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REPUBLIC OF KENYA




THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – THIRD SESSION – 2024

DEPARTMENTAL COMMITTEE ON EDUCATION

REPORT ON:
CONSIDERATION OF THE HIGHER EDUCATION LOANS BOARD
(AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 58 OF 2022) BY THE
HON. JOYCE KAMENE, MP

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 11 APR 2024	
DAY: Thursday	
TABLED BY:	Hon. Jerucha Mwangi (Member, Education Committee)
CLERK-AT THE TABLE:	Shibuko

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Table of Contents

CHAIRPERSON'S FOREWORD	3
PART ONE	4
1.0 PREFACE	4
1.1 Establishment of the Committee	4
1.2 Committee Membership	6
1.3 Committee Secretariat	7
PART TWO	8
2.0 CONSIDERATION OF THE BILL BY THE COMMITTEE	8
2.1 Committal of the Bill	8
2.2 Memorandum of Objects and Reasons for the Bill	8
Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution	8
2.3 Public Participation on the Bill	8
2.4 SUBMISSIONS BY THE STAKEHOLDER	9
2.4.1 Submission from Hon. Joyce Kamene, MP	9
2.4.2 Submissions by State Department for Higher Education, Ministry of Education	9
2.4.3 Kenya Law Reform Commission (KLRC).....	9
2.4.4 The Office of the Attorney General	9
PART THREE	13
3.0 DETERMINATION AS TO WHETHER OR NOT THE BILL SHOULD BE PASSED BY THE HOUSE	13
PART FOUR	14
5.0 COMMITTEE RECOMMENDATIONS	14

LIST OF ANNEXURES

- Annexure 1 :** Report adoption list
- Annexure 2 :** Minutes of Committee sittings
- Annexure 3 :** Copy of the newspaper advertisement on public participation on the Bill
- Annexure 4 :** Submissions by stakeholders

CHAIRPERSON'S FOREWORD

The Higher Education Loans Board (Amendment) Bill, 2022 (National Assembly Bill No. 58) sponsored by the Hon. Joyce Kamene, MP was read a First Time on 26th July, 2023 and committed to the Departmental Committee on Education for consideration and reporting to the House, pursuant to Standing Order 127(1).

The principal object of the Bill is to amend the Higher Education Loans Board Act No. 3 of 1995 to expressly provide that the Higher Education Loans Board shall not deny a loan to a student who has not attained the age of eighteen years.

The amendment further provides that any student who applies for an education loan and who is under the age of eighteen years shall be required to have his or her parents as co-signatories to the loan agreement so as to ensure the access to loans of all eligible university students despite their age.

This will ensure that university students who have not attained the age of eighteen years and who do not yet have national identification cards, are allowed access to the higher education loans. The amendment will thus ensure the access to loans of all eligible university students despite their age.

Pursuant to Article 118(1) (b) of the Constitution and Standing Orders 127(3), advertisements for request for submission of memoranda were placed in the Daily Nation and the Standard newspapers on 8th August, 2023 inviting interested members of the public to submit views on the Bill. The Committee received submissions from the Ministry of Education, Hon Joyce Kamene, Kenya Law Reform Commission and the Attorney General's office. All the submissions were considered by the Committee.

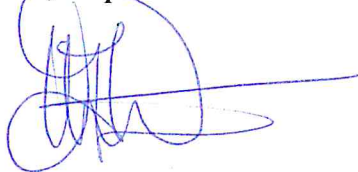
Further, in considering the Bill, the Committee held a total of three (3) meetings to receive and consider submissions.

The Committee, having considered the Bill clause by clause and taking into consideration views and recommendations of the stakeholders pursuant to Standing Order 127(3A), made observations and recommendations contained in Part Three and Part Four of this report.

The Committee is thankful to the Office of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings.

On behalf of the Committee, and pursuant to Standing Order 127(4), it is my pleasant duty to table the Report of the Departmental Committee on Education on its consideration of the Higher Education Loans Board (Amendment) Bill (National Assembly Bill No. 58 of 2022).

