

REPUBLIC OF KENYA



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TWELFTH PARLIAMENT

THIRD SESSION

THE SENATE

THE STANDING COMMITTEE ON INFORMATION AND TECHNOLOGY

REPORT ON THE CONSIDERATION OF NATIONAL ASSEMBLY
AMENDMENTS TO THE COUNTY OUTDOOR ADVERTISING CONTROL
BILL, (SENATE BILLS No. 19 of 2018)

Clerk's Chambers
Parliament Buildings,
NAIROBI

September, 2020.

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PREFACE

Mr. Speaker Sir,

Establishment of the Committee

The Senate Standing Committee on Information and Technology, was constituted on, Thursday, 14th December, 2017 during the First Session of the Twelfth (12th) Parliament pursuant to the provisions of standing order 218 (1) of the Senate Standing Orders which states:

There shall be Select Committees to be designated Standing Committees which shall be nominated by the Senate Business Committee in consultation with parliamentary parties at the commencement of every Parliament.

On 24th June, 2020 , the Senate passed a motion to reconstitute its Committee. The Committee was then re-constituted.

Mandate of the Committee

The Senate Standing Committee on Information and Technology is established under standing order 218(3) and is mandated to, *inter alia-*

Consider all matters related to technology, engineering and electronic research, information broadcasting and Information Communications Technology development.

Standing order 218 (4) provides that Standing Committees may, in dealing with the matters assigned to them under the Second Schedule, scrutinize the resolutions of the Senate (including adopted Committee Reports), petitions and formal undertakings given by the National Executive and examine-

- a) *whether or not such resolutions and undertakings have been implemented and where implemented, the extent to which they have been implemented; and whether such implementation has taken place within a reasonable time;*
- b) *whether or not legislation or subsidiary legislation passed by the Senate has been operationalized and, where operationalized, the extent to which such operationalization has taken place*

Membership of the Committee

The Committee is comprised of the following Members-

- | | |
|------------------------------|--------------------|
| 1) Sen. Gideon Moi Kipsielei | - Chairperson |
| 2) Sen. Halake Abshiro Soka | - Vice Chairperson |
| 3) Sen. Enoch Wambua | - Member |
| 4) Sen. Issa Juma Boy | - Member |
| 5) Sen. Susan Kihika | - Member |
| 6) Sen. Mercy Chebeni | - Member |
| 7) Sen. Petronilla Were | - Member |
| 8) Sen. John Kinyua | - Member |
| 9) Sen. Anuar Loitiptip | - Member |

Committee Secretariat

The secretariat comprises of the following members of staff;

- | | |
|-------------------------|------------------------------------|
| 1) Ms. Gloria Wawira | Clerk Assistant |
| 2) Mr. Moses Kenyanchui | Legal Counsel |
| 3) Ms. Lorna Okatch | Research and Policy Analyst |
| 4) Mr. Washinton Otiato | Media Relations Officer |
| 5) Mr. Elijah Ichwara | Audio Officer |

Acknowledgement

I appreciate the continued commitment and dedication of the Committee Members towards realising the mandate of the Committee. Similarly, I thank the offices of the Speaker and the Clerk of the Senate for the necessary support extended to the Committee in the execution of its mandate.

Mr. Speaker Sir,

It is my pleasant duty, pursuant to Standing Order 143, to present a Report of the Standing Committee on Information & Technology (IT) on its consideration of amendments passed by the National Assembly to the County Outdoor Advertising Control Bill, 2018

SIGNED:




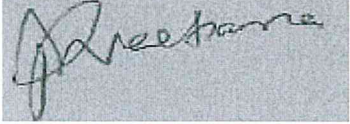
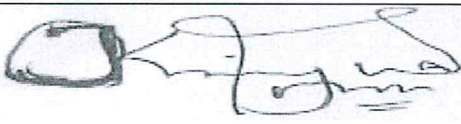


FOR:HON. SEN.GIDEON MOI KIPSIELEI, CBS, M.P.

