



REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT – (THIRD SESSION)

THE NATIONAL ASSEMBLY

VOTES AND PROCEEDINGS

WEDNESDAY, MARCH 20, 2024 AT 2.30 PM (AFTERNOON SITTING)

1. The House assembled at thirty minutes past Two O'clock
2. The Proceedings were opened with Prayer
3. **Presiding** – the Honourable Speaker
4. **COMMUNICATION FROM THE CHAIR**

The Speaker issued the following Communication -

Claims of unconstitutionality of certain provisions of the National Government Administration Laws (Amendment) Bill (National Assembly Bill No. 73 of 2023)

“Honourable Members,

You will recall that during the Afternoon Sitting of yesterday, Tuesday 19th March 2024, during the Second Reading of the National Government Administration Laws (Amendment) Bill, 2023 the Leader of the Minority Party (Hon. Opiyo Wandayi, EGH, MP) rose on a Point of Order under Standing Order 47(3)(b). The Hon. Leader of the Minority Party sought the Speaker’s ruling on the constitutionality of some specific aspects of the Bill.

In his submission, the Leader of the Minority Party claimed that there were constitutional issues that touched on the substratum of the said Bill, hence requiring determination of the Speaker, before debate on the Bill could resume.

Honourable Members, the Leader of the Minority Party singled out the proposed amendments to the provisions relating to the National Government Coordination Act, 2013, whose import is to create the Office of the Chief Administrative Secretary and that of the Head of Public Service. He argued that the amendments, if passed in the manner contained in the Bill, would be unconstitutional.

Honourable Members, the matter elicited interest from several other Members including the Hon. Caroli Omondi, the Hon. Jared Okello, the Hon. (Dr.) James Nyikal, the Hon. Samuel Chepkonga, the Hon. (Dr.) Ojiambo Oundo, the Hon. Gitonga Murugara and the Hon. Owen Baya.

Honourable Members, having listened to the concerns raised by the Leader of the Minority Party as well as the arguments and counter-arguments by several other Members, I have distilled the following FIVE questions as requiring my determination. These are –

- (i) **Whether a state office may be created through a national legislation;**
- (ii) **Whether the offices of the Chief Administrative Secretary and the Head of Public Service as proposed in the Bill are public or state offices;**

- (iii) **Whether the establishment of the offices of Chief Administrative Secretary and the Head of Public Service in the form proposed in the Bill, is unconstitutional;**
- (iv) **What is the value of a report of a Committee on a Bill to the House during debate at Second Reading of the Bill and at Committee of the whole House; and**
- (v) **Whether the amendments proposed by the Departmental Committee on Justice and Legal Affairs would cure any offensive provisions in the Bill.**

Honourable Members, the first issue is *whether a state office may be established through national legislation*. On this question, the Leader of the Minority Party opined that the two offices were unconstitutional to the extent that they were not contemplated under the definition of “state office” under Article 260 of the Constitution.

The Honourable Members who expressed divergent views from those of the Leader of the Minority Party relied on the fact that the Departmental Committee on Justice and Legal Affairs has, in its Report on the Bill, recommended certain proposed amendments intended to address the concerns raised by the Leader of the Minority Party. They also argued that the Constitution grants latitude to the House to exercise its legislative power to create offices in the public service through national legislation.

Honourable Members, Article 260 of the Constitution defines a public office as **“an office in the national government, a county government or the public service, if the remuneration and benefits of the office are payable directly from the Consolidated Fund or directly out of money provided by Parliament.”** The same Article also defines the term “state office” to include the various offices therein enumerated at paragraphs (a) to (q).

Most relevant to this matter is paragraph (q) which provides that a state office could also be **an office established and designated as such by national legislation**.

Honourable Members, it is, in fact, instructive to note that Article 260 of the Constitution is not couched in an exhaustive manner. Paragraph (q) of the said Article donates power to Parliament to further legislate on the subject by providing that a state office also include an office established and designated as such by national legislation.

Honourable Members, the Courts have also interpreted the question of whether state offices may be created by national legislation. In the case of *Matindi & 3 others v The National Assembly of Kenya & others [2023] KEHC 19534 (KLR)*, the High Court was satisfied that a state office can be created by national legislation. The Court held as follows -

“...whereas HE the President can establish a state office within the ranks of the public service, it requires approval by the National Assembly. Such approval may be achieved by enactment of a statute, which provides for the same and further provide an appropriate framework for a cap on the number of CASs if necessary.”

The High Court was satisfied that a state office may be created by statute.

Honourable Members, this settles the first issue on establishment of a public or state office by national legislation.

