Issue No.7/2019 April 9, 2019

Legislative UPDATE

Dear Esteemed Member,

This Bulletin summarizes some of the key Bills, and Motions set for debate and consideration before Parliament in the week ending 29th March 2019.

THE NATIONAL ASSEMBLY

1. SENATE AMENDMENTS TO THE LAND VALUE INDEX LAWS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 3 OF 2018)

The Land Value Index Laws (Amendment) Bill 2018 seeks to amend the Land Act, the Land Registration Act, the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act, and to provide for the assessment of value index in respect of the compulsory acquisition of land. The Bill seeks to be governing laws on valuation of land and compulsory acquisition of land by the State in the interest of the people of Kenya. It was passed by the National Assembly on 8th August 2018. Thereafter, it was conveyed to the Senate in accordance with provisions of Article 110(4) of the Constitution of Kenya. The Senate considered it and passed it with amendments on 14th February 2019. The amendments were thereon conveyed to Departmental Committee on Lands.

The Committee considered some of the Senate's amendments and rejected others. Some of the Senate amendments agreed upon by the Committee include;

1) Introduction of timelines within which the Commission should relay *information to the acquiring body. The acquiring body here is the Kenya National Highways Authority (KeNHA), and any other body that acquires property on behalf of the Government.*

2) The introduction of timelines in the Senate amendment to Clause 7A (The clause provides for Compensation for compulsorily acquired land). The amendment shall ensure that compulsory acquisition is completed within two years. And where an acquisition has taken longer than 24 months, then it is considered to have lapsed.

Those comments disagreed upon by the Committee include;

1) The Senate amendment to proposed new Clause 107A (8) (a) reduces the duration of what can be termed as uninterrupted occupation from 12 years to six years. It was noted that the period the period should be tied to the advanced possession common law which refers to 12 years.

2) Changing the title of the Bill to read "Land Laws Amendment Bill." It was noted that the title of the Bill cannot be changed since the Bill is specifically dealing with land value, land rates and all the other rates like Stamp Duty.

Since the National Assembly was in agreement with some amendments made by Senate but rejected a few., the amendments to the Bill will be referred to the Committee of the Whole House and thereafter will be referred to the Mediation Committee. Where a Bill is referred to a mediation committee, the Speakers of both Houses appoint a mediation committee consisting of equal numbers of members of each House to attempt to develop a version of the Bill that both Houses will pass which the House then votes on. If both Houses approve the version of the Bill proposed by the mediation committee, the Speaker of the National Assembly shall refer the Bill to the President within 7 days for assent. If the mediation committee fails to agree on a version of the Bill within 30 days, or if a version proposed by the committee is rejected by either House, the Bill is defeated.

2. SENATE AMENDMENTS TO THE PHYSICAL PLANNING BILL (NATIONAL ASSEMBLY NO. 34 OF 2017

The Physical Planning Bill, 2017 seeks to make provisions for the planning, use, regulation and development of land in Kenya. It entails the general patterns of land use; standards and development control aspects; the character and location of public buildings; the structures and design of streets; the location of transit and transportation systems; and, other physical facilities which are necessary and desirable to promote economic betterment, comfort, convenience and general welfare. The physical planning function entails provision of spatial framework for arrangement and organisation of socio-economic activities and space at the national, inter-county, county and local levels to achieve optimal use and suitable development for the well-being of the society.

The Bill was passed by the National Assembly on 3rd May 2018. Thereafter, it was considered by the Senate where it was passed with amendments on 14th February 2019.

One of the Senate's amendments to the Bill was changing the Bill from "Physical Planning" to "Land Use Planning". In rejecting the Bill, the Departmental Committee on Lands noted that changing the title of the Bill does not offend the provisions of Article 66 of the Constitution which refers to land use planning.

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committee is rejected by either House, the Bill is defeated.

3. SENATE AMENDMENTS TO THE IRRIGATION BILL

The National Assembly was in agreement with some amendments from the Senate but rejected a few. The Committee on Agriculture and Livestock disagreed with the Senate's definition of 'irrigation' to mean any hydraulic engineering process which extracts, stores and supplies water to crops or any other cultivated plants, livestock and all that. The Committee stated that the amendments of the Departmental Committee on Agriculture and Livestock supersede that because it carries more weight and scope in terms of definition. The Committee disagreed with the Senate, the justification being that the Senate amendment to the definition of the term 'irrigation' and 'licence' are without effect.

