



REPUBLIC OF KENYA

TWELFTH PARLIAMENT – SIXTH SESSION

THE NATIONAL ASSEMBLY

VOTES AND PROCEEDINGS

THURSDAY, FEBRUARY 17, 2022

1. The House assembled at thirty minutes past Two O'clock
2. The Proceedings were opened with Prayer
3. **Presiding** – the Hon. Speaker

4. **PAPERS LAID**

The following Papers were laid on the Table –

- i) Legal Notice No. 28 relating to the Traffic (Driving Schools, Driving Instructors and Driving Licences) Rules, 2020 from the Ministry of Transport, Infrastructure, Urban Development and Public Works and the following accompanying documents: -
 1. The Explanatory Memorandum;
 2. Nairobi High Court Judgement (Petition No. E251 of 2020);
 3. Letter dated January, 2020 by the Principal Secretary, State Department of Transport on the Traffic (Driving Schools, Driving Instructors and Driving Licences) Rules, 2020; and
 4. Notice to Members of the Public, Report on the Public Participation and List of Attendance of Members of the Publics to Public Participation Forums.
- ii) Reports of the Auditor-General and Financial Statements in respect of the following Institutions for the year ended 30th June, 2021 and the certificates therein: -
 - a) Combating Poaching and Illegal Wildlife Trafficking in Kenya Through an Integrated Approach Project - State Department for Wildlife;
 - b) Kenya Water Towers Project – Kenya Forest Service;
 - c) Integrated Programme to Build Resilience to Climate Change and Adaptive Capacity of vulnerable Communities in Kenya – National Environment Management Authority;
 - d) Northern Kenya Conservation Project – Kenya Wildlife Service;
 - e) Green Growth and Employment Thematic Programme – Ministry of Environment and Forestry;
 - f) International Partnership Programme – Kenya Forest Service;
 - g) GCF Readiness and Preparatory Support “Capacity Strengthening Programme Towards Accessing Climate Finance from Green Climate Fund” – National Environment Management Authority;

- h) Kenya Industry and Entrepreneurship Project – Statement Department for Industrialization;
 - i) Independent Policing Oversight Authority;
 - j) The Centre of Excellence Sustainable Agriculture and Agribusiness Management - Egerton University;
 - k) Kenya Towns Sustainable Water Supply and Sanitation Programme - Kenya Valley Water Works Development Agency;
 - l) Kenya Towns Sustainable Water Supply and Sanitation Program – Athi Water Works Development Agency;
 - m) Integrated Health and Environment Observatories and Legal and Institutional Strengthening for the Sound Management of Chemicals in Africa – Ministry of Environment and Forestry;
 - n) Water and Sanitation Services Improvement Project - Athi Water Works Development Agency;
 - o) Mwea Irrigation Development Project – National Irrigation Authority;
 - p) Nairobi Rivers Basin Rehabilitation and Restoration Program (Sewerage Improvement Project Phase II) - Athi Water Works Development Agency;
 - q) National Action Plan on Artisanal Small-Scale gold Mining Project – Ministry of Environment and Forestry;
 - r) Kenya-EU Partnership for the Implementation of the National Strategy to Counter Violent Extremism in Kenya – National Counter Terrorism Centre;
 - s) Kenya Italy Debt for Development Programme – Ministry of Water, Sanitation and Irrigation;
 - t) KFS-Capacity Development project for Sustainable Forest Management in Kenya – Kenya Forest Service;
 - u) Sound Chemicals Management Mainstreaming and UPOPS Reduction in Kenya – Ministry of Environment and Forestry;
 - v) Kenya Institutional Strengthening Project Phase XI - Ministry of Environment and Forestry;
 - w) East Africa Trade and transport Facilitation Project – Kenya National Highways Authority;
 - x) Kenya Transport Sector Support Project - Kenya National Highways Authority;
 - y) Arusha-Namanga-Athi River Road Development Project - Kenya National Highways Authority;
 - z) Kenya Urban Water and Sanitation OBA Project Fund for Low Income Areas – Water Sector Trust Fund;
 - aa) Mombasa-Nairobi-Addis Ababa Road Corridor Project Phase III - Kenya National Highways Authority;
 - bb) Technical Assistance to Enhance the Capacity of the President’s Delivery Unit Project – State Department for Interior and Citizen Services;
 - cc) Kenya Nairobi-Thika Highway Improvement Project (Lot 3) Government Concessional Loan Agreement - Kenya National Highways Authority; and
 - dd) Multi-National Arusha-Holili/Taveta-Voi Road Corridor Development Project Phase I - Kenya National Highways Authority.
- iii) Reports of the Auditor-General and Financial Statements in respect of the following Institutions for the year ended 30th June, 2020 and the certificates therein: -
- a) Kenya Accreditation Service; and
 - b) Tana and Athi Rivers Development Authority.
- iv) Reports of the Auditor-General and Financial Statements in respect of the following Institutions for the year ended 30th June, 2019 and the certificates therein: -
- a) Siala Technical Training Institute; and

