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TWELFTH PARLIAMENT – SECOND SESSION 2018

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

....

REPORT ON THE COUNTY GOVERNMENTS RETIREMENT SCHEME BILL, 2018

CLERKS CHAMBERS

DIRECTORATE OF COMMITTEE SERVICES

PARLIAMENT BUILDINGS

NAIROBI

Approved 7/6

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ABBREVIATIONS

CGRS	-	County Governments Retirement Scheme Bill, 2018
LAPFUND	-	Local Authorities Provident Fund
CPA	-	County Pensioners' Association
RBA	-	Retirement Benefits Act
NSSF	-	National Social Security Fund
DC	-	Defined Contribution
DB	-	Defined Benefits
SCAC	-	State Corporations Advisory Committee
CS	-	Cabinet Secretary
CGA	-	County Governments Act, 2012
CPF	-	County Pension Fund
LAPTRUST	-	Local Authorities Pensions Trust
RBA	-	Retirement Benefits Authority
CoG	-	Council of Governors
CEO	-	Chief Executive Officer
NTSA	-	National Transport and Safety Authority
KIE	-	Kenya Institute of Education
KICD	-	Kenya Institute of Curriculum Development
IRA	-	Insurance Regulatory Authority
MCA	-	Member of County Assembly

CHAIRPERSON'S FOREWORD

This report contains the Committee's proceedings for the consideration of the County Governments Retirement Scheme Bill, 2018. The Bill was read a first time on 18th April, 2018 and subsequently committed to the Departmental Committee on Finance and National Planning for consideration and facilitation of public participation pursuant to Standing Order 127. In processing the Bill, the Committee invited comments from the public by placing advertisements in the Daily Nation and Standard Newspapers on 23rd April, 2018 pursuant to Article 118 of the Constitution. At the time of consideration, a total of seventeen (17) institutions had submitted their memoranda.

Upon scrutiny of the memoranda, the Committee resolved to carry out a stakeholders' forum which was held between 23rd and 26th May, 2018 at the Boma Inn Hotel, Nairobi. During the Stakeholder forum the Committee examined the proposed amendments, together with the justifications by each of the stakeholders, which eventually formed part of the basis through which the Committee came up with the final Committee stage amendments as contained in chapter four of this report.

In considering the Bill, the Committee noted that one of the key things that the Bill seeks to achieve is to establish the County Government's Retirement Scheme as a mandatory Scheme for all County Government Officers. A comprehensive pension law is critical for the harmonization of the sector players for county governments' pension schemes. Recognizing that the Bill proposes to have the existing schemes to be remain *closed to new entrants*, the Committee is recommending an amendment to Clause 56 to provide for a clear transition from the existing system of retirement benefits schemes i.e Local Authorities Provident Fund, the Local Authorities Pension Trust, the Local Authorities Pension Trust (Defined Benefits) Scheme and the Local Authorities Pension Trust (Umbrella) Retirement Fund. The State Corporations Advisory Committee is supposed to, upon enactment of this Bill, ensure that transition is done effectively and ensure preservation of all accrued rights of members.

On behalf of the Departmental Committee on Finance and National Planning and pursuant to provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the County Governments Retirement Scheme Bill, 2018.

The Committee is grateful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee wishes to thank the National Treasury and all the other stakeholders for their participation in scrutinizing the Bill.

Finally, I wish to express my appreciation to the Honorable Members of the Committee who made useful contributions towards the preparation and production of this report.

SIGNED..DATE....7/6/2018.........................

THE HON. JOSEPH LIMO, MP

CHAIRPERSON

DEPARTMENTAL COM0MITTEE ON FINANCE AND NATIONAL PLANNING

EXECUTIVE SUMMARY

The County Governments Retirement Scheme Bill, 2018 was published on 10th April, 2018 and read a first time on 18th April, 2018. The Bill was thereafter committed to the Departmental Committee on Finance and National Planning for consideration pursuant to Standing Order 127. The County Governments Retirement Scheme Bill, 2018 seeks to establish the County Government's Retirement Scheme as a mandatory Scheme for all County Government Officers; provide for the establishment of the Scheme's Board of Trustees and provide for the Scheme's management and administration. The Bill proposes to have the scheme offer lump sum payments as provident, periodic payments as pensions and income draw-downs. The proposed Scheme will transition the former local authorities' and national government employees under a national retirement scheme and retirement arrangements into one universal scheme for all the forty-seven county governments besides being open to other public officers and any other person approved by the Board.

Pursuant to Article 118 of the Constitution, the Committee invited comments from the public by placing advertisements in the Daily Nation and Standard newspapers on **Monday, 23rd April, 2018.** By the time the Committee was conducting a stakeholders' forum which was held between 23rd and 26th May 2018 at the Boma Hotel, seventeen (17) organizations had submitted their memoranda as follows:-

1. Local Authorities Provident Fund (LAPFUND)
2. County Pensioners' Association
3. County Pension Fund Financial Services Limited
4. Clinical Nursing Society of Kenya
5. County Public Service Boards (National Consultative Forum)
6. National Social Security Fund
7. Kenya County Government Workers' Union
8. Kenya National Union of Nurses
9. Hon. Joe Donde
10. Mr. John Biiy
11. Members of the County Assembly of Nairobi
12. Former Councilors' Association
13. Union of Kenya Civil Servants
14. State Corporations Advisory Council

15. Council of Governors

During the forum, all the above stakeholders were given an opportunity to make an oral presentation to the Committee highlighting clearly the specific amendment they wished to make to the Bill. In conformity with the requirements of Article 110, the Committee also engaged the National Treasury who made their comments on each of the proposals made by the stakeholders.

1.0 ESTABLISHMENT OF THE COMMITTEE

The Departmental Committee on Finance & National Planning is one of the fifteen Departmental Committees of the National Assembly established under ***Standing Order 216*** whose mandates pursuant to the ***Standing Order 216 (5)*** are as follows:

1. To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
2. To study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation;
3. **To study and review all the legislation referred to it;**
4. To study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
5. To investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;
6. To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No.204 (Committee on appointments);
7. To examine treaties, agreements and conventions;
8. To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
9. To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
10. To examine any questions raised by Members on a matter within its mandate.

1.1 MANDATE OF THE COMMITTEE

In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider, Public finance, Monetary policies, Public debt, Financial institutions (excluding those in securities exchange), Investment and divestiture policies, Pricing policies, Banking, Insurance, Population revenue policies including taxation and National planning and development.

In executing its mandate, the Committee oversees the following government Ministries;

1. The National Treasury and Ministry of Planning
2. Ministry of Devolution and ASAL
3. The Commission on Revenue Allocation
4. Office of the Controller of Budget
5. Salaries and Remuneration Commission
6. Office of the Auditor General

1.2 COMMITTEE MEMBERSHIP

The Committee on Finance and National Planning comprises of the following Members:-

1. The Hon. Joseph K. Limo, MP – **Chairperson**
2. The Hon. Isaac W. Ndirangu – **Vice-Chairperson**
3. The Hon. Jimmy O. Angwenyi, MP
4. The Hon. Alfred W. Sambu, MP
5. The Hon. Dr. Enoch Kibunguchy, MP
6. The Hon. Shakeel Shabbir Ahmed, MP
7. The Hon. Abdul Rahim Dawood, MP
8. The Hon. Daniel E. Nanok, MP
9. The Hon. Andrew A. Okuome, MP
10. The Hon. David M. Mboni, MP
11. The Hon. Francis K. Kimani, MP
12. The Hon. Joseph M. Oyula, MP
13. The Hon. Joshua C. Kandie, MP
14. The Hon. Lydia H. Mizighi, MP
15. The Hon. Mohamed A. Mohamed, MP
16. The Hon. Purity W. Ngirici, MP
17. The Hon. Samuel Atandi, MP
18. The Hon. Stanley M. Muthama, MP

1.3 COMMITTEE SECRETARIAT

2. Ms. Leah W. Mwaura - **First Clerk Assistant/Lead Clerk**
3. Ms. Laureen Wesonga - **Third Clerk Assistant**
4. Mr. Josephat Motonu - **Fiscal Analyst I**
5. Ms. Lynette Otieno - **Legal Counsel II**
6. Mr. Chelang'a Maiyo - **Research & Policy Analyst III**

2.0 CONSIDERATION OF THE COUNTY GOVERNEMNTS RETIREMENT SCHEME BILL 2018

2.1 BACKGROUND INFORMATION

The County Governments Retirement Scheme Bill, 2018 is a Bill of the Act of Parliament that seeks to provide for the management and administration of pensions for County governments' employees, persons in the service of county governments and for connected purposes as may be approved by the Scheme Board of Trustees.

The principal object of the Bill is to establish the County Government's Retirement Scheme as a mandatory Scheme for all County Government Officers; provide for the establishment of the Scheme's Board of Trustees and provide for the Scheme's management and administration.

Further the Bill seeks to have the scheme offer lump sum payments as provident, periodic payments as pensions and income-draw –downs. This income draw- down is derived from the scheme continuing to keep retirement savings invested in the scheme and take an income during a specified period rather than buy an annuity.

Additionally, the proposed Scheme will transition the former local Authorities' and national Government employees under a national retirement scheme and retirement arrangements into one universal scheme for all the forty-seven (47) county government.

The scheme upon establishment will in addition be open to other public officers and any other person as approved by the Board.

Upon enactment, the Act will provide for the establishment of the County Governments Retirement Scheme, provide for the payment of retirement benefits to members of the Scheme when they fall due, provide for the social security of members of the Scheme by ensuring that members save in order to cater for their livelihood during their retirement, establish a uniform set of rules, regulations and standards for the administration and payment of retirement benefits for members of the Scheme and establish transitional provisions for existing Schemes.

2.1 CLAUSE BY CLAUSE ANALYSIS

Part I (Clauses 1-3) Preliminary

1. This part contains the short title, interpretation of terms and objects of the Act.
   (a) Clause 2 of the Bill provides for the definition of the following key terms as follows-
   (a) "administrator" that means the person appointed as such under section 23;
   (b) "annuity" means a pension purchased under a contract with a registered insurer;
   (c) "approved issuer" means an approved issuer appointed by the Trustee to provide the services of approved issuer in accordance with the Retirement Benefits Act,1997
   (d) "associated organization" means any person, firm, company or organization of employees or association of employers created by, owned by or associated with county governments, urban areas and cities or any other institution, established under the County Governments Act, 2012, the Urban Areas and Cities Act, 2011, or their staff or any other person or body providing services to county governments or to their employees and includes those organizations whether associated with county governments or not that choose to participate in the Scheme by signing a deed of adherence;
   (e) "Board" means the Board of Trustees established under section 6;
   (f) "custodian" means a person appointed as such under section 22 of the Act;
   (g) "deed of adherence" means the legal instrument to be executed by the employer who joins the Scheme after the commencement date of the Scheme and which shall bind that employer to the Scheme's rules;
   (h) "eligible employee" means an employee of the county public service employee or an employee of an associated organization or body, as may be approved by the Board and which has signed a deed of adherence in accordance with this Act;
   (i) "existing scheme" means the Local Authorities Provident Fund, the Local Authorities Pensions Trust and any other scheme that may be prescribed under this Act;
   (j) "pensionable emoluments" means basic salary excluding housing, transport and any other allowances or fluctuating emoluments;
   (k) "Trustee" means a member of the Board.
   (b) Clause 3 provides for the objects of the Act which is to-

a. provide for the establishment of the Scheme;

b. provide for the payment of retirement benefits to members of the Scheme when they become due;

c. provide for the social security of members of the Scheme;

d. establish a uniform set of rules, regulations and standards for the administration and payment of retirement benefits for members of the Scheme; and

e. establish transitional provisions for existing schemes.

Part II (Clauses 4-20) Establishment of the County Governments Retirement Scheme

2. This Part provides for the establishment and management of the Scheme. It establishes the County Retirement Scheme as a body corporate with perpetual succession. Clause 4(3) provides for the establishment of the Scheme as a defined contribution Scheme providing social security benefits including—

   a. periodic payments through the purchase of annuities;

   b. a lump sum as a commutation of pension or trivial pension in accordance with the RBA Regulations;

   c. income drawdown; and

   d. any other benefit approved by the Board under this Act.

3. Clause 5 of the Bill provides for membership of the Scheme, where **any public officer or any other person** approved by the Board may become a member of the scheme.
4. Clause 6 provides for the Board of Trustees of the Scheme. It provides the procedure for appointment of the Trustees and the necessary qualifications. The Board shall consist of—

   (a) a representative of the Council of County Governors;

   (b) two representatives of the County Public Service Boards one of whom shall be of the opposite gender;

   (c) a representative of the County Assembly Service Boards;

   (d) two persons nominated by the trade union umbrellas representing public servants;

   (e) three persons nominated by employees of county governments of whom at least one shall be of the opposite gender;

(f) the **chief executive officer** appointed under section 18, who shall be the secretary.

5. Part II also sets out the Trustees' functions and powers and sets their tenure to three years renewable once based on performance under Clause 9.
6. It also provides for the qualifications of the Trustees, tenure of office, procedure for removal or vacation from office as well as filling of a vacancy in the Board, powers and functions of the Board, committees of the Board, remuneration of the Trustees as well as the conduct of the meeting of the Board.
7. Clause 13 provides for the functions of the Boards as follows—
    i. formulate the policies relating to the Scheme in accordance with the provisions of the Retirement Benefits Act, 1997;
    ii. collect contributions and income payable to the Fund under this Act;
    iii. pay out the various benefits to persons entitled to the benefits as provided under the Act;
    iv. protect the Fund's assets and ensure long term viability of the Scheme;
    v. ensure efficient management of the Scheme;
    vi. ensure prudent investment of the monies forming part of the Fund;
    vii. negotiate competitive annuity rates on behalf of members;
    viii. ensure that the Scheme observes high standards of corporate and business ethics;
    ix. advise the Cabinet Secretary on any matter relating to the objects and functions of the Board under this Act; and perform any other functions assigned to it under this Act.

8. Whereas Clause 14 gives the Board the following powers—
    i. supervise the assets of the Scheme in such manner as best promotes the purpose for which the Scheme is established;
    ii. appoint a custodian, fund manager and administrator to carry out their functions as specified in the Retirement Benefits Act, 1997;
    iii. determine the provisions to be made for administrative expenses as provided for under section 38 and for reserves of the Fund as provided for under section 39;
    iv. ensure protection, where necessary, of the assets of the Scheme;
    v. associate with any other institution so as to further the purpose for which the Scheme is established;

vi. receive grants, gifts, donations or endowments and make legitimate disbursements from them;
vii. enforce remittance of outstanding Contributions by a sponsor;
viii. invest any monies of the Scheme not immediately required for its purposes;
ix. delegate any of its powers; and
x. undertake any activity necessary for the fulfilment of any of the functions of the Scheme.

The delegation of the powers of the Board shall be in writing and these powers may be **delegated to any one or more of the Trustees or to the chief executive officer or employees of the Scheme**

9. Clause 18 provides for the appointment of the CEO of the Scheme by the Board through a competitive process. The chief executive officer shall be the accounting officer of the Scheme and secretary to the Board.

Part III (Clauses 21-36) Administration of the Scheme

10. Part III contains provisions on the administration of the Scheme and provides for the appointment of the fund manager and the custodian. It also sets out their functions. The functions of the administrator are also set out. Further, the Part provides for membership of the Scheme without a sponsor, the vesting of benefits, and withdrawal from the retirement savings account and retirement from the service among others.
11. Clause 21 provides for the functions of the Fund Manager who shall, in addition to the duties prescribed under the Retirement Benefits Act –
    i. implement the investment policy of the Scheme as approved by the Board;
    ii. manage the Scheme funds and assets in accordance with the provisions of the Retirement Benefits Act;
    iii. maintain books of account on all investment transactions relating to the Scheme;
    iv. provide regular information on investment strategy, market returns and other performance indicators to the Board; and
    v. perform any other function that may be assigned in the instrument of appointment and other written law.