Honourable Members, the second issue for determination is *whether the offices of the Chief Administrative Secretary and the Head of Public Service as proposed in the Bill are public or state offices*.

Honourable Members, you will recall that the Office of the Chief Administrative Secretary has been subject of litigation before the High Court.

Honourable Members, in the case of *Okoiti & another v Public Service Commission others [2021] KEHC 464 (KLR)* the Court held that there were no processes laid down in legislation for establishing the office of Chief Administrative Secretary hence the finding of unconstitutionality.

The findings in this case were reaffirmed in the latter case of *Matindi and 3 others v The National Assembly of Kenya & others [2023] KEHC 19534 (KLR)* in which the Court affirmed that *the offices of Chief Administrative Secretaries were State offices which could only be lawfully established and designated as State offices by national legislation.*

Honourable Members, in summary, the Court in both instances emphasized on the need for legislation in order to constitutionalise the establishment of those offices. **Differently put, the Court in both instances would probably have arrived at a different finding, had the establishment of those offices been done by national legislation.**

In this context, it appears therefore that the Bill being contested by the Leader of the Minority party in actual fact intends to fill the lacunae in law as identified by the Courts in the aforesaid cases.

Honourable Members, whereas the Bill as published does not expressly designate the two offices as either public or state offices, it follows without question that the remuneration and benefits of the offices established are payable directly out of monies to be provided by Parliament. To that extent, the offices established are public offices within the meaning of Article 260 of the Constitution.

Honourable Members, this disposition settles the second issue. It also settles the third issue on whether the establishment of the two offices in the form proposed in the Bill is constitutional.

Honourable Members, permit me now to address the fourth issue concerning the value of a report of a Committee on a Bill to the House during debate at Second Reading of the Bill and at Committee of the whole House.

Honourable Members, you may recall that, while speaking to the matter, the Member for Funyula (Hon. (Dr.) Ojiambo Oundo) argued that whenever a Bill is listed in the Order Paper for Second Reading, the said Bill is exclusively what should be before the House for debate and not the Report of the relevant Committee on the Bill.

According to Hon. Oundo, a report of a Committee of this House on a Bill is inconsequential to the legislative processes, to the extent that what is ordinarily debated is the Bill and not the report.

Honourable Members, I take it that the Hon. Oundo advanced the said argument oblivious of the fact that committees interface the House with the public, hence actualizing the provisions of Article 118 of the Constitution on public participation. It is for this purpose that Standing Order 127 is couched in mandatory terms, as follows—

- “127(3) The Departmental Committee to which a Bill is committed shall facilitate public participation on the Bill through an appropriate mechanism, including-*
- (a) inviting submission of memoranda;*
 - (b) holding public hearings;*
 - (c) consulting relevant stakeholders in a sector; and*
 - (d) consulting experts on technical subjects.*

*(3A) The Departmental Committee **shall** take into account the views and recommendations of the public under paragraph (3) **in its report to the House.**”*

Honourable Members, in compliance with Standing Order 227, the Departmental Committee on Justice and Legal Affairs undertook public participation on the Bill and tabled a report thereof. Further, the Committee tabled an Addendum to the Report that addresses emergent issues relating to certain provisions of the Bill. For greater certainty, the initial Report and the Addendum should be read together.

Indeed, Honourable Members, in the 12th Parliament, on 7th July 2021, when addressing the fate of individual Members' Bills that were pending before various committee of the House, my immediate predecessor did observe as follows, and I quote—

“...the importance of having Committee reports on Bills before commencement of Second Reading needs not be over-emphasised. For the information of Members, Committee reports on Bills not only inform and enrich debate on the Bill, but also most importantly, espouse the views and recommendations of the public, which legitimises the legislative process and cushions the House from judicial review for failing to comply with provisions under Article 118 of the Constitution (Public Access and Participation).”

From the foregoing, Honourable Members and in the face of the express dictates of Standing Order 127 it is generally part of our practice that committee reports on Bills are integral and imperative to the legislative process and the contents therein cannot be wished away as suggested by the Hon. Member for Funyula.

Honourable Members, this determination leads me to the fifth question, which is *whether the amendments proposed by the Departmental Committee on Justice and Legal Affairs would cure any offensive provisions of the Bill.*

Honourable Members, you will note that, based on the views of the public and stakeholders, the Committee has recommended a raft of amendments in its Report.

I have perused the Report and **I am satisfied that the Committee's proposed amendments, if passed by the House, will remedy the inadequacies, if any, contained in the Bill.** I therefore urge the House to consider the amendments proposed by the Departmental Committee on Justice and Legal Affairs.