b) Kiambu Institute of Science and Technology.

(The Leader of the Majority Party)

v) The Report of the Committee on Delegated Legislation on its consideration of the Public Finance Management (National Roads Toll Fund) Regulations, 2021, *(Legal Notice No. 222 of 2021)*.

(Chairperson, Committee on Delegated Legislation)

vi) The Report of the Departmental Committee on Agriculture and Livestock on its consideration of the Coffee Bill (Senate Bill No. 22 of 2020).

(Chairperson, Departmental Committee on Agriculture and Livestock)

5. **NOTICES OF MOTION**

The following Notices of Motion were given -

(i) The Report of the Public Investment Committee on the consideration of special audit regarding utilization of Covid-19 Funds by KEMSA.

(Chairperson, Public Investments Committee)

(ii) The Report of the Select Committee on National Government Constituencies Development Fund on the List of Nominees to the National Government Constituencies Development Fund Committee for Ugenya Constituency.

(Chairperson, Select Committee on NG-CDF)

(iii) The Report of the Select Committee on Delegated Legislation on its consideration of the Public Finance Management (National Roads Toll Fund) Regulations, 2021, (Legal Notice No. 222 of 2021).

(Chairperson, Select Committee on Delegated Legislation)

6. **QUESTIONS**

a) The following Questions were asked-

(i) **Question No.006/2022** by the Member for Tharaka (Hon. George Murugara) on the amount of money set aside for payment of pensions, gratuities and other benefits to former Councillors who served in the defunct County Councils between 1963 and 2012;

(To be replied to by the Cabinet Secretary for the National Treasury & Planning before the Departmental Committee on Finance & National Planning)

(ii) **Question No.043/2022** by the Member for Mathioya (Hon. Peter Kihara) on why persons living along the *Kiriaini-Kairo Road* in Mathioya Constituency are yet to be compensated for land compulsorily acquired by the Government for the upgrading of the road to bitumen standards;

(To be replied to by the Cabinet Secretary for Lands & Physical Planning before the Departmental Committee on Lands)

(iii) **Question No.045/2022** by the Member for Matuga (Hon. Kassim Tandaza) on the provision of a list of all beneficiaries under the Food Relief Cash Transfer Programme in each sub-location in Matuga Constituency;

(To be replied to the Cabinet Secretary for Interior & Coordination of National Government before the Departmental Committee on Administration & National Security)

b) The following Question was dropped from the Order Paper –

- (i) **Question No.037/2022** by the Member for Kibwezi East (Hon. Jessica Mbalu) regarding the implementation status of electrification projects in Kibwezi East Constituency.

7. **REQUEST FOR STATEMENT PURSUANT TO STANDING ORDER 44(2)(c)**

- i. The Member for Lungalunga (Hon. Khatib Mwashetani) requested for a statement from the Chairperson of the Implementation Committee regarding the implementation status of the Report on the Petition on recognition of the Pemba Community.
- ii. The Nominated Member (Hon. Wilson Sossion) requested for a statement from the Chairperson of the Departmental Committee on Education & Research regarding the irregular dismissal of a teacher by the Teachers Service Commission.

8. **STATEMENT PURSUANT TO STANDING ORDER 44(2)(a)**

Pursuant to the provisions of Standing Order 44(2)(a), the Leader of the Majority Party issued a Statement regarding the Business of the House for the week commencing Tuesday, February 22, 2022.

