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REPUBLIC OF KENYA
KENYA NATIONAL ASSEMBLY
TENTH PARLIAMENT – FOURTH SESSION

debated 13.4.2011
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REPORT

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OF THE
DEPARTMENTAL COMMITTEE ON FINANCE,
PLANNING, TRADE & TOURISM

ON
THE SALARIES AND REMUNERATION
COMMISSION BILL, 2011

1.0 INTRODUCTION

Mr. Speaker Sir, on behalf of the Members of the Departmental Committee (F) on Finance, Planning, Trade & Tourism and pursuant to the provisions of Standing Order No. 181, I would like to take this opportunity to present to the House, the Committee's Report on the Salaries and Remuneration Commission Bill, 2011.

The membership of the Committee comprise of the following:-

The Hon. Chrysanthus Okemo, EGH, M.P. (Chairman)

The Hon. (Prof.) Philip Kaloki, M.P. (Vice Chairman)

The Hon. Jakoyo Midiwo, MGH, M.P.

The Hon. Musikari Kombo, M.P.

The Hon. Lucas Chepkitony, M.P.

The Hon. Nelson Gaichuhie, MP

The Hon. Ntoitha M'Mithiaru, M.P.

The Hon. Ahmed Shabbir Shakeel, M.P.

The Hon. Nkoidila Ole Lankas, M.P.

The Hon. Lenny M. Kivuti, M.P.

The Hon. Sammy Mwaita, M.P.

The functions of this Departmental Committee as established under Standing Order No. 198 are inter alia:-

- (i) to study and review all legislation after First Reading subject to the exemptions under Standing Order No. 111 (3)*
- (ii) to make reports and recommendations to the House as often as possible including recommendations of proposed legislation.*

The Salaries and Remuneration Commission Bill, 2011 was referred to the Committee pursuant to the provisions of Standing Order No. 111(1).

2.0 COMMITTEE'S DELIBERATION ON THE SALARIES AND REMUNERATION COMMISSION BILL, 2011

The Committee deliberated on Bill as follows:--

CLAUSES

- Clause 1 - Agreed to
- Clause 2 - Amendment proposed
- Clauses 3-4 - Agreed to
- Clause 4 - Agreed to
- Clause 5 - Amendment proposed
- Clauses 6-10 - Agreed to
- Clause 11 - Amendment proposed
- Clauses 12-15 - Agreed to
- Clause 16 - Amendment proposed
- Clause 17 - Agreed to
- Clause 18 - Amendment proposed
- Clause 19 - Agreed to
- Clause 20 - Amendment proposed
- Clauses 21-28 - Agreed to

SCHEDULES

- First Schedule - Agreed to
- Second Schedule - Agreed to
- Title - Agreed to

3.0 COMMITTEE'S OBSERVATIONS ON THE SALARIES AND REMUNERATION COMMISSION BILL, 2011

The main object of the Bill is to give effect to the constitutional provisions relating to the Salaries and Remuneration Commission

under Article 230. The Bill also provides for additional functions and powers of the Commission, the qualification and procedures for the appointment of the chairperson and members of the Commission.

Clause 2 – Interpretation/Definition

“*State Officer*” – the phrase is used in the Bill but not defined as is the case with “Public Officer” and should therefore be defined for clarity.

“*Salary and remuneration*” - the definition is not very clear and should also include benefits as additional pay.

Clause 5 – Qualification for appointment of Chairperson

In addition to the other qualifications, knowledge and ten (10) years experience is adequate for appointment of a chairperson.

Clause 11

Article 230(4) of the Constitution provides for the powers and functions of the Commission to:-

- (a) set and regularly review the remuneration and benefits of all State Officers; and
- (b) advise the national and county governments on the remuneration and benefits of all other Public Officers.

The Bill is seeking to provide additional powers under Clause 11(a) to the Commission to determine and not to advise on the salaries and remuneration paid to Public Officers contrary to the provisions of Article 230(4) of the Constitution.

Clause 16- Appointment of the Secretary of the Commission

- The procedure for the appointment of the Secretary of the Commission and the vetting process should be subjected to Parliamentary approval.
- The procedure for appointment of the Secretary should also be similar to that of the chairperson and members of the Commission as provided for under Clause 5.
- In addition to the other qualifications, ten (10) years experience is adequate for appointment.

