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13TH PARLIAMENT | 4TH SENATE | SECOND SESSION

STANDING COMMITTEE ON ENERGY

REPORT ON THE ENERGY (AMMENDMENT) BILL, 2023 (SENATE BILLS NO 42 OF
2023)

PAPERS LAID	
DATE	8/12/2023
TABLED BY	Chair
COM. MITTEE	Energy
CLERK AT THE TABLE	Lawrence M.

*Hon. Speaker
You may approve for
tabling. 30/11/23*

[Red Signature]
30/11/23

Clerk's Chamber
The Senate
Parliament Buildings
NAIROBI

APPROVED
RT. HON. SEN
AMASON J. KINCI

November, 2023

*CBS
This is forwarded and recommended
for approval for tabling
30/11/2023*

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LIST OF ABBREVIATIONS AND ACRONYMS

HFO	Heavy Fuel Oil
IPP	Independent Power Producers
KENGEN	Kenya Electricity Generating Company
LNG	Liquefied Natural Gas

PRELIMINARIES

The Senate Standing Committee on Energy is established under standing order 228(3) of the Senate Standing Orders. Pursuant to the provisions of the Fourth Schedule of the Standing Orders the Standing Committee on Energy is assigned to consider all matters related to fossil fuels exploration, development, production, maintenance and regulation of energy.

Mandate of the Committee

The Standing Order 228(4)(a) assigns the Standing Committee to investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration and operations of the assigned Ministries and departments. In executing its mandate, the Standing Committee on Energy oversees the Ministry of Energy and Petroleum and the following semi-autonomous government agencies-

1. Energy and Petroleum Regulatory Authority
2. Kenya Power & Lighting Company Limited
3. Kenya Electricity Generating Company Limited
4. Kenya Electricity Transmission Company Limited
5. Rural Electrification and Renewable Energy Company
6. Nuclear Power and Energy Agency
7. Geothermal Development Company.

Membership of the Committee

The Committee is composed of the following members-

- | | |
|--|---------------------------|
| 1. Sen. Wamatinga Wahome, MP | - Chairperson |
| 2. Sen. William Kisang' Kipkemoi, MP | - Vice-Chairperson |
| 3. Sen. (Dr.) Boni Khalwale, CBS, MP | - Member |
| 4. Sen. Ledama Olekina, MP | - Member |
| 5. Sen. (Dr.) Oburu Oginga, MGH, MP | - Member |
| 6. Sen. James Lomenen Ekomwa, MP | - Member |
| 7. Sen. Danson Buya Mungatana, MGH, MP | - Member |
| 8. Sen. Abass Sheikh Mohamed, MP | - Member |
| 9. Sen. Edwine Watanya Sifuna, MP | - Member |

CHAIRPERSON'S FOREWORD

Mr. Speaker Sir,

The Energy (Amendment) Bill (Senate Bills No 42 of 2023) is a Bill for an act of Parliament to amend the Energy ACT to make provision for energy purchase agreements; and for connected purposes.

The Principal object of the Bill is to amend the Energy Act, 2019 to provide for transparency in energy purchase agreements. The rationale for disclosure of the beneficial ownership information is to create an accurate public disclosure regime that provides transparency in the beneficial ownership and control structures of companies. This aids in not only promoting investor confidence and good corporate governance practices but also in uncovering tax evasion schemes, money laundering practices, corruption schemes, and other illegal activity involving either one or more companies.

The Bill intends to amend section 134 of the Energy Act, 2019 through enhancing the regulation of energy purchase agreements through reinforcements of the constitutional requirements of transparency and accountability.

It proposes this by ensuring that a generating entity shall sell energy to a licensed entity listed in the Third Schedule of the Energy Act 2019.

Currently most independent power producers (IPP's) have beneficial owners listed as corporations that are in other jurisdictions. During the inquiry into the high cost of electricity that was conducted by the Committee, it was noted that IPP's had ownership listed as companies that are registered in other countries. This revelation informed this amendment in an aim of providing transparency.

Additionally, during the inquiry on the high cost of electricity in the country, it was determined that the highest cost of electricity came from IPP's generating electricity using heavy fuel oil (HFO). In its report to the Senate, the Senate Standing Committee on Energy proposed that IPP's generating electricity using HFO should switch to Liquefied Natural Gas (LNG) and also recommended that the IPP's producing electricity using renewable energy should be given priority during the dispatch of electricity.

This Bill seeks to address that by ensuring that priority is given to IPP's who generate with a sustainable base load and those who generate electricity using renewable energy sources. This will reduce the cost of electricity significantly.

Mr. Speaker Sir,

The Energy (Amendment) Bill 2023 (Senate Bills No. 42 of 2023) was published on 1st September 2023 and was introduced in the Senate by way of First Reading on Tuesday 17th October 2023 and thereafter stood committed to the Senate Standing Committee on Energy for consideration and facilitation of public participation.