Hon. Julius Melly, CBS, MP
Chairperson, Departmental Committee on Education



PART ONE

1.0 PREFACE

1.1 Establishment of the Committee

1. The Departmental Committee on Education was constituted pursuant to the provisions of Standing Order No. 216(1) of the National Assembly Standing Orders. Pursuant to the Standing Order 216 (5) read together with the Second Schedule to the Standing Orders, the functions of the Committee are to: -
 - a. *investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the Ministry of Education;*
 - b. *study the programme and policy objectives of Ministry and the Departments of the Ministry, and the effectiveness of the implementation;*
 - c. *study and review all legislation referred to it;*
 - d. *study, assess and analyze the relative success of the relevant Ministry as measured by the results obtained as compared with their stated objectives;*
 - e. *investigate and inquire into all matters relating to the as may be necessary, and as may be referred to the Committee by the House;*
 - f. *to vet and report on all appointments where the Constitution or any law requires the National Assembly and by extension, the Committee to approve;*
 - g. *make reports and recommendations relating to the functions of the relevant Ministry to the House as often as possible, including recommendation of proposed legislation;*
 - h. *make recommendations to the House as often as possible, including recommendation of proposes legislation;*
 - i. *consider reports of the relevant commissions and independent offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
 - j. *examine any questions raised by Members on a matter within the mandate of the Committee.*
2. The Committee's subjects according to the Second Schedule of the Standing Orders are as follows
 - i. Education,
 - ii. Training; and
 - iii. Research.
3. The Committee oversights the following government entities: -
 - (a) Ministry of Education comprising the following State Departments
 - i. The State Department for Basic Education
 - ii. The State Department for TVET

iii. The State Department for Higher Learning and Research

(b) The Teachers Service Commission

1.2 Committee Membership

4. The Committee comprises of the following Members of Parliament: -

Hon. Julius Kibiwott Melly, MP
Chairperson
Tinderet Constituency
UDA

Hon. Moses Malulu Injendi, MP
Vice Chairperson
Malava Constituency
ANC

Hon. Dr. Christine Oduor Ombaka, MP
Siaya County
ODM

Hon Julius Taitumu M'Anaiba, MP
Igembe North Constituency
UDA

Hon. Eve Akinyi Obara, MP
Kabondo Kasipul Constituency
ODM

Hon. Nabii Nabwera Daraja, MP
Lugari Constituency
ODM

Hon. Jerusha Mongina Momanyi, MP
Nyamira County
JP

Hon. Peter Ochieng Orero, MP
Kibra Constituency
ODM

Hon. Abdul Ebrahim Haro, MP
Mandera South Constituency
UDM

Hon. (Prof.) Phylis Jepkemoi Bartoo
Moiben Constituency
UDA

Hon. Anne Muratha, MP
Kiambu County
UDA

Hon. Rebecca Noonaishi Tonkei, MP
Narok County
UDA

Hon. Clive Gisairo, MP
Kitutu Masaba, Constituency
ODM

Hon. Timothy Toroitich, MP
Marakwet West Constituency,
IND

Hon. Dick Oyugi Maungu, MP
Luanda Constituency
DAP-K

1.3 Committee Secretariat

5. The Committee is facilitated by:

Ms. Rose M. Wanjohi
Senior Clerk Assistant

Mr. Clive Onyancha
Clerk Assistant III

Mr. Eric Kanyi
Fiscal Analyst II

Dr. Maina Mburu
Research Officer

Mr. Daniel Psirmoi
Media Relations Officer

Ms. Pauline Njuguna
Hansard Reporter

Ms. Fiona Githunguri
Legal Counsel II

Ms. Winnie Kulei
Research Officer

Mr. Richard Sang
Sergeant-at-Arms

Mr. Nimrod Ochieng
Audio Recording Officer

Mr. Jared Onyancha
Protocol Officer

PART TWO

2.0 CONSIDERATION OF THE BILL BY THE COMMITTEE

2.1 Committal of the Bill to the Committee

6. The Higher Educations Loans Board (Amendment) Bill, 2022(National Assembly Bill No. 58 of 2022) sponsored by Hon. Joyce Kamene, MP was read a First Time on 26th July, 2023 and committed to the Departmental Committee on Education for consideration and reporting to the House, pursuant to Standing Order 127(1).

2.2 Memorandum of Objects and Reasons for the Bill

7. The principal object of the Bill is to amend the Higher Education Loans Board Act, No. 3 of 1995 to expressly provide that the High Education Loans Board shall not deny a loan to a student who has not attained the age of eighteen years.
8. The amendment further provides that any student who applies for an education loan and who is under the age of eighteen years shall be required to have his or her parents or guardians as co-signatories to the loan agreement, so as to ensure the validity of the loan agreement. This will ensure that university students who have not attained the age of eighteen years and who do not yet have national identification cards are allowed access to higher education loans. The amendment will thus ensure access to loans for all eligible university students regardless of their age.

