

Approved for tabling in the House.



BA SNA
23/11/2021

REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT (FIFTH SESSION)

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 23 NOV 2021	DAY: Tue
TABLED BY:	Chair, Finance Hon. Gladys Wanga
CLERK-AT THE TABLE:	Gertrude Chebet

REPORT ON THE CONSIDERATION OF SENATE AMENDMENTS TO THE PUBLIC
PRIVATE PARTNERSHIPS BILL (NATIONAL ASSEMBLY BILL NO. 6 OF 2021)

CLERK'S CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI

NOVEMBER 2021

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CHAIRPERSON'S FOREWORD

This report contains the proceedings of the Departmental Committee on Finance and National Planning on consideration of the Senate amendments to the Public-Private Partnerships Bill (*National Assembly Bill No. 6 of 2021*). The Public-Private Partnerships Bill, 2021 was passed by the National Assembly on **30th June 2021** and thereafter conveyed to the Senate in accordance with the provisions of Article 110(4) of the Constitution. Subsequently, the Senate considered the Bill and passed it with amendments on **Thursday, 21st October 2021**. The amendments were thereafter referred to the Departmental Committee on Finance and National Planning on **9th November 2021**. The Committee subsequently considered the amendments on **23rd November 2021** as contained in this report.

The Bill seeks to provide for the participation of the private sector in the financing, construction, development, operation or maintenance of infrastructure or development projects through public private partnerships and also streamline the regulatory framework for public private partnerships.

The Bill further proposes to enhance efficiency in the regulatory process of engagement of private parties and the manner in which public private partnerships are conducted so as to ensure the provision of high quality facilities and services. The Bill also provides a comprehensive framework for the implementation of public private partnerships and addresses the gaps in Public Private Partnerships Act, 2013.

In addition, the Bill proposes timelines on key project processes and stages for a more efficient and predictable project development environment. Further, it reduces the number of oversight approvals required from the Committee in the course of project development and delegates to the Directorate extensive operational latitudes to guide and champion project development.

Further, the Bill expands the scope of arrangements that qualify as public private partnerships and expands the scope of available procurement methods for public private partnerships by introducing direct procurement as one of the approved methods. This allows for partnerships to be procured either competitively or single sourced through direct procurement or Privately-Initiated Proposals. The Bill simplifies procedural elements on the conduct of feasibility studies, tender evaluations, contract negotiations and approval applications.

Enactment of the Bill will repeal the Public Private Partnerships Act, 2013 and is expected to speed up project development by facilitating faster processing of Privately-Initiated Proposals, enabling direct negotiations through direct procurement where it is feasible as well as value engineering of open procurement options in line with the new directive to align public investment programmes into project prioritisation.

On behalf of the Departmental Committee on Finance and National Planning and pursuant to provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the Senate amendments to the Public Private Partnerships Bill (N.A. Bill No. 6 of 2021). The Committee is grateful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. I wish to express my appreciation to the Honourable Members of the Committee and the Committee Secretariat who made useful contributions towards the preparation and production of this report.

Hon. Gladys Wanga, CBS, M.P.

Chairperson, Departmental Committee on Finance and National Planning

PART ONE

1 PREFACE

1.1 ESTABLISHMENT OF THE COMMITTEE

1. The Departmental Committee on Finance & National Planning is one of the fifteen Departmental Committees of the National Assembly established under Standing Order 216 whose mandates pursuant to the Standing Order 216 (5) are as follows:
 - a. *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
 - b. *To study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation;*
 - c. ***To study and review all the legislation referred to it;***
 - d. *To study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;*
 - e. *To investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;*
 - f. *To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No.204 (Committee on appointments);*
 - g. *To examine treaties, agreements and conventions;*
 - h. *To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
 - i. *To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
 - j. *To examine any questions raised by Members on a matter within its mandate.*

1.2 MANDATE OF THE COMMITTEE

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider, public finance, monetary policies, public debt, financial institutions (excluding those in securities exchange), investment and divestiture policies, pricing policies, banking, insurance, population revenue policies including taxation and national planning and development.
3. In executing its mandate, the Committee oversees the following Government Ministries and Departments:
 - a. The National Treasury and Planning
 - b. State Department for Devolution
 - c. The Commission on Revenue Allocation (CRA)
 - d. Office of the Controller of Budget
 - e. Salaries and Remuneration Commission (SRC)

