is given that Sen. Charles Kibiru, Chairperson, Committee on Finance and Budget, intends to move the following amendments to the Prompt Payment Bill, Senate Bills No. 16 of 2021, at the Committee Stage-

**CLAUSE 3**

**THAT** the Bill be amended by deleting clause 3 and substituting therefor the following new clause-

Application of the Act.  
No. 33 of 2015.

**3.** This Act shall apply to payment due for all goods, works, and services procured by private entities, the national government, county governments and any other entity specified as a public entity under section 2 of the Public Procurement and Asset Disposal Act.

**CLAUSE 4**

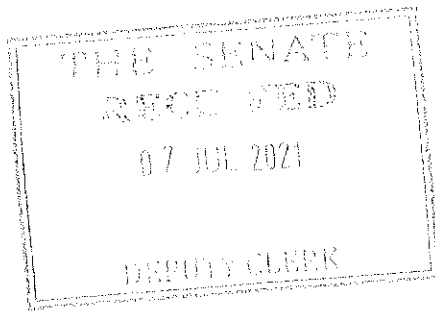
**THAT** clause 4 of the Bill be amended-

- (a) in subsection (2) by inserting the words “the full contract price and” immediately after the words “sections 5 and 6, pay”;
- (b) in subsection (4)-
  - (i) by inserting the word “full” immediately after the word “the” appearing at the beginning of the sentence in paragraph (a);
  - (ii) by inserting the word “full” immediately after the word “the” appearing at the beginning of the sentence in paragraph (b); and

(iii) by inserting the word “full” immediately after the word “the” appearing at the beginning of the sentence in paragraph (c).

Dated ....., 2021.

Charles Kibiru,  
*Chairperson,*  
*Committee on Finance and Budget.*



REPUBLIC OF KENYA  
THE NATIONAL TREASURY AND PLANNING

Telegraphic Address: 22921  
FINANCE - NAIROBI  
Fax No. 315779  
Telephone: 2252299

THE NATIONAL TREASURY  
P.O. Box 30007 - 00100  
NAIROBI  
KENYA

When replying please quote

Ref: ES 1/032 'G' (03)

Date: 6<sup>th</sup> July, 2021

Mr. J.M Nyegenye, CBS  
Clerk of the Senate  
Parliament Building  
NAIROBI

07 JUL 2021

Dear *Nyegenye,*

DCOM/DLS  
Please deal  
Deputy Clerk, Senate  
Date 07/07/2021

**RE: REQUEST FOR SUBMISSION ON THE PROMPT PAYMENT BILL  
(SENATE BILLS NO. 16 OF 2021)**

We refer to your letter Ref. SEN/DCS/SCF&B/2021/053 dated 28<sup>th</sup> June, 2021 seeking for views of the National Treasury on the Prompt Payment Bill (Senate Bills No. 16 of 2021).

We note that the objective of the Bill is to establish a legal framework to facilitate prompt payment for supply of goods, works and services procured by Government entities both at the County and National Government level. We have reviewed the proposed Bill and wish to submit the following comments:

- (i) **Disputed payments:** Section 6 of the Bill provides for the process of addressing disputes in invoices arising from defects in an invoice. However, there are no clear processes for addressing disputed payment where a

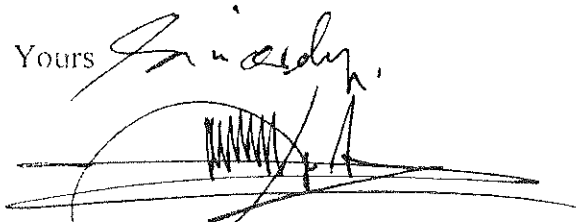
07 JUL 2021

supplier presents an invoice for disputed works or services. The Bill should provide that until the dispute is resolved, there should not be any accrual of interest or penalties;

- (ii) **Cash flow challenges:** The Bill does not provide exemption clauses, especially where non-payment for goods and services is caused by reasons beyond the control of an Accounting Officer. This is especially where there are delayed disbursements of funds to entities due to poor revenue performance or for any other justifiable reason. The Bill should only be applicable where Accounting Officers deliberately delay payments; and
- (iii) **Commencement Clause:** The Bill does not provide for clear commencement date of the Bill. This is important to ensure that only pending payments incurred after the enactment of the Bill are subjected to the provisions of the Bill to avoid its abuse.

This is therefore submitted for your further action.