Honourable Members, the purpose of Standing Order 47(3)(b) cited by the Honourable Leader of Minority Party is to avoid an absurd situation, where the House debates, votes on and possibly passes an unconstitutional motion. The House may therefore cure any issues of unconstitutionality at Committee of the Whole House, if any.

Honourable Members, the ruling of my predecessor on the question of unconstitutionality claims on the Finance Bill, 2019 delivered on 19th September 2019 has been extensively referenced by Hon. Opiyo Wandayi. In my view, that question may be distinguished from the present one. This is because the impugned clauses of the Finance Bill, 2019 were procedurally defective as they sought to limit the right to privacy without any additional provision stating the intention to limit that right and the nature and extent of the limitation.

It is therefore my view that the application of Standing Order 47(3)(b) is reserved for matters that are outrightly unconstitutional, whether procedurally or substantively. It is my considered view that the issues raised by the Hon. Opiyo Wandayi do not fall within that category and may therefore be canvassed by the House, noting that the report of the Justice and Legal Affairs Committee and the addendum thereof proposes amendments to the Bill.

Honourable Members, I am inclined to the view that the plea by the Leader of Minority Party for the Speaker to find specific provisions of the Bill unconstitutional is premature. Doing so well aware that the House can still cure any offensive provisions in the Bill through amendments at the Committee of the whole House is **akin to throwing the baby out with the bathwater.**

In this regard, Honourable Members, having settled the claim of unconstitutionality in relation to the Bill, and bearing in mind that there are amendments proposed by the Departmental Committee on Justice and Legal Affairs and other Members, my finding is as follows: -

- 1) **THAT**, the National Government Administration Laws (Amendment) Bill, 2023 is properly before the House;
- 2) **THAT**, since debate for Second Reading was concluded yesterday, and the mover did reply, I will hereafter proceed to put the Question for Second Reading;
- 3) **THAT**, the Bill may thereafter proceed to the Committee of the whole House and Third Reading as scheduled by the House Business Committee.

The House is accordingly guided. I thank you!"

5. PAPERS

The following papers were laid on the Table –

- (i) Reports of the Auditor-General and Financial Statements for the year ended 30th June, 2023 and the certificates therein in respect of –
 - (a) University of Embu;
 - (b) Commission for University Education-Staff Car Loan and Mortgage Scheme/Fund;
 - (c) Petroleum Development Levy Fund – State Department for Petroleum;
 - (d) National Communication Secretariat;
 - (e) Kenyatta University Teaching, Referral and Research Hospital;
 - (f) Kenya Trade Remedies Agency; and
 - (g) Anti-Counterfeit Authority.

(Leader of the Majority Party)

- (ii) Report of the Departmental Committee on Defence, Intelligence and Foreign Relations on its participation in the Diaspora Mobile Consular Service (MCS) exercise in Japan from 20th to 27th November 2023.

(The Hon. Nelson Koech, MP - Chairperson, Departmental Committee on Defence, Intelligence & Foreign Relations)

6. NOTICES OF MOTION

The following Notices of Motion were given –

- (i) **Participation in the Diaspora Mobile Consular Service Exercise**

THAT, this House adopts the Report of the Departmental Committee on Defence, Intelligence and Foreign Relations on its participation in the Diaspora Mobile Consular Service (MCS) exercise in Japan, *laid on the Table of the House on Wednesday, 20th March, 2024.*

(The Chairperson, Departmental Committee on Defence, Intelligence & Foreign Relations)

(ii) **Establishment of a National Policy to combat disrespectful childbirth practices in Kenya**

THAT, aware that, Article 43(1)(a) of the Constitution provides for the right of every person to access the highest attainable standard of health; further aware that, poor quality of health services especially maternal care has been a recurring concern among women in the country; noting that, there is increased pre- and post-partum mistreatment and dehumanized care of women by healthcare providers, also known as *obstetric violence (OBV)*; further noting that, obstetric violence includes, but is not limited to, disrespectful and abusive behaviour, physical and verbal abuse, neglect, forced medical procedures, humiliation and assault in healthcare settings; concerned that, sustained class-based disparities shape different maternal and infant health outcomes with women of low socio-economic status experiencing greater levels of obstetric violence; further concerned that, this not only affects women's physical and mental health, but also impacts on the overall health outcomes of mothers and their newborns, significantly contributing to high maternal mortality rates; cognizant of the fact that, there exists no national policy or framework to address and prevent obstetric violence; now therefore, this House resolves that, the National Government, through the Ministry of Health, develops a policy on prevention of obstetric violence in healthcare facilities in the country and provides a framework for regular monitoring and reporting of cases to curb incidences of pre- and post-partum mistreatment of women seeking health services.