The Committee of the Whole House approved the Senate Amendments to the Irrigation Bill (National Assembly Bill No. 46 of 2017) with amendments. The Bill will therefore be referred to the Mediation Committee.

PETITIONS TABLED BEFORE THE NATIONAL ASSEMBLY

1. DELAYED VAT REFUND TO EDIBLE OIL MANUFACTURERS

A petition was submitted by one Mrs. Florence Njeri, on behalf of the Edible Oil Manufacturers. The petitioner is requesting the House to amend relevant sections of the Tax Procedures Act, 2015 in order to compel the Kenya Revenue Authority (KRA) to refund overpaid taxes within 30 days and reduce withholding Value Added Tax (VAT) from 6 per cent to 2 per cent. Members of the House were informed that the citizen has submitted the public Petition in exercise of her right to petition Parliament to consider any matter within its authority, including enacting, amending or repealing any legislation.

The petitioner avers that Edible Oil Manufacturers have invested over Kshs 1.6 *that KRA has a backlog of billions of shillings in unpaid VAT refunds, of which a substantial part is owed to the edible oil industry.*

Owing to the frustrations deemed to be delaying the funds, the petitioner proposes that the House considers amending Section 47 (5) of the Tax Procedures Act, 2015 to have overpaid taxes refunded within 30 days, failure to which the amount due shall attract interest at a rate of 2 per cent per month.

In addition, the petitioner seeks for amendment of Section 42A (1) of the same Act, so as to reduce Withholding VAT from 6 per cent to 2 per cent due to the distortions it causes in the pricing of taxable supplies. As such, the Speaker committed the Petition to the Departmental Committee on Finance and National Planning, which would consider the Petition and report its findings to the House and the petitioner.

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THE SENATE

1. THE NATURAL RESOURCES (BENEFIT SHARING) BILL (SENATE BILLS NO 31 OF 2018)

The Bill was coming up for a second reading. It establishes a system of benefit sharing in resource exploitation between resource exploiters, the national government, county governments and local communities. It has two key components in its various parts. The first is to ensure that there is an overarching body that is in charge of natural resources across the various counties. In the first Bill, that is, The Natural Resources Benefit Sharing Bill, 2014, it had been catered for as an authority. When the Bill went to the National Assembly, it was termed a money Bill, partly because of having an authority. As such, in 2018 Bill the Authority was changed to a commission, body or organisation that already exists, the Commission on Revenue Allocation (CRA).

The second important component of the Bill is in Clause 8, where the Bill creates the formula for revenue allocation within the various counties. In terms of revenue and benefit sharing, the Bill refers to a Sovereign Wealth Fund.

The Bill has a total of six parts. The first one gives the functions of the CRA in detail. The second gives the collection of the royalties and the fees. It gives specific responsibilities to the KRA to collect the royalties. Clause 8 gives the revenue sharing ration. The Benefit Sharing Agreement, where we have the specific organs that are created, such as the County Benefit Sharing Committee; the functions and *the financial obligations.*

**Money Bill refers to a Bill that contains provisions dealing with taxes; the imposition of charges on a public fund or the variation or repeal of any of those charges; the appropriation, receipt, custody, investment or issue of public money; the raising or guaranteeing of any loan or its repayment. A Money Bill can only be introduced in the National Assembly.*

2. THE PUBLIC PARTICIPATION BILL (SENATE BILLS NO. 4 OF 2018)

The Bill was coming up for a Committee of the Whole. It provides for a general framework for effective public participation; to give effect to the constitutional principles of democracy and participation of the people under Articles 1(2), 10(2), 35, 69(1)(d), 118, 174(c) and (d), 184(1)(c), 196,201(a) and 232(1)(d) of the Constitution.

SENATE DEPARTMENTAL COMMITTEE ISSUES

IMPACT OF DEVOLUTION ON LIVESTOCK FARMING

A statement was sought from the Standing Committee on Agriculture, Livestock and Fisheries on the impact of devolution on livestock farming. In the Statement the Committee was tasked to:

1) Explain the extent to which agriculture has been devolved, especially in the livestock sector for both beef and dairy farmers.

2) Explain where the counties have been equipped with the requisite resources, including skilled labour to handle livestock diseases, vaccination and storage of vaccines.

3) State whether dairy boards have been established in livestock- producing counties to handle dairy production.

4) Explain the measures put in place to ensure that counties market their dairy products within and outside the country and whether there exists a national policy on dairy farming.

Your comments will be most appreciated - please send to kepsappd@kepsa.or.ke

Best regards,

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