1.3 COMMITTEE MEMBERSHIP

4. The Departmental Committee on Finance and National Planning was re-constituted by the House in July 2020 and comprises of the following Members:

Chairperson

Hon. Gladys Wanga, CBS, MP
Homabay County

ODM Party

Vice-Chairperson

Hon. Isaac W. Ndirangu, MP
Roysambu Constituency

Jubilee Party

Hon. Jimmy O. Angwenyi, MGH, MP
Kitutu Chache North Constituency

Jubilee Party

Hon. Christopher Omulele, CBS, MP
Luanda Constituency

ODM Party

Hon. Shakeel Shabbir Ahmed, CBS, MP
Kisumu Town Constituency

Independent Member

Hon. Daniel Epuyo Nanok, MP
Turkana West Constituency

Jubilee Party

Hon. (Dr.) Christine O. Ombaka, MP
Siaya County

ODM Party

Hon. Andrew Adipo Okuome, MP
Karachuonyo Constituency

ODM Party

Hon. David Mwalika Mboni, MP
Kitui Rural Constituency

CCU Party

Hon. Francis Kuria Kimani, MP
Molo Constituency

Jubilee Party

Hon. Joseph Maero Oyula, MP
Butula Constituency

ODM Party

Hon. Joshua Chepyegon Kandie, MP
Baringo Central Constituency

MCC Party

Hon. Stanley M. Muthama, MP
Lamu West Constituency

MCC Party

Hon. Edith Vethi Nyenze, MP
Kitui West Constituency

WDM-K

Hon. Catherine Waruguru, MP
Laikipia County

Jubilee Party

Hon. James Gichuhi Mwangi, MP
Tetu Constituency

Jubilee Party

Hon. (Prof.) Mohamud Mohamed, MP
Wajir South Constituency

Jubilee Party

Hon. Peter Lochakapong, MP
Sigor Constituency

Jubilee Party

Hon. Qalicha Gufu Wario, MP
Moyale Constituency

Jubilee Party

1.4 COMMITTEE SECRETARIAT

5. The Committee is facilitated by the following staff:

Head of the Secretariat

Ms. Leah W. Mwaura
Senior Clerk Assistant

Ms. Jennifer Ndeto
Principal Legal Counsel I

Ms. Laureen Wesonga
Clerk Assistant II

Mr. Josephat Motonu
Fiscal Analyst I

Mr. Chelang'a Maiyo
Research Officer II

Mr. Luka Mutua
Serjeant-At-Arms

Mr. John Njoro
Serjeant-At-Arms

Ms. Christine Maeri
Audio Officer

PART TWO

2 CONSIDERATION OF THE SENATE AMENDMENTS TO THE PUBLIC PRIVATE PARTNERSHIPS BILL (NATIONAL ASSEMBLY BILL NO. 6 OF 2021)

2.1 INTRODUCTION

6. The Public Private Partnerships Bill, 2021 was considered and passed with amendments by the Senate on **Thursday, 21st October 2021**. The amendments were conveyed back to the National Assembly for consideration vide a message from the Speaker of the Senate to the Speaker of the National Assembly. The amendments were then committed to the Departmental Committee on Finance and National Planning for consideration on **9th November 2021**.

2.2 SENATE AMENDMENTS TO THE PUBLIC PRIVATE PARTNERSHIPS BILL (N.A. BILL NO. 6 OF 2021)

The Senate proposed the following amendments to the Public Private Partnerships Bill, 2021:

Clause 6

7. That clause 6 of the Bill be amended by deleting paragraph (c) and substituting therefore the following new paragraph, *“(c) the Principal Secretary in the State Department responsible for matters relating to infrastructure”*.

Clause 33

8. That clause 33 of the Bill be amended in sub-clause (3) by inserting the words *“within twenty-one days of receipt of the evaluation report”* immediately after the words *“the Committee shall”*.

Clause 75

9. That clause 75 of the Bill be amended-
- a) In sub-clause (2)-
 - i. by deleting the word *“five”* appearing immediately before the words *“other persons with”* in paragraph (bb) and substituting therefore the word *“four”*; and
 - ii. by deleting the word *“one person”* appearing immediately before the words *“two persons”*.
 - b) By inserting the following new sub-clause immediately after sub-clause (6), *“(6A) A person aggrieved by the decision of the Committee may, within seven days of the decision, make an application for review to the Committee in the prescribed form”*.