In Compliance with the provisions of Article 118 of the Constitution and Standing Order 145(5) of the Senate Standing Orders, the Committee proceeded to undertake public participation on the Bill. In this regard, the Committee published an advertisement in the Daily Nation and Standard newspapers on Thursday, 19th October 2023 inviting members of the public to submit written memoranda to the Committee on the Bill by 3rd November, 2023.

The Committee received written submissions from one (1) stakeholder namely the Council of Governors of Kenya.

Mr. Speaker Sir,

This bill is as a result of the inquiry conducted by the Committee on the high cost of Electricity in the Country. I want to thank Sen. Edwine Watanya Sifuna, MP a member of this Committee, who has sponsored the amendment bill to the Energy Act, 2019. I want to commend the members of the Committee for their devotion and commitment to duty, which made consideration of the Bill successful.

I also want to thank the offices of the Speaker and the Clerk of the Senate for the support extended to the Committee in undertaking this assignment.

Mr. Speaker Sir,

It is now my pleasant duty and privilege, on behalf of the Standing Committee on Energy Committee, pursuant to Standing Order 223(6), to present a report on The Energy (Amendment) Bill 2023 (Senate Bills No. 42 of 2023).

Signed.....  Date.....

SEN. WAHOME WAMATINGA MP
CHAIRPERSON, STANDING COMMITTEE ON ENERGY

CHAPTER ONE

1.1. BACKGROUND

1. The Energy (Amendment) Bill 2023 (Senate Bills No. 42 of 2023) was published on 1st September 2023 and was introduced in the Senate by way of First Reading on Tuesday, 17th October 2023 and thereafter stood committed to the Senate Standing Committee on Energy for consideration and facilitation of public participation.
2. The principal object of the Bill is to amend the Energy Act, 2019 to provide for transparency in energy purchase agreements. The rationale for disclosure of the beneficial ownership information is to create an accurate public disclosure regime that provides transparency in the beneficial ownership and control structures of companies. This aids in not only promoting investor confidence and good corporate governance practices but also in uncovering tax evasion schemes, money laundering practices, corruption schemes, and other illegal activity involving either one or more companies.

1.2.OVERVIEW OF THE BILL

3. The proposed Bill intends to amend section 134 of the Energy Act, 2019 through enhancing the regulation of energy purchase agreements through reinforcements of the constitutional requirements of transparency and accountability.
4. It proposes this by ensuring that a generating entity shall sell energy to a licensed entity listed in the Third Schedule of the Energy Act 2019.
5. The proposed Bill further proposed the placing obligations on the nature of the energy purchasing agreement through ensuring statutory compliance with Article 201 of the Constitution. The Bill further proposes that the energy purchasing agreement should only be entered into with a generating entity that has disclosed and registered full beneficial ownership in accordance with the Companies Act, 2015.
6. The proposed Bill intends to ensure that a purchasing entity in an energy purchasing agreement shall conduct a feasibility study prior to the procurement. The purpose of the feasibility study is to identify whether there is enough demand for electricity which cannot be met by the existing production.
7. The Bill further proposes that the procurement process shall strictly comply with the procedure of the Public Procurement and Assets Disposal Act and that priority is given to companies dealing with renewable energy.

8. The Bill also proposes that EPRA should not approve an energy purchase agreement that fails to comply with the requirements set out in the Bill.

1.3.CONSEQUENCE OF THE BILL

9. If enacted, the Bill will enhance the legal compliance requirements of energy purchase agreements. It shall further create greater transparency in purchase of electric energy from private generators, thus ensuring that the contracts entered into are financially sound and thus protect consumers from inflated energy prices.

CHAPTER TWO

2.1. OVERVIEW OF PUBLIC PARTICIPATION ON THE BILL

2.1.1. Introduction

10. The Energy (Amendment) Bill 2023 (Senate Bills No. 42 of 2023) was published on 1st September 2023 and was introduced in the Senate by way of First Reading on Tuesday, 17th October, 2023 and thereafter the Bill stood committed to the Senate Standing Committee on Energy for consideration and facilitation of public participation.
11. In Compliance with the provisions of Article 118 of the Constitution and Standing Order 145(5) of the Senate Standing Orders, the Committee proceeded to undertake public participation on the Bill. In this regard, the Committee published an advertisement in the Daily Nation and Standard newspapers on Thursday, 19th October, 2023 inviting members of the public to submit written memoranda to the Committee on the Bill by 3rd November, 2023. **A copy of the advertisement is attached as Appendix 3**
12. In response to the advertisement, the Committee received written submissions from one (1) stakeholder namely the Council of Governors of Kenya. **Their response is attached as Appendix 4**

2.1.2. Submissions from the Council of Governors

13. In their Submission the Council of Governors expressed its support of the proposed amendment as it seeks to promote transparency in energy purchase agreements. The disclosure of beneficial ownership information by the generating entity shall not only aid in promoting investor confidence but also in uncovering tax evasion schemes, money laundering and other illegal activities.
14. Further the Council of Governors indicated that it supports the Bill on the ground that it is tandem with the constitutional provision enshrined under Article 201 of the Constitution which lists openness and accountability as the principles of public finance.