Yours



**HON. (AMB) UKUR K. YATANI, EGH**  
**CABINET SECRETARY/NATIONAL TREASURY & PLANNING**





National Gender and Equality Commission  
1st Floor, Solution Tech Place, 5 Longonot Road, Upper Hill, Nairobi  
P.O. OX 27512-00506 Nairobi, Kenya  
Landline: +254 (020)3213100  
Mobile: +254 (020)375100  
Toll Free: 0800720187  
www.ngeckeny.org  
Email: info@ngeckeny.org

When replying please quote

Ref: No.....NGEC/CS/NAS/005/VOL. I (43)

20<sup>th</sup> May 2021

NATIONAL GENDER AND EQUALITY COMMISSION

Mr. J.M. Nyegenye, CBS

Clerk of the Senate  
Clerk's Chambers  
Parliament Building  
P.O. Box 41842-00100  
NAIROBI

[Csenate@parliament.go.ke](mailto:Csenate@parliament.go.ke)  
[scfinanceandbudget@gmail.com](mailto:scfinanceandbudget@gmail.com)

Dear Mr. Nyegenye,

**SUBMISSION OF MEMORANDUM ON THE PROMPT PAYMENT BILL  
(SENATE BILLS NO. 16 OF 2021)**

Reference is made to your call for the submission of memoranda on The Prompt Payment Bill (Senate Bills No. 16 of 2021).

The National Gender and Equality Commission (NGEC) is a Constitutional Commission with the mandate of promoting and ensuring gender equality, principles of equality and non-discrimination for all persons in Kenya, with a focus on Special Interest Groups (SIGs) who include women, children, Persons with Disabilities (PWDs), youth, older members of society and minority and marginalized groups.

Section 8 (b) of the National Gender and Equality Commission Act, No. 15 of 2011 mandates the Commission to, '*monitor, facilitate and advise on the integration of the principles of equality and freedom from discrimination in all national and county policies, laws, and administrative regulations in all public and private institutions*';

In line with its mandate, the Commission presents to you its observations on the proposed amendments and its proposals in the enclosed Memorandum.

Yours sincerely,

Betty Sungura-Nyabuto, MBS  
**COMMISSION SECRETARY/CEO**  
Encl. (1)

*"Gender Equality and Non-Discrimination"*



**CPA**  
**Samuel Otulo Lisege**  
0710-811846  
Email:[lisegez@gmail.com](mailto:lisegez@gmail.com)

**The Clerk, Senate**

**Tel: (254-2) 2221291 or 2848000**

**E-mail: [cSenate@parliament.go.ke](mailto:cSenate@parliament.go.ke)**

**RE: Memoranda on Prompt Payment Bill 2021**

This is my contribution on the Prompt Payment Bill 2021

**Clause 4-6: Processing of Payments**

The prompt payments should be electronically done in this digital age to avoid human contact.(mode of payment is an important tool for promptness)

Each County should set a electronic avenue to enable the same payments, of which a report will be submitted to the Senate and Controller of Budget monthly.

A state agency's payment is due by the 30th calendar day after the latest of the following:

- The day the agency received the goods;
- The day the services were completed by the vendor for the agency; or
- The day the agency received the invoice for the goods or services.

**Clause 10: Penalty on Accounting Officer**

- Late payments will automatically have interest calculated and included with the payment.
- Payments for goods and services must be paid no later than 30 days after the latter of (1) the receipt of goods/services or (2) receipt of a completed invoice.

- Emphasis that everything should happen within 30 days: (1) Receipt of invoice and verification, first ten days (2) Dispute and corrections before the 21<sup>st</sup> (3) Electronic settlements within the last 9 days. NOTE; the promptness of the bill is within the 30 days.
- A side rule to follow an Accounting Officer who delays payments under the bill.

#### **RECOMMENDATIONS:**

- **PROMPT OR EARLY PAYMENT DISCOUNT.**
- (a) The intent of the legislature is that a governmental entity should take advantage of an offer for an early payment discount. A state agency shall when possible negotiate a prompt payment discount with a vendor.
- (b) A governmental entity may not take an early payment discount a vendor offers unless the governmental entity makes a full payment within the discount period.
- (c) If a governmental entity takes an early payment discount later, the unpaid balance accrues interest beginning on the date the discount offer expires.



KAM/10/27/rl/mb/jw/PW/2021

14<sup>th</sup> June 2021

Mr. Jeremiah M. Nyegenye  
Clerk of the Senate  
Parliament of Kenya, Parliament Buildings  
P.O Box 41842 - 00100  
**NAIROBI**

Dear Sir,

**RE: SUBMISSION OF KAM MEMORANDUM ON THE PROMPT PAYMENT BILL 2021**

Reference is made to the afore-referenced matter.