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

9. The Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms.

Statement of how the Bill concerns County Governments

10. The Bill does not concern county governments in terms of Article 109(5) of the Constitution as it does not contain provisions that affect the functions and powers of the county governments as set out in the Fourth Schedule to the Constitution.
11. The Universities and other institutions of higher learning are functions of the national government as provided in Part 1 of the Fourth Schedule to the Constitution.

Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution

12. The enactment of the Bill shall not occasion the expenditure of public funds.

2.3 Public Participation on the Bill

13. Pursuant to Article 118(1) (b) of the Constitution and Standing Order 127(3), advertisement for request for submission of memoranda was placed in the "Daily Nation" and the "Standard" newspapers on Tuesday 8th August, 2023 inviting the public to submit representations they may have on the Bill. (Annexure 3).
14. The Committee received memoranda from-
 - i. Hon. Joyce Kamene, MP; sponsor of the Bill;

- ii. The Principal Secretary, State Department for Higher Education, Ministry of Education;
- iii. Kenya Law Reforms Commission; and
- iv. The Attorney-General's Office

All the submissions were considered by the Committee.

2.4 STAKEHOLDER SUBMISSIONS

2.4.1 Submission by Hon. Joyce Kamene, MP

15. The Hon. Joyce Kamene, MP the sponsor of the Bill indicated that clause 2 of the Bill seeks to amend Section 14 of the Act to mandate the Board to approve loan applications for persons under the age of 18 years.

2.4.2 Submissions by State Department for Higher Education, Ministry of Education

16. Dr. Beatrice Inyangala, the Principal Secretary, State Department for Higher Education submitted that the Higher Education Loans Board (HELB) agreed with the proposal but proposed that another subsection 2B be introduced as follows: *"The provisions of any other written law notwithstanding, the contract between HELB and the applicant shall be deemed to be a contract of necessity and not voidable on account of incapacity to contract."*
17. This provision will ensure that those granted loans while under 18 cannot refuse to repay loan on account of having lacked capacity to contract at the time of signing the contract.
"Any student who applies for an education loan and who is under the age of 18 years shall be required to have his or her parents or guardians as co-signatories to the loan agreement" be brought in as Subsection 2C.

2.4.3 Kenya Law Reform Commission (KLRC)

18. The Kenya Law Reform Commission (KLRC) submitted that means need to be devised to ensure that needy but underage applicants access HELB loans. This will prevent needy persons who haven't attained the age of eighteen years from being locked out of loans advanced to support their higher education.
19. Contracts with minors are voidable in that they cannot be specifically enforced against the minor. However, parents or guardians of minors can name them in contracts only if it benefits them but even in this case, the minor cannot be personally liable. Additionally, minors may not ratify a contract upon attaining age of majority unless a law specifically allows this.
20. KLRC asserted that the amendments as proposed will give minors an opportunity to benefit from the loans available to those pursuing higher education.

2.4.4 The Office of the Attorney-General and Department of Justice

21. The Office submitted that Clause 2 of the Bill seeks to amend section 14 of the Act which provides for conditions for grant of loan by inserting new sub sections immediately after subsection (2) to mandate the board to approve applications by persons under the age of 18 as long as the parents and guardians of the applicant cosign the loan.

22. This proposal though beneficial as it gives access to loans to beneficiaries in institutions of higher education who have not attained the age of majority, may create challenges in the implementation as a minor (a person under the age of 18 years) may not have capacity to enter into a legally binding contract and also can't open a bank account to where the funds can be channeled. Thus, the contracts may be challenged in a Court of law.
23. The Office proposed that the Bill may be amended to consider having the guardians and parents as applicants until the minor becomes of age where the applicant can regularize the application
24. The Office had consulted the Ministry of Education on the proposed amendment.