CHAPTER THREE

3.1. COMMITTEE OBSERVATIONS AND RECCOMEDATIONS

3.1.1. Observations

The Committee made the following Observation

15. With the exception of Rabai Power and Kenya Electricity Generating Company (KENGEN) all other IPP have beneficial owners listed as organizations from other jurisdictions other than Kenya.
16. That the cost of electricity can reduce significantly if priority is given to those that produce electricity using renewable energy.

3.1.2. Recommendations

The Committee recommends —

17. That the House approves the Energy (Amendment) Bill 2023 (Senate Bills No. 42 of 2023) without amendments.



MINUTES OF THE FORTY-FIFTH (45TH) SITTING OF THE STANDING COMMITTEE ON ENERGY HELD ON TUESDAY, 28TH NOVEMBER, 2023 AT 11.00 AM IN GROUND FLOOR BOARD ROOM COUNTY HALL PARLIAMENT BUILDINGS.

PRESENT

- | | |
|--|---------------------|
| 1. Sen. Wamatinga Wahome, MP | - Chairperson |
| 2. Sen. William Kisang' Kipkemoi, MP | - Vice- Chairperson |
| 3. Sen. (Dr.) Oburu Oginga, MGH, MP | - Member |
| 4. Sen. Abass Sheikh Mohamed, MP | - Member |
| 5. Sen. James Lomenen Ekomwa, MP | -Member |
| 6. Sen. Danson Buya Mungatana, MGH, MP | - Member |
| 7. Sen. Edwine Watanya Sifuna, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--------------------------------------|----------|
| 1. Sen. (Dr.) Boni Khalwale, CBS, MP | - Member |
| 2. Sen. Ledama Olekina, MP | - Member |

COMMITTEE SECRETARIAT

- | | |
|------------------------------|----------------------------------|
| 1. Mr. Crispus Njogu | - Clerk Assistant I/ Lead Clerk |
| 2. Ms. Mary Waqo | - Clerk Assistant III |
| 3. Ms. Faith Cherutoh Rotich | - Legal Counsel II |
| 4. Ms. Nancy Mulei | - Research Officer III |
| 5. Mr. Nicholas Arusei | - Audio Officer III |
| 6. Ms. Julia Gachoki | - Assistant Sergeant at Arms |
| 7. Ms. Merolyne Gwala | - Public Communications Attachee |

MIN/SEN/ENG/NO.305/2023

PRELIMINARIES

Prayer

The Chairperson called the meeting to order at 11.15 am. This was followed by a word of prayer.

MIN/SEN/ENG/NO.306/2023

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after it was proposed Sen. Abass Sheikh Mohamed, MP and Seconded by Sen. (Dr.) Oburu Oginga, MGH, MP as follows-

AGENDA

1. Prayer;
2. Adoption of the Agenda;
3. Confirmation of the minutes;
4. Matters Arising from the previous minutes;
5. Consideration and adoption of the Report of the Committee on the Energy (Amendment) Bill 2023. (Senate Bill No 42. of 2023)
6. Any Other Business; and
7. Date of the Next Meeting and Adjournment.

MIN. SEN/ENG/NO.307/2023

CONFIRMATION OF MINUTES OF THE PREVIOUS SITTINGS

- a) Minutes of the 42nd Sitting held on 16th November 2023 were confirmed as the true record of the proceedings. They were proposed by Sen. James Lomenen, MP and seconded by Sen. Abass Sheikh Mohamed.
- b) Minutes of the 43rd Sitting held on 21st November 2023 were confirmed as the true record of the proceedings. They were proposed by Sen. James Lomenen, MP and seconded by Sen. William Kisang MP.
- c) Confirmation of Minutes of the 44th sitting held on 23rd November 2023, were confirmed as the true record of the proceedings. They were proposed by Sen. James Lomenen, MP and seconded by Sen. Danson Buya Mungatana, MGH.

MIN. SEN/ENG/NO.308/2023

MATTERS ARISING FROM THE MINUTES

Ex Min Sen/Eng/no.286/2023

Meeting with Smart Meters Technology Limited, Magnate Ventures Limited, Inhemeter Africa Company and Yocean Group Limited to deliberate on inadequate supply of meters to KPLC.

Members noted that KPLC used the Public Works Act of 1969 to directly procure Meters worth KSH. 2 Billion from Harley Berry Limited. It was resolved that the Secretariat review the Public Works Act of 1969.

Ex Min Sen/Eng/no.303/2023

Any Other Business

Members noted that the Committee would rather invite Saudi Aramco, Emirates National Oil Company and Abu Dhabi National Oil Company to Kenya as the Committee is not able to fund a trip to Saudi Arabia.

