



Legislative UPDATE

Dear Esteemed Member,

This Bulletin summarizes some of the key Bills and Motions were set for debate and consideration before Parliament in the week ending 15th March 2019.

THE NATIONAL ASSEMBLY

1. THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) (NO.2) BILL (NATIONAL ASSEMBLY BILL NO. 13 OF 2018)

The Bill was read a Second Time and committed to a Committee of the whole House.
The Acts being amended by the Bill include:

a. The Betting, Lotteries and Gaming Act (Cap 131)

*The Bill proposes to amend the Betting, Lotteries and Gaming Act to enhance the penalties provided in sections 5(4), 8(3), 10(2), 11(4), 59(2) and 61. The Bill also seeks to amend the Act to **reduce the amount of betting and lottery tax payable by operators and have part of it being paid out winnings.***

b. The Dairy Industry Act (Cap.336)

*The Bill proposes to amend the Dairy Industry Act to **enlarge the definition of milk to include goat and camel milk.** It also seeks to enhance penalties under the Act as well as allow for regulations on the standards, manner of installation and operation of milk dispensers.*

c. The Co-operative Societies Act, (Cap. 490)

The Bill proposes to amend The Co-operative Societies Act, (Cap. 490) to create a new form of members of co-operative societies by creating a new class of members of co-operative societies targeted towards social impact investments. The Bill seeks to safeguard member rights in the democratic choice in co-operative societies by

by creation of such new classes.

The Bill also seeks to limit the voting powers of social impact members be limited to specific resolutions; maintenance and operation of the proposed Special Fund, investment committee, remuneration of the special fund trustee and similar affairs.

d. The National Hospital Insurance Fund Act 1998 (No. 4 of 1998)

The Bill seeks to amend the National Hospital Insurance Fund Act, 1995 to enable the Fund to receive contributions from the National Government, the County Governments and employers for the administration of employee benefits; contributions from the postretirement medical funds or employers in respect to retired employees; donations, gifts or grants; to receive an employer's contribution, matching the employee's contribution and to receive contributions from the National and County Governments of Kenya for persons certified by the board to be unable to pay the contributions from funds voted by parliament for that purpose.

The Bill also seeks to provide for prudent investment of the Fund and to provide for administration expenditures in respect of any financial year not exceeding fifteen per cent of the total annual collected Funds.

e. The Sacco Societies Act (No. 14 of 2008)

The Bill proposes to amend the Sacco Societies Act, (No. 14 of 2008) to create an exception to the restricted investments that a Sacco society is permitted to make. The Bill seeks to provide for the establishment of a Special Fund by Sacco societies, the establishment of an Investment Committee to monitor and supervise the Special Fund and the appointment of a Special Fund Trustee who shall be responsible receiving and investing the Special Fund.

f. The Micro and Small Enterprises Act 2012 (No. 55 of 2012)

The Bill seeks to amend the MSE Act to create a conducive environment for investors.

g. The Public Private Partnership Act, 2013 (No. 15 of 2013)

The Bill proposes to amend the Public Private Partnership Act, 2013, to remove the provisions relating to the Committee and confer functions on the Cabinet Secretary. It also seeks to expand the functions of the Unit. It also seeks to amend Section 28 to empower the Cabinet Secretary to impose a success fee to be paid by a successful bidder on a transaction.

The Bill also proposes to amend Section 45 to remove the requirement of consultation with the public private partnerships Unit and approval of the Committee where a contracting authority chooses to conduct a competitive dialogue with bidders. It also seeks to amend section 54 and sets out the procedures of submission of memorandum to Cabinet Secretary for approval. It also proposes

approval. It also proposes to amend section 64 to provide for the amendment of both national and county level projects.

h. The Crops Act, 2013 (No. 16 of 2013)

The Bill seeks to amend the Crops Act, 2013 to provide for the benefit of value addition to agricultural produce in relation to export.

i. The Fisheries Management and Development Act, 2016 (No. 35 of 2016)

The Bill proposes to amend the Fisheries Management and Development Act, 2016, to harmonize various definitions in the Act. It also seeks to introduce a new provision which empower the Cabinet Secretary to make Regulations with regard to the conduct of the affairs of the standing committee and the technical committee and to prescribe the minimum standards for crew working on fishing vessels. It also seeks to introduce new provisions to streamline the issue of licensing for fisheries activities.