(Hon. Gathoni Wamuchomba, MP – Member for Githunguri)

7. QUESTIONS

The following Questions were asked and responded to by the Cabinet Secretary for Youth Affairs, Creative Economy and Sports in plenary –

- (i) **Question No. 231 of 2023** by the Member for Nyeri Town (Hon. Duncan Mathenge, MP) regarding progress of the Ministry's policy in stopping the construction of new stadia across the country.
- (ii) **Question No. 053 of 2024** by the Member for Ndhiwa (Hon. Martin Owino, MP) regarding measures by the Ministry in promoting sports development and nurturing talents among communities.
- (iii) **Question No. 054 of 2024** by the Member for Imenti North (Hon. Abdul Dawood, MP) regarding timeline for the release of Ksh. 42 million committed by Sports Kenya on 13th December, 2017 intended for the partial construction of Meru Divisional County Offices.
- (iv) **Question No. 055 of 2024** by the Nominated Member (Hon. Irene Mayaka, MP) regarding policy framework guiding the provision of medical cover for Sportspersons in the country.

Various Members also raised Supplementary Questions which were responded to by the Cabinet Secretary within the allotted time.

8. STATEMENTS PURSUANT TO STANDING ORDER 44(2)(c)

(a) The following Statements were requested:

- (i) By the Member for Baringo Central (Hon. Joshua Kandie, MP) from the Chairperson, Departmental Committee on Education regarding delayed salaries and understaffing of non-teaching personnel in special needs school;
- (ii) By the Member for Kilifi North (Hon. Owen Baya, MP) from the Chairperson, Departmental Committee on Education regarding withholding of academic certificates by school heads; and
- (iii) By the Member for Laisamis (Hon. Joseph Lekuton, MP) from the Chairperson, Departmental Committee on Environment, Forestry and Mining regarding status of preparedness of the Government in curbing the impact of climate change; and

(b) The following Statement response was made:

- (i) By the Vice-Chairperson of the Select Committee on National Government Constituencies Development Committee (Hon. Kassim Tandaza, MP) to a statement requested by the Member for Nyando (Hon. Jared Okello, MP) regarding allocation of funds towards infrastructure development in Junior Secondary Schools.

9. THE STATUTORY INSTRUMENTS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 3 OF 2024)

Order for Second Reading read;

Motion made and Question proposed -

THAT, the Statutory Instruments (Amendment) Bill (National Assembly Bill No. 3 of 2024) be now read a Second Time.

(The Leader of the Majority Party – 20.03.2024)

Debate on the Bill having been concluded on Wednesday, March 20, 2024 (Morning Sitting);

Question put and agreed to.

Bill read a Second Time and committed to the Committee of the whole House tomorrow.

10. THE NATIONAL GOVERNMENT ADMINISTRATION LAWS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 73 OF 2023)

Order for Second Reading read;

Motion made and Question proposed -

THAT, the National Government Administration Laws (Amendment) Bill (National Assembly Bill No. 73 of 2023) be now read a Second Time.

(The Leader of the Majority Party – 14.03.2024)

Debate on the Bill having been concluded on Tuesday, March 19, 2024;

Question put and agreed to.

Bill read a Second Time and committed to the Committee of the whole House tomorrow.

11. THE NATIONAL COHESION AND INTEGRATION BILL (NATIONAL ASSEMBLY BILL NO. 74 OF 2023)

(The Chairperson, Committee on National Cohesion and Equal Opportunity)

Order for First Reading read;

Bill read a First Time and referred to the relevant Committee pursuant to Standing Order 127(2).

12. THE TREATY MAKING AND RATIFICATION (AMENDMENT) (NO.2) BILL (NATIONAL ASSEMBLY BILL NO. 9 OF 2024)

(The Chairperson, Departmental Committee on Justice and Legal Affairs)

Order for First Reading read;

Bill read a First Time and referred to the relevant Departmental Committee pursuant to Standing Order 127(1).