12. Clause 22 provides for the custodian of the Scheme who shall, in addition to the duties prescribed under the Retirement Benefits Act –

i receive the contributions remitted by the sponsors and members under this Act on behalf of the Board;

ii not later than the next business day following receipt of the contributions from a sponsor, notify the fund manager and the administrator of such receipt;

iii receive and keep in safe custody the title documents, securities and monies of the Scheme in trust for the members and beneficiaries;

iv collect dividends for the Scheme;

v report to the Board on any matter relating to the assets being held by the custodian on its behalf at such intervals as may from time to time be determined by the Board;

vi undertake statistical analysis on the investments and returns on investments with respect to funds in its custody and provide data and information to the administrator and the Board;

vii execute, on behalf of the Board, the relevant proxy for the purpose of voting in relation to the investments; and

viii perform any other function that may be assigned in the instrument of appointment or any other written law.

13. Clause 23 provides for the appointment of an administrator by the Board whose functions shall be to-

i open and maintain an account for each member;

ii upon receiving details of the contributions remitted under this Act, cause the amount of the contributions to be credited in the account of the Member in respect of whom the sponsor has made the payment;

iii inform the Board if a member's contribution details differ from the expected;

iv provide customer support services to members, including access to members' account balances and statements;

v cause to be paid retirement benefits to a member who has retired;

vi be responsible for all calculations relating to retirement benefits; and

vii carry out any other functions as may be directed by the Board from time to time.

14. Clause 24 provides for contribution by an employee to be at 7.5% of their pensionable emoluments and further that every sponsor shall contribute to the Scheme fifteen per cent (15%) of the pensionable emoluments of every employee who is a member of the Scheme plus the amounts necessary to cover the premiums for insured benefit. Clause 24(4) further provides that all

contributions to the Scheme by members and sponsors shall be reduced by the amounts of the contributions to the National Social Security Fund by and in respect of the members. Further in addition to the contributions a sponsor is required to take out and maintain a life insurance policy that has disability benefits in favour of every member of the Scheme, for a minimum of three times of the member's annual pensionable emoluments. Contributions are to be paid by the 10th of every month and late contributions shall attract an interest. All unpaid contributions and interest thereon shall constitute a civil debt of the respective sponsor and shall be recoverable summarily by the Board as provided for by law.

15. Clause 23 of the Bill provides for withdrawal of membership and benefits and withdrawal on retirement from service under Clause 27.

16. Clause 29 provides for payment of retirement benefit. Where a member retires as provided in this Act, the member may request the Board in writing to pay to him or her—

   i a lump sum from the balance in his or her retirement savings account that shall not exceed the equivalent of one-third of that balance:

   Provided that a Member may withdraw any additional voluntary contributions made into the scheme and accrued interest in full;

   ii monthly or quarterly income drawdown in accordance with a formula prescribed by the Board on the advice of an actuary;

   iii monthly or quarterly annuity for life purchased from an approved issuer of their choice:

Provided that the annuity shall include a provision for benefits payable to dependants upon a member's death

17. Clause 36 provides for prohibited payments from the Scheme that include—

   i a Member while the Member is still in the employment of a Sponsor except where a Member works on a contractual basis for the Sponsor after their resignation or early retirement ; or

   ii any person as a loan, advance or other similar benefit or payment except as provided under this Act.

Part IV (Clauses 37-44) Financial Provisions

18. This Part contains the financial provisions and provides for the establishment of a Fund to be known as the County Governments Retirement Scheme Fund which is to be administered by the Board of

Trustees. It also provides how surplus funds may be invested as well and sets out a requirement for the Board to have a reserve account.

19. Clause 38 (4) (b) provides for the annual administrative expenses deducted from the value of the Fund at the rate approved from time to time by the Board but subject to a maximum of one and half percent (1.5%) of the Fund value or any such rate as the Board in consultation with the Authority may prescribe.
20. Clause 44 provides for actuarial review of the scheme by an actuary appointed by the Board in accordance with the RBA and its attendant Regulations.

Part V (Clauses 45-53) Miscellaneous Provisions

21. This Part sets out the general provisions including the duty of care of the Board, protection of the Trustees and employees of the Scheme from personal liability, offences, and proceedings for recovery of deductions from employers and a general penalty clause. It also contains a provision on the making of regulations and gives this power to the Board, in consultation with the Cabinet Secretary. The repeal of the Local Authorities Provident Fund Act is also provided for in this part. Finally, this part contains a provision exempting members of the Scheme from contributing to other statutory schemes
22. Clause 45 provides that where there is a conflict between the provisions of this Act and the provisions of the Retirement Benefits Act, the provisions of the Retirement Benefits Act shall prevail.

Part V (Clauses 54-57) Savings and Transition

23. Clause 54 provides that Members shall only be exempt from Tier II contributions to the NSSF.
24. Clause 55 for eligible employees to whom the Bill applies and who, prior to the commencement date, were members of a contributory pension scheme may, subject to the Regulations made by the Cabinet Secretary, transfer contributions to the Fund. Further a person who, at the commencement date, is an employee of the national government and whose remaining period of service is five years or less, is not eligible to join the Scheme and shall have his or her pension paid out under the provisions of the Pensions Act and the Widows and Children Pensions Act or any other relevant legislation. A person who was an employee of a local authority and was a member of the Local Authorities Pensions Trust and

whose remaining period of service is five years or less, is not eligible to join the Scheme and shall have his or her pension paid in accordance with the provisions of the Local Authorities Pensions Trust Rules, 2007 or any other relevant legislation.

Eligible employees to whom this Act applies and who, prior to the commencement date, were employees of the national government shall have their Pension paid out under the Pensions Act and the Widows and Children Pensions Act, for the period they served in the national government.

25. Clause 56 provides that the Local Authorities Provident Fund and the Local Authorities Pensions Trust Fund shall, upon the commencement date of this Act, remain as closed funds to new entrants and shall ensure the preservation of all accrued rights of members but shall continue paying any pensions and benefits as and when they fall due.
26. Clause 57 provides that any eligible employee who joined the service of a sponsor on permanent and pensionable terms after the first general elections under the Constitution shall be deemed to be a member of the Scheme with effect from the date of employment. Further eligible employees of a Sponsor who are employed on contractual terms may opt, upon agreement with the Sponsor, to join the Scheme in lieu of gratuity for the duration of their contract term provided that the extent of contribution in such case shall be in line with section 26 of this Act.

3.0 SUBMISSION BY THE STAKEHOLDERS

Following the call for memoranda from the public on 23rd February 2018, the Committee received memoranda from eleven organizations. All their proposals were deliberated on and considered by the Committee. Below are the views of the stakeholders:

3.1 COUNTY PENSIONERS' ASSOCIATION

The Association is a registered body established in 2001 that brings together all retired persons formerly working with Local Authorities, who are approximately eight thousand (8,000) pensioners of Laptrust. They submitted the following: -

1. THAT they were in full support of any process that would benefit the current employees of County Governments as long as it does not disadvantage the pensioners who were already receiving their monthly Pension from their Scheme.
2. THAT the Bill was proposing to merge Laptrust and Lapfund and in their view Laptrust scheme should not be merged with other schemes as this may lead to loss of their pension funds due to investments currently being undertaken.
3. THAT the Bill was proposing a reduction of contribution from 12% to 7.5% which they were against. They argued that this would lead to reduction of pension that members will be entitled to upon retirement. Further, the reduction will affect the yearly increment received by the pensioners. and eventually create two classes of pensioners, that is, those being deducted 12% and those of 7.5%.
4. That the Bill was proposing to introduce contribution to NSSF while currently members of Laptrust do not contribute to NSSF.
5. THAT LAPFUND was a provident fund, whose members are paid off upon retirement, while LAPTRUST pays a part lump sum and puts its members on a payroll for life.
6. THAT they were concerned with the proposal to do away with the representation of pensioners in the Board of Trustees.
7. THAT the combined arrangement that the Bill seeks to achieve between Laptrust and Lapfund should be one of a pension scheme and not a provident fund.
8. THAT they support the County Pension Scheme Bill, 2017 as opposed to the County Governments Retirement Scheme Bill, 2018 that is in consideration.
9. THAT the Legal Notice (Local Authorities Pensions Trust Rules, 2007) establishing Laptrust should not be revoked.

The National Treasury's comments

The National Treasury's disagree with the views as the Bill seeks to set up a pension scheme.

3.2 CLINICAL NURSING SOCIETY OF KENYA

They oppose the Bill and contend that they were not involved in the formulation of the Bill. They propose the fast tracking of the County Pension Scheme Bill, 2017.The submissions are anchored on the following facts-

1. That after 2013 General elections there were a number of proposals of how to establish a pension scheme at the County Level;
2. In 2015 stakeholders from all sectors converged in Naivasha and charted a way forward
3. That after Naivasha the numerous Bills that had been introduced in both Houses were abandoned in favour of the County Pension Scheme Bill, 2017 which after approval by the Senate was sent to the National Assembly in 2017.
4. That to conclude the process, the National Assembly in 2018 invited for submissions from stakeholders.
5. The aforementioned Bill is similar to the one being fronted by the Nairobi Senator at the Senate of which they took a similar position.
6. The introduction of numerous Bills by Honourable Members touching on the same subject raises integrity issues on the entire process.

They proposed the following amendments-

The Bill be amended in the long title by deleting the words "**County Governments Retirement Scheme**" and substituting therefor the words "**County Pension Fund**"

Justification

The title of the Bill is restrictive with the meaning and application limited and solely meant for the County Governments. There is need to amend it to make it shorter, simple and inclusive and succinct.

Committee's Position

The Committee rejected the proposal

Clause 6

The Scheme be amended in Clause 6 by deleting and substituting therefor the following paragraphs-

(3) The Board shall comprise nine Trustees appointed by the sponsors vide a resolution of the Council of Governors and gazetted by the Cabinet Secretary and shall comprise of-

(a) a representative of the Council of Governors;

(b) a representative of the Public Service Commission;

(c) a representative of the County Public Service Boards;

(d) a representative of the County Assembly Service Boards;

(e)five other nominees from county governments appointed by five most representative employee Unions. Provided only that two shall be of the opposite gender and one shall represent people with disabilities.

Justification

The Board proposed under the Bill undermines the devolved system of government and in extensor the Constitution of Kenya, 2010.

Committee's Position

The Committee rejected the proposal

Clause 24(1)

The propose amendment to clause 24(1) on contribution and propose the insertion of the following-
"an amount equal to twelve percent (12%) of his pensionable emoluments, or higher or lower rate as may be prescribed by the Board" immediately after the word "Scheme."

Clause 24(2)
The propose amendment to clause 24(2) on contribution and propose the insertion of the following-
"The Sponsor shall make its own contribution on behalf of the member of the scheme who is his employee at the rate of fifteen (15%) percent of a member's Pensionable Emoluments, or any higher or lower amount as may be prescribed."

Justification

A contribution rate of 12% and 15% is adopted to ensure meaningful savings by the Members and hence guaranteeing higher and adequate pension payouts at retirement thus providing an assurance of enjoyable sunset years.

The rate of 15% provides for continuity as envisaged under the County Governments Act. This is a negotiated rate under the prevailing Collective Bargaining Agreements between the employees and the respective County Governments (former local authorities).

The National Treasury's comments on the proposed amendments

GENERAL COMMENTS

Disagree: The Bill before the National Assembly was developed through a consultative process led by the defunct Transition Authority.

3.3 KENYA UNION OF CLINICAL OFFICERS

They opposed the Bill. They noted that:-

1. They were not involved in the formulation of the Bill as opposed to formulation of the County Pension Scheme Bill, 2017.
2. The Bill reduces benefits of members at retirement by lowering contributions to 7.5% as the current contributions are 12%.
3. Laptrust and Lapfund should be closed to new members only but should be allowed to continue for respective members. As opposed to what is provided in Clauses 53(1) and (2) is to repeal and revoke the laws establishing Laptrust and Lapfund.
4. They were concerned by the proposal to compel employees to contribute to NSSF

The National Treasury's comments on the proposed amendments

Disagree: The proposed contribution rates will harmonise with rates for National Government workers. However, as the scheme is DC members are free to top up their contributions to 12.5%. The proposal in the Bill is also consistent with the Treasury Circular No.18/2010.

3.4 KENYA NATIONAL UNION OF NURSES

The Kenya National Union of Nurses submitted as follows:-

1. The Bill sets annual administrative expenses from the fund value up to a maximum of 1.5%.
2. The Bill protects contributors' money by stating that no funds of the scheme shall be advanced as ordinary loans to anybody other than as provided for in Retirement Benefits Act.
3. The Bill has addressed a serious mischief where County Pension Fund Services which is a private company was being legislated as the sole fund administrator contrary to the Retirement Benefits Act.
4. It provides for an internal administrator that they support as a union.
5. It does not purport to amend other law as the County Pension Scheme Bill purported to.
6. The Bill addresses satisfactorily how employees of the two schemes shall be handled at the commencement of the Act.
7. It addresses the operation of the existing schemes.

They proposed the following amendments:-

Clause 6(2)(d)

Delete the word two and insert the word five, delete word umbrellas after county and insert the word county after representing.

Delete entire Clause 6(2)(e)

Delete clause (f) and insert clause e.

Justification

Ordinarily all (national and state corporation employees) public servants are not automatic members of the fund hence they can't be given representative where they have no interest. It is not feasible to conduct an election to get workers representations from forty-seven county government plus other related organization as it will be a very expensive exercise.

Members belong to trade union for corporate representation, hence unions representing county governments employees, should nominate the trustees on behalf of their members.

Clause 9

Delete the word three and insert the word five

Justification

Trustees should have enough time in office to ensure that they lay down their strategic plan and implementation. If adequate period is not accorded, it will create an avenue for intimidation and manipulation.

Our political system is molded on five-year term, this should be replicated in all arms of government.

Schedule 5.17

Clause 2(1)

Delete number 5 after the word section and insert number 6

Delete number 5 and insert number 6 before the last word section in the second last paragraph and delete word or and letter e.

Justification

These are typographical error, since trustees are found in Clause 6 and not 5

The National Treasury's comments on the proposed amendments

Schedule

Agree: the intention was to refer to section 6 and not 5.

Disagree: the proposal should not be carried. the bill already provides that the quorum will be attained with employees and employer represented.

3.3 MR. JOHN K. BIIY

Mr. John K. Biiy submitted as follows that:-

1. The various Bills concerning pensions needs to be harmonized as processing separate Bills is a waste of resources and duplicates the legislative process.
2. They were involved in the formulation of County Pension Scheme Bill, 2017 and urge its provisions to be incorporated in the provisions of the County Governments Retirement Scheme Bill, 2018.

3. They propose an amendment of the long title of the Bill that is restrictive and propose it to be amended to read as follows- County Pension Fund Bill."

3.4 HON. JOE DONDE, CHAIRMAN COUNTY PUBLIC SERVICE BOARD-SIAYA COUNTY

Hon. Joe Donde submitted as follows, That: -

1. The Bill is a culmination of wide stakeholder consultative meetings that was undertaken in Naivasha.
2. The National Treasury and the Cabinet are spearheading the enactment of the Bill through the National Assembly. This is the proper Bill for the establishment of a retirement scheme for county government employees.

He proposed the following amendments: -

(a) Clause 55(1) of the Bill to be amended by inserting the words "CPF Umbrella Retirement Fund, CPF Individual Retirement Fund shall upon the commencement of this Act be deemed to be a member of the Scheme."

(b) Clause 55(3), delete the words "and subject to any suitability test conducted by the Board of trustees" and replace it with "to be determined by the State Corporation Advisory Committee (SCAC)"

(c) The Memorandum, objects and reason Part Delete "the repeal of Local Authorities Provident Fund" as its not provided for in the main body part 5 in any case the Bill proposes to close LAPFUND for new members while existing members continue to draw their benefits from the Fund until the last person exits.

3.5 KENYA COUNTY GOVERNMENT WORKERS' UNION

Kenya County Government Workers' Union stated that: -

1. The Bill is a risk to the defined benefits scheme that they have been operating. There is a debt owed by County Governments to the schemes.
2. They are concerned by the number of Bills proposed to address the issue of County Government Pensions.
3. They propose that public participation on the Bill should be conducted in different Counties to ensure the views of all stakeholders are taken into consideration.

4. They propose to maintain CPF and Laptrust as the administrator of the new Scheme.
5. The Local Authorities Provident Fund Act and Local Authorities Pension Trust Rules, 2007 should not be repealed.

They proposed the following amendments:-

Clause 2

The definition of 'Pensionable Emoluments' to read, salary and house allowance.