Insertion of new clauses

10. That the Bill be amended by inserting the following new clauses immediately after clause 75:
- 75A. (1) The Cabinet Secretary shall designate a public officer to serve as the secretary of the Committee.
- (2) A person designated under sub-section (1) shall be an Advocate of the High Court of Kenya of at least seven years standing.

- 75B. The members of the Committee shall be paid such salaries and allowances as the Cabinet Secretary shall, in consultation with the Salaries and Remuneration Commission, determine.
- 75C. A member of the Committee who has a direct or indirect interest in a matter before the Committee shall declare the interest and shall not participate in any proceedings of the Committee on the matter.
- 75D. (1) A person shall not-
- a) without reasonable cause or lawful excuse, obstruct or hinder, assault or threaten a member of the Committee acting under this Act;
 - b) without justification, fail to provide information required by the Committee under this Act;
 - c) without justification, fail to provide information within reasonable time that is required by the Committee under this Act;
 - d) submit false or misleading information to the Committee;
 - e) misrepresent to or knowingly mislead a member of the Committee acting under this Act; or
 - f) interfere with or exert undue influence on any member of the Committee.
- (2) A person who contravenes sub-section (1) commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding one year, or both.
- 75E. The Committee shall issue a decree setting out its decision in a particular matter and the decree shall be enforceable in the same manner as a decree of the Court.

PART THREE

3 COMMITTEE'S RECOMENDATION

The Committee having considered the Bill recommends that **all the amendments** as proposed by the Senate be passed.

SIGNED..... DATE..... 23/11/2021


THE HON. GLADYS WANGA, CBS, MP
CHAIRPERSON,

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

**ADOPTION OF THE REPORT ON THE CONSIDERATION OF THE SENATE
AMENDMENTS TO THE PUBLIC PRIVATE PARTNERSHIPS BILL (NATIONAL
ASSEMBLY BILL NO. 6 OF 2021)**

The report on the consideration of the Public Private Partnerships Bill (National Assembly Bill No. 6 of 2021) was adopted by the Committee on Monday, 22nd November 2021 having been proposed and seconded by Hon. Joseph Oyula, M.P. and Hon. (Dr.) Christine Ombaka, M.P. respectively. The following Members acceded to the recommendations proposed in the report to be considered during the Committee Stage having been present in the meeting:

- | | | |
|---|---|-------------------------|
| 1. Hon. Gladys Wanga, CBS, M.P. | - | Chairperson |
| 2. Hon. Isaac Waihenya Ndirangu, M.P. | - | Vice-Chairperson |
| 3. Hon. Jimmy Angwenyi, MGH, M.P. | | |
| 4. Hon. Christopher Omulele, CBS, M.P. | | |
| 5. Hon. Shakeel Shabbir Ahmed, CBS, M.P. | | |
| 6. Hon. Daniel Nanok, M.P. | | |
| 7. Hon. (Dr.) Christine Ombaka, M.P. | | |
| 8. Hon. Andrew Okuome, M.P. | | |
| 9. Hon. Francis Kimani, M.P. | | |
| 10. Hon. Joseph Oyula, M.P. | | |
| 11. Hon. Joshua Kandie, M.P. | | |
| 12. Hon. Catherine Waruguru, M.P. | | |
| 13. James Gichuhi Mwangi, M.P. | | |
| 14. Hon. (Prof.) Mohamud Sheikh Mohamed, M.P. | | |

**MINUTES OF THE 85TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
FINANCE AND NATIONAL PLANNING HELD IN VIRTUALLY ON MONDAY, 22ND
NOVEMBER 2021 AT 10:00 A.M.**

PRESENT

- | | | |
|---|---|-------------------------|
| 1. Hon. Gladys Wanga, CBS, MP | - | Chairperson |
| 2. Hon. Isaac W. Ndirangu, MP | - | Vice Chairperson |
| 3. Hon. Jimmy O. Angwenyi, MGH, MP | | |
| 4. Hon. Christopher Omulele, CBS, MP | | |
| 5. Hon. Shakeel Shabbir Ahmed, CBS, MP | | |
| 6. Hon. Daniel E. Nanok, MP | | |
| 7. Hon. (Dr.) Christine Ombaka, MP | | |
| 8. Hon. Andrew A. Okuome, MP | | |
| 9. Hon. Francis K. Kimani, MP | | |
| 10. Hon. Joseph M. Oyula, MP | | |
| 11. Hon. Catherine Waruguru, MP | | |
| 12. Hon. James Gichuhi Mwangi, MP | | |
| 13. Hon. (Prof.) Mohamud Sheikh Mohamed, MP | | |
| 14. Hon. Joshua C. Kandie, MP | | |