13. COMMITTEE OF THE WHOLE HOUSE

Order for Committee read;

IN THE COMMITTEE

The Third Chairperson (Hon. Omboko Milemba) in the Chair

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) (NO.2) BILL (NATIONAL ASSEMBLY BILL NO. 68 OF 2023)**SCHEDULE****Provisions relating to the Oaths and Statutory Declarations (Cap 15)**

Proposed Sections 3 and 12 - agreed to

Provisions relating to the Oaths and Statutory Declarations (Cap 15) - agreed to

Provisions relating to the Advocates Act (Cap 16)

Proposed sections 2 and 81(1) - agreed to

Provisions relating to the Advocates Act (Cap 16) - agreed to

Provisions relating to the Notaries Public Act (Cap. 17)

Proposed sections 4(1); 4(2); and 5(3) - agreed to

Provisions relating to the Notaries Public Act (Cap. 17) - agreed to

Provisions relating to the Civil Procedure Act (Cap. 21)

Proposed section 81(1) - amendment proposed

THAT, the Schedule to the Bill be amended by deleting the proposed amendments to the Civil Procedure Act (Cap. 21)

(Chairperson, Departmental Committee on Justice and Legal Affairs)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Section 81(1) - deleted

Provisions relating to the Civil Procedure Act (Cap. 21) as amended - agreed to

Provisions relating to the Public Holidays Act (Cap. 110)Schedule - amendment proposed

THAT, the Schedule to the Bill be amended by deleting the proposed amendment to the Public Holidays Act (Cap. 110), and substituting therefor the following new amendment –

The Public Holidays Act (CAP. 110)	Schedule	Delete the expression “Utamaduni Day” and substitute therefor the expression “Mazingira Day”
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(The Leader of the Majority Party)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Schedule as amended - agreed to

Provisions relating to the Public Holidays Act (Cap. 110) as amended - agreed to

Provisions relating to the Trustees (Perpetual Succession) Act (Cap. 164)

Proposed sections 2; 3(1); 3(2); 3(2A); 3(2B); 3J (8); 5(1); 6(1); 6(2); 6(3); 8(1); 9(1); 9(2); 11; 13(1); 15; 16(1); 16(2) & 17 - agreed to

Schedule - agreed to

Provisions relating to the Trustees (Perpetual Succession) Act (Cap. 164) - agreed to

Provisions relating to the Industrial Training Act, (Cap 237)

Proposed section 5B (3) - agreed to

Provisions relating to the Industrial Training Act, (Cap 237) - agreed to

Provisions relating to the Traffic Act (Cap 403)

Section 117(3) - agreed to

Sections 117(8) & 117(9) - amendment proposed

THAT, the Schedule to the Bill be amended –

- (a) by deleting the proposed amendment to the Traffic Act (Cap. 403), and substituting therefor the following new amendment –

- s. 117(8) Delete the expression “to a fine not exceeding two hundred shillings or to imprisonment for a term not exceeding one month” and substitute therefor the expression “on first conviction, to a fine of an amount equivalent to ten times the maximum statutory penalty of the offence to which the notification relates, and an amount equivalent to twenty times of the penalty for a second or subsequent conviction:

Provided that where a notification relates to two or more offences, the fine under this subsection shall be based on the offence with the highest penalty under the notification”.

- s. 117(9)(a) Delete the expression “on first conviction to a fine not exceeding two hundred shillings, and on each subsequent conviction to a fine not exceeding five hundred shillings or to imprisonment for a term not exceeding three months” and substitute therefor the expression “on first conviction to a fine of an amount equivalent to ten times the maximum statutory penalty of the offence to which the notification relates, and an amount equivalent to twenty times of the penalty for a second or subsequent conviction:

Provided that where a notification relates to two or more offences, the fine under this paragraph shall be based on the offence with the highest penalty under the notification”.

(The Leader of the Majority Party)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Sections 117(8) & 117(9) as amended

- agreed to

Sections 117(8)

Further amendment proposed

THAT, the Schedule to the Bill be amended in the proposed amendments to the Traffic Act (Cap. 403) by deleting the proposed amendments to section 117(8);

(The Member for Kitutu Masaba (Hon. Clive Gisairo)

Amendment dropped;

Sections 117(10)

- agreed to

Provisions relating to the Traffic Act (Cap. 403)) as amended -

agreed to

Provisions relating to the Sexual Offences Act (No. 3 of 2006)

Proposed section 39(13)

- agreed to

Provisions relating to the Sexual Offences Act (No. 3 of 2006) -

agreed to

Provisions relating to the Employment Act, 2007(No.11 of 2007)

Proposed section 3(2)

- agreed to

Provisions relating to the Employment Act, 2007(No.11 of 2007) -

agreed to

Provisions relating to the Veterinary Surgeons and Veterinary Paraprofessionals Act, 2011(No.29 of 2011)Proposed Sections 2Amendment proposed

THAT, the Schedule to the Bill be amended in the proposed amendments to the Veterinary Surgeons and Veterinary Professionals Act, 2011 (No.29 of 2011) in the proposed amendment to section 2-

- (i) by deleting the proposed amendment to the definition of the word “annual premises license”; and,
- (ii) by deleting the proposed amendment to the definition of the word “private practice”.