Justification

Salary is defined as basic and house allowance in the former local Authorities Collective Bargaining Agreement.

The definition lowers the current amount of contribution of both employee and employer. It Diminishes benefits of existing members.

Clause 4(2)(d)

Delete subsection word (d)

Justification

Lending pension money is a high risk affair and defaulting on debts is worse than a bad investment.

Clause 5(3)

The clause to read; The scheme shall be a defined contribution scheme providing social security for county government and associated organizations employees.

Justification

The existing schemes are occupational schemes which were built by County Government employees and Water companies since 1920s and are deduction from salaries for many years plus their employers contributions.

Clause 6(2)(e) and (d)

- Clause 6(2)(d) and (e) be merged.
- The new (d) to read; Five persons nominated by trade Unions representing county Government employees on the basis of the number of members.

The clause seeks to convert an occupational scheme in to a National public scheme which takes away the rights of Members.

Justification

Trade Unions represents Members and majority of county Government employees are unionized.

Members slots have been misinterpreted and E (misused before where senior managers are appointed only to support sponsors agenda and decisions made are skewed.

It is not practical to get all county employees in 47 counties to elect/nominate a representative of members.

Clause 24

Clause 24 (1)

24(1) To read; Every member shall contribute 12% of pensionable emoluments to the scheme.

24(2) To read: Every sponsor shall contribute to the scheme 15% of the pensionable emoluments.

Justification

Currently all members contribute at 12% employee and 15% employer. A reduction in the contribution/savings by employee will result in diminishing employee benefits which is unlawful. The rate of 12% was negotiated in previous Collective Bargaining Agreements.

Clause 24(d)

Add a sentence to read;

All contributions to the scheme by members and sponsors shall be reduced by the amounts of the contributions to the NSSF by and in respect of members. The Defined Benefits Members shall be exempted.

Justification

This clause applies to Define contribution members.

The closed Defined benefits scheme to be allowed to pay benefits until the last pensioner is paid and must be exempted from Tier I and Tier II NSSF contributions.

Clause 24(6)

Delete last sentence 'or before any other day which may be notified in writing and approved by Authority.

Justification

It is allows sponsors to be late with contributions.

Clause 52

Clause 52 should be deleted. All employee contributions should be at the rate of 12%.

Justification

Rules should not be bend to accommodate another member selectively. All members to enjoy same terms and conditions.

Clause 55 (6)

Members currently in the LAPTRUST Defined Benefit Scheme should continue having benefits based on the formula (promise) of the Defined Benefit Scheme until the last pensioner is paid.

Justification

The DB scheme is unique in its form and the transfer/ conversion to the DC scheme diminishes the employees' returns. Lacks professionalism and protection of benefits.

In the year 2012 Treasury allowed Laptrust DB scheme to continue paying benefits to members until the last pensioner is paid.

Clause 56(2)

- To read; LAPTRUST and LAPFUND To be merged before commencement of the Act. The schemes should not be closed but a professional merger involving all stakeholders must be done. That will not collapse one scheme to another and that will not disadvantage any member.

Justification

There is no justifiable rationale for closing schemes that have been running to give life to a new one against the wish of members.

Ambiguity in the proposed Bill, lacks provision for management of closed schemes assets and liabilities which may be a window for embezzlement.

The National Treasury's comments on the proposed amendments

Disagree: The proposed contribution rates will harmonise with rates for National Government workers. However, as the scheme is DC members are free to top up their contributions to 12.5%. The proposal in the Bill is also consistent with the Treasury Circular No.18/2010.

3.6 FORMER COUNCILORS' ASSOCIATION

They submitted that:-

1. The Constitution of Kenya, 2010 did not address issues of former councilors.
2. The former councilors had petitioned Senate, that recommended a payment of a one-off honorarium of Kshs. 1.5 million per former councilor having served a minimum of one term since independence, a monthly pension of Kshs. 30,000 and a state sponsored health insurance.
3. They proposed an amendment to the Bill that takes into consideration the recommendations by Senate.

The Committee observed that their submission was out of scope of the Bill since the proposed scheme is meant to be a contributory and hence their issues could not be addressed by the Bill in its current form. The representatives of the former Councilors were advised to seek redress of their issues by way of a Petition to the House.

3.7 MEMBERS OF THE COUNTY ASSEMBLY OF NAIROBI

They submitted that:-

1. Members of county assemblies are major stakeholders on pension matters relating to counties since the operationalization of the counties, we have looked forward to transition of retirement benefits schemes to serve the devolved government.
2. They support the Bill. They note that the Bill proposes a single institution to handle retirement benefits matters for the county government employees, MCAs and affiliated companies which will remove the current confusion where employee of one institution are members of different schemes and they don't know how to choose.
3. The Bill further offers diverse retirement products including pensions, provident annuity, income drawdown and mortgage guarantee to accommodate various preferences.
4. The Bill proposes immediate vesting of benefits to a member upon remittance by the Sponsor.
5. The proposed scheme is modeled like other public scheme with an internal administrator to cut on costs and give control to the Board.
6. The Bill reflects agreement by stakeholders after several Bills had been tabled to safe guard divergent ad personal interests.

They proposed the following amendments:-

a) They proposed transition of the institutions as opposed to closure provided in Clauses 55 and 56. This will ensure continuity and avoid losses and scandals associated with dissolution of public entities.
b) The transition should also be done after thorough auditing of finances and systems of existing schemes to establish their status and to make decisions on how to deal with various issues to avoid transiting baggage.
c) Phasing of contributions as provided in Clause 52 should be deleted entirely.

The National Treasury's comments on the proposed amendments

CLAUSE 52

Agree: All employees of the county Governments and associated organizations should be given equal treatment.

The referred employees will be disadvantaged because the scheme is defined contribution and the benefits will be based on the contributions made

Clause 52 is discriminatory and against Regulation 18 of the Occupational Regulations

GENERAL COMMENTS

Agree: This is a good proposal to ensure that the bill incorporates transitional provisions of both existing and closed schemes.

Further, the bill should define the transition period.

3.8 UNION OF KENYA CIVIL SERVANTS

They submitted that:-

1. They were aware that there were three Bills in Parliament addressing the county pension scheme
2. They understood the origin of the County Pension Scheme Bill, 2017 which is a stakeholders Bill. They were however not involved in the preparation of the County Governments Retirement Scheme Bills at the Senate and the National Assembly.
3. The Bill seeks to set up a new scheme which is a mixture of pension and provident. They were of the view that section 132 should be followed as the same has good reason, it is intended to ensure continuity and benefit from years of experience that an existing scheme has acquired over years.
4. The Bill attempts to repeal and revoke the laws establishing Lapfund and Laptrust in Clauses 53(1) and (2) thus the two schemes shall ultimately be wound up. They support the proposal that the administration services of the schemes be done jointly through a corporate administrator bringing together all the staff of Laptrust and Lapfund.
5. The Bill does not address what will happen to the assets and liabilities of Lapfund and Laptrust and whether members of Lapfund and Laptrust will claim from the new scheme when they retire. There must be certainty in the law otherwise, uncertainties like the ones characterizing this Bill is a fertile ground for a floodgate of litigation.
6. They did not support the Bill because:-
   a) it anchors the County Pension Fund under an Act of Parliament in line with section 132 of the County Governments Act that requires employees to join an existing pension scheme.
   b) It ensures continuity of Laptrust and Lapfund but as schemes closed to new members.
   c) It merges the administration of Laptrust, Lapfund and CPF under one Corporate Administrator owned by all the schemes.
   d) It provides for the transfer of staff of Laptrust and Lapfund to the Corporate Administrator and protect their terms of service.

7. They requested the National Assembly to reinstate the County Pension Scheme Bill, 2017 as the same is more comprehensive and clear leaving no doubts.

The National Treasury's comments on the proposed amendments

General Comments

Disagree: The County Pension Bill was not developed through an all-encompassing consultative process unlike the current Bill before the National Assembly which was signed off by all stakeholders.

3.9 NATIONAL SOCIAL SECURITY FUND

The National Social Security Fund through their written memoranda submitted as follows:-

1. Section 25(4) recognizes NSSF as a mandatory scheme in so far as contributions to members and sponsors are concerned. However, the manner of deductions and remittances to NSSF is not clearly spelt out in the Bill. Therefore, a clear mechanism should be spelt out on the manner of deduction and mode of remittance to NSSF.
2. Section 53 provides for direct exemption contrary to the provisions of Section 21 of the NSSF Act No. 45 of 2013 which spells out the mode of exemption by sponsor/employer through the Retirement Benefits Authority. There is need for an amendment in this clause.
3. Proposal for amendment of the Bill by deleting Section 53 of the Bill as the mechanism for contracting out by an employer/sponsor has been provided for under section 21 of the NSSF Act and the contracting out is a prerogative given to the Regulator (RBA) which no scheme can run away from.
4. The reason for this amendment proposal is because the RBA regulates and supervises schemes set by statute and Trust Deeds. It further recognizes the need to have vibrancy in the retirement benefits sector and that is why it has registered over 1300 schemes in Kenya.
5. However, not all schemes are national neither are all schemes occupation or individual schemes which are mandatory by nature (Provident or Pension), Occupational Schemes which are Voluntary in Nature (set up by employers for their employees) and individual schemes which are voluntary in nature (run by insurance companies).
6. It is for this reasons that Section 21 of the NSSF Act provided for an opt out Tier II contributions to ensure that there is no disability to the already existing Retirement Benefits Schemes and to make sure that healthy competition and vibrancy carries on in the Pension Industry.

3.10 LOCAL AUTHORITIES PROVIDENT FUND

The Local Authority Provident Fund submitted that they are in support of the County Governments Retirement Scheme Bill, 2018 for the following reasons-

(a) The Bill seeks to align management of pension for County employees, County assemblies and affiliated companies to the devolved system. This is something that Lapfund has looked forward to since the promulgation of the constitution of Kenya, 2010.

(b) The Bill accommodates all retirement arrangements (pensions, provident, annuity and income drawdown) in line with the global trends.

(c) The Bill caters for retirement benefits of employees hired by County Governments, employees of former local authorities and civil servants devolved to County Governments.

(d) The Bill reflects the best practice by advocating for internal administration of the Scheme. This is the same scenario with are NSSF, Central Bank, KPA, Kenya Power and LAPFUND. Statutory schemes are by best practice administered internally.

(e) Stakeholders met in 2015 and agreed on various issues that the Bill has captured considering the best interest of the members.

(f) The existing schemes should be transitioned into the new scheme including CPF/Laptrust (Umbrella).

(g) Outstanding contributions are owed by defunct local authorities and county government that has not been addressed in the Bill. A timeframe should be provided for settlement of the monies owed.

They proposed the following amendments-

(a) Definition of "existing schemes" should incorporate Local Authorities Pension Trust Umbrella Retirement Fund;

(b) There's need for an amendment of Clause 6 (2)(b) on composition to incorporate the Cabinet Secretary or his representative

(c) Clause 6(3) should be amended to delete provision for election of vice-chairperson and chairperson and insert the following "a chairperson appointed by the Cabinet Secretary";

(d) Clause 18 should be amended to provide that "the chief executive officer shall be the administrator of the scheme

(e) Clause 14(1) should be amended to read a follow "the Board shall be accountable to the sponsors and members of the scheme."
(f) Clause 23 to be amended to insert the word "internal administrator"
(g) Clause 52 on phasing out of contributions be deleted in its entirety.
(h) Clause 53(2) should be deleted and replaced with the following
"The Local Authorities Provident Fund established under Cap 272 shall upon commencement of this Act, be transition into the new scheme"
(i) Clause 54 should be amended as follows "The sponsors and Members of the Scheme shall be fully exempt from making any contributions to the National Social Security Fund"
(j) Insertion of new clause 56(4) as follows that-
"The Laptrust umbrella Pension Scheme shall upon commencement of this Act be transferred in to the new scheme."

In the Schedule need to delete provision making reference to vice-chairperson.

3.11 COUNTY PUBLIC SERVICE BOARDS (NATIONAL CONSULTATIVE FORUM)

The County Public Service Boards (National Consultative Forum submitted that:-

1. They support the Bill to the extent that it provides a framework for administration of pensions within the County.
2. They propose that Parliament's leadership should amalgamate the three Bills relating to pensions into one to pave way for a common and joint approach by all stakeholders.
3. Section132 of the County Governments Act provides for the transition of employees of county government into an existing pension scheme. However, they note the need for a Bill to provide for pensions a management within the devolved structure.
4. A corporate administrator be appointed to manage all the transitional issues of the existing schemes. This could be done through the adoption of a restructured CPF to allow and cater for interest of the existing schemes.
5. A new Board of Directors of the restructured /CFP Financial Services be formed to have representatives of Laptrust, Lapfund, CPPF and the new scheme with a agreed shareholding formula.

6. In the transition arrangements, the terms conditions and benefits of all existing staff under the corporate administrator shall not be varied or altered in any way to their disadvantage.
7. Rules and regulations to operationalize the new scheme be quickly drafted and passed to ensure fairness, equity and to address the perennial problem of late or non-remitted contributions. This is a priority item in the transition of existing schemes to the new one under the envisaged Act.
8. CPF Financial Services shall be used to offer joint administrative services to all the Schemes to avoid wastage of members; funds in setting up a new administrator.
9. The three Boards of the existing schemes shall appoint the Board of Directors of the Corporate Administrator and supervise the performance of the administrator. The administrator shall have no option but to discharge impeccable services for the benefit of its members.
10. Each Board shall retain and exercise its fiduciary responsibilities distinctively while the administration of the Schemes is merged under one administrator.

The National Treasury's comments on the proposed amendments

General Comments

Disagree: The Bill provides for a neutral position through closure of all existing schemes and creation of a new scheme.

3.12 COUNTY PENSION FINANCIAL SERVICES

The County Pension Financial Services submitted that:-

1. The main reason why the pension for County Government employees has remained pending from 2013 is the delay to operationalize and implement section132 of the County Governments Act.
2. Notwithstanding their legitimate expectations on section 132, they have considered the Bill together with the County Pension Scheme Bill, 2017 and note that the County Government's Retirement Scheme Bill, 2018 diverges substantially from the recommendations of the Technical committee on the establishment of a County Public Service Staff Pension Scheme which recommended as follows:-

   (a) A new umbrella Scheme be set up under an Act of Parliament a new Scheme that shall be a pension fund rather than a provident fund to safeguard the scheme.
   (b) Close Lapfund and Laptrust schemes to all employees of the county governments and ensure preservation of all the accrued rights of all members under these Schemes.

(c) Merge the administrative services of the two Schemes Laptrust and Lapfund. The merged organizations will provide administration services to the two closed schemes as well as the new umbrella scheme.

3. The above mentioned recommendations were captured in the County Pension Scheme Bill, 2017. That a material discrepancy characterizes the County Governments Retirement Scheme Bill, 2018 and puts at risk pension for County employees.
4. The Bill proposes the establishment of a totally new retirement Scheme with elements of a provident fund contrary to section 132 of the County Governments Act.
5. On the other hand, the County Pension Scheme Bill, 2017 anchors the County Pension Fund, an existing pension scheme, under an Act of Parliament, thus operationalizing section 132 of the CGA. The rationale for this is to ensure continuity and to tap onto the experiences and expertise of the existing pension scheme.
6. It is legally expedient to confer upon the Board of Trustees legal personality and not the Scheme as proposed under clause 4(2) of the County Government's Retirement Scheme Bill, 2018.
7. Administration of the three schemes through an in house administrator as proposed under Clause 18 and 23 of the County Governments Retirement Scheme Bill is not recognized in law.
8. The rate of contributions under Clause 24 of the Bill of 7.5% of pensionable emoluments goes against the prevailing negotiated collective bargaining agreements and directives from the National Treasury. The prevailing contribution rates for CPF, LAPFUND and LAPTRUST is 12% of pensionable emoluments.
9. The proposal to repeal Cap 272 and revoke Legal Notice 50 is improper as it violates existing laws on winding up of Schemes.
10. The Schemes cannot be merged at this point due to the liabilities and contributions owed. The Assets and liabilities of the existing schemes should not be merged without proper regulations of managing them.

