



REPUBLIC OF KENYA

TWELFTH PARLIAMENT – (FIFTH SESSION)

VOTES AND PROCEEDINGS

TUESDAY, NOVEMBER 02, 2021 AT 2.30 P.M.

1. The Senate assembled at thirty minutes past Two O'clock.
2. The proceedings were opened with Prayer said by the Deputy Speaker.
3. **COMMUNICATIONS FROM THE CHAIR**

The Deputy Speaker of the Senate conveyed the following Communications from the Chair-

(i) Convening of Part VI of the Fifth Session

“Honourable Senators,

It is my pleasure and privilege to welcome you from the short recess period. We commence Part VI of the Fifth Session of the Senate which, looking at the Order Paper; will be equally busy. In accordance with the Calendar of the Senate, this Part begins today and will run until Thursday, 2nd December, 2021.

Honourable Senators,

At the rise of the House on Thursday, 21st October, 2021, we had outstanding business across a spectra of legislative business (Bills, Motions, Petitions and Statements) before the Senate. One (1) Bill scheduled for First Reading, twenty (20) Bills at the Second Reading stage; and twelve (12) Bills due for the Committee of the Whole Stage. There are a further twenty three (23) Bills which are undergoing the concurrence process pursuant to Article 110(3) of the Constitution. In this respect, I urge respective Standing Committees to table reports on the Bills to facilitate speedy processing.

There are fifty (50) Petitions which are yet to be reported on by respective Standing Committees that require immediate action while Statements referred to Committees also require to be addressed pursuant to the Standing Orders.

Honourable Senators,

During the Session before we proceeded on recess, we had severe quorum challenges. I urge the House Leadership not to spare any effort to ensure that Senators are present to vote during divisions, and to prosecute their Bills, Motions and Statements in a timely manner.

I wish to remind you that between today, Tuesday, 2nd November, 2021 and Thursday, 2nd December, 2021, we have 15 sitting days remaining to the end of this Session, which translates to sixty (60) sitting hours to conclude all pending business.

Honourable Senators,

I urge all of us to remain committed and focused, and to undertake the tasks ahead of us with utmost integrity in service to our great country.

I thank you and wish you all a fruitful Session.”

(ii) Nomination, by the Senate, of a Member of the Equalization Fund Advisory Board.

“Honourable Senators,

As you will recall, on 19th August, 2021, vide a letter, Reference No. IGFR/EF/01/TY/2, the National Treasury and Planning submitted to the Senate, the Public Finance Management (Equalization Fund Administration) Regulations, 2021, for consideration. By the time of receipt of the letter from the National Treasury and Planning on 19th August, 2021, the Senate was on the August recess in accordance with the Calendar for the Fifth Session.

The Regulations were tabled in the Senate on Tuesday, 7th September, 2021, in accordance with Standing Order 221(2) and subsequently committed to the Sessional Committee on Delegated Legislation for further consideration.

Honourable Senators,

You will further recall that on Tuesday, 28th September, 2021, the Chairperson of the Sessional Committee on Delegated Legislation laid on the Table of the Senate the Report of the Sessional Committee on the Public Finance Management (Equalization Fund Administration) Regulations, 2021, and thereafter gave a Notice of Motion for approval of the Regulations, pursuant to Section 205 (4) of the Public Finance Management Act.

Honourable Senators,

As you are aware, Section 205 (6) of the Public Finance Management Act provides that-

(6) If a House of Parliament does not make a resolution either approving or rejecting any regulations within fifteen sitting days after submission to it for approval, the House shall be deemed to have approved those regulations.

The time allocated to the Senate to make a decision on the Regulations was fifteen sitting days. Following the Tabling of the Regulations in the Senate on 7th September, 2021, time started running on 8th September, 2021, and lapsed on Tuesday, 12th October, 2021.