PETITIONS TABLED BEFORE THE NATIONAL ASSEMBLY

AMENDING THE CONSTITUTION TO ALTER THE SYSTEM OF REPRESENTATION OF THE PEOPLE

The Speaker informed the House of Public Petition No. 20 of 2019 which requests Parliament to amend the Constitution of Kenya to alter the system of representation of the people. The Petition proposes that the House should consider several amendments to the Constitution affecting the bicameral nature of the legislature, the two-thirds gender principle, among other proposals. The Petition was committed to the Departmental Committee on Justice and Legal Affairs.

FUNDING OF CO-CURRICULAR ACTIVITIES IN PUBLIC PRIMARY SCHOOLS

A Petition regarding funding of co-curricular activities in public primary schools was tabled praying that the National Assembly through the Departmental Committee on Education and Research:

(i) recommends to the Ministry of Education to consider up-scaling of Government capitation for co-curricular activities in public primary schools from Kshs 76 to a minimum of Kshs 150 per pupil or more with a view to avail sufficient activity fees at school level;

activities per pupil at school level with a view to recommending a reasonable capitation for co-curricular in subsequent sporting years;

(iii) recommends that the share of the said capitation of sub county, county and regional levels be submitted directly to the relevant offices, and;

(iv) makes any other order or direction it deems fit in the circumstances of the matter.

MOTIONS TABLED BEFORE THE NATIONAL ASSEMBLY

ENHANCEMENT OF FUNDS FOR IMPROVEMENT OF INFRASTRUCTURE IN PUBLIC DAY SECONDARY SCHOOLS

The House was notified of the motion that due to the government in implementing the free tuition secondary education policy, it has resulted in a stretch and strain on school infrastructure and facilities as a result of the large numbers of students admitted in secondary schools, thus the Government should ensure that at least, 70 per cent of the total funds allocated under secondary schools infrastructure improvement programme is allocated to public day secondary schools (which have a wider reach to students) to cater for improved infrastructure and further that this funds be allocated as capitation grant.

MEASURES TO BRIDGE TRADE DEFICIT IN KENYA

A notice of a motion compelling the House to resolve that the Government urgently puts in place measures to bridge the huge trade deficit by providing incentives to potential investors and farmers, supporting local production through promotion and protection of local industries and implementing competitive export promotion strategies was tabled.

This is in light of the fact that Kenya's trade deficit has been on the increase in the past few years with the Financial Year 2016/2017 deficit being estimated at Kshs.1.1 trillion; noting that the deficit is mainly attributable to the exports worth Kshs.594 billion against imports amounting to Kshs.1.7 trillion, driven mainly by the more than doubling of food and machinery imports amid slow-moving exports.

There was also concern that the widening deficit has continued to pile pressure on the shilling against other global currencies such as the dollar, and that the high demand for the dollar to fund imports has been forcing the Central Bank of Kenya (CBK) to intervene, depleting foreign exchange reserves even as the country continues to incur foreign debts. The rising imports also amplified by flat exports portend a difficult operating environment for local enterprises and farmers thereby denying Kenyans employment opportunities when locals lose out to foreign manufacturers and farmers; notwithstanding the effects of protectionism policies

international markets.