3.13 COUNCIL OF GOVERNORS

The Council of Governors submitted that:-

1. Their memorandum is designed to propose amendments to the County Governments Retirement Scheme Bill, 2018 for the benefit of the forty-seven County Governments and their respective employees.
2. That a stakeholders forum held by the National Treasury where the following was agreed upon-

I. The CEO of the Scheme was to be independent and not the administrator of the Scheme.
II. The administrator should be a corporate administrator as opposed to an internal administrator.
III. 5% of the fund was to be allocated to the administrative expenses.
IV. The exemption of NSSF contributions was to be subject to concurrence by NSSF.
V. There was however no concurrence on appointment of Trustees of the Scheme.
VI. Liabilities were to be borne by respective levels of Government.

3. The role of National Government (National Treasury) on pension Matters for county employees is limited to prescribing standards for social security and professional pension plans, pursuant to the Fourth Schedule, Paragraph 14 of the Constitution of Kenya, 2010 which is stated below-

   "Consumer protection, including standards for social security and professional pension plans."

4. It is the position of County Governments that the constitutional mandate is not elastic to extend beyond consumer protection through prescribing standards, regulations and to setting up or determining how county governments choose to set up or adopt their pension scheme. The functions of the National Government and ipso facto the national treasury is assigned to RBA under section 5(d) the retirement benefits Act which is stated as follows.
5. The role of County Governments of Pension matters is anchored under Article 235 of the Constitution and section 56 of the County Governments Act, both which are stated below and which recognizes County governments as employers within their respective counties, thus have the authority to determine pension arrangements for their employees as an exclusive county governments function.
6. They recommend for the setting up of a new Scheme and the transitioning of the existing schemes
7. They recommend 7.5% and 15% of pensionable emoluments contributions by employee and employer respectively. Increasing the amount of employee contribution to 122% may lead in some instances to pecuniary embarrassment to County employees.
8. All the existing schemes should be closed schemes and the definition should be incorporated. However because of actuarial liabilities it may not be possible to merge the existing schemes at this point until the mechanism for dealing with liabilities is formulated.

They proposed the following amendments:-

Clause 2

(i) The definition of "Cabinet secretary" should be deleted and substituted with-

"Chairperson, Council of Governors"

(ii) The definition of "Scheme" should be deleted and substituted with-

Scheme means the County Pension scheme under this Act

(iii) The definition of "Administrator" should be deleted and substituted with-

"Corporate administrator" means a retirement benefit scheme administrator jointly established by the closed schemes and the County pensions Fund scheme in accordance with the Retirement Benefits Act

(iv) Insert the following definition "closed scheme"-

"Closed Scheme" means the Local Authorities Pension Trust (Defined Benefits) Scheme and Local Authorities Provident Fund

Justification

i Setting up of pension schemes for County Governments is a function of the County Governments under the constitution.

ii As provided under the constitution, the National Government's role should be limited to prescribing broad pensions standards and policy directions and also to exercise regulatory and oversight roles.

iii Adopting the existing County Pension Fund (Laptrust [Umbrella] Retirement Fund) as opposed to establishing a new scheme is in tandem with section 132 of the CGA.

iv The definition of Corporate administrator be maintained since the design of the administrator is intended to merge administration of the three schemes without commingling assets also the use of corporate administrator is a transitional arrangement, which shall distinguish when all liabilities of Laptrust and Lapfund are settled by government.

v Since it is actuarially impossible to merge Laptrust and Laptrust, there is need to close them to new members only.

Clause 4

(i) Clause 4 be deleted and substituted with the following–

4. (1) There is adopted the County Pension Fund which shall be administered by the Board in accordance with this Act and the Retirement Benefits Act and the Regulations therein.

(2) The Scheme is an umbrella pension scheme for all persons in service in the County Governments.

(3) The Scheme shall be the successor to the Laptrust (Umbrella) Retirement Fund previously established and registered under Trust Deed and Rules under Retirement Benefits Authority Certificate Registration no. 01305, and all rights, obligations, assets and liabilities of the Laptrust (Umbrella) Retirement Fund existing on the date of the coming into force of this Act shall be deemed to be transferred to the Fund and any reference to the Laptrust (Umbrella) Retirement Fund in any contract or document shall for all intents and purposes be deemed to be a reference to County Pension Fund.

(ii) They propose deletion of clause 4(3) and substitution of the following-

"The Scheme shall be an umbrella pension scheme for all persons in service of the County Governments"

Justification

i This is pursuant to section 132 of the County Governments Act which provides that officers and staff of a county government shall subscribe to an existing pension scheme for offices and staff of local government.

ii The best practice all over the world is to shift from provident funds to pension funds.

Clause 6

They proposed the deletion of sub clause (2) and substitution with the following-

> "The management of the Scheme shall be vested in the Board of Trustees appointed by the Sponsors vide a resolution of the Council of Governors and gazette by the Cabinet Secretary in charge of devolution."

Justification

This shall allow for cooperation and interdependence, with the counties appointing and the cabinet secretary in charge of devolution gazetting the Trustees.

Clause 10

The propose deletion of Cabinet Secretary and substitution of the following "Chairperson of the Council of Governors"

Justification

1. There is need to ensure cooperation and interdependence in the running of the scheme with the Counties allowed to supervise the running of the scheme without interference.
2. In any event, the setting up of pension schemes for County Governments is a function of the County Governments under the Constitution.
3. Indeed state corporations even those under the Ministry of Finance, it is the management that chooses the trustees. Parent Ministries don't interfere. The full Council will therefore make resolutions for the chairman of the Council of Governors to effect.

Clause 11

The propose deletion of Cabinet Secretary and substitution of the following "Chairperson of the Council.

Justification

1. There is need to ensure cooperation and interdependence in the running of the scheme with the Counties allowed to supervise the running of the scheme without interference.
2. In any event, the setting up of pension schemes for County Governments is a function of the County Governments under the Constitution.
3. Indeed state corporations even those under the Ministry of Finance, it is the management that chooses the trustees. Parent Ministries don't interfere. The full Council will therefore make resolutions for the chairman of the Council of Governors to effect.

Clause 12

The propose deletion of Cabinet Secretary and substitution of the following "Chairperson of the Council

Justification

1. There is need to ensure cooperation and interdependence in the running of the scheme with the Counties allowed to supervise the running of the scheme without interference.

2. In any event, the setting up of pension schemes for County Governments is a function of the County Governments under the Constitution.
3. Indeed state corporations even those under the Ministry of Finance, it is the management that chooses the trustees. Parent Ministries don't interfere. The full Council will therefore make resolutions for the chairman of the Council of Governors to effect.

Clause 18

They propose a deletion of the Clause.

Justification

In the case of multiple schemes the appropriate administration framework is through a corporate administrator.

In any event corporate administrative framework is provided under clause 23.

Clause 19

They propose a deletion of the Clause

Justification

In the case of multiple schemes the appropriate administration framework is through a corporate administrator.

In any event corporate administrative framework is provided under clause 23.

Clause 23

They propose to delete clause 23 and substituting it with the following-

23(1) The Scheme shall be administered by the Corporate Administrator jointly owned by the Scheme herein and the Closed Schemes.

(2) Upon the adoption of the Corporate administrator, the respective Boards of the three schemes shall restructure the corporate administrator to suit the joint needs of the three partner schemes to serve during the ten (10) year transition period envisaged herein.

(3) The Corporate Administrator shall be a Company established in accordance with this act, the Companies Act, and the Retirement Benefits Act, 1997.

Justification

They support clause 23 for it proposes external administration through a corporate administrator. However, we propose the use of the existing corporate administrator which shall be restructured and commonly owned by all the Schemes under the merged administrative framework.

Clause 51

They propose to delete clause 51 and substituting it with the following-

51. The Cabinet Secretary in consultation with the Chairperson of the Council of Governors the Board shall make regulations generally for the better carrying out of the provisions of this Act.

Justification

This will ensure that the Regulations prescribed are implemented effectively at the county level.

The National Treasury's comments to the COG's proposed amendments

CLAUSE 2

Disagree: The proposal introduces **Chairperson, CoG** as the office responsible and yet it is Cabinet Secretary for matters relating to finance who is responsible for matters relating to the management and regulation of pension schemes in Kenya policy decisions on retirement benefits and other financial services (See section 14 of Part 1 of the Fourth Schedule of the Constitution).

The Bill gives the Cabinet Secretary a policy making role including making of regulations (sec 51) and transfers by National Government workers (sec55) which cannot be vested in the Council of Governors

Comments on ii

Disagree: There is no need for deleting the definition of *'scheme'* in (ii) , The scheme should be a new one as proposed in the bill to ensure that there is no comingling of the existing assets and liabilities of the existing schemes

The proposal seeks to have the scheme as a successor of the LAPTRUST Umbrella Fund. This means as a successor all the rights, obligations, assets and liabilities are transferred to the new scheme. This will burden the new scheme with liabilities from the on-set including high levels of un remitted contributions from both precious Local Authorities and current County Governments. Section 132 of the CGA was intended to provide for transition mechanism BUT NOT as a long lasting arrangement.

The intention reflected in the CGRS Bill 2018, being the view of all the stakeholders, provides for the establishment of a new scheme devoid of any liabilities.

The Bill should amend the definition of existing scheme to include all existing schemes and incorporate Local Authority Provident Fund (LAPFUND), Local Authority Pension Trust (LAPTRUST) and LAPTRUST Umbrella Retirement Fund *(hereby referred to as County Pension Scheme).*

Comments on iii

Disagree: The position in the bill is in harmony with the Retirement Benefits Act and Trustee fiduciary responsibilities

The Trustees should have powers to choose between internal administration and appointing a corporate trustee and not be locked into a specific corporate trustee

Comments on iv

Agree with the proposal for a new definition of closed schemes but this should incorporate Local Authority Provident Fund (LAPFUND), Local Authority Pension Trust (LAPTRUST) and LAPTRUST Umbrella Retirement Fund

CLAUSE 4

Disagree: It is prudent in setting up of a new scheme as proposed in the bill to ensure that there is no comingling of the existing assets and liabilities of the existing schemes as earlier advised.

The proposal by COG is promoting an existing Scheme which could be having its own encumbrances.

CLAUSE 6

Disagree: All these proposals seeking to amend section 6 of the Bill are against consistency and order in the appointment and running of the affairs of the board

The National Treasury Supports Section 6 in entirety with a proposal that all trustees representing employees should be elected.

If the CEO is a member of the Board of Trustees, the number of the trustees will be ten and this will conflict with the provisions of the Retirement Benefits Act which limit the number to a maximum of 9 members for a Defined Contribution (DC) scheme

CLAUSE 9

Disagree: This proposal is contrary to the provisions of the Retirement Benefits Act which provides that the term of trustees should not exceed two terms of three years each.

CLAUSE 10

Disagree: National Treasury oppose the deletion as proposed by COG.

In an ideal situation the sponsor should be the one appointing trustees, since CoG is forum for consulting and therefore not intended to make executive decisions that are legally binding on individual counties, then the Cabinet secretary should perform the function. It should be noted that development of policy and legal frameworks, including standards and norms for managing pensions/retirement benefit schemes is the responsibility of the National Government through the responsible line ministry i.e. National Treasury and Planning (refer to section 14 of PART I of the Fourth Schedule of the Constitution).

CLAUSE 18

Disagree: They proposed that the clause should be retained to sustain meritocracy

They also proposed that the CEO should not have voting rights.

CLAUSE 19

Disagree: The clause may be amended to allow for the Trustees to opt to appoint a corporate trustee.

CLAUSE 23

Disagree: The clause in the bill should be retained since it is in accordance with the provisions in Retirement Benefits Act. However it may be amend to incorporate option of Trustees selecting a corporate administrator.

CLAUSE 51

Disagree: The clause be retained. As explained above the responsibility for setting policy and legal framework is assigned to the CS/NT, including norms and standards for pensions. The county governors should then govern the schemes under the established frameworks. The power of the county governments to manage county schemes has not been taken away since the membership of the Board includes counties.

3.14 STATE CORPORATIONS ADVISORY COMMITTEE

The State Corporations Advisory Committee submitted that:-

1. There should be representative of the National Treasury in the Board as the parent Ministry. As a state corporation there should National Treasury in the Board as the parent Ministry.
2. A transitional body may be created to handle the concerns regarding assets and liabilities of the existing Schemes.
3. It is important to transition staff in to the new institution in a smooth manner so as to avoid any eventualities that may be associated with inadequate transition.

They proposed the following amendments:-

(a) Clause 6 be amended to incorporate a representative of the National Treasury in the Board as the parent Ministry.

(b) Clause 57 to be amended to read as follows-

57(1) assets of the existing institutions includes all property movable or immovable and all estates, easements and rights whether equitable or legal in, over or out of property, choses-in-action, money or good will of the existing schemes whether situated in Kenya or elsewhere.

Liabilities of the existing institutions includes, debts, charges, duties and obligations of every description, whether present or future, actual or contingent and whether to be observed or performed in Kenya or elsewhere.

(c) Amend the Clause 56 to read as follows-

(1) An Interim Board appointed by the Cabinet secretary to spearhead transition of the existing schemes in consultation with the State Corporations Committee, within period of one year or until the transition is over whichever is earlier, from the date of the commencement of the Act.

(2) Any person, who at the commencement of this Act, is a public servant working in an existing scheme shall, on the commencement date, become a member of staff of the scheme on the same or better terms and conditions of service as may be specified by the Salaries and Remuneration Commission and the Cabinet Secretary in consultations with the State Corporations Advisory Committee.

(3) The Staff of the existing schemes shall upon commencement of this Act, be placed in appropriate positions subject to suitability tests conducted by an Interim Board under the guidance of the state corporations advisory committee.

(d) They further proposed insertion of the following Clause 56(4), (5) and (6)-

(4) Where any disciplinary proceedings against any member of staff of an existing scheme;

(i) are in the course of being heard or instituted, the Scheme shall carry on and complete the hearing or investigation and make an order or render a decision, as the case may be; and

(ii) have been heard or investigated by the existing scheme but no order or decision has been made thereon; make an order or render a decision.

(5) Where any such member of staff is interdicted or suspended, the scheme shall deal with such member of staff in such manner as it deems appropriate having regard to the offence committed by him or her, including the completion of disciplinary proceedings that have been commenced against that member of staff.

(6) Where any penalty, other than dismissal, had been imposed on any member of staff of an existing scheme pursuant to disciplinary proceedings and the penalty has not been, or remains to be, served by such member of staff, the member shall serve or continue to serve such penalty to its full as if it had been imposed by the Scheme.

THE NATIONAL TREASURY'S COMMENTS ON THE PROPOSED AMENDMENTS

CLAUSE 56

Comment on (1)

Disagree: Not agreed. The proposal encourages interim boards. The office of trustees cannot be interim.

Comment on (2)

Agreed. Employees rights should be sustained as at the commencement date of the scheme, moving forward the terms of staff should be determined by the Board.

Comment on (3) to (6)

Disagree: The proposal from 3 to 6 above from SCAC should not be prescribed in the law, as the board of trustees already has this mandate to make a determination.

CLAUSE 57

Disagree: The proposal is out of context with the bill

3.15 MINISTRY OF DEVOLUTION AND ASAL – STATE DEPARTMENT OF DEVOLUTION

The State Department of Devolution through their written memoranda submitted as follows:-

1. The Ministry of Devolution and Asals has extensive experience with retirement schemes for County Governments and the defunct local authorities. They have been key stakeholders on County Government Retirement Schemes since 1963 when the then Minister for Local Government established Kenya Local Authorities Superannuation Fund (the predecessor of

Laptrust) pursuant to Regulation 8 of the Kenya (Local Government) (Pension) Regulations, 1963.