(CHAIRPERSON, STANDING COMMITTEE ON INFORMATION AND TECHNOLOGY)

Date: 28th September, 2020

We, the members of the Senate Standing Committee on Information and Technology have pursuant to Standing Order 213 adopted this Report on the consideration of National Assembly Amendments the County Outdoor Advertising Control Bill, (Senate Bills no. 19 of 2018) and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity today Wednesday, 12th August, 2020-

NO	NAME	DESIGNATION	SIGNATURE
1.	Sen. Gideon Moi, CBS	Chairperson	
2.	Sen. Halake Abshiro	Vice- Chairperson	
3.	Sen. Enoch Wambua	Member	
4.	Sen. Issa Boy Juma	Member	
5.	Sen. Susan Kihika	Member	
6.	Sen. Anuar Loitiptip	Member	
7.	Sen. Petronilla Were Lokorio	Member	
8.	Sen. Mercy Chebeni	Member	
9.	Sen. John Nderitu Kinyua	Member	

EXECUTIVE SUMMARY

The County Outdoor Advertising Control Bill, (Senate Bills No. 19 of 2018) was sponsored by Sen. Samuel Lesuron Poghio, EGH, M.P., Leader of Majority was read a First Time in the Senate on 11th September, 2018. Following the First Reading, the Bill, stood committed to the Standing Committee on Information and Technology pursuant to standing order 140 (1) of the Senate Standing Orders.

The Senate passed the Bill on 19th June, 2019 and it was thereafter sent to the National Assembly for concurrence. The National Assembly passed the Bill with amendments on 25th June, 2020.

During the Sitting of the Senate held on 14th July, 2020, the Speaker reported Messages from the National Assembly on the approval (with amendments) of the County Outdoor Advertising Control Bill 2018. The Speaker directed the Committee to deliberate on the amendments to the Bill and report to the Senate.

At its Sitting held on 29th July, 2020, the Committee considered the amendments and made comments as contained in Chapter Two of this report. The Committee thereafter made its recommendation that the Senate passes the amendments to the County Outdoor Advertising Control Bill, (Senate Bills No. 19 of 2018).

INTRODUCTION

Background on the County Outdoor Advertising Control Bill, (Senate Bills No. 19 of 2018)

Advertising is a rapidly growing industry and now forms part of everyday culture, often adding colour to our streets. It is a valuable source of information and is viewed by many also as a form of entertainment. Outdoor advertising is a key element of the industry and contributes to the creation of a vibrant and competitive economy. There is however a need to balance the requirements of the industry with the protection and, where possible, enhancement of the character and appearance of the environment. Further, there is also a need to ensure that advertisements will not prejudice public safety.

The principle **object of the Bill** is to ensure that outdoor advertisements respect amenity and do not prejudice public safety, including road safety and that the display of outdoor advertisements contributes positively to the appearance of a well-cared for and attractive environment in the counties. It seeks to provide a legal framework for the control of outdoor advertising in order to achieve a balance between the need to advertise and the protection of amenity and public safety. The Bill proposes to provide for the procedure for the application for and issuance of an outdoor advertising license.

Further, the Bill seeks to provide a legal framework for the control of outdoor advertising in counties. **Paragraph 3 of Part 2 of the Fourth Schedule to the Constitution** provides for outdoor advertising as one of the functional areas of county governments. Therefore, the Bill concerns county governments in terms of Articles 110 (1) (a) of the Constitution in that it contains provision that affects the functions and powers of the county governments as set out in the Fourth Schedule to the Constitution.