MIN. SEN/ENG/NO.309/2023

ADOPTION OF THE REPORT OF THE COMMITTEE ON THE ENERGY (AMENDMENT) BILL 2023. (SENATE BILL NO 42. OF 2023)

The Report of the Energy (Amendment) Bill 2023 (Senate Bill No 42. of 2023) was considered by the Committee and adopted for tabling. It was proposed by Sen. Abass Sheikh Mohamed, MP and seconded by Sen. James Lomenen.MP

MIN. SEN/ENG/NO.310/2023

ANY OTHER BUSINESS

The following issues were deliberated under Any Other Business-

The Committee was taken through The Statute Law (Miscellaneous Amendments) Bill, 2023 seeks to amend various laws among them, the Energy Act, No. 1 of 2019. The

Committee noted that the Bill is currently in the National Assembly waiting public participation.

MIN. SEN/ENG/NO.311/2023

ADJOURNMENT

The meeting was adjourned at 12.34 pm. The date of the next meeting would be communicated by notice.

SIGNED.....

DATE.....

**SEN. WAMATINGA WAHOME, MP.
CHAIRPERSON.**



MINUTES OF THE FORTY-THIRD (43RD) SITTING OF THE STANDING COMMITTEE ON ENERGY HELD ON TUESDAY, 21ST NOVEMBER, 2023 AT 11.00 AM IN GROUND FLOOR BOARD ROOM, COUNTY HALL.

PRESENT

1. **Sen. William Kisang' Kipkemoi, MP** - Vice- Chairperson
2. Sen. (Dr.) Oburu Oginga, MGH, MP - Member
3. Sen. James Lomenen Ekomwa, MP -Member
4. Sen. Danson Buya Mungatana, MGH, MP - Member

ABSENT WITH APOLOGY

1. **Sen. Wamatinga Wahome, MP** - Chairperson
2. Sen. (Dr.) Boni Khalwale, CBS, MP - Member
3. Sen. Ledama Olekina, MP - Member
4. Sen. Abass Sheikh Mohamed, MP - Member
5. Sen. Edwine Watanya Sifuna, MP - Member

COMMITTEE SECRETARIAT

1. Mr. Crispus Njogu - Clerk Assistant I/ Lead Clerk
2. Ms. Mary Waqo - Clerk Assistant III
3. Ms. Faith Cherutoh Rotich - Legal Counsel II
4. Mr. Erick Ososi - Research Officer I
5. Ms. Nancy Mulei - Research Officer III
6. Mr. Nicholas Arusei - Audio Officer III
7. Mr. Joseph Lekisima - Fiscal Analyst III
8. Ms. Julia Gachoki - Assistant Sergeant at Arms

MIN/SEN/ENG/NO.289/2023

PRELIMINARIES

Prayer

The Chairperson called the meeting to order at 11.25 am, followed by a word of prayer.

MIN/SEN/ENG/NO.290/2023

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after it was proposed by Sen. Danson Buya Mungatana, MGH, MP and Seconded by Sen. (Dr.) Oburu Oginga, MGH, MP as follows-

AGENDA

1. Prayer;
2. Adoption of the Agenda;
3. Confirmation of the minutes;
4. Matters Arising from the previous minutes;
5. Consideration of-
 - i. Petition by the residents of Uyombo Village in Kilifi County concerning the protection of the Right to Life and Health and a Clean environment and other Constitutionally protected rights and fundamental freedoms; (*Committee Paper No. 49*)
 - ii. Response of the Ministry of Energy and Petroleum to a statement sought by Sen. James Lomenen, MP on electricity transmission infrastructure within Turkana County (*Committee Paper No. 50*)
 - iii. Review of Memoranda submitted on the Energy Amendment Bill, (*Committee Paper No. 51*)
6. Any Other Business; and
7. Date of the Next Meeting and Adjournment.

MIN. SEN/ENG/NO.291/2023

CONFIRMATION OF MINUTES OF THE PREVIOUS SITTINGS

Confirmation of Minutes of the 42nd Sitting held on 16th November 2023 was deferred until the next meeting.

MIN. SEN/ENG/NO.292/2023

MATTERS ARISING FROM THE MINUTES

This Agenda was deferred till the next meeting.

MIN. SEN/ENG/NO.293/2023

CONSIDERATION OF PETITION BY RESIDENTS OF UYOMBO VILLAGE IN KILIFI COUNTY CONCERNING THE PROTECTION OF THE RIGHT TO LIFE AND HEALTH AND A CLEAN ENVIRONMENT AND OTHER CONSTITUTIONALLY PROTECTED RIGHTS AND FUNDAMENTAL FREEDOMS(COMMITTEE PAPER NO. 49)

The Committee was informed that at the Senate Sitting held on Wednesday 16th November 2023 the petition by residents of Uyombo Village in Kilifi County concerning Protection of the right to life and health and a clean environment and other constitutionally protected rights and fundamental freedoms, was referred to the Senate Standing Committee on Energy.