2. Since then, the Permanent Secretary for Local Government (and now Principal Secretary, Ministry of Devolution) has been a permanent member of the Board of Trustees of Local Authorities Pension Trust Fund (Laptrust).
3. When the National Treasury vide Circular No. 18 of 2010 directed that Defined Benefits Schemes be closed, the Ministry spearheaded Member engagements at Bomas of Kenya and KICC and subsequently approved the establishment of Laptrust (Umbrella) Retirement Fund (the proposed County Pension Fund).
4. Co-ordination and consultations between the Government and the Counties is within the mandate of the Ministry of Devolution both by statute and Executive Order No. 1 of 2016. The mandate of the Ministry of Devolution in respect of Laptrust and all its affiliate companies including CPF is to appoint Trustees to the Board and gazette their respective names, supervise the management and make regulations for the proper running of the affairs of the Schemes.
5. In view of the mandate of the Ministry of Devolution, they submitted that it is the most suitable parent ministry for the above Scheme and therefore request that the role of the Ministry in the management of retirement scheme for County Government employees be retained as presently provided.
6. Following the promulgation of the Constitution of Kenya 2010 which created the devolved structure of government, the Ministry took the leading role in the Taskforce that came up with the County Governments Act. In respect of pensions for County Governments, the said Act prescribed under section 132 as follows:-

   "Subject to the transitional provisions herein, all members, officers and staff of a county government shall subscribe to an existing pension scheme for officers and staff of local government."
7. They noted that the proposal to establish a totally new scheme of the County Governments' Retirement Scheme Bill breaches section 132 of the County Government Act.
8. They submitted that the County Governments Retirement Scheme Bill, 2018 fails to make provision for the promoter and or founder of the Scheme and the costs for the promotion of the Scheme. It is therefore assumed that the old schemes (Laptrust and Lapfund) shall fund the establishment of the proposed new scheme thus members of the old schemes shall be deprived of their benefits and the same conferred to the new scheme.

Regulation 20 of the Retirement Benefits (Occupational Retirement Benefits Schemes) Regulations 2000 is stated as follows:-

"The scheme rules shall provide that benefits be fully vested in a member immediately on commencement of pensionable service:

Provided that-

(i) all benefits derived from statutory contributions and contributions made by a member shall vest immediately in the member."

9. In the year 2011, the National Treasury issued Circular No. 18/2010 which directed Laptrust to close Laptrust DB, approved the establishment of Laptrust (Umbrella) Retirement Fund (the County Pension Fund) and earmarked the same for County Governments in the letter dated 21st July, 2011. Indeed, resources were spent in setting up the scheme and the County Governments ultimately adopted the same in line with Section 132 of the County Governments Act. Establishing a new scheme to replicate the proposed County Pension Fund is unnecessary wastage of public funds.
10. Finally, they noted that the proposals under Clause 53 and 54 to repeal Local Authorities Provident Fund Act, Cap 272 and revoke Local Authorities Pension Trust Rules, 2007 (L.N. 50 of 2007) respectively is improper for the following reasons:
    a. A repeal of Cap 272 and revocation of L.N. 50 of 2007 leaves the two schemes in limbo. It neither merges nor transitions them into a single scheme thus leading to unnecessary ambiguities.
    b. Even if Clauses 53 and 54 were to be interpreted as merging the two schemes, the Draft Bill fails to provide for a procedure of meeting that end. In any event, it is legally and actuarially impossible to merge DB and DC schemes unless they are fully funded, which is not the case for Laptrust and Lapfund.
    c. It is legally absurd to have respective laws establishing Laptrust and Lapfund are revoked and repealed under clause 53 and 54 and at the same time provide for their continuity under clause 56(2) as closed schemes to new entrants. Indeed, once a law is revoked and/or repealed, all the entities it establishes cease to exist.
    d. It conflicts with the provisions of the Retirement Benefits Act and the regulations thereunder on winding up and dissolution of Schemes.

They submitted that the Draft Bill addresses the aforementioned issues and savings and transitional provisions be developed.

3.16 THE NATIONAL TREASURY

The National Treasury submitted the Bill should provide for who will bear the setting up costs of the scheme. NT also reiterated that all existing schemes namely LAPFUND, LAPTRUST DB and LAPTRUST Umbrella should all be deemed to be existing schemes for closure. In the Memorandum of objects and reasons, it is indicated that the Bill is not a money Bill. The National Treasury view is that this is a money Bill as the sponsor contributions will be met from the funding by the National Treasury through taxes.

4.0 COMMITTEE'S STAGE AMENDMENTS

Having considered the memoranda from all the stakeholders, the Committee made the following amendments;

CLAUSE 2

THAT, clause 2 of the Bill be amended by deleting the definition of "existing scheme" and substituting therefor the following new definition—

> "existing scheme" means the Local Authorities Provident Fund, the Local Authorities Pension Trust, the Local Authorities Pension Trust (Defined Benefits) Scheme and the Local Authorities Pension Trust(Umbrella)Retirement Fund.

Justification: To include all the scheme that exist as far as managing pensions for county pensions is concerned

CLAUSE 4

THAT, clause 4(2) of the Bill be amended by deleting the word "lending" appearing in paragraph (d) and substituting the word "investing".

Justification: Lending is contrary to the RBA Act which guides all the retirement benefits schemes.

CLAUSE 5

THAT, clause 5 of the Bill be amended by inserting the word "county" immediately before the words "public officer."

Justification: For clarity since the Bill seeks to establish a scheme for county government public officers and not any other.

CLAUSE 6

THAT, the Bill be amended in clause 6 by—

(a) deleting sub clause (2) and substituting therefor the following new sub clause—

(2) The Board shall consist of the following members—

(a) the Chairperson appointed by the Cabinet Secretary from amongst the Trustees appointed under paragraph (d), (e), (f) and (g);

(b) the Principal Secretary responsible for matters relating to finance or his representative;

(c) the Principal Secretary responsible for matters relating to devolution; □

(d) a representative of the Council of County Governors;

(e) two representatives of the County Public Service Boards one of whom shall be of the opposite gender;

(f) a representative of the County Assembly Service Boards;

(g) three persons nominated by the trade unions representing county public servants Boards one of whom shall be of the opposite gender; and

(h) the chief executive officer appointed under section 18, who shall be the secretary.

(b) deleting sub clause (3) and substituting therefor the following new sub clause—

(3) The vice-chairperson of the Board shall be elected by the Trustees from among their number.

(c) inserting the following new clause immediately after sub clause (4) —

(4) The Cabinet Secretary shall ensure that not more than two thirds of the members of the Board is of the same gender.

Justification: To ensure that the Board of Trustee is representative by also including Ministry of Devolution and providing for the appointment of the Chairperson by the Cabinet Secretary for the National Treasury as opposed to the way it is proposed in the Bill. This will safeguard his independence.

CLAUSE 14

THAT, clause 14(1) of the Bill be amended by deleting the word "Fund" and substituting the word "Scheme."

Justification: The Bill seeks to establish a scheme and not a fund.

CLAUSE 18

THAT, clause 18 (3) the Bill be amended by—

deleting the word "Master's" appearing in paragraph (b); and

deleting paragraph (d).

Justification: The requirement for masters degree is too high and goes contrary to the Mwongozo guidelines where it only requires a first degree for one to qualify as chief executive officer.

CLAUSE 24

THAT, clause 24 of the Bill be amended by—

deleting sub clause (3) and substituting therefor the following new sub clause—

(3) Subject to such guidelines as the Board may issue, in consultation with the members and sponsors of the Scheme, a member of the Scheme may make additional contributions to the Scheme; and

deleting sub clause (4).

Justification: To allow for the Board to consult with the members and sponsors when issuing guidelines and in case a member wishes to make any additional contribution they are free to do so.

CLAUSE 26

THAT, clause 26 Bill be amended—

by renumbering clause 26 as 26(1); and

in sub clause (3)(b) by deleting the words "fifty per cent of his or her sponsor's contribution" and substituting therefor the words "the sponsor's contribution as may be prescribed by the Retirement Benefits Authority"

Justification: Adherence to the requirements to RBA Act

CLAUSE 27

THAT, clause 27(2) of the Bill be amended by deleting paragraph (d).

Justification: To remove the discretion from the Board to determination of a member's retirement age. It is assumed that majority of the members would possess identification documents clearly indicating the actual date of birth hence no need for that to be left to the Board to decide.

CLAUSE 28

THAT, clause 28(2) of the Bill be amended by deleting paragraph (d).

Justification: In case a Member wishes to take an early retirement. This is meant to remove the discretion from the Board to determination of a member's retirement age. It is assumed that majority of the members would possess identification documents clearly indicating the actual date of birth hence no need for that to be left to the Board to decide

CLAUSE 49

THAT, clause 49(4) of the Bill be amended by deleting the words "five hundred thousand shillings, or in the case of a natural person, to imprisonment for a term not exceeding three years, or to both" and substituting therefor the words "five million shillings, or in the case of a natural person, to imprisonment for a term not exceeding two years, or to both"

Justification: Harmonization of penalties

CLAUSE 52

THAT, the Bill be amended by deleting clause 52.

Justification: The provision is discriminatory as it allows for phasing of ontribution for employees who were previously working for National Government . It is assumed that they would have already stabilized in their present stations hence no need for phasing of their contributions.

CLAUSE 53

THAT, the Bill be amended by deleting clause 53.

Justification: The import of this clause is remove the legal framework through which both LAPFUND and Laptrust operate essentially meaning they will be non existent. The closed funds shall remain closed to new entrants and not cease to exist.

CLAUSE 54

THAT, the clause 54 of the Bill be amended by deleting the word "shall" and substituting therefor the word "may."

Justification: For the members who may want to make Tier II Contributions to NSSF they are free to do so if they wished.

CLAUSE 56

THAT, clause 56 of the Bill be amended—

(a) by deleting sub clause (2) and substituting therefor the following new sub clause—

(2) The Local Authorities Provident Fund, the Local Authorities Pension Trust, the Local Authorities Pension Trust (Defined Benefits) Scheme and the Local Authorities Pension Trust (Umbrella)Retirement Fund shall, upon the commencement date of this Act, remain a closed funds to new entrants and shall ensure the preservation of all accrued rights of members but shall continue paying any pensions and benefits as and when they fall due.

(b) inserting the following new sub clause immediately after sub clause (3)—

(4) The State Corporations Advisory Committee shall, within three years from the commencement of this Act, ensure the implementation of this section.

Justification: To incorporate all the schemes and to also provide for mechanism of transition.

CLAUSE 57

THAT, clause 57 of the Bill be amended—

by inserting the words "Subject to section 55" immediately before the words "Any Eligible employee"; and

renumbering sub clause (4) as (2).

Justification: The clause is dependent on clause 55 hence the need to mention it in clause 57

SCHEDULE

THAT, clause Schedule to the Bill be amended—

by deleting section 2 and substituting therefor the following new paragraph-

2(1) The quorum of a meeting of the Board shall be five Trustees present and voting provided that at least two trustees appointed under section 6(b), (c), (d), (e) or (f) and at least two Trustees appointed under section 6 (g)are present.

(2) For special meetings, the quorum shall be six Trustees present and voting provided that at least two trustees appointed under section 6 b), (c), (d), (e) or (f) and at least two Trustees appointed under section 6(g) are present.

in section 5(4) by deleting the word "seven" and substituting therefor the word "two."

Justification: To ensure that all the meetings conducted are well representative and for special meetings are also conducted in a manner that is representative.

5.0 Annextures

Minutes

REPUBLIC OF KENYA

NATIONAL ASSEMBLY

DEPARTMENTAL COMMITTEE ON FINANCE & NATIONAL PLANNING ADOPTION SCHEDULE OF THE REPORT ON THE COUNTY GOVERNMENTS RETIREMENT SCHEME BILL, 2018

DATE: 6TH JUNE, 2018

NAME	SIGNATURE
1. HON. JOSEPH K. LIMO, MP – CHAIRMAN	
2. HON. ISAAC W. NDIRANGU – VICE-CHAIRMAN	
3. HON. JIMMY O. ANGWENYI, MP	
4. HON. ALFRED W. SAMBU, MP	
5. HON. ENOCH KIBUNGUCHY, MP	
6. HON. SHAKEEL SHABBIR AHMED, MP	
7. HON. ABDUL RAHIM DAWOOD, MP	
8. HON. DANIEL E. NANOK, MP	
9. HON. ANDREW A. OKUOME, MP	
10. HON. DAVID M. MBONI, MP	
11. HON. KURIA KIMANI, MP	
12. HON. JOSEPH M. OYULA, MP	
13. HON. JOSHUA KANDIE, MP	
14. HON. LYDIA H. MIZIGHI, MP	
15. HON. MOHAMED ALI, MP	
16. HON. PURITY NGIRICI, MP	
17. HON. SAMUEL ATANDI, MP	
18. HON. STANLEY M. MUTHAMA, MP	

MINUTES OF THE 36TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON WEDNESDAY, 6TH JUNE, 2018 IN ROOM 9 AT 11.00 AM

PRESENT

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP- **Vice Chairperson**
3. Hon. Jimmy O. Angwenyi, MP
4. Hon. Shakeel Shabbir Ahmed, MP
5. Hon. Abdul Rahim Dawood, MP
6. Hon. Daniel E. Nanok, MP
7. Hon. Andrew A. Okuome, MP
8. Hon. David M. Mboni, MP
9. Hon. Joseph M. Oyula, MP
10. Hon. Francis K. Kimani, MP
11. Hon. Joshua C. Kandie, MP
12. Hon. Mohamed A. Mohamed, MP
13. Hon. Purity W. Ngirici, MP
14. Hon. Samuel Atandi, MP

APOLOGY

1. Hon. Alfred Sambu, MP
2. Hon. Dr. Enoch Kibunguchy, MP
3. Hon. Lydia H. Mizighi, MP
4. Hon. Stanley M. Muthama, MP

INATTENDANCE

SECRETARIAT

1. Ms. Leah Mwaura	–	First Clerk Assistant/Lead Clerk
2. Ms. Laureen Wesonga	–	Third Clerk Assistant
3. Ms. Lynette Otieno	–	Legal Counsel
4. Mr. Josephat Motonu	–	Fiscal Analyst
5. Mr. Chelang'a Maiyo	–	Research and Policy Analyst
6. Mr. Collins Mahamba	–	Audio Officer
7. Mr. John Njoro	–	Serjeant-At-Arms

Agenda

1. Prayers

2. Preliminaries/Introductions
3. Communication from the Chair
4. Bills
5. Petitions
6. Papers
7. Personal statement **(Members Only)**
8. Confirmation of Minutes
9. Matters Arising
10. **Meeting to reports on the County Governments Retirement Scheme Bill, 2018 and the County Pension Scheme Bill, 2017**
11. Adjournment

MIN.NO.181/DC-F/2018:PRELIMINARIES/COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 11:30 a.m with prayer from the Chairperson. He then welcomed the meeting to deliberate on the day's agenda.

MIN.NO.182/DC-F/2018: CONFIRMATION OF MINUTES

Agenda deferred

MIN.NO.183/DC-F/2018: MEETING TO ADOPT THE REPORT ON THE COUNTY GOVERNMENT RETIREMENT SCHEME BILL, 2018

The Legal Counsel took the meeting through their proposed amendments to the Bill. The report was then adopted by the Committee.

MIN.NO.184/DC-F/2018: MEETING TO ADOPT THE REPORT ON THE COUNTY PENSION SCHEME BILL, 2017

The meeting deliberated as follows:-

1. That both the County Governments Retirement Scheme Bill, 2018 and the County Pension Scheme Bill, 2017 were addressing the same matter and it would paint the Committee in bad light if both Bills were tabled in the House.
2. Members unanimously agreed that the report on the County Governments Retirement Scheme Bill, 2018 should take precedence over the report on the County Pension Scheme Bill, 2017 which will be tabled with the Committee's resolutions and justifications.

ADOPTION OF REPORT ON THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL, 2017

The meeting deliberated and agreed that clause 10A(3) should be deleted and a New Clause 131B inserted to provide for the establishment of the County Fiscal Bureau.

The report was however not adopted because of time.

MIN.NO.185/DC-F/2018: ADJOURNMENT

There being no other business to deliberate on, the meeting was adjourned at 2.05pm. The next meeting will be held on 7th June, 2018 at 10.00am.

HON. JOSEPH K. LIMO, MP

(CHAIRPERSON)

SIGNED ....**DATE**...7/6/2018...