SECTION AMENDED	CURRENT PROVISION	PROPOSED AMENDMENT	Memoranda received	Rationale
2	<p>14. Conditions for grant of loan</p> <p>(1) The Board may—</p> <p>(a) accept or reject any application for a loan;</p> <p>(b) grant a loan to any student and in so granting impose conditions, demand security and require repayment in instalments at such times and within such periods as the Board deems fit:</p> <p>Provided that and subject to the provisions of this section the Board may upon the request by any student to whom a loan has been granted at any time vary—</p> <p>(i) the condition subject to which the loan was made;</p> <p>(ii) any security given in relation to the loan;</p> <p>(iii) any of the terms of repayment of the loan.</p> <p>(2) Where the Board has resolved to make a loan to any eligible student, the Board shall notify the</p>	<p>2. The Higher Education Loans Board Act, 1995 is amended in section 14 by inserting the following new subsections after subsection (2) —</p> <p>“(2A) The Board shall not reject an application for a loan under this Act only on the ground that the student has not attained the age of eighteen years.</p> <p>(2B) A person granted an education loan by the Board under this Act and who is under the age of eighteen years shall be required to have his or her parents or</p>	<p>State Department for Higher Education</p> <p>The institution agreed with the provision.</p> <p>They proposed a subsection 2B be introduced as follows” <i>the provision of any other written law notwithstanding, the contract between HELB and the applicant shall be deemed to be a contract of necessity and not voidable on account of incapacity to contract.</i>”</p> <p>The committee rejected the proposed additional subsection 2B.</p>	<p>The provision will ensure that those granted loans while under 18 cannot refuse to repay loans on account of having lacked capacity to contract at the time of signing the contract.</p>
			Office of the Attorney General and Department of Justice	The minor may not have capacity to enter into a legally

	<p>applicant in writing, and require him within a specified period not exceeding six months to comply with any conditions and provide any security which the Board may have imposed or demanded.</p> <p>(3) Where any applicant fails to comply with the requirement of the Board notified to him under subsection (2) within the prescribed period, the application shall be deemed to have lapsed.</p> <p>(3A) The Board shall notify every applicant in writing whether the application for a higher education loan has been accepted or rejected.</p> <p>(3B) A student may appeal against a decision of the Board to reject his or her application for grant of a higher education loan in writing, addressed to the Secretary of the Board.</p> <p>(4) Where in granting a higher education loan to any student the Board considers it prudent to request for a guarantor to guarantee any loan granted to a student, in case of any default by the loanee in the repayment of the loan any guarantor who has guaranteed any such loan, shall automatically and fully be liable to pay</p>	<p>guardian as co-signatories to the loan.”</p>	<p>The AG's office agreed with the proposed amendment. However, though beneficial as it gives access to loans to beneficiaries in institutions of higher education who have not attained the age of majority may create challenges in the implementation as a minor may not have capacity</p> <p>The Committee agreed with the Need to enjoin the guardians or parents to the loan application until the minor attains the majority age.</p>	<p>binding contract and also cannot open a bank account to where the funds can be channelled. Thus the contracts may be challenged in a court of law. They proposed that the Bill be amended to consider having the guardians and parents as applicants until the minor becomes of age when then the applicant can regularise the application</p> <p>The amendment will ensure needy but underage applicant</p>
			<p>Kenya Law Reform Commission It agreed with the propose amendment</p>	

	to the Board all or any loan together with interest accrued and outstanding owed to the Board by the loanee, as shall be notified to the guarantor by the Board.			access HELB loans.
	(5) Where a guarantor who has been notified by the Board under subsection (4) fails or refuses to repay such loan together with any interest accrued thereon, the guarantor shall be guilty of an offence and liable to criminal prosecution or civil proceedings or both in accordance with the provisions of this Act.			

2.4.5 Clause by Clause Analysis

CLAUSE 1 of the Bill provides for the Short title.

The Committee Agreed

CLAUSE 2 of the Bill proposes the amendment of Section 14 of the principal Act, by inserting the following new subsections immediately after subsection (2) –

“(2A) The Board shall not reject an application for a loan under this Act only on the ground that the student has not attained the age of eighteen years.

“(2B) A person granted an education loan by the Board under this Act and who is under the age of eighteen years shall be required to have his or her parents or guardian as co-signatories to the loan.”

The Committee agreed with the proposed amendment and proposed an amendment to include the guardians and parents of the minor to act as co-signatories to the loans until such a time the minor attains the age of majority. This was as proposed by the Kenya Law Reform Commission and the Attorney General’s office.