By close of business on Tuesday, 12th October, 2021, the Senate had not voted to approve or reject the Regulations. Consequently, by operation of section 205 (6) of the Public Finance Management Act, 2012 and the Regulations having been approved by the National Assembly, the Regulations were deemed to have been approved by Parliament.

Honourable Senators,

I am now in receipt of a letter dated 25th October, 2021 from the Cabinet Secretary, the National Treasury and Planning, calling for the nomination, by the Senate, of a member of the Equalization Fund Advisory Board in accordance with paragraph 4(1)(e) of the Public Finance Management (Equalization Fund Administration) Regulations, 2021. The Equalization Fund Advisory Board is established under paragraph 4 of the Regulations.

The key functions of the Board are to—

- (a) advise and make recommendations to the Cabinet Secretary on the distribution of resources for the provision of the basic services to the marginalized areas under Article 204 of the Constitution;*
- (b) appraise and evaluate projects proposed under the workplans submitted by county technical committees to ensure compliance with the Constitution and the recommendations issued by the Commission on Revenue Allocation;*
- (c) oversee, in consultation with the county governments, the implementation of the projects to ensure compliance with the Constitution; and*
- (d) monitor and evaluate the projects implemented by county governments using equalization funds to determine their impact in addressing the factors contributing to the marginalization of the areas identified in the counties.*

Honourable Senators,

Paragraph 4 of the Regulations provides for the composition of the Board and the Senate is required, under paragraph 4(1)(e), to nominate one person to serve on the Board.

Standing Order 72 of the Senate Standing Orders provides the procedure to be followed in the nomination a person to serve in a public office as follows

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Where the Senate is to nominate a person to a public office and the procedure of such nomination is not governed by the Constitution or any other law, the following procedure shall apply—

- (a) *on receipt of a notice from the Authority appointing a public officer, the Clerk shall advertise in the Gazette and a newspaper of nationwide circulation calling for applications to the public office;*
- (b) *upon close of application, the Clerk shall transmit the names and all documents received from interested persons, to the relevant Committee for short-listing and vetting;*
- (c) *the Committee shall—*
 - (i) *short-list the candidates that meet the set criteria and cause the list to be published;*
 - (ii) *facilitate public participation on the suitability of the short-listed candidates; and*
 - (iii) *conduct the vetting exercise and table its Report before the Senate within fourteen days of receipt of the names of interested persons from the Clerk.*
- (d) *the Clerk shall notify the appointing authority of the decision of the Senate within seven days of the decision.*

In this regard and pursuant to standing order 72(a) of the Senate Standing Orders, I direct the Office of the Clerk to advertise the vacancy in the membership of the Board under paragraph 4(1)(e) of the Regulations.

Honourable Senators,

Pursuant to standing order 72(b) of the Senate Standing Orders, the Clerk is required, upon the close of the application period, to transmit the names and all documents received from interested persons to the relevant Committee, in this case, the Senate Standing Committee on Finance and Budget for short-listing and vetting.

Pursuant to standing order 72(b) of the Senate Standing Orders, the Committee on Finance and Budget is required to —

- (a) short-list the candidates that meet the set criteria and cause the list to be published;
- (b) facilitate public participation on the suitability of the short-listed candidates; and
- (c) conduct the vetting exercise and table its Report before the Senate within fourteen days of receipt of the names of interested persons from the Clerk.

The Committee shall be expected to table its report upon completion of the vetting exercise in this House in accordance with standing order 72(c)(iii) of the Senate Standing Orders. Taking into account the provisions of the Regulations and the standing orders, I direct that the Standing Committee on Finance and Budget tables its report in the Senate on or before Thursday 2nd December, 2021.

I urge the Committee to exercise utmost circumspection and to uphold the letter and spirit of the Constitution in the conduct of this exercise.

I thank you.”