MINUTES OF THE 2ND SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING RETREAT HELD ON TUESDAY, 29TH MAY, 2018 IT LAKE BOGORIA SPA RESORT AT 2.45PM

PRESENT

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP- **Vice Chairperson**
3. Hon. Jimmy O. Angwenyi, MP
4. Hon. Andrew A. Okuome, MP
5. Hon. David M. Mboni, MP
6. Hon. Joseph M. Oyula, MP
7. Hon. Mohamed A. Mohamed, MP
8. Hon. Samuel Atandi, MP
9. Hon. Stanley M. Muthama, MP

APOLOGY

1. Hon. Alfred Sambu, MP
2. Hon. Dr. Enoch Kibunguchy, MP
3. Hon. Shakeel Shabbir Ahmed, MP
4. Hon. Abdul Rahim Dawood, MP
5. Hon. Daniel E. Nanok, MP
6. Hon. Francis K. Kimani, MP
7. Hon. Joshua C. Kandie, MP
8. Hon. Lydia H. Mizighi, MP
9. Hon. Purity W. Ngirici, MP

INATTENDANCE

SECRETARIAT

1.	Ms. Leah Mwaura	–	First Clerk Assistant/Lead Clerk
2.	Ms. Laureen Wesonga	–	Third Clerk Assistant
3.	Ms. Lynette Otieno	–	Legal Counsel
4.	Mr. Chelang'a Maiyo	–	Research and Policy Analyst
5.	Ms. Brigid Sielei	–	Public Relations Officer
6.	Mr. Collins Mahamba	–	Audio Officer
7.	Mr. John Njoro	–	Serjeant-At-Arms
8.	Mr. Vitalis Augo	–	Office Assistant

MIN.NO.5/DC-F/2018: PRELIMINARIES/COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 2:50 p.m with prayer from Hon. Isaac Ndirangu, MP. The Chairperson then welcomed the meeting to deliberate on the day's agenda.

MIN.NO.6/DC-F/2018: CONFIRMATION OF MINUTES

Agenda deferred

MIN.NO.7/DC-F/2018: MEETING TO CONSIDER THE COMMITTEE'S AMENDMENTS TO THE COUNTY GOVERNMENTS RETIREMENT SCHEME BILL, 2018

The Committee made the following amendments:-

CLAUSE 40

Agreed to

CLAUSE 41

Agreed to

CLAUSE 42

Agreed to

CLAUSE 43

Agreed to

CLAUSE 44

Agreed to

CLAUSE 45

Agreed to

CLAUSE 46

Agreed to

CLAUSE 47

Agreed to

CLAUSE 48

Agreed to

CLAUSE 49

THAT, clause 49(4) of the Bill be amended by deleting the words "five hundred thousand shillings, or in the case of a natural person, to imprisonment for a term not exceeding three years, or to both" and substituting therefor the words "five million shillings, or in the case of a natural person, to imprisonment for a term not exceeding two years, or to both"

CLAUSE 50

Agreed to

CLAUSE 51

Agreed to

CLAUSE 52

THAT, the Bill be amended by deleting clause 52.

CLAUSE 53

THAT, the Bill be amended by deleting clause 53.

CLAUSE 54

THAT, the clause 54 of the Bill be amended by deleting the word "shall" and substituting therefor the word "may."

CLAUSE 55

Agreed to

CLAUSE 56

THAT, clause 56 of the Bill be amended—

(a) by deleting sub clause (2) and substituting therefor the following new sub clause—

(2) The Local Authorities Provident Fund, the Local Authorities Pension Trust, the Local Authorities Pension Trust (Defined Benefits) Scheme and the Local Authorities Pension Trust(Umbrella)Retirement Fund shall, upon the commencement date of this Act, remain a closed funds to new entrants and shall ensure the preservation of all accrued rights of members but shall continue paying any pensions and benefits as and when they fall due.

(b) inserting the following new sub clause immediately after sub clause (3)—

(4) The State Corporations Advisory Committee shall, within three years from the commencement of this Act, ensure the implementation of this section.

CLAUSE 57

THAT, clause 57 of the Bill be amended—

(a) by inserting the words "Subject to section 55" immediately before the words "Any Eligible employee"; and
(b) renumbering sub clause (4) as (2).

SCHEDULE

THAT, clause Schedule to the Bill be amended—

(a) by deleting section 2 and substituting therefor the following new paragraph-
2(1) The quorum of a meeting of the Board shall be five Trustees present and voting provided that at least two trustees appointed under section 6(b), (c), (d), (e) or (f) and at least two Trustees appointed under section 6 (g) are present.

(2) For special meetings, the quorum shall be six Trustees present and voting provided that at least two trustees appointed under section 6 b), (c), (d), (e) or (f) and at least two Trustees appointed under section 6(g) are present.

(b) in section 5(4) by deleting the word "seven" and substituting therefor the word "two."

CLAUSE 2

THAT, clause 2 of the Bill be amended by deleting the definition of "existing scheme" and substituting therefor the following new definition—

"existing scheme" means the Local Authorities Provident Fund, the Local Authorities Pension Trust, the Local Authorities Pension Trust (Defined Benefits) Scheme and the Local Authorities Pension Trust(Umbrella)Retirement Fund.

CLAUSE 1

Agreed to

MIN.NO.8/DC-F/2018: ADJOURNMENT

There being no other business to deliberate on, the meeting was adjourned at 4.20pm. The next meeting will be held on 30th May, 2018 at 2.45pm.

HON. JOSEPH K. LIMO, MP

(CHAIRPERSON)

SIGNED ……………………………………………………..**DATE** 7/6/2018……………………………..

MINUTES OF THE 1ST SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING RETREAT HELD ON TUESDAY, 29TH MAY, 2018 IT LAKE BOGORIA SPA RESORT AT 9.00AM

PRESENT

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP- **Vice Chairperson**
3. Hon. Jimmy O. Angwenyi, MP
4. Hon. Andrew A. Okuome, MP
5. Hon. David M. Mboni, MP
6. Hon. Joseph M. Oyula, MP
7. Hon. Mohamed A. Mohamed, MP
8. Hon. Samuel Atandi, MP
9. Hon. Stanley M. Muthama, MP

APOLOGY

1. Hon. Alfred Sambu, MP
2. Hon. Dr. Enoch Kibunguchy, MP
3. Hon. Shakeel Shabbir Ahmed, MP
4. Hon. Abdul Rahim Dawood, MP
5. Hon. Daniel E. Nanok, MP
6. Hon. Francis K. Kimani, MP
7. Hon. Joshua C. Kandie, MP
8. Hon. Lydia H. Mizighi, MP
9. Hon. Purity W. Ngirici, MP

INATTENDANCE

SECRETARIAT

1.	Ms. Leah Mwaura	–	First Clerk Assistant/Lead Clerk
2.	Ms. Laureen Wesonga	–	Third Clerk Assistant
3.	Ms. Lynette Otieno	–	Legal Counsel
4.	Mr. Chelang'a Maiyo	–	Research and Policy Analyst
5.	Ms. Brigid Sielei	–	Public Relations Officer
6.	Mr. Collins Mahamba	–	Audio Officer
7.	Mr. John Njoro	–	Serjeant-At-Arms
8.	Mr. Vitalis Augo	–	Office Assistant

MIN.NO.1/DC-F/2018: PRELIMINARIES/COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 9:25 a.m with prayer from Hon. Isaac Ndirangu, MP. The Chairperson then welcomed the meeting to deliberate on the day's agenda.

MIN.NO.2/DC-F/2018: CONFIRMATION OF MINUTES

Agenda deferred

MIN.NO.3/DC-F/2018: MEETING TO CONSIDER THE COMMITTEE'S AMENDMENTS TO THE COUNTY GOVERNMENTS RETIREMENT SCHEME BILL, 2018

The Committee made the following amendments:-

CLAUSE 3

Agreed to

CLAUSE 4

THAT, clause 4(2) of the Bill be amended by deleting the word "lending" appearing in paragraph (d) and substituting the word "investing".

CLAUSE 5

THAT, clause 5 of the Bill be amended by inserting the word "county" immediately before the words "public officer."

CLAUSE 6

THAT, the Bill be amended in clause 6 by—

(a) deleting sub clause (2) and substituting therefor the following new sub clause—
(2) The Board shall consist of the following members—

(a) the Chairperson appointed by the Cabinet Secretary from amongst the Trustees appointed under paragraph (d), (e), (f) and (g);
(b) the Principal Secretary responsible for matters relating to finance or his representative;
(c) the Principal Secretary responsible for matters relating to devolution;
(d) a representative of the Council of County Governors;
(e) two representatives of the County Public Service Boards one of whom shall be of the opposite gender;
(f) a representative of the County Assembly Service Boards;
(g) three persons nominated by the trade unions representing county public servants Boards one of whom shall be of the opposite gender; and
(h) the chief executive officer appointed under section 18, who shall be the secretary.

(b) deleting sub clause (3) and substituting therefor the following new sub clause—

(3) The vice-chairperson of the Board shall be elected by the Trustees from among their number.

(c) inserting the following new clause immediately after sub clause (4) —

(4) The Cabinet Secretary shall ensure that not more than two thirds of the members of the Board is of the same gender.

CLAUSE 7

Agreed to

CLAUSE 8

Agreed to

CLAUSE 9

Agreed to

CLAUSE 10

Agreed to

CLAUSE 11

Agreed to

CLAUSE 12

Agreed to

CLAUSE 13

Agreed to

CLAUSE 14

THAT, clause 14(1) of the Bill be amended by deleting the word "Fund" and substituting the word "Scheme."

CLAUSE 15

Agreed to

CLAUSE 16

Agreed to

CLAUSE 17

Agreed to

CLAUSE 18

THAT, clause 18 (3) the Bill be amended by—

(a) deleting the word "Master's" appearing in paragraph (b); and
(b) deleting paragraph (d).

CLAUSE 19

Agreed to

CLAUSE 20

Agreed to

CLAUSE 21

Agreed to

CLAUSE 22

Agreed to

CLAUSE 23

Agreed to

CLAUSE 24

THAT, clause 24 of the Bill be amended by—

(a) deleting sub clause (3) and substituting therefor the following new sub clause—
 (3) Subject to such guidelines as the Board may issue, in consultation with the members and sponsors of the Scheme, a member of the Scheme may make additional contributions to the Scheme; and
(b) deleting sub clause (4).

CLAUSE 25

Agreed to

CLAUSE 26

THAT, clause 26 Bill be amended—

(a) by renumbering clause 26 as 26(1); and

(b) in sub clause (3)(b) by deleting the words "fifty per cent of his or her sponsor's contribution" and substituting therefor the words "the sponsor's contribution as may be prescribed by the Retirement Benefits Authority"

CLAUSE 27

THAT, clause 27(2) of the Bill be amended by deleting paragraph (d).

CLAUSE 28

THAT, clause 28(2) of the Bill be amended by deleting paragraph (d).

CLAUSE 29

Agreed to

CLAUSE 30

Agreed to

CLAUSE 31

Agreed to

CLAUSE 32

Agreed to

CLAUSE 33

Agreed to

CLAUSE 34

Agreed to

CLAUSE 35

Agreed to

CLAUSE 36

Agreed to

CLAUSE 37

Agreed to

CLAUSE 38

Agreed to

CLAUSE 39

Agreed to

MIN.NO.4/DC-F/2018: ADJOURNMENT

There being no other business to deliberate on, the meeting was adjourned at 1.55pm. The next meeting will be held the same day at 2.45pm.

HON. JOSEPH K. LIMO, MP

(CHAIRPERSON)

SIGNED ……………………………………………………………**DATE**…7/6/2018…

MINUTES OF THE 2ND SITTING OF THE STAKEHOLDER CONSULTATIVE WORKSHOP OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON WEDNESDAY, 23RD MAY, 2018 IT BOMA HOTEL AT 2.30PM

PRESENT

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP- **Vice Chairperson**
3. Hon. Jimmy O. Angwenyi, MP
4. Hon. Shakeel Shabbir Ahmed, MP
5. Hon. Abdul Rahim Dawood, MP
6. Hon. Daniel E. Nanok, MP
7. Hon. Andrew A. Okuome, MP
8. Hon. David M. Mboni, MP
9. Hon. Francis K. Kimani, MP
10. Hon. Joseph M. Oyula, MP
11. Hon. Mohamed A. Mohamed, MP
12. Hon. Purity W. Ngirici, MP
13. Hon. Samuel Atandi, MP
14. Hon. Stanley M. Muthama, MP

APOLOGY

1. Hon. Alfred Sambu, MP
2. Hon. Dr. Enoch Kibunguchy, MP
3. Hon. Joshua C. Kandie, MP
4. Hon. Lydia H. Mizighi, MP

INATTENDANCE

SECRETARIAT

1. Ms. Leah Mwaura	–	First Clerk Assistant/Lead Clerk
2. Ms. Laureen Wesonga	–	Third Clerk Assistant
3. Ms. Lynette Otieno	–	Legal Counsel
4. Mr. Chelang'a Maiyo	–	Research and Policy Analyst
5. Mr. Collins Mahamba	–	Audio Officer
6. Mr. John Njoro	–	Serjeant-At-Arms
7. Mr. Vitalis Augo	–	Office Assistant

UNION OF KENYA CIVIL SERVANTS
LOCAL AUTHORITIES PROVIDENT FUND

1. Mr. David Koross – Chief Executive Officer
2. Mr. Flevian Kubasu – Head, Corporate Affairs

COUNTY PUBLIC SERVICE BOARDS

Arc. Kungu P. – Chairman

COUNTY PENSION FUND

1. Mr. Hosea Kili – Chief Executive Officer

COUNCIL OF GOVERNORS

1. H.E Hon. James Ongwae – Governor, Kisii County
2. H.E. Wycliffe Wangamati – Governor, Bungoma County
3. Ms. Carolyne Mage – Chief Executive Officer

STATE CORPORATIONS ADVISORY COMMITTEE

Mr. Hamisi Williams – Deputy Director, Research

MIN.NO.10/DC-F/2018:PRELIMINARIES/COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 2:55 p.m with prayer from the Hon. Abdul Rahim Dawood, MP. The Chairperson then called for introduction of those present before welcoming the meeting to deliberate on the day's agenda.

MIN.NO.11/DC-F/2018: CONFIRMATION OF MINUTES

Agenda deferred

MIN.NO.12/DC-F/2018: MEETING TO DELIBERATE ON THE COUNTY GOVERNMENT RETIREMENTS SCHEME BILL, 2018 WITH THE UNION OF KENYA CIVIL SERVANTS

They submitted that:-

1. They were aware that there were three Bills in Parliament addressing the county pension scheme
2. They understood the origin of the County Pension Scheme Bill which is a stakeholders Bill. They were however not involved in the preparation of the County Governments Retirement Scheme Bills at the Senate and the National Assembly.
3. The Bill seeks to set up a new scheme which is a mixture of pension and provident. They were of the view that section 132 should be followed as the same has good reason, it is intended to ensure continuity and benefit from years of experience that an existing scheme has acquired over years.

4. The Bill attempts to repeal and revoke the laws establishing Lapfund and Laptrust in Clauses 53(1) and (2) thus the two schemes shall ultimately be wound up. They support the proposal that the administration services of the schemes be done jointly through a corporate administrator bringing together all the staff of Laptrust and Lapfund.
5. The Bill does not address what will happen to the assets and liabilities of Lapfund and Laptrust and whether members of Lapfund and Laptrust will claim from the new scheme when they retire. There must be certainty in the law otherwise, uncertainties like the ones characterizing this Bill is a fertile ground for a floodgate of litigation.
6. They did not support the Bill because:-
   a) it anchors the County Pension Fund under an Act of Parliament in line with section 132 of the County Governments Act that requires employees to join an existing pension scheme.
   b) It ensures continuity of Laptrust and Lapfund but as schemes closed to new members.
   c) It merges the administration of Laptrust, Lapfund and CPF under one Corporate Administrator owned by all the schemes.
   d) It provides for the transfer of staff of Laptrust and Lapfund to the Corporate Administrator and protect their terms of service.
7. They requested the National Assembly to reinstate the County Pension Scheme Bill, 2017 as the same is more comprehensive and clear leaving no doubts.

MIN.NO.13/DC-F/2018: MEETING TO DELIBERATE ON THE COUNTY GOVERNMENT RETIREMENTS SCHEME BILL, 2018 WITH THE LOCAL AUTHORITIES PROVIDENT FUND

They submitted that they are in support of the County Governments Retirement Scheme Bill,2018 for the following reasons-

(a) Outstanding contributions are owed by defunct local authorities and county government that has not been addressed in the Bill. A timeframe should be provided for settlement of the monies owed.
(b) The Bill seeks to align management of pension for County employees, County assemblies and affiliated companies to the devolved system. This is something that Lapfund has looked forward to since the promulgation of the constitution of Kenya, 2010.
(c) The Bill accommodates all retirement arrangements (pensions, provident, annuity and income drawdown) in line with the global trends.
(d) The Bill caters for retirement benefits of employees hired by County Governments, employees of former local authorities and civil servants devolved to County Governments.
(e) The Bill reflects the best practice by advocating for internal administration of the Scheme. This is the same scenario with are NSSF, Central Bank, KPA, Kenya Power and LAPFUND. Statutory schemes are by best practice administered internally.
(f) Stakeholders met in 2015 and agreed on various issues that the Bill has captured considering the best interest of the members.
(g) The existing schemes should be transitioned into the new scheme including CPF/Laptrust (Umbrella).