(Chairperson, Departmental Committee on Agriculture and Livestock)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Section 2 as amended

- agreed to

Proposed sections 2(1), 6(2)(a), and 6(2)(n)

- agreed to

Sections 16(5)

Amendment proposed

THAT, the Schedule to the Bill be amended in the proposed amendments to the Veterinary Surgeons and Veterinary Professionals Act, 2011 (No.29 of 2011) by deleting the proposed amendment to section 16(5).

(Chairperson, Departmental Committee on Agriculture and Livestock)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Section 16(5)

- deleted

Provisions relating to the Veterinary Surgeons and Veterinary Professionals Act, 2011 (No.29 of 2011) as amended

- agreed to

Provisions relating to the Public Finance Management, Act 2012 (No.18 of 2012)

Proposed sections 40(3) and 40(4)

- agreed to

Provisions relating to the Public Finance Management, Act 2012 (No.18 of 2012)-
agreed to

Provisions relating to the Universities, Act 2012 (No.42 of 2012)

New Proposed Section 24(3)

Amendment proposed

THAT, the Schedule to the Bill be amended in the proposed amendments to the Universities Act, 2012 by inserting the following new amendment immediately before the proposed amendment to section 25-

The Universities Act, 2012 (No.42 of 2012)	s.24 (3)	Delete the words “a specialized degree awarding institution” appearing immediately after the word “establish” and substitute therefor the words “specialised degree awarding institutions”.
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(The Leader of the Majority Party)

Motion made and question proposed –

THAT New Proposed Section 24(3) be read a Second Time;

Debate arising;

Question put and agreed to.

Motion made and question proposed –

THAT New Proposed Section 24(3) be part of the Bill;

Question put and agreed to.

New Proposed Section 24(3) - agreed to

Proposed Sections 25 Amendment proposed

THAT, the Schedule to the Bill be amended in the proposed amendments to the Universities Act, 2012 (No. 42 of 2012) by deleting the proposed amendment to section 25.

(Chairperson of the Departmental Committee on Education)

Question of the amendment proposed;

Debate arising;

Amendment - withdrawn;

Proposed Section 25 - agreed to

Proposed Section 56(1)(a) - withdrawn by the mover

Provisions relating to the Universities, Act 2012 (No.42 of 2012) as amended
- agreed to

Provisions relating to the Office of the Attorney General, Act 2012 (No.49 of 2012)

Proposed Sections 13; 21(1) and 22 Amendment proposed –

THAT, the Schedule to the Bill be amended by deleting the proposed amendments to the Office of the Attorney-General Act, 2012 (No. 49 of 2012) and substituting therefor the following new proposed amendments in the proper chronological sequence -

*Provis
ion*

s. 2 Delete the words “the Public Service Commission” appearing immediately after the word “employed” in the definition of “subordinate officer”.

Insert the following new definition in the proper alphabetical sequence—

“Advisory Board” means the Advisory Board established under section 20A (1).

s. 9
(2) Delete the words “Public Service Commission” appearing immediately after the words “recommended by the” and substituting therefor the words “Advisory Board”.

s. 9 (5) (d) Delete the words “Article 234 of the Constitution”
appearing

immediately after the words “Subject to” and
substituting

therefor the words “Section 20B”

s. 13 Delete the words “the Public Service Commission” and
substitute therefor the words “Advisory Board”

New Insert the following new Part immediately after section
20 -

**PART IIA - ADVISORY BOARD OF THE OFFICE OF
THE ATTORNEY GENERAL**

Advisory Board. **20A.** (1) There is established a board to be
known as the Advisory Board to the Office
of the Attorney-General.

(2) The Board shall consist of -

- (a) the Attorney-General;
- (b) the Principal Secretary responsible for
matters relating to the public service;
- (c) the Principal Secretary responsible for
matters relating to the National
Treasury;
- (d) the Chairperson of the Public Service
Commission or a representative
designated in writing by the
Chairperson;
- (e) the Chairperson of the Council of the
Institute of Human Resource
Management established under the
Human Resource Management
Professionals Act or a representative
designated in writing by the
Chairperson; and
- (f) the President of the Law Society of
Kenya or a representative designated
in writing by the President.

Cap.
538.

(3) The Attorney-General shall be the
chairperson of the Board.

(4) The Solicitor-General shall be the secretary
to the Board.

Functions of the Advisory Board.

20B. (1) The Advisory Board shall advise the Attorney-General on -

- (a) recruitment and appointment of the Solicitor-General, deputy solicitors-general, state counsel and other members of staff of the Office;
- (b) promotion of state counsel and other members of staff of the Office;
- (c) discipline of the deputy solicitors-general, state counsel and other members of staff of the Office
- (d) remuneration of the Solicitor-General, deputy solicitors-general, state counsel and other members of staff of the Office in consultation with the Salaries and Remuneration Commission; and
- (e) matters that may be referred to the Board by the Attorney-General.