The Committee noted that the petitioners do not want the Nuclear Plant to be put up in Kilifi County. The Committee noted that in some cases activism inhibits development and the Committee should ensure that the views represent that of the Kilifi people. The Committee noted that nuclear energy is a cheaper source of energy.

The Committee resolved to meet with the following stakeholders from 15th January 2024 – 19th January 2024 in Kilifi County-

- i. Ministry of Environment, Climate Change and Forestry;
- ii. Ministry of Energy and Petroleum;
- iii. County Government of Kilifi;
- iv. Sen. (Rtd) Justice Stewart Madzayo, CBS, MP;
- v. The Petitioners;
- vi. National Environment Management Authority; and
- vii. Nuclear Power and Energy Agency

MIN. SEN/ENG/NO.294/2023

RESPONSE OF THE MINISTRY OF ENERGY AND PETROLEUM TO A STATEMENT SOUGHT BY SEN. JAMES LOMENEN, MP ON ELECTRICITY TRANSMISSION INFRASTRUCTURE WITHIN TURKANA COUNTY (COMMITTEE PAPER NO. 50)

The Committee was informed that-

- i. Vide a letter Ref. SEN/DSEC/ENERGY/CORR/2023/90 dated 17th October 2023 the Committee had requested for a response to the statement sought by Sen. James Lomenen, MP from the Cabinet Secretary Ministry of Energy and Petroleum.
- ii. Vide a letter Ref. ME/CONF/1/42 dated 7th November 2023 the Ministry of Energy and Petroleum responded to the statement sought by Sen. James Lomenen, MP on electricity transmission infrastructure in major towns within Turkana County.

The Committee noted that a Cost analysis should be done by the Ministry of Energy on doing a mini-grid versus connection to the National grid for areas not connected to the National grid.

The Committee noted that Rural Electrification and Renewable Energy Cooperation should be in charge of energizing and metering of power to avoid time wastage in unfinished projects due to accusals between REREC and KPLC.

MIN. SEN/ENG/NO.295/2023

REVIEW OF MEMORANDA SUBMITTED ON THE ENERGY AMMENDMENT BILL 2023 (COMMITTEE PAPER NO. 51)

The Committee was informed that it has received one memoranda on the Energy Amendment Bill 2023 from the Council of Governors.

The Committee was informed that the memoranda has been reviewed and a report will be adopted on Tuesday 28th November 2023.

MIN. SEN/ENG/NO.296/2023

ANY OTHER BUSINESS

The was informed that-

- a) Tullow Oil is yet to get an approved Field Development Plan from the Ministry of Energy and Petroleum.

The Committee resolved to find out from the Ministry of Energy and Petroleum the status of Tullow Oil's Field Development Plan.

MIN. SEN/ENG/NO.297/2023

ADJOURNMENT

The meeting was adjourned at 12.52 pm. The next meeting will be by notice.

SIGNED.....



DATE.....

28/11/2023

**SEN. WAMATINGA WAHOME, MP.
CHAIRPERSON.**



MINUTES OF THE THIRTY- FIRST (31ST) SITTING OF THE STANDING COMMITTEE ON ENERGY HELD ON TUESDAY 1ST AUGUST, 2023 AT 10.00 AM IN COMMITTEE ROOM 5, MAIN PARLIAMENT BUILDINGS.

PRESENT

- | | |
|--|---------------------|
| 1. Sen. Wamatinga Wahome, MP | - Chairperson |
| 2. Sen. William Kisang' Kipkemoi, MP | - Vice- Chairperson |
| 3. Sen. (Dr.) Oburu Oginga, MGH, MP | - Member |
| 4. Sen. Danson Buya Mungatana, MGH, MP | - Member |
| 5. Sen. Abass Sheikh Mohamed, MP | - Member |
| 6. Sen. James Lomenen Ekomwa, MP | -Member |
| 7. Sen. Edwine Watanya Sifuna, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--------------------------------------|----------|
| 1. Sen. (Dr.) Boni Khalwale, CBS, MP | - Member |
| 2. Sen. Ledama Olekina, MP | - Member |

COMMITTEE SECRETARIAT

- | | |
|------------------------|-------------------------------------|
| 1. Mr. Crispus Njogu | - Clerk Assistant I/ Lead Clerk |
| 2. Ms. Mary Waqo | - Clerk Assistant III |
| 3. Mr. Malcom Ngugi | - Legal Counsel I |
| 4. Mr. Erick Ososi | - Research Officer I |
| 5. Mr. Nicholas Arusei | - Audio Officer III |
| 6. Mr. Joseph Lekisima | - Fiscal Analyst III |
| 7. Mr. Rony Nyaga | - Public Communications Officer III |
| 8. Ms. Julia Gachoki | - Assistant Serjeant at Arms |

MIN/SEN/ENG/NO.203/2023

PRELIMINARIES

a) Prayer

The Chairperson called the meeting to order at 10.04 AM. This was followed by a word of prayer.

b) Introductions

There was a round of introductions from the Honourable Senators.