9. **MOTION – REPORT OF THE COMMITTEE OF THE WHOLE HOUSE ON ITS CONSIDERATION OF THE SACCO SOCIETIES (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 55 OF 2021)**

Motion made and Question proposed –

THAT, this House do agree with the Report of the Committee of the whole House on its consideration of the Sacco Societies (Amendment) Bill (National Assembly Bill No. 55 of 2021).

(The Leader of the Majority Party)

Question put and agreed to.

Motion made and Question proposed –

THAT, the Sacco Societies (Amendment) Bill (National Assembly Bill No. 55 of 2021) be now read a Third Time

(The Leader of the Majority Party)

Question put and agreed to.

Bill read a Third Time and **passed**.

10. **THE WILDLIFE CONSERVATION AND MANAGEMENT (AMENDMENT) BILL (SENATE BILL NO. 30 OF 2020)**

Order for Second Reading read;

Motion made –

THAT, the Wildlife Conservation and Management (Amendment) Bill (Senate Bill No.30 of 2020) be now read a Second Time

*(The Chairperson, Departmental Committee on Environment and Natural Resources –
16.02.2022)*

Debate interrupted on Wednesday, February 16, 2022 (Afternoon Sitting) resumed;

There being no Member to second the motion, the provisions of Standing Order 57 applied.

In this regard, the Speaker issued the following Communication:

**ON THE CONSIDERATION OF THE WILDLIFE CONSERVATION AND MANAGEMENT
(AMENDMENT) BILL (SENATE BILL NO. 30 OF THE 2020)**

“Honourable Members,

You will recall that on Wednesday, 16th February 2022 during the Afternoon Sitting, when the Order for Second Reading was read, the Chairperson of the Departmental Committee on Environment and Natural Resources, the Hon. Sophia Abdi, MP moved the motion that **“The Wildlife Conservation and Management (Amendment) Bill (Senate Bill No. 30 of 2020) be read a Second time”**.

Honourable Members, in moving the Motion, the Chairperson expressed reservations on the Bill. In particular, the Chairperson claimed that the proposed Bill contains provisions that have money bill implications and that the Bill ought not to have originated from the Senate. She further indicated that following the public participation exercise undertaken, the Cabinet Secretary for Tourism and Wildlife submitted to the Committee that a more comprehensive Draft Bill from the Ministry to the Wildlife Conservation and Management. She indicated that the publication of the Bill is at an advanced stage and it was her considered view that the proposed Bill is a proposed piecemeal review of the Act. The Committee agreed with the Cabinet Secretary.

Honourable Members, the Chairperson also indicated that she was moving the motion, albeit reluctantly, since it is her obligation to move the Motion. At the end, she asked the Member for Laikipia North, the Hon. Sarah Korere, MP to second the Motion for Second Reading for the Bill. On her part, the Member declined to second the Motion. Consequently, the Speaker was not able to propose the Question by dint of Standing Order 57 which provides that-

“The question on any motion shall not be proposed unless it shall have been seconded and any motion that is not seconded shall be deemed to have been withdrawn, and shall not be moved again in the same Session.”

Honourable Members, since this is a Bill originating from the Senate, I wish to invoke the provisions of Standing Order No. 1 and pause for a moment to find out whether there is any Member desirous in seconding the Motion for Second Reading for the Bill.

If any Member is so desirous, please proceed to do so now!

[No Member rose to second the Motion]

Honourable Members, in the absence of such a Member to second the Motion, then the provisions of Standing Order 57 (1) as stated above shall apply, the effect of which is that the Bill shall not proceed at Second Reading, but will instead be referred to a Mediation Committee.

Honourable Members, may I therefore request the Leader of the Majority Party to consult with the Leader of Minority Party and propose five (5) members to sit in the Mediation Committee so as to enable me communicate the decision of the House to the Senate, in line with the provisions of Articles 112 and 113 of the Constitution.