4. **MESSAGE FROM THE NATIONAL ASSEMBLY ON THE PASSAGE BY THE NATIONAL ASSEMBLY OF THE IRRIGATION (AMENDMENT) BILL (NATIONAL ASSEMBLY BILLS NO. 12 OF 2021)**

The Deputy Speaker conveyed the following message from the National Assembly-

Honourable Senators,

I wish to report to the Senate that, pursuant to Standing Order 41 (3) and (5), I have received the following message from the Speaker of the National Assembly regarding the passage by the Assembly of the Irrigation (Amendment) Bill (National Assembly Bill No. 12 of 2021)-

The Message which is dated Thursday, 21st October, 2021, was received on 26th October, 2021 while the Senate was on recess and was transmitted to all Senators on 28th October, 2021 pursuant to Standing Order No. 41 (5).

Pursuant to the said Standing Order, I now report the Message-

“WHEREAS the Irrigation (Amendment) Bill (National Assembly Bill No. 12 of 2021) was published vide Kenya Gazette Supplement No. 65 of 16th April, 2021 as a Bill concerning county governments in terms of Article 110 (4) of the Constitution seeking to amend the Irrigation Act, 2019 to amongst other things, expand the administration of irrigation matter to include management and regulation of irrigation matters;

AND WHEREAS the National Assembly considered and passed the said Bill on Thursday, 23rd September, 2021 with amendments, in the form attached hereto;

NOW THEREFORE, in accordance with the provisions of Article 110(4) of the Constitution and Standing Orders 41(1) and 142 of the National Assembly Standing Orders, I hereby convey the said Bill to the Senate for consideration.”

Honourable Senators,

Pursuant to Standing Order 157 which requires that a Bill originating in the National Assembly be proceeded with by the Senate in the same manner as a Bill

introduced in the Senate by way of First Reading in accordance with Standing Order 139, I direct that the Irrigation (Amendment) Bill (National Assembly Bill No. 12 of 2021) be Read a First-time tomorrow, Wednesday, 3rd November, 2021.

I thank you!

5. **PAPERS**

The following papers were laid on the Table of the Senate –

- i) Report of the Auditor General on the Financial Statements of Kisii County Executive Loans and Mortgage Fund for the year ended 30th June, 2019.
- ii) Report of the Auditor General on the Financial Statements of Kisii Demonstration Farm Fund for the year ended 30th June, 2019.
- iii) Report of the Auditor General on the Financial Statements of Kapenguria Water and Sewerage Services Company Limited for the year ended 30th June 2019.
- iv) Report of the Auditor General on the Financial Statements of Laikipia County Assembly Car Loan and Mortgage Scheme Fund for the year ended 30th June 2019.
- v) The Irrigation (General) Regulations, Legal Notice No. 199 of 2021.

(The Senate Deputy Majority Leader)

- vi) The Report of the Standing Committee on Labour and Social Welfare on the status of labour migration to the Middle East and proposed policy interventions.

(The Chairperson, Standing Committee on Labour and Social Welfare)

6. **NOTICE OF MOTION - ADOPTION OF THE REPORT OF THE STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE ON THE STATUS OF LABOUR MIGRATION TO THE MIDDLE EAST AND PROPOSED POLICY INTERVENTIONS**

(The Chairperson, Standing Committee on Labour and Social Welfare)

THAT, the Senate adopts the report of the Standing Committee on Labour and Social Welfare on the status of labour migration to the Middle East and proposed policy interventions laid on the table of the Senate, today Tuesday, 2nd November, 2021.

7. **STATEMENTS PURSUANT TO STANDING ORDER 48 (1)**

- i) Nominated Senator (Sen. Isaac Ngugi Githua, MP) sought a statement from the Standing Committee on National Cohesion, Equal Opportunity and

Regional Integration concerning youth and special groups Access to Government Procurement Opportunities (AGPO) Programme as provided for in Article 55 of the Constitution of Kenya and the Public Procurement and Asset Disposal Act, 2015.