ABSENT WITH APOLOGY

1. Hon. David M. Mboni, MP
2. Hon. Stanley M. Muthama, MP
3. Hon. Edith Nyenze, MP
4. Hon. Peter Lochakapong, MP
5. Hon. Qalicha Gufu Wario, MP

IN ATTENDANCE

SECRETARIAT

- | | | |
|------------------------|---|--|
| 1. Ms. Leah Mwaura | - | Senior Clerk Assistant/Head of Secretariat |
| 2. Ms. Jennifer Ndeto | - | Principal Legal Counsel I |
| 3. Ms. Laureen Wesonga | - | Clerk Assistant II |
| 4. Mr. Josephat Motonu | - | Senior Fiscal Analyst |
| 5. Mr. Mark Mbuthia | - | Audio Officer |
| 6. Ms. Hannah Mwangi | - | Intern |

AGENDA

1. Prayers
2. Communication from the Chairperson
3. Confirmation of Minutes from the previous sitting(s) and Matters Arising
4. **Clause by clause consideration and adoption of reports of the following Bills:**
 - i. **Senate Amendments to the Public Private Partnerships Bill, 2021;**
 - ii. **The Asian Widows' and Orphans' Pensions (Repeal) Bill, 2021;**
 - iii. **The Provident Fund (Repeal) Bill, 2021;**
 - iv. **The Public Procurement and Asset Disposal (Amendment) Bill, 2021; and**
 - v. **The Public Procurement and Asset Disposal (Amendment) (No. 2) Bill, 2021**
5. Any Other Business
6. Adjournment/Date of Next Meeting

MIN.NO.NA/F&NP/2021/398: COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 10:27 a.m. and a prayer was said. The Chairperson welcomed the meeting to deliberate on the day's agenda.

MIN.NO.NA/F&NP/2021/399: CONFIRMATION OF MINUTES
Agenda deferred

MIN.NO.NA/F&NP/2021/400: CLAUSE BY CLAUSE CONSIDERATION AND ADOPTION OF THE REPORT OF THE SENATE AMENDMENTS TO THE PUBLIC PRIVATE PARTNERSHIPS BILL, 2021

Members observed that Senate amendments to the Public Private Partnerships Bill, 2021 added value to the amendments passed by the National Assembly. The Committee therefore resolved as follows on the Senate amendments:

1. **Clause 6:** Agreed to
2. **Clause 33:** Agreed to
3. **Clause 75:** Agreed to
4. **New Clauses:** Agreed to

The Committee adopted the report on the consideration of the Public Private Partnerships Bill, 2021 having been proposed by Hon. Joseph Oyula, MP and seconded by Hon. (Dr.) Christine Ombaka, MP.

MIN.NO.NA/F&NP/2021/401: CLAUSE BY CLAUSE CONSIDERATION AND ADOPTION OF THE REPORT OF THE ASIAN WIDOWS' AND ORPHANS PENSIONS (REPEAL) BILL, 2021

The Committee deliberated on the amendments proposed in the Bill and resolved as follows:

1. **Clause 1:** Agreed to
2. **Clause 2:** Agreed to
3. **Clause 3:** Agreed to
4. **Clause 4**

Amend by inserting a new paragraph (f) providing for the final auditing of the accounts.

The Committee adopted the report on the consideration of the Asian Widows' and Orphans' Pensions (Repeal) Bill, 2021 having been proposed by Hon. Shakeel Shabbir, CBS, MP and seconded by Hon. Joseph Oyula, MP.

MIN.NO.NA/F&NP/2021/402: CLAUSE BY CLAUSE CONSIDERATION AND ADOPTION OF THE REPORT OF THE PROVIDENT FUND (REPEAL) BILL, 2021

The Committee deliberated on the amendments proposed in the Bill and resolved as follows:

1. **Clause 1:** Agreed to
2. **Clause 2:** Agreed to
3. **Clause 3:** Agreed to
4. **Clause 4**

Amend by inserting a new paragraph (f) providing for the final auditing of the accounts.

The Committee adopted the report on the consideration of the Provident Fund (Repeal) Bill, 2021 having been proposed by Hon. (Dr.) Christine Ombaka, MP and seconded by Hon. Joshua Kandie, MP.