Following the call for memoranda published in the local newspapers on the **PROMPT PAYMENT BILL 2021**, we wish to submit the Kenya Association of Manufacturers (KAM) Memorandum. Established in 1959, the Association is the representative business membership organization representing companies in the value-add industry and related services.

The purpose of this letter is to submit the Kenya Association of Manufacturers Memorandum on the Prompt Payment Bill 2021 enclosed to this Letter for your consideration. We are available to meet with the relevant Committee to present the same at a suitable date and time.

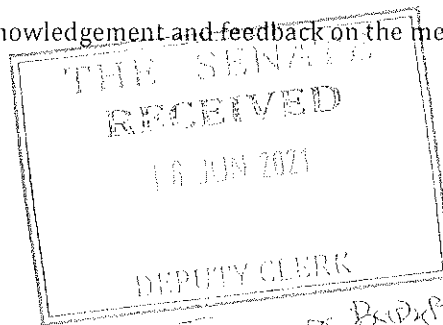
Advance feedback can be sent through email at [ceo@kam.co.ke](mailto:ceo@kam.co.ke) or call +254721303335/  
+254 20 2324817/8.

We look forward to your acknowledgement and feedback on the meeting request.

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'Phyllis Wakiaga'.

**Phyllis Wakiaga**  
CHIEF EXECUTIVE



*Handwritten notes:*  
C. ASSESS. Finance or Budget  
Kindly deal  
16/06/2021

*Handwritten notes:*  
DKS  
DCM ✓  
Kindly deal  
EJ  
16/06/21

P.O Box 30225 – 00100 Nairobi, Kenya  
Website: [www.kam.co.ke](http://www.kam.co.ke)  
Email: [info@kam.co.ke](mailto:info@kam.co.ke)  
Location: 15 Mwanzi Road, Opposite Westgate Shopping  
Mall, Westlands, Nairobi

Tel: +254 20 2324817/8; 020 8155531/2; 020 2166657  
Mobile: +254 722 204368; 0706 612384  
Chairman: Mucal Kuniyo, CEO: Phyllis Wakiaga



**MEMORANDUM ON THE PROMPT PAYMENT BILL 2021.**

Submitted to

**JEREMIAH M. NYEGENYE, THE CLERK, SENATE, PARLIAMENT BUILDINGS, NAIROBI.**

Presented By

**PHYLLIS WAKIAGA, CHIEF EXECUTIVE,  
KENYA ASSOCIATION OF MANUFACTURERS (KAM)**

**JUNE 2021 - NAIROBI, KENYA**

CLAUSE	PROPOSAL	JUSTIFICATION
Clause 4(2)	<p>Proposal to amend the clause by adding the words "the <b>principal amount plus</b>" after the word "pay" to read as follows:</p> <p><i>"A procuring entity who fails to pay a supplier by the prescribed payment date shall, unless otherwise agreed to and subject to sections 5 and 6, pay the principal amount plus an interest to the supplier in accordance with this section on the amount due under the contract for the supply of goods, works, or services."</i></p>	<p>By adding the principal amount, this removes the possibility of paying the interest only and seeks to protect the suppliers.</p>
Clause 4(4)	<p>Proposal to amend the clause by adding the word "<b>full</b>" before the word "amount" in sub clause (a), (b) and (c) to read as follows:</p> <p><i>"(4) For purposes of subsection (3), payment shall be taken to have been made when —</i></p> <p><i>(a) the full amount due is received by the supplier;</i></p> <p><i>(b) the full amount due is credited by, on behalf of, or at the direction of, the procuring entity to an account nominated by the supplier; or</i></p>	<p>This creates strong ownership of the entire procured goods, works or services.</p> <p>It also ensures that budgeting and procurement are done with integrity and responsibility.</p>

	<p><i>(c) the supplier is put in a position by the procuring entity to be able, by the supplier's own actions, to credit the full amount due to such an account."</i></p>	
<p>Clause 4 (5)</p>	<p>Proposal to amend the clause by deleting the words <b>"without demand for its payment being made by the supplier"</b> after the word "services" to read as follows;</p> <p><i>"An interest shall not be waived by the supplier, and shall be included with the amount due for the supply of goods, works or services"</i></p>	<p>This will ensure that late payments by a procuring entity are paid in full; that is the primary amount and the interest. By including the statement "without demand for its payment being made by the supplier" it could lead to a situation where a supplier does not have a means of redress where a procuring entity makes the late payment for the primary amount of supply of goods, works or services but does not make the payment on the interest.</p>
<p>Clause 4</p> <p>Prompt payment of accounts.</p>	<p>Proposal to amend by adding a new clause to read as follows;</p> <p><i>"(6) The supplier shall retain the title and ownership of the goods until such time when the payment are made in full"</i></p>	<p>This ensures that the interest of the supplier is protected in the law.</p>