In the meantime, **Honourable Members**, The **Wildlife Conservation and Management (Amendment) Bill (Senate Bill No. 30 of 2020)** stands defeated and the provisions of Articles 112 and 113 of the Constitution apply. **The House is accordingly guided. I thank you!"**

11. **COMMITTEE OF THE WHOLE HOUSE**

Order for Committee Read;

IN THE COMMITTEE

The Deputy Speaker in the Chair

(a) The Public Procurement and Asset Disposal (Amendment) Bill (National Assembly Bill No. 32 of 2021)

Clause 3 - amendment proposed –

THAT, the Bill be amended by deleting clause 3.

(Chairperson, Departmental Committee on Finance & National Planning)

Debate arising;

Question on the amendment put and agreed to;

Clause 3 - deleted.

Clause 4 - amendment proposed –

THAT, the Bill be amended in clause 4 by deleting paragraph (a).

(Chairperson, Departmental Committee on Finance & National Planning)

Debate arising;

Question on the amendment put and agreed to;

Clause 4 - as amended agreed to.

Clauses 5, 6, 7, 8, 9, 10, 11, 12, 13 & 14 - agreed to

Clause 15 - amendment proposed –

THAT, clause 15 of the Bill be amended by inserting the following proposed new subsection immediately after the proposed new subsection (2A) –

(2B) For infrastructure projects the head of the procurement function in liaison with the head of the technical function in a procuring entity shall, prepare a market survey at the beginning of every financial year of the cost of goods and services and thereafter prepare a current cost handbook to be revised every six months for use in the decision making in the procurement process by the procuring entity.

(Hon. Joseph Nduati)

Debate arising;

Question on the amendment put and agreed to;

Clause 15 - as amended agreed to.

Clauses 16, 17 & 18 - agreed to

Clause 19 - amendment proposed –

THAT, the Bill be amended in clause 19 by –

(a) deleting paragraph (b); and

(b) deleting paragraph (c).

(Chairperson, Departmental Committee on Finance & National Planning)

Debate arising;

Question on the amendment put and agreed to;

Clause 19 - as amended agreed to.

Clauses 20, 21, 22 & 23 - agreed to

Clause 24 - amendment proposed –

THAT, the Bill be amended by deleting clause 24.

(Chairperson, Departmental Committee on Finance & National Planning)

Debate arising;

Question on the amendment put and agreed to;

Clause 24 - deleted.

Clauses 25, 26, 27, 28, 29, 30 & 31 - agreed to

Clause 32 - amendment proposed –

THAT, the Bill be amended by deleting clause 32.

(Chairperson, Departmental Committee on Finance & National Planning)

Debate arising;

Question on the amendment put and agreed to;

Clause 32 - deleted.

Clause 33 - amendment proposed –

THAT, the Bill be amended by deleting clause 33.

(Chairperson, Departmental Committee on Finance & National Planning)

Debate arising;

Question on the amendment put and agreed to;

Clause 33 - deleted.

Clause 34 - agreed to

Clause 35 - amendment proposed –

THAT, the Bill be amended by deleting clause 35 and substituting therefor the following new clause 35-

Amendment of section 139 of No. 33 of 2015. **35.** 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 but shall only be considered after twelve months from the date of signing of the contract, in the case of a price variation”.

(Chairperson, Departmental Committee on Finance & National Planning)

Debate arising;

Proposed amendment withdrawn.

Further amendment proposed -

THAT, the Bill be amended by deleting clause 35 and inserting the following new clause-

Amendment of section 139 of No. 33 of 2015. **35.** The principal Act is amended in section 139-
(a) by deleting subsection (2) and substituting therefor the following new subsection-

“(2) An accounting officer of a procuring entity, on the recommendation of an evaluation committee or as prescribed in the signed Contract Agreement, may approve the request for—

- (a) use of prime costs;
- (b) use of contingencies;
- (c) reimbursable costs; and
- (d) use of provisional sums.”

(b) by inserting the following new subsection immediately after subsection (2)–

“(2A) Despite subsection (2), an accounting officer of a procuring entity, on the recommendation of an evaluation committee or as prescribed in the signed contract agreement, may approve the request for the extension of the contract period, which request shall be accompanied by a letter from the tenderer making justifications for such extension.”