CLAUSE BY CLAUSE CONSIDERATION
AND ADOPTION OF THE REPORT OF THE
PUBLIC PROCUREMENT AND ASSET
DISPOSAL (AMENDMENT) BILL (N.A. BILL
NO. 32 OF 2021)

The Committee deliberated on the amendments proposed in the Bill and resolved as follows:

1. **Clause 1:** Agreed to
2. **Clause 2:** Delete paragraph (a)
3. **Clause 3:** Delete
4. **Clause 4:** Delete
5. **Clause 5:** Agreed to
6. **Clause 6:** Agreed to
7. **Clause 7:** Agreed to
8. **Clause 8:** Agreed to
9. **Clause 9:** Agreed to
10. **Clause 10:** Agreed to
11. **Clause 11:** Agreed to
12. **Clause 12:** Agreed to
13. **Clause 13:** Agreed to
14. **Clause 14:** Agreed to
15. **Clause 15:** Agreed to
16. **Clause 16:** Agreed to
17. **Clause 17:** Agreed to
18. **Clause 18:** Agreed to
19. **Clause 19:** Delete paragraphs (b) and (c)
20. **Clause 20:** Agreed to
21. **Clause 21:** Agreed to
22. **Clause 22:** Agreed to
23. **Clause 23:** Agreed to
24. **Clause 24:** Delete
25. **Clause 25:** Agreed to
26. **Clause 26:** Agreed to
27. **Clause 27:** Agreed to
28. **Clause 28:** Agreed to
29. **Clause 29:** Agreed to
30. **Clause 30:** Agreed to
31. **Clause 31:** Agreed to
32. **Clause 32:** Delete
33. **Clause 33:** Delete
34. **Clause 34:** Agreed to
35. **Clause 35:** Delete and substitute with the following paragraph; "*Section 139 of the principal Act is amended in subsection (4) by deleting the words "any variation of a contract shall only be considered after twelve month from the date of signing the contract" and substituting therefor the words "a variation of a contract shall be considered at any time, in the case of a quantity variation or shall only be considered after twelve months from the date of signing of the contract, in the case of a price variation".*
36. **Clause 36:** Agreed to
37. **Clause 37:** Delete paragraph (a)
38. **Clause 38:** Agreed to

- 39. **Clause 39:** Agreed to
- 40. **Clause 40:** Delete
- 41. **Clause 41:** Agreed to
- 42. **Clause 42:** Agreed to
- 43. **Clause 43:** Agreed to
- 44. **Clause 44:** Agreed to

The Committee adopted the report on the consideration of the Public Procurement and Asset Disposal (Amendment) Bill (N.A. Bill No. 32 of 2021) having been proposed by Hon. Catherine Waruguru, MP and seconded by Hon. Daniel Nanok, MP.

MIN.NO.NA/F&NP/2021/404:

**CLAUSE BY CLAUSE CONSIDERATION
AND ADOPTION OF THE REPORT OF THE
PUBLIC PROCUREMENT AND ASSET
DISPOSAL (AMENDMENT) (NO. 2) BILL
(N.A. BILL NO. 36 OF 2021)**

The Committee deliberated on the amendments proposed in the Bill and resolved as follows:

- 1. **Clause 1:** Agreed to
- 2. **Clause 2:** Delete
- 3. **Clause 3:** Agreed to
- 4. **Clause 4:** Delete
- 5. **Clause 5:** Agreed to
- 6. **Clause 6:** Agreed to
- 7. **Clause 7:** Agreed to
- 8. **Clause 8**
 - a. Amend paragraph (1) by deleting the word "*business*".
 - b. Amend paragraph 2(a) by deleting the words "*twenty-four*" and substituting with the words "*forty-eight*".
- 9. **Clause 9:** Delete

The Committee adopted the report on the consideration of the Public Procurement and Asset Disposal (Amendment) (No. 2) Bill (N.A. Bill No. 36 of 2021) having been proposed by Hon. Joseph Oyula MP and seconded Hon. (Dr.) Christine Ombaka, MP.

MIN.NO.NA/F&NP/2021/405:

**ADJOURNMENT/DATE OF NEXT
MEETING**

There being no other business to deliberate on, the meeting adjourned at 1.06 p.m. The next meeting will be on Tuesday, 23rd November 2021 at 10.00a.m.

**HON. GLADYS WANGA, CBS, MP
(CHAIRPERSON)**

SIGNED.....

DATE.....

23/11/2021