MIN/SEN/ENG/NO.204/2023

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after it was proposed by Sen. Danson Buya Mungatana, MGH, MP and Seconded by Sen. (Dr.) Oburu Oginga, MGH, MP as follows-

AGENDA

1. Prayer;
2. Adoption of the Agenda;
3. Confirmation of the minutes;
4. Matters Arising from the previous minutes;
5. Consideration of the pre-publication scrutiny on the local content bill 2023. (*Committee Paper No 38*)
6. Consideration of the pre-publication scrutiny on a legislative proposal to amend the Energy Act. (*Committee Paper No 39*)
7. Any Other Business; and
8. Date of the Next Meeting and Adjournment.

MIN. SEN/ENG/NO.205/2023

CONFIRMATION OF MINUTES OF THE PREVIOUS SITTINGS

- a. Confirmation of Minutes of the 12th Sitting held on 20th March 2023;
- b. Confirmation of Minutes of the 14th sitting held on 29th March 2023;
- c. Confirmation of Minutes of the 15th sitting held on 4th April 2023;
- d. Confirmation of Minutes of the 16th sitting held on 5th April 2023;
- e. Confirmation of Minutes of the 17th sitting held on 13th April 2023;
- f. Confirmation of Minutes of the 18th Sitting held on 17th April 2023;

- g. Confirmation of Minutes of the 19th sitting held on 17th April 2023;
- h. Confirmation of Minutes of the 20th sitting held on 18th April 2023;
- i. Confirmation of Minutes of the 21st sitting held on 18th April 2023;
- j. Confirmation of Minutes of the 21st sitting held on 24th April 2023;
- k. Confirmation of Minutes of the 22nd sitting held on 24th April 2023
- l. Confirmation of Minutes of the 23rd sitting held on 25th April 2023,
- m. Confirmation of Minutes of the 24th Sitting held in 2nd May 2023 ;
- n. Confirmation of minutes of the 25th Sitting held on 8th May 2023;
- o. Confirmation of minutes of the 26th Sitting held on 26th May 2023;
- p. Confirmation of minutes of 27th Sitting held on 30th May 2023 and;
- q. Confirmation of minutes of the 28th Sitting held on 8th June, 2023 were differed till the end of the inquiry.
- r. Minutes of the 29th sitting held on 13th June 2023 were confirmed as the true record of the proceedings after being proposed by Sen. Abbas Sheikh Mohamed, MP and Seconded by Sen. Edwine Watanya Sifuna, MP.
- s. Confirmation of minutes of the 30th sitting held on 20th June 2023 were differed to the next meeting.

MIN. SEN/ENG/NO.206/2023

MATTERS ARISING FROM THE MINUTES

There were no matters arising.

MIN. SEN/ENG/NO.207/2023

CONSIDERATION OF PRE-PUBLICATION SCRUTINY ON THE LOCAL CONTENT BILL 2023. (COMMITTEE PAPER NO 38)

- a) The committee was taken through the bill digest for the local content bill after the suggested amendments were included.
- b) The committee was informed that the suggestion to have the name ‘indigenous’ to replace local persons in the bill will not be necessary as the definition of a local person is conclusive as it includes the word ‘Kenyan Citizen’ as conferred in the constitution by Articles 13 and 15.
- c) The committee noted that it was necessary to look into different jurisdictions on local content and compare to the recommended 30% by the Committee before adoption of the bill.

- d) The committee noted that the bill should also encourage foreign investors and make the country as attractive as possible to ensure economic growth.
- e) The committee further noted that breaking down the local content into different percentages is necessary.

MIN. SEN/ENG/NO.208/2023

**CONSIDERATION OF THE PRE –
PUBLICATION SCRUTINY ON A
LEGISLATIVE PROPOSAL TO
AMMEND THE ENERGY ACT
(COMMITTEE PAPER NO 39)**

- a) The committee was taken through the bill digest for the Energy Amendment bill 2023.
- b) The committee noted that the amendment of the energy act was necessitated from the experience of the inquiry, the high levels of secrecy from the Independent Power Producers and the lack of transparency in disclosing the beneficial owners of the companies.
- c) The committee noted that there will be additional amendments that will arise on the Energy Act 2019 from the committee recommendations on the inquiry.

MIN. SEN/ENG/NO.209/2023

ANY OTHER BUSSINESS

There following issues deliberated under any other business-

- a) The committee was informed that two Independent Power Producers, Kipeto Energy PLC and Lake Turkana Wind Power Ltd have extended an invite to the committee to tour the projects.
- b) The committee resolved to tour Kipeto Energy PLC in Kajiado on 11th August 2023 and thereafter proceed to write the report on the Inquiry on the high cost of electricity in the country in Machakos County.
- c) The committee resolved to visit Lake Turkana Wind Power Ltd during Senate Mashinani which will be taking place in Turkana County.