(c) by deleting subsection (4) and inserting the following new subsection–

“(4) For the purposes of this section, any variation of a contract shall only be considered if the following are satisfied—

- (a) the price variation from the original price is based on the prevailing consumer price index obtained from Kenya National Bureau of Statistics;
- (b) the quantity variation for goods does not exceed fifteen per cent of the original contract quantity;
- (c) the price or quantity variation is to be executed within the period of the contract;
- (d) the cumulative value of all contract variations for goods do not result in an increment of the total contract price by more than twenty five per cent of the original contract price; and
- (e) the cumulative value of professional services does not result in an increment of the total contract price by more than twenty five per cent of the original contract price.

(d) by inserting the following new subsection immediately after subsection (6)–

(7) The method for computing price variation shall be prescribed in regulations.

(Hon. Joseph Nduati)

Debate arising;

Question on the further amendment put and agreed to;

Clause 35 - as amended agreed to.

Clause 36 - agreed to

Clause 37 - amendment proposed –

THAT, the Bill be amended in clause 37 by deleting paragraph (a).

(Chairperson, Departmental Committee on Finance & National Planning)

Debate arising;

Question on the amendment put and agreed to;

Clause 37 - as amended agreed to.

Clauses 38 & 39 - agreed to

Clause 40 - amendment proposed –

THAT, the Bill be amended by deleting clause 40.

(Chairperson, Departmental Committee on Finance & National Planning)

Debate arising;

Question on the amendment put and agreed to;

Clause 40 - deleted.

Clauses 41, 42, 43 & 44 - agreed to

Clause 2 - amendment proposed –

THAT, the Bill be amended in clause 2 by deleting paragraph (a).

(Chairperson, Departmental Committee on Finance & National Planning)

Debate arising;

Proposed amendment withdrawn;

Further amendment proposed –

THAT, clause 2 of the Bill be amended in–

- (a) paragraph (a) by deleting the words “or any other supply chain professional body” and substituting therefor the words “or any other procurement or supply chain professional body recognised in Kenya”; and
- (b) paragraph (b) by inserting the following proposed new definition in proper alphabetical sequence–
"complex and specialized contracts" means contracts that include procurement where the terms and conditions of an agreement are different from standard commercial terms and conditions, and includes contracts for infrastructural works performed under international agreements containing international terms and conditions;

(Hon. Joseph Nduati)

Debate arising;

Question of the amendment put and agreed to;

Clause 2 - as amended agreed to.

Title - agreed to

Clause 1 - agreed to

Bill to be reported with amendments.

(b) The Copyright (Amendment) Bill (National Assembly Bill No. 44 of 2021)

Committee of the Whole House on this Bill deferred to another day.

12. **HOUSE RESUMED** - the Third Chairperson in the Chair

(a) The Public Procurement and Asset Disposal (Amendment) Bill (National Assembly Bill No. 32 of 2021)

Bill reported with amendments.

Motion made and Question proposed –

THAT, the House do agree with the Committee in the said report.

(Leader of the Majority Party)

Question deferred to another day.

13. **THE UNIVERSITIES (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 35 OF 2021)**

Order for Second Reading read;

Motion made and Question proposed –

THAT, the Universities (Amendment) Bill (National Assembly Bill No.35 of 2021) be now read a Second Time

(Leader of the Majority Party – 16.02.2022)

Debate interrupted on Wednesday, February 16, 2022 (Afternoon Sitting) resumed;

Mover replied;

Question deferred to another day.

14. **THE NATIONAL GOVERNMENT CONSTITUENCIES DEVELOPMENT FUND (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 4 OF 2021)**

Order for Second Reading read;

Motion made and Question proposed -

THAT, the National Government Constituencies Development Fund (Amendment) Bill (National Assembly Bill No. 4 of 2021) be now read a Second Time

(Chairperson, Committee on the National Government Constituencies Development Fund)

Debate arising;

And the time being Seven O'clock, the Third Chairperson interrupted the proceedings and adjourned the House without Question put pursuant to the Standing Orders.

15. **HOUSE ROSE** - at Seven O'clock

M E M O R A N D U M

The Speaker will take the Chair on
Tuesday, February 22, 2022 at 2.30 p.m.

---x---