<p>Clause 5(1)</p>	<p>Proposal to amend the clause by adding the words "by the due date without fail" after the word "entity" to read as follows;</p> <p>"Notwithstanding the provisions of section 4, a procuring entity shall ensure that priority is given to the payment of any outstanding debts for the supply of goods and services to the procuring entity by due dates without fail."</p>	<p>This ensures that procuring and accounting officers will remain committed to all the terms of the contracts and supply and therefore a strong call for their direct involvement in ensuring the whole process is credible and ties to budget.</p>
<p>Clause 5(2)</p>	<p>Proposal to amend the clause by adding the words "while strictly adhering to the due dates" after the word "first-out" to read as follows;</p> <p>"In determining which debts shall be given priority under subsection (1), a procuring entity shall have regard to the dates upon which payment fell due and shall pay debts on the basis of first-in, first-out, while strictly adhering to the due dates."</p>	<p>The addition of adhering to the due dates removes the possibility of procuring entities not observing payments terms. When suppliers are paid as per terms, the overall economy of the country remains on an upward growth path.</p>
<p>Clause 6 Return of Invoice</p>	<p>Proposal to amend the clause by deleting the word "fourteen" and replacing with the word</p>	<p>This is to provide for a short period of time to handle the disputed invoice.</p>

	<p>"five" after the word "within" to read as follows:</p> <p><i>"A procuring entity who disputes an invoice may, within five days of receipt of the invoice —"</i></p>	
Transition clause	<p>The application of this Act shall extend to all the payment due for all goods, works, and service.</p>	<p>This ensures that suppliers with payments due before the passing of this Bill shall be paid without fail.</p>



**MEMORANDUM ON THE PROMPT PAYMENT BILL (SENATE BILLS NO. 16 OF 2021)**

Submitted to: [Csenate@parliament.go.ke](mailto:Csenate@parliament.go.ke); [cc.scfinanceandbudget@gmail.com](mailto:cc.scfinanceandbudget@gmail.com).

PROVISIONS	PROPOSED AMENDMENTS	REMARKS/PROPOSAL
<p><b>MEMORANDUM OF OBJECTS AND REASONS PROVIDES AS FOLLOWS-;</b></p> <p>Clauses 4 to 6 of the Bill provide for processing of payment. The Bill requires that a procuring entity shall pay for the goods, works or services provided by the prescribed payment date.</p> <p>Failure to pay amount due within the stipulated time, a procuring entity shall be liable to pay an interest calculated on the basis of the Central Bank base rates.</p> <p><b>Clause 4 -Prompt payment of accounts.</b></p>	<p><b>PUBLIC PROCUREMENT AND DISPOSALS ACT</b></p> <p><b>PART V – INTERNAL ORGANISATION OF PROCURING ENTITIES</b></p> <p>44. Responsibilities of the accounting officer</p> <p>a) An accounting officer of a public entity shall be primarily responsible for ensuring that the public entity complies with the Act.</p> <p>b) In the performance of the responsibility under subsection (1), an accounting officer shall—</p> <p>(a) ensure that procurements of goods, works and services of the public</p>	<p>The Commission has considered the proposals in the proposed Prompt Payment Bill which require prompt payments and the sanctions attached to non-compliance and then read the same together with provisions in Section 44 of the Public Procurement and Disposals Act on the Responsibilities of an Accounting officer and has the following comments-;</p> <p>i. The proposals in the Bill are beneficial to the suppliers and especially Persons with disability, women and youth who will be assured of prompt pay once they supply the goods/works and services. However, on the other hand, the Commission as a public entity notes</p> <p>ii.</p>