- ii) The Senator for Makueni County (Sen. Mutula Kilonzo Junior, MP) sought a statement from the Standing Committee on Labour and Social Welfare on the directive by the Cabinet Secretary Ministry of Sports, Culture and Heritage to the Sports Registrar to undertake an inspection of the Football Kenya Federation (FKF) and the disbursement and administration of funds from the Sports, Arts and Social Development Fund during the Financial Year 2019 to date.
- iii) The Senator for Kericho County (Sen. Aaron Cheruiyot, MP) sought a statement from the Standing Committee on Labour and Social Welfare on the state of stadia in the Country.
- iv) The Senator for Kericho County (Sen. Aaron Cheruiyot, MP) sought a statement from the Standing Committee on Energy on the power purchase agreements with Kenya Power Company.
- v) The Senator for Nandi County (Samson Cherarkey, MP) sought a statement from the Standing Committee on Finance and Budget regarding award of tender by the National Treasury under the specially permitted procurement procedure.
- vi) The Senator for Kitui County (Sen. Enoch Wambua, MP) sought a statement from the Standing Committee on Justice, Legal Affairs and Human Rights regarding the status of preparedness for the upcoming general elections by the Independent Electoral and Boundaries Commission (IEBC).
- vii) The Senator for Kitui County (Sen. Enoch Wambua, MP) sought a statement from the Standing Committee on Education regarding the ongoing students unrests and rising cases of fires in secondary schools across the country.

8. **THE ELECTION CAMPAIGN FINANCING (AMENDMENT) BILL (SENATE BILLS NO. 51 OF 2021)**

(Sen. Ledama Olekina, MP)

Order for First Reading Read;

Bill Read a First Time and Committed to the Standing Committee on Justice, Legal Affairs and Human Rights.

9. **MOTION – RESCINDING THE RESOLUTION OF THE SENATE ON APPROVAL OF SENATORS TO SERVE IN THE COMMITTEE OF POWERS AND PRIVILEGES**

Order read;

Motion made and Question proposed;

THAT, pursuant to Standing Order 58(2)(a) the Senate rescinds its resolution made on Thursday, 16th September, 2021 on the approval of Senators to serve in the Committee of Powers and Privileges.

(The Senate Deputy Majority Leader on behalf of the Senate Majority Whip)

Debate arising;

And there being no other Senators wishing to contribute;

Before the Question was put and pursuant to Standing Order 79 (1) the Deputy Speaker ruled the motion did not affect counties.

Question put, agreed to.

RESOLVED ACCORDINGLY

THAT, pursuant to Standing Order 58(2)(a) the Senate rescinds its resolution made on Thursday, 16th September, 2021 on the approval of Senators to serve in the Committee of Powers and Privileges.

10. **MOTION - APPROVAL OF SENATORS TO SERVE IN STANDING COMMITTEES**

Order read;

Motion made and Question proposed;

THAT, NOTWITHSTANDING, the resolutions of the Senate made on 14th December, 2017; 14th February, 2018; 21st February, 2018; 21st November, 2018; 20th March, 2019; 19th June, 2019; 28th April, 2020; and 24th June, 2020 on the approval of Senators to serve in various Standing Committees of the Senate, and pursuant to Standing Orders 189, 218, and the Second Schedule to the Standing Orders, the Senate approves the following Senators nominated by the Senate Business Committee to serve in Standing Committees of the Senate as follows –

(i) Standing Committee on Energy

Sen. Haji Abdul Mohammed, MP to serve as a Member.

(ii) Standing Committee on Justice, Legal Affairs and Human Rights

Sen. Isaac Ngugi Githua, MP to serve as a Member.

(iii) Standing Committee on National Security, Defence and Foreign Relations

Sen. Gideon Moi, CBS, MP to serve as a Member.

(The Senate Deputy Majority Leader on behalf of the Senate Majority Whip)

Debate arising;

And there being no other Senator wishing to contribute;

Before the Question was put and pursuant to Standing Order 79 (1) the Deputy Speaker ruled the motion did not affect counties.