Clause 18 – Secondment of Staff

- Secondment of staff to the Commission is an administrative issue that should not be legislated as proposed in the Bill since it is a stop gap measure to enable the Commission to recruit permanent staff.
- If legislated, secondment can open a window for abuse to second staff for many years without recruiting permanent staff and can also provide an opportunity for favouritism which can lead to nepotism.
- Being an independent Commission, the secondment of staff should not exceed six months so as not to compromise the independence of the officers.

Clause 20 – Funds of the Commission

- The provision for retaining receipts and earnings effectively ring fences the Commission's resources and therefore effectively creating a fund which has the effect of distorting the standard

procedure for Public Financial Management (PFM) and could result in misappropriation of the retained resources.

- Commission's receipts should be returned to the Consolidated Fund at the end of the financial year for re-appropriation to avoid misuse, as ring fencing funds sets precedence and creates inflexibility in the allocation of resources.

4.0 COMMITTEE'S PROPOSED AMENDMENTS TO THE SALARIES AND REMUNERATION COMMISSION BILL, 2011

CLAUSE 2

THAT, Clause 2 be amended by:-

- (i) Including the definition of "State Officer" under interpretations as:-

"State Officer" – means a person holding a State office as defined under Article 260 of the Constitution.

Justification

"State Officer" – the phrase is used in the Bill but not defined as is the case with "Public Officer" and should therefore be defined for clarity.

- (ii) Inserting the word "**benefits**" after the word "**emoluments**" appearing under the definition of "**Salary and remuneration**"

Justification

The definition of "Salary and remuneration" is not very clear and should also include benefits as additional pay.

CLAUSE 5

THAT, Clause 5(1)(b) be amended by deleting the word "*fifteen*" and inserting in place thereof the word "*ten*".

Justification

In addition to the other qualifications, knowledge and ten (10) years experience is adequate for appointment of a chairperson.

CLAUSE 11

THAT, Clause 11(a) be amended by deleting the word "*determine*" and inserting in place thereof the word "*regulate*".

Justification

Article 230(4) of the Constitution provides for the powers and functions of the Commission to:-

- (c) set and regularly review the remuneration and benefits of all State Officers; and
- (d) advise the national and county governments on the remuneration and benefits of all other Public Officers.

The Bill is seeking to provide additional powers under Clause 11(a) to the Commission to determine and not to advise on the salaries and remuneration paid to Public Officers contrary to Article 230(4) of the Constitution.

CLAUSE 16

THAT, Clause 16 be amended:-

- (i) In subsection (1) by inserting the following words at the end.
"and approval by the National Assembly"

Justification

The procedure for the appointment of the Secretary of the Commission and the vetting process should be subjected to Parliamentary approval.

- (ii) In subsection (2)(c) by deleting the word "**fifteen**" and inserting in place thereof the word "**ten**".

Justification

In addition to the other qualifications, ten (10) years experience is adequate for appointment.

CLAUSE 18

THAT, Clause 18 be deleted.

Justification

- Secondment of staff to the Commission is an administrative issue that should not be legislated as proposed in the Bill since it is a stop gap measure to enable the Commission to recruit permanent staff.
- If legislated, secondment can open a window for abuse to second staff for many years without recruiting permanent staff and can also provide an opportunity for favouritism which can lead to nepotism.
- Being an independent Commission, the secondment of staff should not exceed six months so as not to compromise the independence of the officers.

CLAUSE 20

THAT, Clause be amended by deleting subsection (2).

Justification

- The provision for retaining receipts and earnings effectively ring fences the Commission's resources and therefore effectively creating a fund which has the effect of distorting the standard procedure for Public Financial Management (PFM) and could result in misappropriation of the retained resources.
- Receipts of the Commission should be returned to the Consolidated Fund at the end of the financial year for re-appropriation to avoid misuse as ring fencing funds sets precedence and creates inflexibility in the allocation of resources.

5.0 CONCLUSION

The Committee recommends that the House adopts its Report on the Salaries and Remuneration Commission Bill, 2011. Mr. Speaker Sir, may I take this opportunity to thank all Members of the Committee for their input and valuable contributions during the deliberations on the Bill.

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Hon. Chrysanthus Okemo, EGH, MP
Chairman

Departmental Committee on
Finance, Planning, Trade & Tourism

Date.....3/5/2011.....