Remunerat
ion of the
Board.

20C. The members of the Board shall be paid such allowances as the Attorney-General, shall approve upon the advice of the Salaries and Remuneration Commission.

Meetings
and
quorum.

20D. (1) The Advisory Board shall meet at least four times in every financial year and not more than three months shall elapse between one meeting and the next meeting.

(2) Unless four members of the Board otherwise agree, at least fourteen days' notice of a meeting shall be given to every member.

(3) The quorum at a meeting of the Advisory Board shall be four members.

(4) The chairperson of the Advisory Board shall convene and preside over the meetings of the Advisory Board or in the absence of the chairperson, a member of the Advisory Board elected by the members present from among their number.

(5) The proceedings of the Advisory Board shall not be invalidated by reason of a vacancy or absence among the members.

(6) A member of the Advisory Board or a person present at a meeting of the Advisory Board who has interest in a matter for consideration by the Advisory Board or by the Office shall disclose in writing the nature of that interest and is disqualified from participating in the deliberations of the Advisory Board or the Office in respect of that matter, unless the Advisory Board or Office decides otherwise.

s.21 (1) Delete the words “the Public Service Commission” appearing immediately after the words

“on the recommendation of the” and substitute therefor the words “Advisory Board”

s. 22 Delete the words “Public Service Commission” appearing immediately after the words “Commission and” and substitute therefor the words “the Advisory Board”.

New Inserting the following new section immediately after section 28 -

Seal of the Office. **28A.** (1) There shall be a seal of the Office which shall be such device as the Attorney-General shall determine.

(2) The seal of the Office shall be kept in the custody of the Attorney-General or such person as the Attorney-General may authorise in that regard.

(3) The seal of the Office shall be used in accordance with the orders of the Attorney-General.

(4) The seal of the Office, when affixed to a document and duly authenticated, shall be judicially and officially noticed and, unless the contrary is proved, any necessary order or authorization of the Attorney-General in respect of the seal under this section shall be presumed to have been duly given.

New Inserting the following new section immediately after section 33 -

Saving. **33A.** (1) Any State Counsel, officer or member of staff employed and deployed by the Public Service Commission and serving in the Office immediately before the commencement of this section shall -

- (a) on the commencement of this section, be deemed to have been employed and deployed in accordance with this Act;
- (b) retain any rights that have accrued or are accruing to him or her before the commencement of this Act;
- (c) continue to contribute to any superannuation scheme to which he or she was a contributor immediately before the commencement of this Act;
- (d) be entitled to receive any deferred or extended leave and any payment, pension or gratuity as if he or she has continued to be such an officer, contributor or person during his or her service as a member of the Office;
- (e) be deemed to have been employed in accordance with this Act for the purposes of any written law under which any rights accrued or were accruing to him or her under which he or she continues to contribute or by which any entitlement has been conferred; and
- (f) be deemed to be a State Counsel, officer or employee of the Office for the purposes of any superannuation scheme to which he or she is entitled to contribute.

Paragra Delete the words “Public Service Code of Conduct and the” appearing
ph 1 (b) immediately after the words “supplementary to the”.
of the
Schedu
le

(Chairperson, Departmental Committee on Justice and Legal Affairs)

Question of the amendments proposed;

Debate arising;

Question put and agreed to;

Proposed Sections 13; 21(1) and 22 as amended - agreed to
Provisions relating to the Office of the Attorney General, Act 2012 (No.49 of 2012) as amended - agreed to

Provisions relating to the Civil Aviation, Act 2013 (No.21 of 2013)

Proposed section 2(1) - agreed to
Proposed amendments to section 34 - dropped
Provisions relating to the Civil Aviation, Act 2013 (No.21 of 2013) - agreed to

Provisions relating to the Value Added Tax, Act 2013 (No.35 of 2013)

New proposed amendments to Section A of Part I of the First Schedule – Amendment proposed

THAT, the Schedule to the Bill be amended in the proposed amendments to the Value Added Tax Act, 2013 by inserting the following new proposed amendment immediately before the existing amendment to section A of Part 1 of the First Schedule to No. 35 of 2013 -

Section A of Delete paragraph 138.
 Part 1 of the
 First
 Schedule to
 No. 35 of
 2013.

Motion made and question proposed –

THAT New proposed amendments to Section A of Part I of the First Schedule be read a Second Time;

Debate arising;

Question put and agreed to.