<p>4. (1) A procuring entity shall pay a supplier by the prescribed payment date.</p> <p>(2) A procuring entity who fails to pay a supplier by the prescribed payment date shall, unless otherwise agreed to and subject to sections 5 and 6, pay an interest to the supplier in accordance with this section on the amount due under the contract for the supply of goods, works, or services.</p> <p>(3) A procuring entity shall pay an interest under this Act for the period beginning on the day after the prescribed payment date and ending on the date on which the payment of the amount due is made.</p>	<p>entity are within approved budget of that entity;</p> <p>(b) constitute all procurement and asset disposal committees within a procuring entity in accordance with the Act;</p> <p>(c) ensure procurement plans are prepared in conformity with the medium term fiscal framework and fiscal policy objectives and, subject to subsection (3), submit them to the National Treasury;</p> <p>(d) ensure proper documentation of procurement proceedings and safe custody of all procurement records in accordance with the Act</p> <p>(e) ensure compliance with sections 68, 147, 148 and 149 of the Public Finance Management Act, 2012 (No. 18 of 2012);</p> <p>(f) approve and sign all contracts of the procuring entity;</p> <p>(g) ensure the procurement and asset disposal process of the public entity shall comply with this Act;</p> <p>(h) ensure that the procurement processes are handled by different professional offices in respect of procurements, initiation, processing and receipt of goods, works and services;</p> <p>(i) submit to the Authority the part in its procurement plan demonstrating application of preference and reservations</p>	<p>that the provisions may not be favourable especially considering the fact that most times allocation of funds from the National Treasury may take longer than anticipated even after compliance with Section 44.</p> <p>iii. Public Entities do not have provision for interest or fines in their budgetary allocations.</p> <p>iv. So any interest imposed will still be from the exchequer because public entities do not generate their own revenue and rely on the National Treasury.</p> <p>v. In summary the intention of the Bill is noble but the crucial party who will determine its success is timely release of the funds as per the procurement plan submitted by the National Treasury.</p> <p>vi. And in the event that Treasury does not release the funds as per plan then it should pay the interest which will still be drawn from taxes by the intended beneficiaries.</p> <p>vii. If the failure to pay is due to the negligence of the Accounting Officer, then the officer should be liable personally for the interest payable and not the entity.</p> <p>viii. There is a need for further consultation and agreement with the National Treasury and commitment to release the funds as planned.</p>
<p><b>Clause 7 - Interest.</b></p> <p>7. (1) Where a supplier has fulfilled all contractual and legal obligations relating to the supply of goods, services or works and a procuring entity fails to pay for the goods, works, or services by the prescribed payment date the procuring entity shall pay to the supplier interest on the amount due under the relevant contract.</p> <p>(2) The maximum interest rate chargeable under subsection (1) shall be based on the base rate set and published by the Central Bank of</p>		

<p>Kenya.</p>	<p>schemes in relation to the procurement budget within sixty days after commencement of the financial year; and</p> <p>(j) ensure compliance with any other responsibilities assigned by this Act or any other Act of Parliament or as may be prescribed in Regulations.</p> <p><b>Proposal</b></p> <p>Amend Sub clause 4(3) by substituting the words "procuring entity" with the following "The Accounting officer responsible for failure to pay or National Treasury".</p>	<p><b>Rationale</b></p> <p>Liability should be attached only to the Accounting Officer or the National Treasury depending on who is liable and not the Entity which does not have an allocation of "interest " and will also protect the entities from multiple cases by suppliers.</p>
<p>Clause 8 of the Bill provide for offences. An accounting officer who, without reasonable cause or negligently fails to pay the amount due commits an offence and shall be liable to pay a fine not exceeding one million shillings or to imprisonment for a term not exceeding five years or to both fine and imprisonment</p>	<p>We propose that this clause be deleted.</p>	<p>The penalty imposed on the Accounting Officer in clause 8 for failure to pay without a reasonable cause of one million or to a term of five years is excessive and disproportionate.</p> <p>The Accounting officer is a Public Officer and there are codes that regulate the conduct of public servants. The negligence in failure to pay is a gross misconduct and so should be considered as such and not as an offence.</p>

		<p>The clause should therefore be deleted because section 44(j) of the Public Procurement and Asset Disposal Act has imposed on the officer the duty of compliance and such an Officer should be dealt within the provisions of Employment and Labour laws, and we have also proposed that they will be personally liable for the interest payable.</p>
<p><b>Clause 3.</b></p> <p>This Act shall apply to payment due for all goods, works, and services procured by the national government, county governments and private entities.</p>	<p><b>Proposal</b></p> <p>The Commission proposes the clause to be amended by deleting the balance of the sentence from the word “the national Government ...” and substituting it with the following words “...all public entities making a procurement to which the Public Procurement and Asset Disposal Act applies.”</p>	<p>The clause as provided includes private entities and also limits the public entities to only National and County Government while the Public Procurement Act lists all of the public entities.</p>