Whereas the principal object of the Bill is to regulate outdoor advertising, **clause 3 of the Bill provides for the exemption of certain forms of advertisements from regulation.** These include notices and displays giving information regarding –

- (i) directions to property for sale which are not visible from a highway;
- (ii) name of owner or occupant of premises;
- (iii) any memorial, railway or road signal;
- (iv) an advertisement on land not visible from outside that land, an advertisement relating to direction or location of a religious institution, or a public education or medical institution, and advertisement displayed on or in a moving vehicle;
- (v) a person's profession, trade or business; and

(vi) goods or services displayed in sports, cultural or social arenas.

Part II of the Bill makes provision for application, consideration of application, issuance, duration and matters connected to an outdoor advertising license. A person intending to engage in outdoor advertising will be required to apply to the county executive committee member for issuance of a license. The application shall be submitted together with the prescribed fee, written consent from the owner or occupier of the site, a plan of the property upon which the advertisement will be erected, and an artistic impression of the advertisement.

Upon receipt of the application, a county executive committee member will take into account the following factors when considering an application for an outdoor advertising license –

- (i) the effect the advertisement will have on the general characteristics of the area;
- (ii) whether the advertisement will endanger or obscure anyone using a highway, road, railway, waterway, dock, harbor or aerodrome;
- (iii) the design and material of the proposed advertisement; and
- (iv) the impact of the proposed advertisement on amenities of the people living nearby and the potential for light pollution.

A license shall be valid from the date specified in license or from the date of issuance and shall remain in force for the period specified in the license. Once a license has expired, a licensee may apply at least six months before the expiration of the license for the license to be renewed.

An outdoor advertising license may be revoked by a county executive committee member after taking into account whether the advertisement poses a danger to life or property, or prejudices operations to the area in which it is located. Before revoking a license, the county executive committee member shall issue to the licensee a notice of the intention to revoke a license and hear the licensee.

Within seven days after the expiration of a license or revocation of a license, clause 13 of the Bill requires a person issued with a license to remove the advertisement.

Part III of the Bill contains miscellaneous provisions which provide for maintenance of signs, public participation, offences and penalties, enactment of county legislation, savings and transition, and consequential amendment. In undertaking public participation with respect to issuance or renewal of a license, the county executive committee member shall invite comments from members of the public through a notice publicized on the county website and other places accessible to the public.

A person issued with a license will be responsible for costs related to maintaining the site used for the display of the advertisement and costs for removal of the advertisement.

The Bill empowers a County Assembly to enact county specific legislation to provide for matters such as service of any notice, fees and charges, and forms to be used.

Committal of the Bill to the Standing Committee on Information and Technology

The County Outdoor Advertising Control Bill, (Senate Bills No. 19 of 2018) was published on 13th July, 2018 and read a First Time in the Senate on 11th September, 2018. The Bill was thereafter committed to the Standing Committee on Information and Technology for consideration.

Pursuant to Article 118 (1) (b) of the Constitution and standing order 140 (5) of the Senate Standing Orders, the Committee invited views on the Bill from the public by placing advertisements in the Daily Nation and the Standard newspapers of 19th September, 2018.

The Committee received oral submissions at the Public Hearings held on 4th October, 2018 in the first floor boardroom, Red Cross Building. The Committee considered the submissions and reported back to the Senate.

The Senate passed the Bill, with amendments, on 19th June, 2019 and it was thereafter sent to the National Assembly for concurrence. Pursuant to standing order 156 of the Senate Standing Orders, the Bill was forwarded to the National Assembly together with a message requesting the concurrence of the National Assembly. The National Assembly passed the Bill with amendments on 25th June, 2020.

During the Sitting of the Senate held on 14th July, 2020 the Speaker reported Messages from the National Assembly on the approval (with amendments) of the County Outdoor Advertising Control Bill, 2018. The Speaker directed the Committee to deliberate on the amendments to the Bill and report to the Senate.

At its Sitting held on 29th July, 2020, the Committee considered the amendments passed by the National Assembly to the Bill.