Question put, agreed to.

RESOLVED ACCORDINGLY

THAT, NOTWITHSTANDING, the resolutions of the Senate made on 14th December, 2017; 14th February, 2018; 21st February, 2018; 21st November, 2018; 20th March, 2019; 19th June, 2019; 28th April, 2020; and 24th June, 2020 on the approval of Senators to serve in various Standing Committees of the Senate, and pursuant to Standing Orders 189, 218, and the Second Schedule to the Standing Orders, the Senate approves the following Senators nominated by the Senate Business Committee to serve in Standing Committees of the Senate as follows –

(i) Standing Committee on Energy

Sen. Haji Abdul Mohammed, MP to serve as a Member.

(ii) Standing Committee on Justice, Legal Affairs and Human Rights

Sen. Isaac Ngugi Githua, MP to serve as a Member.

(iii) Standing Committee on National Security, Defence and Foreign Relations

Sen. Gideon Moi, CBS, MP to serve as a Member.

11. **MOTION – ADOPTION OF THE REPORT OF THE STANDING COMMITTEE ON FINANCE AND BUDGET ON THE STATUS OF KENYA’S STOCK OF PUBLIC DEBT**

Order read;

Motion made and Question proposed;

THAT, the Senate adopts the Report of the Standing Committee on Finance and Budget on the Status of Kenya’s Stock of Public Debt, laid on the Table of the Senate on Thursday, 14th October, 2021.

(Chairperson, Standing Committee on Finance and Budget -19.10.2021)

Debate interrupted on Tuesday, 19th October, 2021 resumed;

And there being no other Senator wishing to contribute;

Sen. Farhiya Ali Haji replied on behalf of the Mover;

Before the Question was put and pursuant to Standing Order 79 (1) the Deputy Speaker ruled the motion did not affect counties.

Question put, agreed to.

RESOLVED ACCORDINGLY

THAT, the Senate adopts the Report of the Standing Committee on Finance and Budget on the Status of Kenya's Stock of Public Debt, laid on the Table of the Senate on Thursday, 14th October, 2021.

12. **THE HERITAGE AND MUSEUMS BILL (SENATE BILLS NO. 22 OF 2021)**

Order for Second Reading read;

Motion made and Question proposed;

THAT, the Heritage and Museums Bill (Senate Bills No. 22 of 2021) be now read a Second time.

(Sen. (Dr.) Alice Milgo, MP – 14.10.2021)

And there being no Senator wishing to contribute;

Pursuant to Standing Order 61 (3), the mover requested the Temporary Speaker (Sen. Rose Nyamunga, MP) to defer putting of the Question to a later date.

And the Temporary Speaker (Sen. Rose Nyamunga, MP) acceding to the request, deferred putting of the Question to the next Sitting.

13. **THE COUNTY OVERSIGHT AND ACCOUNTABILITY BILL (SENATE BILLS NO. 17 OF 2021)**

Order for Second Reading read;

Motion made and Question proposed;

THAT, the County Oversight and Accountability Bill (Senate Bills No. 17 of 2021) be now read a Second time.

(Sen. Ledama Olekina, MP)

And there being no Senator wishing to contribute;

Pursuant to Standing Order 61 (3), the mover requested the Temporary Speaker (Sen. Rose Nyamunga, MP) to defer putting of the Question to a later date.

And the Temporary Speaker (Sen. Rose Nyamunga, MP) acceding to the request, deferred putting of the Question to the next Sitting.

And the time being thirty minutes past six O'clock, the Temporary Speaker (Sen. Rose Nyamunga, MP) interrupted the proceedings and adjourned the Senate without Question put, pursuant to the Standing Orders.

14. **SENATE ROSE** – at thirty Minutes past Six O'clock.

M E M O R A N D U M

*The Speaker will take the Chair on
Wednesday, November 03, 2021 at 2.30 p.m.*

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