Motion made and question proposed –

THAT New proposed amendments to Section A of Part I of the First Schedule be part of the Bill;

Question put and agreed to.

New proposed amendments to Section A of Part I of the First Schedule - agreed to
Section A of Part I of the First Schedule – Further amendment proposed

THAT, the Schedule to the Bill be amended by deleting the proposed amendments to the Value Added Tax Act, 2013 (No. 35 of 2013).

(Chairperson of the Departmental Committee on Finance and National Planning)

Proposed Amendment - dropped

Part A of the Second Schedule – Amendment proposed

THAT, the Schedule to the Bill be amended in the proposed amendments to the Value Added Tax Act, 2013 by deleting the proposed amendment to Part A of the Second Schedule.

(The Leader of the Majority Party)

Question of the amendments proposed;

Debate arising;

Question put and agreed to;

Part A of the Second Schedule – deleted

Part A of the Second Schedule – Further amendment proposed

THAT, the Schedule to the Bill be amended by deleting the proposed amendments to the Value Added Tax Act, 2013 (No. 35 of 2013).

(Chairperson of the Departmental Committee on Finance and National Planning)

Proposed Amendment – dropped

Provisions relating to the Value Added Tax, Act 2013 (No.35 of 2013) as amended - agreed to

Provisions relating to the Privatization, Act 2023 (No. 11 of 2023)

Proposed section 9 – agreed to

Provisions relating to the Privatization, Act 2023 (No. 11 of 2023) - agreed to

New proposed provisions relating to the National Employment Authority Act, 2016 (No. 3 of 2016) – withdrawn by the mover

Clause 2 – agreed to

Title – agreed to

Clause 1 – Amendment proposed

THAT, Clause 1 of the Bill be amended by inserting the words “and shall come into force upon publication in the *Gazette*” immediately after the expression “2023”.

(The Leader of the Majority Party)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 1 as amended – agreed to;

Bill to be reported with amendments.

14. HOUSE RESUMED – Fifth chairperson (Hon. Peter Kaluma) in the Chair

The Statute Law (Miscellaneous Amendments) (No.2) Bill (National Assembly Bill No.68 of 2023)

Bill reported with amendments;

Motion made and Question proposed –

THAT, the House do agree with the Report of the Committee of the Whole House on its consideration in the said report

(Leader the Majority Party)

Putting of the Question deferred to another day.

15. THE NATIONAL DISASTER RISK MANAGEMENT BILL (NATIONAL ASSEMBLY BILL NO. 24 OF 2023)

(The Leader of the Majority Party)

Second Reading

Order deferred

16. MOTION –REPORTS OF THE AUDITOR-GENERAL ON THE NATIONAL GOVERNMENT CONSTITUENCIES DEVELOPMENT FUND FOR FIVE CONSTITUENCIES IN VIHIGA COUNTY

(The Chairperson, Decentralized Funds Accounts Committee)

THAT, this House **adopts** the Report of the Decentralized Funds Accounts Committee on its consideration of the Report of the Auditor-General on the Financial Statements for the National Government Constituencies Development Fund for five Constituencies in Vihiga County for Financial Years 2013/2014, 2014/2015, and 2015/2016, *laid on the Table of the House on Wednesday, 14th February 2024.*

Order deferred

17. MOTION –INQUIRY INTO THE MAIZE FLOUR SUBSIDY PROGRAMME FOR THE FINANCIAL YEAR 2022/2023

(The Chairperson, Departmental Committee Agriculture and Livestock)

THAT, this House **adopts** the Second Report of the Departmental Committee on Agriculture and Livestock on the inquiry into the maize flour subsidy programme for the Financial Year 2022/2023, *laid on the Table of the House on Tuesday, 27th February 2024.*

Order deferred

18. MOTION- REPORTS OF THE AUDITOR-GENERAL ON THE NATIONAL GOVERNMENT CONSTITUENCIES DEVELOPMENT FUND FOR NINE CONSTITUENCIES IN BUNGOMA COUNTY

(The Chairperson, Decentralized Funds Accounts Committee)

THAT, this House **adopts** the Report of the Decentralized Funds Accounts Committee on its consideration of the Report of the Auditor-General on the Financial Statements for the National Government Constituencies Development Fund for nine Constituencies in Bungoma County for Financial Years 2013/2014, 2014/2015 and 2015/2016, *laid on the Table of the House on Thursday, 7th March 2024.*

Order deferred

19. HOUSE ROSE

- at thirty minutes Seven O'clock.

M E M O R A N D U M

The Speaker will take the Chair on
Thursday, March 21, 2023 at 9.30a.m

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