MIN. SEN/ENG/NO.210/2023

ADJOURNMENT

The meeting was adjourned at 11.16 am. The date of the next meeting was to be communicated by notice,

SIGNED*.....

DATE 13/9/2023.....

**SEN. WAMATINGA WAHOME, MP.
CHAIRPERSON.**

SPECIAL ISSUE

Kenya Gazette Supplement No. 162 (Senate Bills No. 42)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

SENATE BILLS, 2023

NAIROBI, 1st September, 2023

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The Energy (Amendment) Bill, 2023	909

THE ENERGY (AMENDMENT) BILL, 2023

A Bill for

AN ACT of Parliament to amend the Energy Act to make provision for energy purchase agreements; and for connected purposes.

ENACTED by the Parliament of Kenya, as follows —

1. This Act may be cited as the Energy (Amendment) Act, 2023.

Short title.

2. The Energy Act is hereby amended by inserting the following new section immediately after section 134—

Insertion of section 134A in Act No. 1 of 2019

Energy Purchase Agreements

134A. (1) A generating entity may enter into an energy purchase agreement to sell electrical energy to a licensed entity specified in the Third Schedule.

(2) An Energy purchase agreement shall comply with the principles of public finance enshrined in Article 201 of the Constitution which include—

- (a) openness and accountability;
- (b) public participation in financial matters;
- (c) good governance to ensure that public funds are used in a prudent and responsible way; and
- (d) sustainability.

(3) The purchasing entity shall—

- (a) prior to procurement of electrical power, conduct a feasibility study to identify whether there is enough demand for electricity purchase which cannot be met by the existing production;
- (b) ensure the process of procurement of electrical energy complies with the procedures set out in the Public Procurement and Asset Disposal Act;
- (c) ensure that priority is given to dispatchable generation with a

Act No. 33 of 2015

sustainable base load at point of dispatch;

- (d) give priority to a generating entity generating electrical energy through renewable technology.

Act No. 17 of
2015

(4) An energy purchase agreement referred to in subsection (1) shall only be entered into with a generating entity which has disclosed and registered full beneficial ownership in accordance with the Companies Act.

(5) A purchasing entity shall prepare and maintain a register of generating entities it has entered into energy purchase agreements with and the entity's beneficial ownership and publish the names of the same —

- (a) on its website; and
(b) in the annual audit report.

(6) The register in subsection (5) shall be—

Act No. 31 of 2016

- (a) prepared within ninety days from the date of operation of this section; and
(b) open for inspection by members of the public in accordance with section 5 (1) (e) of the Access to Information Act.

(7) The Authority shall not approve an energy purchase agreement which fail to comply with this section.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of the Bill is to amend the Energy Act, 2019 to provide for transparency in energy purchase agreements. The rationale for disclosure of beneficial ownership information is to create an accurate public disclosure regime that provides transparency in the beneficial ownership and control structures of companies. This aids in not only promoting investor confidence and good corporate governance practices but also in uncovering tax evasion schemes, money laundering practices, corruption schemes, and other illegal activity involving either one or more companies.

The purchase of power from private energy generators by Kenya Power is subject to principles of public finance as envisaged under Article 201 of the Constitution, which include openness and accountability. The disclosure of beneficial ownership of energy generators is compulsory to a procuring entity when the company participates in public procurement and assets disposal and to a contracting authority when the company participates in a public private partnership.

This Bill seeks to create transparency in purchase of electric energy from private generators, ensure the contracts entered into are financially sound to protect the end user of electricity from inflated electricity costs.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill neither delegates legislative powers to the Cabinet Secretary nor limits fundamental rights and freedoms.

Statement of how the Bill concerns county governments

Energy plays a critical role in enabling social, economic and environmental sustainability. Access to affordable energy is important in achieving sustainable development goals in health, education and agriculture to improve living standards. Health, education and agriculture are devolved functions whose viability is directly impacted by the high energy costs. Additionally, pursuant to paragraph 8 (e) of the Fourth Schedule to the Constitution, electricity, gas reticulation and energy regulation is a county function. This therefore is a Bill concerning county governments.

Statement that the Bill is not a money Bill within the meaning of Article 114 of the Constitution.

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 4th August, 2023.

SIFUNA EDWIN WATENYA,
Senator.

Section 134 of Act No. 1 of 2019 which it is proposed to amend

134. Direction to operate a generating plant

(1) The Cabinet Secretary may direct that any generating plant shall, in extraordinary circumstances, be operated and maintained in accordance with such directions as he may prescribe.

(2) For the purposes of this section, the expression “extraordinary circumstances” means circumstances arising out of threat to security of the state, public order or a natural calamity or such other circumstances arising in the public interest.