They proposed the following amendments-

(a) Definition of "existing schemes" should incorporate Local Authorities Pension Trust Umbrella Retirement Fund;
(b) There's need for an amendment of Clause 6 (2)(b) on composition to incorporate the Cabinet Secretary or his representative
(c) Clause 6(3) should be amended to delete provision for election of vice-chairperson and chairperson and insert the following "a chairperson appointed by the Cabinet Secretary";
(d) Clause 18 should be amended to provide that "the chief executive officer shall be the administrator of the scheme
(e) Clause 14(1) should be amended to read a follow "the Board shall be accountable to the sponsors and members of the scheme."
(f) Clause 23 to be amended to insert the word "internal administrator"
(g) Clause 52 on phasing out of contributions be deleted in its entirety.
(h) Clause 53(2) should be deleted and replaced with the following
"The Local Authorities Provident Fund established under Cap 272 shall upon commencement of this Act, be transition into the new scheme"
(i) Clause 54 should be amended as follows "The sponsors and Members of the Scheme shall be fully exempt from making any contributions to the National Social Security Fund"
(j) Insertion of new clause 56(4) as follows that-
"The Laptrust umbrella Pension Scheme shall upon commencement of this Act be transferred in to the new scheme."
(k) In the Schedule need to delete provision making reference to vice-chairperson.

MIN.NO.14/DC-F/2018: MEETING TO DELIBERATE ON THE COUNTY GOVERNMENT RETIREMENTS SCHEME BILL, 2018 WITH THE COUNTY PUBLIC SERVICE BOARDS, NATIONAL CONSULTATIVE FORUM

They submitted that:-

1. They support the Bill to the extent that it provides a framework for administration of pensions within the County.
2. They propose that leadership to amalgamate the three Bills into one would be most ideal to pave way for a common and joint approach by all stakeholders.
3. Section132 of the County Governments Act provides for the transition of employees of county government into an existing pension scheme. However, they note the need for a Bill to provide for pensions a management within the devolved structure.
4. A corporate administrator be appointed to manage all the transitional issues of the existing schemes. This could be done through the adoption of a restructured CPF to allow and cater for interest of the existing schemes.
5. A new Board of Directors of the restructured /CFP Financial Services be formed to have representatives of Laptrust, Lapfund, CPPF and the new scheme with a agreed shareholding formula.
6. In the transition arrangements, the terms conditions and benefits of all existing staff under the corporate administrator shall not be varied or altered in any way to their disadvantage.
7. Rules and regulations to operationalize the new scheme be quickly drafted and passed to ensure fairness, equity and to address the perennial problem of late or non-remitted

contributions. This is a priority item in the transition of existing schemes to the new one under the envisaged Act.

8. CPF Financial Services shall be used to offer joint administrative services to all the Schemes to avoid wastage of members; funds in setting up a new administrator.
9. The three Boards of the existing schemes shall appoint the Board of Directors of the Corporate Administrator and supervise the performance of the administrator. The administrator shall have no option but to discharge impeccable services for the benefit of its members.
10. Each Board shall retain and exercise its fiduciary responsibilities distinctively while the administration of the Schemes is merged under one administrator.

MIN.NO.15/DC-F/2018: MEETING TO DELIBERATE ON THE COUNTY GOVERNMENT RETIREMENTS SCHEME BILL, 2018 WITH THE COUNTY PENSION FUND

They submitted that:-

1. The main reason why the pension for County Government employees has remained pending from 2013 is the delay to operationalize and implement section132 of the County Governments Act.
2. Notwithstanding their legitimate expectations on section 132, they have considered the Bill together with the County Pension Scheme Bill, 2017 and note that the County Government's Retirement Scheme Bill, 2018 diverges substantially from the recommendations of the Technical committee on the establishment of a County Public Service Staff Pension Scheme which recommended as follows:-

   (a) A new umbrella Scheme be set up under an Act of Parliament a new Scheme that shall be a pension fund rather than a provident fund to safeguard the scheme.
   (b) Close LApfund and Laptrust schemes to all employees of the county governments and ensure preservation of all the accrued rights of all members under these Schemes.
   (c) Merge the administrative services of the two Schemes Laptrust and Lapfund. The merged organizations will provide administration services to the two closed schemes as well as the new umbrella scheme.
3. The above mentioned recommendations were captured in the County Pension Scheme Bill, 2017.That a material discrepancies characterizes the County Governments Retirement Scheme Bill, 2018 and puts at risk pension for County employees.
4. The Bill proposes the establishment of a totally new retirement Scheme with elements of a provident fund contrary to section 132 of the County Governments Act.
5. On the other hand, the County Pension Scheme Bill, 2017 anchors the County Pension Fund, an existing pension scheme, under an Act of Parliament, thus operationalizing section 132 of the CGA. The rationale for this is to ensure continuity and to tap onto the experiences and expertise of the existing pension scheme.
6. It is legally expedient to confer upon the Board of Trustees legal personality and not the Scheme as proposed under clause 4(2) of the County Government's Retirement Scheme Bill, 2018.
7. Administration of the three schemes through an in house administrator as proposed under Clause 18 and 23 of the County Governments Retirement Scheme Bill is not recognized in law.

8. The rate of contributions under Clause 24 of the Bill of 7.5% of pensionable emoluments goes against the prevailing negotiated collective bargaining agreements and directives from the National Treasury. The prevailing contribution rates for CPF, LAPFUND and LAPTRUST is 12% of pensionable emoluments.
9. The proposal to repeal Cap 272 and revoke Legal Notice 50 is improper as it violates existing laws on winding up of Schemes.
10. The Schemes cannot be merged at this point due to the liabilities and contributions owed. The Assets and liabilities of the existing schemes should not be merged without proper regulations of managing them.

MIN.NO.16/DC-F/2018: MEETING TO DELIBERATE ON THE COUNTY GOVERNMENT RETIREMENTS SCHEME BILL, 2018 WITH THE COUNCIL OF GOVERNORS

They submitted that:-

1. Their memorandum is designed to propose amendments to the County Governments Retirement Scheme Bill, 2018 for the benefit of the forty-seven County Governments and their respective employees.
2. That a stakeholders forum held by the National Treasury where the following was agreed upon-

    I. The CEO of the Scheme was to be independent and not the administrator of the Scheme.
    II. The administrator should be a corporate administrator as opposed to an internal administrator.
    III. 5% of the fund was to be allocated to the administrative expenses.
    IV. The exemption of NSSF contributions was to be subject to concurrence by NSSF.
    V. There was however no concurrence on appointment of Trustees of the Scheme.
    VI. Liabilities were to be borne by respective levels of Government.

3. The role of National Government (National Treasury) on pension Matters for county employees is limited to prescribing standards for social security and professional pension plans, pursuant to the Fourth Schedule, Paragraph 14 of the Constitution of Kenya, 2010 which is stated below-

    "Consumer protection, including standards for social security and professional pension plans."

4. It is the position of County Governments that the constitutional mandate is not elastic to extend beyond consumer protection through prescribing standards, regulations and to setting up or determining how county governments choose to set up or adopt their pension scheme. The functions of the National Government and ipso facto the national treasury is assigned to RBA under section 5(d) the retirement benefits Act which is stated as follows.
5. The role of County Governments of Pension matters is anchored under Article 235 of the Constitution and section 56 of the County Governments Act, both which are stated below and which recognizes County governments as employers within their respective counties, thus have the authority to determine pension arrangements for their employees as an exclusive county governments function.
6. They recommend for the setting up of a new Scheme and the transitioning of the existing schemes

7. They recommend 7.5% and 15% of pensionable emoluments contributions by employee and employer respectively. Increasing the amount of employee contribution to 122% may lead in some instances to pecuniary embarrassment to County employees.
8. All the existing schemes should be closed schemes and the definition should be incorporated. However because of actuarial liabilities it may not be possible to merge the existing schemes at this point until the mechanism for dealing with liabilities is formulated.

MIN.NO.17/DC-F/2018: MEETING TO DELIBERATE ON THE COUNTY GOVERNMENT RETIREMENTS SCHEME BILL, 2018 WITH THE STATE CORPORATIONS ADVISORY COUNCIL

They submitted that:-

1. There should be representative of the National Treasury in the Board as the parent Ministry. As a state corporation there should National Treasury in the Board as the parent Ministry.
2. A transitional body may be created to handle the concerns regarding assets and liabilities of the existing Schemes.
3. It is important to transition staff in to the new institution in a smooth manner so as to avoid any eventualities that may be associated with inadequate transition.

They proposed the following amendments:-

(a) Clause 6 be amended to incorporate a representative of the National Treasury in the Board as the parent Ministry.

(b) Clause 57to be amended to read as follows-

57(1) assets of the existing institutions includes all property movable or immovable and all estates, easements and rights whether equitable or legal in, over or out of property, choses-in-action, money or good will of the existing schemes whether situated in Kenya or elsewhere.

Liabilities of the existing institutions includes, debts, charges, duties and obligations of every description, whether present or future, actual or contingent and whether to be observed or performed in Kenya or elsewhere.

(c) Amend the Clause 56 to read as follows-

(1)An Interim Board appointed by the Cabinet secretary to spearhead transition of the existing schemes in consultation with the State Corporations Committee, within period of one year or until the transition is over whichever is earlier, from the date of the commencement of the Act.

(2)Any person, who at the commencement of this Act, is a public servant working in an existing scheme shall, on the commencement date, become a member of staff of the scheme on the same or better terms and conditions of service as may be specified by the

Salaries and Remuneration Commission and the Cabinet Secretary in consultations with the State Corporations Advisory Committee.

(3)The Staff of the existing schemes shall upon commencement of this Act, be placed in appropriate positions subject to suitability tests conducted by an Interim Board under the guidance of the state corporations advisory committee.

(d) They further propose insertion of the following Clause 56(4), (5) and (6)-

(4)Where any disciplinary proceedings against any member of staff of an existing scheme;

(i) are in the course of being heard or instituted, the Scheme shall carry on and complete the hearing or investigation and make an order or render a decision, as the case may be; and
(ii) have been heard or investigated by the existing scheme but no order or decision has been made thereon; make an order or render a decision.

(5)Where any such member of staff is interdicted or suspended, the scheme shall deal with such member of staff in such manner as it deems appropriate having regard to the offence committed by him or her, including the completion of disciplinary proceedings that have been commenced against that member of staff.

(6)Where any penalty, other than dismissal, had been imposed on any member of staff of an existing scheme pursuant to disciplinary proceedings and the penalty has not been, or remains to be, served by such member of staff, the member shall serve or continue to serve such penalty to its full as if it had been imposed by the Scheme.

MEMBERS' DELIBERATION

1. The meeting directed the County Public Service Boards to submit their Clause by clause analysis to the Committee by Friday, 25th May, 2018.
2. The Committee noted that there is need for a proper transition mechanism for handling of assets and liabilities of the existing schemes.
3. The committee observed there is a contradiction between Clause 53 that repeals and revokes the Local Authorities Provident Fund Act and the Local Authorities Pensions Trust Rules, 2007 and Clause 56(1) that provides for the Schemes to operate as closed schemes.

MIN.NO.18/DC-F/2018: ADJOURNMENT

There being no other business to deliberate on, the meeting was adjourned at 7.35pm. The next meeting will be held on Thursday 24th May, 2018 at 9.00am.

HON. JOSEPH K. LIMO, MP

(CHAIRPERSON)

7/6/2018

MINUTES OF THE 1ST SITTING OF THE STAKEHOLDER CONSULTATIVE WORKSHOP OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON WEDNESDAY, 23RD MAY, 2018 IT BOMA HOTEL AT 9.00AM

PRESENT

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP- **Vice Chairperson**
3. Hon. Jimmy O. Angwenyi, MP
4. Hon. Shakeel Shabbir Ahmed, MP
5. Hon. Abdul Rahim Dawood, MP
6. Hon. Daniel E. Nanok, MP
7. Hon. Andrew A. Okuome, MP
8. Hon. David M. Mboni, MP
9. Hon. Francis K. Kimani, MP
10. Hon. Joseph M. Oyula, MP
11. Hon. Mohamed A. Mohamed, MP
12. Hon. Purity W. Ngirici, MP
13. Hon. Samuel Atandi, MP
14. Hon. Stanley M. Muthama, MP

APOLOGY

1. Hon. Alfred Sambu, MP
2. Hon. Dr. Enoch Kibunguchy, MP
3. Hon. Joshua C. Kandie, MP
4. Hon. Lydia H. Mizighi, MP

INATTENDANCE

SECRETARIAT

1.	Ms. Leah Mwaura	–	First Clerk Assistant/Lead Clerk
2.	Ms. Laureen Wesonga	–	Third Clerk Assistant
3.	Ms. Lynette Otieno	–	Legal Counsel
4.	Mr. Chelang'a Maiyo	–	Research and Policy Analyst
5.	Mr. Collins Mahamba	–	Audio Officer
6.	Mr. John Njoro	–	Serjeant-At-Arms
7.	Mr. Vitalis Augo	–	Office Assistant

COUNTY PENSIONERS ASSOCIATION

1. Mr. Ezra Ngoje – Chairman
2. Mr. Charles I. Muiruri – Secretary
3. Mr. Jeremiah Nabongo – Treasurer

CLINICAL NURSING SOCIETY OF KENYA

1. Mr. Henry Ondieki – Chair, Kisumu County
2. Mr. Amos Ngetich – Baranch Official
3. Mr. Jeremiah Maina – Secretary
4. Ms. Catherine Amani – Administration Officer

KENYA NATIONAL UNION OF NURSES

1. Mr. Seth Panyako – General Secretary/CEO
2. Mr. John Biiy – Former Chairperson
3. Mr. Kibii K. Simon – Branch Chairman, Uasin Gishu County
4. Ms. Sarah Aditch – Guest Relations Officer

Mr. Joe Donde

KENYA COUNTY GOVERNMENT WORKERS' UNION

1. Mr. Benard Inyangah – Chairman
2. Mr. Charles Makini – Vice Chairman
3. Ms. Matilda Kimetto – Organising Secretary
4. Mr. Francis Gachukia – Treasurer
5. Mr. Simon Ndiba – Treasurer
6. Ms. Mariamu Bilah – Women Leader
7. Ms. Emily Mwangi – Women Leader
8. Mr. Hesbon Wagai – Assistant Treasurer
9. Mr. Monica Wangare – Assistant Treasurer
10. Mr. Kepha Nduko – Assistant Secretary
11. Mr. Hussein Wafwa – Assistant Vice Chairman
12. Mr. Benson Oliaga – National Executive Council
13. Ms. Christine Songa – National Executive Council
14. Ms. Peris Wangui – Assistant Women Leader
15. Ms. Susan Mutemi – Assistant Women Leader
16. Mr. Boniface Waweru – Secretary, Nairobi
17. Mr. R. Kimani – Treasurer, Nairobi
18. Ms. Fidesco Mbogo – Shopsteward
19. Mr. Caleb Ogamba – Shopsteward
20. Mr. Makaliech – Shopsteward
21. Mr. Caleb Kinara – Shopsteward
22. Mr. Michael Akwiri – Shopsteward

NAIROBI COUNTY MCAS

1.	Hon. Peter Warutere	–	MCA
2.	Hon. Anthony K. Karanja	–	MCA

KENYA UNION OF CLINICAL OFFICERS

1.	Mr. George Gibore	–	Secretary General/CEO
2.	Mr. Man Bonface	–	National Treasurer
3.	Ms. Azizah Yusuf	–	National Executive Council

FORMER COUNCILORS ASSOCIATION

1.	Cllr. Hezron Kereimi	–	Chairman
2.	Cllr. Geoffrey Gitau	–	National Organising Secretary
3.	Cllr. Senteu Lekina	–	Member
4.	Cllr. William Komen	–	Member
5.	Cllr. B.D. Ali	–	Member
6.	Cllr. Hassan Maalim	–	Member
7.	Cllr. Omondi Kokoreh	–	Member
8.	Cllr. Nyagilo Obat	–	Member
9.	Cllr. Hussein Abduba	–	Member
10.	Cllr. Joseph P.M. Matara	–	Member
11.	Cllr. Jeremiah Nyaga	–	Member
12.	Cllr. Stephen Kaberia	–	Member
13.	Cllr. Margaret Nkandau	–	Member
14.	Cllr. Johnson Njoroge	–	Member
15.	Cllr. Bashir Mohamed	–	Member

MIN.NO.1/DC-F/2018: PRELIMINARIES/COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 9:30 a.m with prayer from the Chairperson. The Chairperson then called for introduction of those present before welcoming the meeting to deliberate on the day's agenda.