NATIONAL ASSEMBLY DEPARTMENTAL COMMITTEE ISSUES

POLICY GUIDELINES FOR BUYING TEA FROM TEA FARMERS

The Departmental Committee on Agriculture and Livestock was tasked to inquire from the Cabinet Secretary for Agriculture, Livestock, Fisheries and Irrigation:

- (i) The existing policy guidelines regarding buying of tea leaves from farmers by tea factories, and in particular by the Mara Tea factory located at the border of Kisii and Narok counties;*
- (ii) What steps is the Ministry is taking to ensure that the numerous challenges faced by tea farmers are addressed.*

EXPLOITATION OF POTATO FARMERS BY MIDDLEMEN

The Departmental Committee on Agriculture and Livestock was tasked to inquire from the Cabinet Secretary for Agriculture, Livestock, Fisheries and Irrigation:

- (i) Whether he is aware that potato farmers are facing massive exploitation by middlemen who use unregulated packaging bags commonly referred to as tusura?*
- (ii) What measures is the Ministry putting in place to ensure regulated and standardized packaging and weights of potatoes by potato farmers in the country?*

DETAILS ON AGE LIMIT FOR IMPORTED SECOND-HAND MOTOR VEHICLES

The Departmental Committee on Trade, Industry and Cooperatives was tasked with inquiring from the Cabinet Secretary for Industry, Trade and Co-operatives the status of the following issues:

- i) Details of his recent public pronouncement on the reduction of the age limit for imported second-hand motor vehicles with engine capacity above 1500cc from eight to five years;*
 - (ii) The short and long-term effects the pronouncement above has on the country's economy;*
 - (iii) Whether the Kenya Bureau of Standards Notice Number KS 1515:2000 of 2018 on*
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the requirements of the Constitution and the Statutory Instruments Act as it relates to public participation and submission to Parliament?

The requirements of the Statutory Instruments Act require that any regulation making authority or body is required to, within 7 days, table the regulations they make before the House, after which the Committee on Delegated Legislation looks at those regulations and determines whether or not to approve them as they are or recommend their annulment to the House.

THE SENATE

1) THE WAREHOUSE RECEIPTS SYSTEM BILL (SENATE BILLS NO.1 OF 2017)

On Tuesday 12th March 2019, the Bill came up in the Committee of the Whole in a bid to consider the National Assembly Amendments, and the said National Assembly amendments to Bill were rejected. The Bill was recommitted to Committee of the Whole but there was division on the National Assembly amendments to the Bill, which the Speaker nullified. Consequently, the results of the purported voting were expunged from the record of the House proceedings by the order of the Speaker.

On Wednesday 13th March 2019, there was no quorum thus the Bill was further listed in the Order Paper for Thursday 14th March, 2019, for the Senate to proceed to another round of electronic voting on the Bills.

On Thursday, Hon. Sen. Ndwiga laid the Report on the Consideration of Amendments passed by the National Assembly to the Warehouse Receipt System Bill (Senate Bills No.10 of 2017). The Bill was rejected and referred to the Mediation Committee.

2) THE TEA BILL (SENATE BILLS NO. 36 OF 2018)

The Bill was coming up for a Second Reading.

During the debate on the Bill, there was concern that the kind of auction happening in Mombasa is not an auction but a predetermined process where 3 to 5 people sit at a hotel in London and determine how much they are buying Kenyan tea. The Bill thus proposes a strong regulator that shall set rules and issue directives and say, for example, from today, anybody that wants to carry out auction business in Kenya must set up an electronic auction as a way of doing business.

The Bill also proposes that the headquarters for the Authority be out of Nairobi since tea is centrally grown in the west and the east of the Rift Valley. A single headquarters at a central point such as Kericho would cater for the entire region from Nandi, Bomet, Kisii and Nyamira counties and one sub-headquarters that will take care of the west of the Rift that will be in charge of the whole region of Embu, Meru, Nyeri and Murang'a.

It was also noted that with tea was one of the highly taxed products, with almost 37 forms of taxation. Farmers get injured and face many other challenges. Small-scale farmers and people who work in the tea sector get injured during pruning and so on. Licensing will weed out the rogue 'tenderpreneurs', brokers and other cartels that exploit tea farmers at any given time.

The Bill also seeks to streamline and remove responsibilities from the Agriculture and Food Authority (AFA) to the Tea Regulatory Authority of Kenya, so that there is more focus in the tea industry and, therefore, in a sense, liberalise the tea industry to enhance quick processing of tea.