CONSIDERATION OF AMENDMENTS PASSED BY THE NATIONAL ASSEMBLY TO THE BILL

At its Sitting held on 29th June, 2020, the Committee considered the amendments passed by the National Assembly as summarized below:

CLAUSE 3

That Clause 3 of the Bill be amended –

- (i) by deleting the expression “(1)” appearing in the introductory clause.
- (ii) In paragraph (c)(vi) by inserting the words “**that has a licence from another county**” immediately after the words “a moving vehicle”.

Rationale

The deletion of the phrase “(1)” is a clean-up amendment since there are no other subclauses in Clause 3.

Paragraph (c)(vi) paragraph is meant to address the requirement by counties to require a moving vehicle employed for purposes of advertising to pay a fee to every county the vehicle passes through. The amendment may be accepted as it will ensure that the fee is paid once, and not to every other county the vehicle passes through.

Resolution- Agreed to

CLAUSE 4

That Clause 4 of the Bill be amended by deleting clause 4(2)(b) and substituting therefor the following new clause –

- (b) The written consent of the owner of the site or any other person with an interest in the site entitled to give consent.

Resolution- Agreed to

CLAUSE 10

That Clause 10 of the Bill be amended by deleting clause 10(2)(b) and substituting therefor the following new paragraph –

- (b) The written consent of the owner of the site or any other person with an interest in the site entitled to give consent.

Resolution- Agreed to

CLAUSE 15

Clause 15 is amended by inserting the words “**regulate and**” immediately after the words “government entity shall”

Rationale

The genesis of clause 15 on levying fees on outdoor advertising and clauses 4 and 10 on obtaining consent from Kenya National Highway Authority (KeNHA) was as a result of a tussle (including court cases) between county governments and KeNHA as to who should levy fees on advertisements put up on road reserves managed by KeNHA. Though the courts have decided that only Counties can levy fees on advertisements put up on road reserves, the Committee felt that there is need for orderliness in the manner in which advertisements are put up on road reserves. To achieve this, KeNHA or such other entity responsible for the management road reserves need to be involved through the obtaining of consent.

Though clause 4(2)(b) and 10(2)(b) as amended seem to cover the obtaining of consent from such entities as KeHNA, there is need to retain the original clause to avoid any ambiguity which may arise, especially when read together with clause 15.

As regards the amendment to clause 15, the import of the amendment is that no other person can regulate and levy fees on outdoor advertising at the same time but another entity can either regulate or levy fees on outdoor advertising. This is because of the use of the conjunction ‘and’ which has been used in this case to mean in addition. To cure this, we propose the conjunction ‘and’ be replaced with the conjunction ‘or’.

Resolution- Agreed to

CLAUSE 12

That Clause 21 of the Bill be amended by deleting clause 21(2)(b) and substituting therefor with –

(b) a rate card that shall be reviewed every seven years stating the fees and charges to be paid in respect of any matter required for the purpose of this Act.

Resolution- Agreed to

CLAUSE 2

That Clause 2 of the Bill be amended by inserting the definition of the word “rate card”.

“rate card” means a document containing prices and descriptions for various advertisement placement options available from a service sector, which sets out the minimum and maximum prices of a service.

Rationale

The amendment to clause 21 and 2 may be retained as it will be indicative of an estimate of charges to be paid for an advertisement which might bring some form of certainty. It will also help persons intending to place advertisements to have an idea of how much it may cost to put an advertisement.

However, the definition of the word ‘rate card’ ought to be redrafted for clarity.

Resolution- Agreed to

COMMITTEE OBSERVATIONS

The Committee noted that the amendments by the National Assembly to the Bill did not substantively change the objectives of the legislation.

COMMITTEE RECOMMENDATIONS

Pursuant to standing order 159 (4) of the Senate Standing Orders, the Committee recommends that the Senate passes the Bill amended by the National Assembly to the County Outdoor Advertising Control Bill, 2018.

ANNEXES
COMMUNICATION FROM THE SPEAKER
MESSAGE FROM THE NATIONAL ASSEMBLY