MIN.NO.2/DC-F/2018: CONFIRMATION OF MINUTES

Agenda deferred

MIN.NO.3/DC-F/2018: MEETING TO DELIBERATE ON THE COUNTY GOVERNMENTS RETIREMENT SCHEME BILL, 2018 WITH THE COUNTY PENSIONERS ASSOCIATION (CPA)

The Chairman of CPA appeared before the Committee accompanied by Members of the the Association. The Chairperson proceeded to invite him to make submissions regarding the County Governments Retirement Scheme Bill. He stated as follows, That:-

(a) They were supportive of any process that would benefit the current employees of County Governments as long as it did not disadvantage the existing pensioners who were already receiving their monthly Pension from their respective schemes.
(b) They were concerned that the Bill was proposing a merger between Laptrust and Lapfund.
(c) Laptrust scheme should not be merged with other schemes as this may lead to loss of their pension funds due to investments that were oingoing..
(d) They did not support the reduction of contribution from 12% to 7.5% as it would to reduction of pension entitlement upon retirement. Further the reduction would affect their yearly increment received as a result of the 12% contribution.
(e) The Bill would create two classes of pensioners, that is, those being deducted 12% and those being deducted 7.5% of pensionable emoluments.
(f) At that time, members of Laptrust do not contribute to NSSF however, the Bill refers to contribution to NSSF.
(g) Lapfund is a provident fund, whose members are paid off upon retirement, while laptrust pays a part lumpsum and puts its members on a payroll for life. This raises concerns with regards to their pension.
(h) The proposal to do away with their Board of Trustees, in which currently have representation as Pensioner. These are people they know and hold accountable for affairs of their scheme.
(i) The combined arrangement under that the Bill seeks to achieve between Laptrust and Lapfund should be one of a pension scheme and not a provident fund.
(j) They support the County Pension Scheme Bill, 2017 as opposed to the County Governments Retirement Scheme Bill, 2018 in consideration.
(k) The Legal Notice (Local Authorities Pensions Trust Rules, 2007) establishing Laptrust should not be revoked.

They propose for the Scheme to be a pension scheme and are content with Laptrust.

MIN.NO.4/DC-F/2018: MEETING TO DELIBERATE ON THE COUNTY GOVERNMENTS RETIREMENT SCHEME BILL, 2018 WITH THE CLINICAL NURSING SOCIETY OF KENYA

The Society presented as follows: -

They oppose the Bill and contend that they were not involved in the formulation of the Bill. They propose the fast racking of the County Pension Scheme Bill, 2017.Their submissions were anchored on the following facts-

1. That after 2013 General elections there were a number of proposals of how to establish a pension scheme at the County Level;
2. In 2015 stakeholders from all sectors converged in Naivasha and charted a way forward
3. That after Naivasha the numerous Bills that had been introduced in both Houses were abandoned in favour of the County Pension Scheme Bill which after approval by the Senate was sent to the National Assembly in 2017
4. That to conclude the process the National Assembly in 2018 again invited for submissions that stakeholders submitted.
5. The aforementioned Bill is similar to the one being fronted by the Nairobi Senator at the Senate of which we made a similar position.
6. The introduction of numerous Bills by Honourable Members touching on the same subject raises integrity issues on the entire process.

They propose the following amendments-

The Bill be amended in the long title by deleting the words "County Governments Retirement Scheme" and substituting therefor the words "County Pension Fund"

Justification

The title of the Bill is restrictive with the meaning and application limited and solely meant for the County Governments. There is need to amend it to make it shorter, simple and inclusive and succinct.

Clause 6

The Scheme be amended in clause 6 by deleting and substituting therefor the following paragraphs-

(3) The Board shall comprise nine Trustees appointed by the Sponsors vide a resolution of the Council of Governors and gazetted by the Cabinet Secretary and shall comprise of-

(a) a representative of the Council of Governors;

(b) a representative of the Public Service Commission;

(c) a representative of the County Public Service Boards;

(d) a representative of the County Assembly Service Boards;

(e)five other nominees from county governments appointed by five most representative employee Unions. Provided only that two shall be of the opposite gender and one shall represent people with disabilities.

Justification

The Board proposed under the Bill undermines the devolved system of government and in extensor the Constitution of Kenya, 2010.

Clause 24(1)

The propose amendment to clause 24(1) on contribution and propose the insertion of the following-
"an amount equal to twelve percent (12%) of his pensionable emoluments, or higher or lower rate as may be prescribed by the Board" immediately after the word "Scheme."

Clause 24(2)
The propose amendment to clause 24(2) on contribution and propose the insertion of the following-
"The Sponsor shall make its own contribution on behalf of the member of the scheme who is his employee at the rate of fifteen (15%) percent of a member's Pensionable Emoluments, or any higher or lower amount as may be prescribed."

Justification

A contribution rate of 12% and 15% is adopted to ensure meaningful savings by the Members and hence guaranteeing higher and adequate pension payouts at retirement thus providing an assurance of enjoyable sunset years.

The rate of 15% provides for continuity as envisaged under the County Governments Act. This is a negotiated rate under the prevailing Collective Bargaining Agreements between the employees and the respective County Governments (former local authorities).

MIN.NO.5/DC-F/2018: MEETING TO DELIBERATE ON THE COUNTY GOVERNMENTS RETIREMENT SCHEME BILL, 2018 WITH THE KENYA NATIONAL UNION OF NURSES
The Kenya National Union of Nurses made their submission on the Bill as follows: -

The Bill sets annual administrative expenses from the fund value up to a maximum of 1.5%

1. The Bill protects contributors money by stating that no funds of the scheme shall be advanced as ordinary loans to anybody other than as provided for in Retirement Benefits Act
2. The Bill has addressed a serious mischief where County Pension fund Services which is a private company was being legislated ass the sole fund administrator contrary to Retirement Benefits Act
3. It provides for an internal administrator that they support as a union.
4. It does not purport to amend other law as the County Pension Scheme Bill purported to.
5. The Bill addresses satisfactorily how employees of the two schemes shall be handled at the commencement of the Act
6. It addresses the operation of the existing schemes.

They proposed the following amendments:-

Clause 6(2)(d)

Delete the word two and insert the word five, delete word umbrellas after county and insert the word county after representing.

Delete entire Clause 6(2)(e)

Delete clause (f) and insert clause e.

Justification

Ordinarily all (national and state corporation employees) public servants are not automatic members of the fund hence they can't be given representative where they have no interest. It is not feasible to conduct an election to get workers representations from forty seven county government plus other related organization as it will be a very expensive exercise.

Members belong to trade union for corporate representation, hence unions representing county governments employees, should nominate the trustees on behalf of their members.

Clause 9

Delete the word three and insert the word five

Justification

Trustees should have enough time in office to ensure that they lay down their strategic plan and implementation. If adequate period is not accorded, it will create an avenue for intimidation and manipulation.

Our political system is molded on five year term, this should be replicated in all arms of government.

Schedule 5.17

Clause 2(1)

Delete number 5 after the word section and insert number 6

Delete number 5 and insert number 6 before the last word section in the second last paragraph and delete word or and letter e.

Justification

These are typographical error, since trustees are found in Clause 6 and not 5

MR. JOHN K. BIIY

He stated that:-

1. The various Bills concerning pensions needs to be harmonized as processing separate Bills is a waste of resources and duplicates the legislative process.
2. They were involved in the formulation of County Pension Scheme Bill, 2017 and urge its provisions be incorporated in the provisions of the County Governments Retirement Scheme Bill, 2018.
3. They propose an amendment of the long title of the Bill that is restrictive and propose it be amended to read as follows- County Pension Fund Bill."

HON. JOE DONDE, CHAIRMAN COUNTY PUBLIC SERVICE BOARDS-SIAYA

He submitted that:-

1. The Bill is a culmination of wide stakeholder consultative meetings that was undertaken in Naivasha.
2. He notes that the National treasury and the Cabinet are spearheading the enactment of the Bill through the National assembly. This is the proper Bill for the establishment of a Retirement scheme for County Government Employees.

He proposed the following amendments:-

(a) Clause 55(1) of the Bill to be amended by inserting the words "CPF Umbrella Retirement Fund, CPF Individual Retirement Fund shall upon the commencement of this Act be deemed to be a member of the Scheme."
(b) Clause 55(3), delete the words "and subject to any suitability test conducted by the Board of trustees" and replace it with "to be determined by the State Corporation Advisory Committee (SCAC)"

He proposed that in the Memorandum, objects and reason Part Delete "the repeal of Local Authorities Provident Fund" as its not provided for in the main body part 5 in any case the Bill proposes to close LAPFUND for new members while existing members continue to draw their benefits from the Fund until the last person exits.

MIN.NO.6/DC-F/2018: MEETING TO DELIBERATE ON THE COUNTY GOVERNMENTS RETIREMENT SCHEME BILL, 2018 WITH THE KENYA COUNTY GOVERNMENT WORKERS' UNION

They stated that:-

1. The Bill is a risk to the defined benefits scheme that they have been operating. There is a debt owed by County Governments to the schemes.
2. They are concerned by the number of Bills proposed to address the issue of County Government Pensions.
3. They propose that public participation on the Bill should be conducted in different Counties to ensure the views of all stakeholders are taken into consideration.
4. They propose to maintain CPF and Laptrust as the administrator of the new Scheme.
5. The Local Authorities Provident Fund Act and Local Authorities Pension Trust Rules, 2007 should not be repealed.

They proposed the following amendments:-

Clause 2

The definition of 'Pensionable Emoluments' to read, salary and house allowance.

Justification

Salary is defined as basic and house allowance in the former local Authorities Collective Bargaining Agreement.

The definition lowers the current amount of contribution of both employee and employer. It Diminishes benefits of existing members.

Clause 4(2)(d)

Delete subsection word (d)

Justification

Lending pension money is a high risk affair and defaulting on debts is worse than a bad investment.

Clause 5(3)

The clause to read; The scheme shall be a defined contribution scheme providing social security for county government and associated organizations employees.

Justification

The existing schemes are occupational schemes which were built by County Government employees and Water companies since 1920s and are deduction from salaries for many years plus their employers contributions.

Clause 6(2)(e) and (d)

Clause 6(2)(d) and (e) be merged.

The new (d) to read; Five persons nominated by trade Unions representing county Government employees on the basis of the number of members.

The clause seeks to convert an occupational scheme in to a National public scheme which takes away the rights of Members.

Justification

Trade Unions represents Members and majority of county Government employees are unionized.

Members slots have been misinterpreted and E (misused before where senior managers are appointed only to support sponsors agenda and decisions made are skewed.

It is not practical to get all county employees in 47 counties to elect/nominate a representative of members.

Clause 24

Clause 24 (1)

24(1) To read; Every member shall contribute 12% of pensionable emoluments to the scheme.

24(2) To read: Every sponsor shall contribute to the scheme 15% of the pensionable emoluments.

Justification

Currently all members contribute at 12% employee and 15% employer. A reduction in the contribution/savings by employee will result in diminishing employee benefits which is unlawful. The rate of 12% was negotiated in previous Collective Bargaining Agreements.

Clause 24(d)

Add a sentence to read;

All contributions to the scheme by members and sponsors shall be reduced by the amounts of the contributions to the NSSF by and in respect of members. The Defined Benefits Members shall be exempted.

Justification

This clause applies to Define contribution members.

The closed Defined benefits scheme to be allowed to pay benefits until the last pensioner is paid and must be exempted from Tier I and Tier II NSSF contributions.

Clause 24(6)

Delete last sentence 'or before any other day which may be notified in writing and approved by Authority.

Justification

It is allows sponsors to be late with contributions.

Clause 52

Clause 52 should be deleted. All employee contributions should be at the rate of 12%.

Justification

Rules should not be bend to accommodate another member selectively. All members to enjoy same terms and conditions.

Clause 55 (6)

Members currently in the LAPTRUST Defined Benefit Scheme should continue having benefits based on the formula (promise) of the Defined Benefit Scheme until the last pensioner is paid.

Justification

The DB scheme is unique in its form and the transfer/ conversion to the DC scheme diminishes the employees' returns. Lacks professionalism and protection of benefits.

In the year 2012 Treasury allowed Laptrust DB scheme to continue paying benefits to members until the last pensioner is paid.

Clause 56(2)

To read; LAPTRUST and LAPFUND To be merged before commencement of the Act. The schemes should not be closed but a professional merger involving all stakeholders must be done. That will not collapse one scheme to another and that will not disadvantage any member.

Justification

There is no justifiable rationale for closing schemes that have been running to give life to a new one against the wish of members.

Ambiguity in the proposed Bill, lacks provision for management of closed schemes assets and liabilities which may be a window for embezzlement.

MIN.NO.7/DC-F/2018: MEETING TO DELIBERATE ON THE COUNTY GOVERNMENTS RETIREMENT SCHEME BILL, 2018 WITH THE NAIROBI COUNTY MCAS

They submitted that:-

1. Members of county assemblies are major stakeholders on pension matters relating to counties since the operationalization of the counties, we have looked forward to transition of retirement benefits schemes to serve the devolved government.
2. They support the Bill. They note that the Bill proposes a single institution to handle retirement benefits matters for the county government employees, MCAs and affiliated companies which will remove the current confusion where employee of one institution are members of different schemes and they don't know how to choose.
3. The Bill further offers diverse retirement products including pensions, provident annuity, income drawdown and mortgage guarantee to accommodate various preferences.
4. The Bill proposes immediate vesting of benefits to a member upon remittance by the Sponsor.
5. The proposed scheme is modeled like other public scheme with an internal administrator to cut on costs and give control to the Board.

6. The Bill reflects agreement by stakeholders after several Bills had been tabled to safe guard divergent ad personal interests.

They proposed the following amendments:-

a) They proposed transition of the institutions as opposed to closure provided in Clauses 55 and 56. This will ensure continuity and avoid losses and scandals associated with dissolution of public entities.
b) The transition should also be done after thorough auditing of finances and systems of existing schemes to establish their status and to make decisions on how to deal with various issues to avoid transiting baggage.
c) Phasing of contributions as provided in Clause 52 should be deleted entirely.

MIN.NO.8/DC-F/2018: MEETING TO DELIBERATE ON THE COUNTY GOVERNMENT RETIREMENTS SCHEME BILL, 2018 WITH THE FORMER COUNCILORS ASSOCIATION

They submitted as follows:-

1. The Constitution of Kenya, 2010 did not address issues of former councilors.
2. The Councilors had petitioned Senate, that recommended a payment of a one-off honorarium of Kshs. 1.5 million per former councilor having served a minimum of one term since independence, a monthly pension of Kshs. 30,000 and a state sponsored health insurance.
3. They propose an amendment to Bill that takes into consideration the recommendations by Senate.

MEMBERS' DELIBERATIONS

The Committee observed that their submission was out of scope of the Bill since the proposed scheme is meant to be a contributory one by officers of county governments and hence their issues could not be addressed by the Bill in its current form. The representatives of the former Councilors were advised to seek redress on their grievances by way of a Petition to the House. Hon. Shakeel Shabbir, MP was requested to assist them in the preparation of the Petition.

MIN.NO.9/DC-F/2018: ADJOURNMENT

There being no other business to deliberate on, the meeting was adjourned at 1.30pm. The next meeting will be held the same day at 2.30pm.

HON. JOSEPH K. LIMO, MP

(CHAIRPERSON)

2/6/2018