Part III of the Bill brings out the gist of the Bill on Regulatory Provisions. For instance, in Clause 17(1), it will be a requirement that every tea grower registers with a processor so that people align themselves. They will be required to give the name, location, parcel number, acreage, variety and all the necessary information so that once the tea is ready for harvesting, there will already be somebody in mind to process it.

After extensive deliberation, the putting of a question on the Bill was deferred.

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

The Bill was coming up for a Second Reading. However, the Bill was deferred.

4) THE DATA PROTECTION BILL (SENATE BILLS NO.16 OF 2018)

The Bill was coming up for a Second Reading. However, the Bill was deferred.

SENATE DEPARTMENTAL COMMITTEE ISSUES

STATUS OF TVET CENTRES IN NORTH EASTERN KENYA

The Standing Committee on Education on Technical and Vocational Training was tasked to provide clarity on:

- (1) The number of Technical and Vocational Educational Training (TVET) centres in North Eastern Kenya;
- (2) The number of students admitted and those who graduated from TVET centres and polytechnics from each constituency in Wajir County during the last five years;
- (3) The number of tutors or teachers spread out in all the TVET centres and

constituencies; who employs the teachers and what happens in those institutions.

The committee is to act on it within two weeks.

EXPIRY OF DRUGS AT KEMSA WAREHOUSES

The Standing Committee on Health was tasked to explain the expiry of drugs at KEMSA warehouses, particularly:

- (1) The circumstances under which KEMSA is currently holding drugs worth Kshs1.2 billion which have expired or are about to expire;*
- (2) Why KEMSA is storing drugs worth Kshs1 billion which have a shelf life of seven months, which is a short period as per pharmaceutical practices;*
- (3) Why drugs are expiring in KEMSA warehouses while almost all public health facilities across the country are experiencing severe shortage of drugs; and*
- (4) Steps being taken by the Ministry of Health to address the issue of drugs expiring at KEMSA and the shortage of drugs in hospitals.*

The Vice Chairperson of the Committee indicated that the Committee had held a meeting with KEMSA on the morning of Wednesday 13th March on the same issue; and noted that the fact of the matter is that there were no expired drugs. He stated that the fact was that the board met last month and they agreed that there were some drugs worth Kshs1.2 billion which were at risk and that by the time the matter was coming up the previous week, all those drugs had been supplied and no drugs expired.

He also indicated that Counties are the ones that apply for medicine from KEMSA, and KEMSA supplies the medicine but the Counties do not pay them and therefore KEMSA is complaining that counties do not pay and that the Counties are buying medicine from other dealers instead of getting the drugs from them. He stipulated that the Committee would ask for more details.

There was also concern from a Member of the Committee on Health that KEMSA supplying medicine to all counties is a problem because it does not have the capacity to adequately supply medicine to 47 counties. He also indicated that the Committee on Health should do an in-depth investigation and report to the House on whether KEMSA has the capacity to continue enjoying the kind of monopoly that it is enjoying in terms of supply of medicine.

OVERSUPPLY OF TEXTBOOKS TO SCHOOLS

The Standing Committee on Education was tasked to explain the text book supply

would be given to specific schools to buy text books. Therefore, schools would be given a certain amount of money and then they would buy the textbooks. However, that policy changed so that the Government now supplies the books. The current scenario is that there has been an oversupply of textbooks within the schools. Initially, it was meant to be one textbook for one student for a particular subject. However, currently a student has more than two or three textbooks for the same subject.

The Committee was tasked to explain the extent to which the textbook supply policy has been implemented, including the number of Counties covered and the number of books supplied to the school within these counties so that this exercise can be curtailed.

The Committee was also tasked to explain what prompted the move to change the policy from buying books directly from the booksellers and publishers. Initially, when capitation went directly to the schools, they would be able to select the specific booksellers and publishers. That way, they would have a role to play about the various publishers and probably indicate the books that would be adequate within the school system.

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

Best regards,



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