THIRTEENTH PARLIAMENT | SECOND SESSION

THE SENATE

INVITATION FOR SUBMISSION OF MEMORANDA

At the sittings of the Senate held on Tuesday, 17th October, 2023 and Wednesday, 18th October, 2023, the Bills listed at the second column below were introduced in the Senate by way of First Reading and thereafter stood committed to the respective Standing Committees indicated at the third column.

Pursuant to the provisions of Article 118 of the Constitution and standing order 145 (5) of the Senate Standing Orders, the Committees now invite interested members of the public to submit any representations that they may have on the Bills by way of written memoranda.

The memoranda may be submitted to the Clerk of the Senate, P. O. Box 41842-00100, Nairobi, hand-delivered to the Office of the Clerk of the Senate, Main Parliament Buildings, Nairobi or emailed to clerk.senate@parliament.go.ke and copied to the email addresses of the respective Committee indicated at the fourth column below, to be received on or before **Friday, 3rd November, 2023 at 5.00 p.m.**

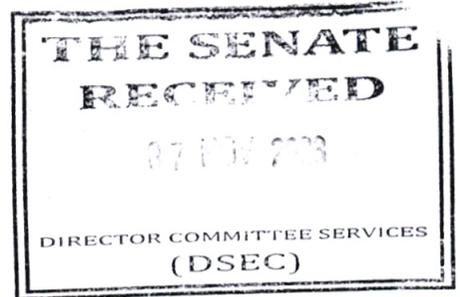
Bill	Committee Referred To	Email Address
a) The Public Holidays (Amendment) Bill, 2023 (Senate Bills No. 31 of 2023)	Standing Committee on National Security, Defence and Foreign Relations	senate.nsdfr@parliament.go.ke
b) The Parliamentary Powers and Privileges (Amendment) Bill, 2023 (Senate Bills No. 37 of 2023)	Standing Committee on Justice, Legal Affairs and Human Rights	senatejlahrc@parliament.go.ke
c) The Public Transport (Motorcycle Regulation) Bill, 2023 (Senate Bills No. 38 of 2023)	Standing Committee on Roads, Transportation and Housing	roadstranshousingcomm.senate@parliament.go.ke
d) The Public Finance Management (Amendment) Bill, 2023 (Senate Bills No. 40 of 2023)	Standing Committee on Finance and Budget	financebudgetcomm.senate@parliament.go.ke
e) The Street Vendors (Protection of Livelihood) Bill, 2023 (Senate Bills No. 41 of 2023)	Standing Committee on Trade, Industrialization and Tourism	tradeindtourismcomm.senate@parliament.go.ke
f) The Energy (Amendment) Bill, 2023 (Senate Bills No. 42 of 2023)	Standing Committee on Energy	energycommittee.senate@parliament.go.ke
g) The Sugar Bill, 2023 (National Assembly Bills No. 34 of 2023)	Standing Committee on Agriculture, Livestock and Fisheries	agriculturelcommittee.senate@parliament.go.ke

The Bills may be accessed on the Parliament website at <http://www.parliament.go.ke/the-senate/house-business/bills>.

J.M. NYEGENYE, CBS,
CLERK OF THE SENATE.



COUNCIL OF GOVERNORS



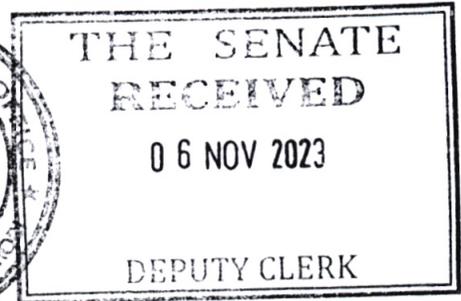
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Nairobi.

Tel: (020) 2403314, 2403313
E-mail: info@cog.go.ke

Our Ref: COG/6/47 Vol. 18 (50)

3rd November 2023

J. M. Nyegenye, CBS
The Clerk of the Senate
Parliament Buildings
Nairobi



Dear Clerk,

THE ENERGY (AMENDMENT) BILL, 2023

The above matter refers.

The Council of Governors has reviewed the **Energy (Amendment) Bill, 2023 (Senate Bills no. 42 of 2023)** that seeks to amend the Energy Act, 2019.

The Council wishes to express its support of the proposed amendment as it seeks to promote transparency in energy purchase agreements. The disclosure of beneficial ownership information by the generating entity shall not only aid in promoting investor confidence but also in uncovering tax evasion schemes, money laundering and other illegal activities.

Further, the Council supports the Bill on the ground that it is in tandem with the constitutional provision enshrined under Article 201 of the Constitution which lists openness and accountability as the principles of public finance.

Please accept our highest esteem and regards.

Yours sincerely,

Mary Mwiti
Chief Executive Officer

② Mrs Nyogu
Kindly deal
sub
8/11/23

① DSKO
DHG
Kindly deal.

② DDBEE
Kindly deal
8/11/2023

EP
07/11/2023