PART THREE

3.0 DETERMINATION AS TO WHETHER OR NOT THE BILL SHOULD BE PASSED BY THE HOUSE

The Committee observed as follows: -

- (a) There is no existing legal framework allowing students under the age of eighteen years to apply for loans from the Higher Education Loans Board.
- (b) The Bill seeks to expressly provide that the Higher Education Loans Board shall not deny a loan to a student who has not attained the age of eighteen years. It will also require a person granted an education loan by the Board who is under the age of eighteen years to have his or her parents or guardian as co-signatories to the loan.
- (c) The Bill be amended to consider having the guardians as applicants until the minor becomes of age where the application can be regularized. The justification for this is to cure the potential challenge of enforcing a loan contract with a minor, as contracts by minors are generally voidable, meaning that upon reaching the age of majority, if the minor chooses to disaffirm the contract they may be able to avoid liability for the loan repayment. By having a parent or legal guardian co-sign the loan, the lender gains additional assurance that the loan will be repaid, even if the minor chooses to disaffirm the contract. Where a parent or guardian co-signs the loan they become jointly liable for the repayment of the loan alongside the minor.
- (d) Further in the context of a loan, both a guarantor and a co-signer serve similar functions, but there are important differences:
 - (i) Co-signer: A co-signer is typically someone who signs the loan agreement alongside the borrower (in this case, the minor). By co-signing the loan, the co-signer becomes equally responsible for repaying the loan if the borrower defaults. This means that the lender can pursue the co-signer for repayment if the borrower fails to meet their obligations.
 - (ii) Guarantor: A guarantor, on the other hand, is someone who agrees to be responsible for the loan if the borrower (the minor) defaults. Unlike a co-signer, a guarantor does not sign the original loan agreement. Instead, they provide a guarantee that they will repay the loan if the borrower cannot. If the borrower defaults, the lender can pursue the guarantor for repayment.

In essence, a co-signer is directly party to the loan agreement and is equally liable for repayment, while a guarantor stands behind the borrower and agrees to cover the debt only if the borrower defaults. Both serve as a form of security for the lender, but the legal mechanisms and responsibilities may differ slightly between the two roles.

PART FOUR

4.0 COMMITTEE RECOMMENDATIONS

25. The Committee having scrutinised the Bill, recommends that the House should pass the Bill with the following amendments:

NEW CLAUSE

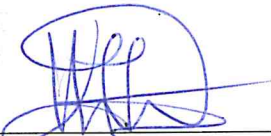
- a. **THAT** the Bill be amended by inserting the following new clause immediately after Clause 1—

"Section 2 of the Higher Education Loans Board Act No.3 of 1995 is amended in the definition of the term "loanee" by inserting the words "including a parent or guardian" immediately before the words "granted an education loan by the Board"

Justification: The amendment seeks to expand the definition of a loanee to include a parent and guardian so as to make it possible to award a HELB loan to a student who has not attained the age of eighteen years with a parent or guardian as co-signatories to the loan.

- b. **Clause 2** be amended by inserting the following new subsection immediately after (2B)–

"(2C) A person granted a loan under subsection (2B) shall ratify the loan contract upon attaining the age of majority."

Signed  Date 11/4/2024

HON. JULIUS MELLY, CBS, MP

CHAIRPERSON, DEPARTMENTAL COMMITTEE ON EDUCATION



Annexure 1 : Report adoption list



PARLIAMENT OF KENYA
NATIONAL ASSEMBLY
13TH PARLIAMENT
THIRD SESSION (2024)

DEPARTMENTAL COMMITTEE ON EDUCATION

ADOPTION LIST

DATE: 19/3/2024

VENUE: CONTINENTAL HOUSE, 5TH FLOOR

AGENDA:

CONSIDERATION AND ADOPTION OF THE HIGHER EDUCATION LOAN BOARD
(AMENDMENT) NO. 58 OF 2022 BY HON. JOYCE KAMUNGU

No.	HON MEMBER	SIGNATURE
1.	Hon. Julius Melly, M.P. Chairperson	
2.	Hon. Moses Malulu Injendi, M.P. Vice Chairperson	
3.	Hon. Dr. Christine Oduor Ombaka, M.P.	
4.	Hon. Eve Obara, MBS, M.P.	
5.	Hon. Jerusha Momanyi, M.P.	
6.	Hon. Abdul Ebrahim Haro, M.P.	
7.	Hon. Anne Wanjiku Muratha, M.P.	
8.	Hon. Clive Ombane Gisairo, M.P.	
9.	Hon. Dick Maungu Oyugi, M.P.	
10.	Hon. Julius Taitumu M'Anaiba, M.P.	
11.	Hon. Nabii Nabwera Daraja, M.P.	
12.	Hon. Peter Ochieng Orero, M.P.	
13.	Hon. Prof. Phyllis Jepkemoi Bartoo, M.P.	
14.	Hon. Rebecca Noonaishi Tonkei, M.P.	
15.	Hon. Timothy Kipchumba Toroitich, M.P.	

