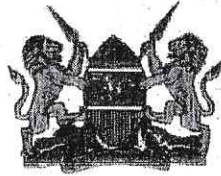


BOMET COUNTY



THE COUNTY ASSEMBLY

**REPORT OF THE COUNTY ASSEMBLY
COMMITTEE ON TRADE, TOURISM,
INDUSTRY AND COOPERATIVES ON THE
BOMET COUNTY ESTABLISHMENT BILL,
2014**

DATE 30-04-2014



PREFACE

Honorable speaker sir,

On behalf of the committee on Trade, Tourism, Industry and Cooperatives and pursuant to the provisions of the standing orders 181 (3), it is my humble pleasure and pleasant privilege to present to you and by extension to the honorable house the report of committee on 'Trade, Tourism, Industry and Cooperatives' findings after public participation albeit once on the Bomet County Agencies Establishment Bill, 2014.

MANDATE OF THE COMMITTEE

The committee derives its mandate from standing order in the second schedule which stipulates that;

All trade development and regulations, Markets, Trade licenses (excluding regulations of professionals), Fair trading practices, Local tourism, Cooperative societies;

The power to Investigate, Inquire and Report on all matters of administration management, activities, operations and estimates of their sector;

Mandated to Study programmes and policy objectives of developments and effectiveness of implementation of their sector;

To Study and review all county legislation touching their sector.

In addition, to make reports and recommendations to County Assembly as often as possible including recommendation of proposed legislation.

Further to this the committee is also required to submit half yearly reports to the liason committee.

COMMITTEE MEMBERSHIP

The Trade, Tourism, Industry and Cooperatives comprises, as currently constituted, of the following honorable members

1. Hon. Chepkoech Leah (Chairperson)
2. Hon. Serbai Robert (Vice Chairperson)
3. Hon. Korir Joyce (Member)
4. Hon. Metet Robert (Member)
5. Hon. Rotich Taplelei (Member)
6. Hon. Kipsiele Sammy (Member)
7. Hon. Korir Philip (Member)
8. Hon. Molel John (Member)
9. Hon. Chepkwony Patrick (Member)

CHALLENGES

The exercise came to its conclusive end not without some surmountable challenges. Quite a number of challenges were encountered; however, members were equal to the task. It is also worth noting that challenges are to be appreciated in any working environment for the challenges indeed offers invaluable learning lessons and every time the difficulties are overcome we stand tall, feel appreciated and give a pat to each others' shoulder for a job well done.

Speaker sir, allow me to name a few.

First was the need to in co-operate the views of the public right from the ward level. This is in line with the Constitution of Kenya 2012 Article 196 (1) (b) which states

"A county Assembly shall facilitate public participation and involvement in legislative and other business of the Assembly and its committee. Further to this, the County Government Act under section 87 provides for the guidelines of public participation.

I wish to categorically state that this bill was subjected to one public participation at ST. Bakhita Hall. The public participation at ST. Bakhita was a success and members of the public gave out their opinions, however, they strongly advised that such public participation be taken to the ward level in future.

Speaker sir, quite another notable challenge was the desire to meet the time limits stipulated. Over time, I, as the Chairperson, and on numerous occasions had to rise and give statements on the progress of the committee on the Bill and particularly seeking the extension of time.

APPRECIATION

I, on behalf of the committee want to thank each member of the committee and the membership of this honorable house for finding time out of their busy schedules to give their high-level critique, and their valuable recommendations. Kindly members feel appreciated.

Speaker sir, I do not wish to be an ingrate by forgetting to have a special mention of the assistance from the office of the speaker and that of the clerk. These offices, by and large, kept us on our toes just to be able to ensure that this committee delivers their mandate and table the report in time. **Speaker sir**, the secretariat team also has a part in the success of this report, however, I particularly noticed that they are particularly ill equipped with the tools like laptops that help them to facilitate easily, efficiently and effectively the task before them. It is our prayer that they be given the necessary materials and equipments. This is not to say they did not perform but rather that that team did a splendid work. To that team I say a big thank you. Another group of persons, which more often than not, is quite forgotten, is the group comprising of the members of the public. This report would not have been complete without their input. Last but not the least to mention is the legal department, which gave their legal opinions so that the amendments proposed are in tandem with the supreme law of the land. To all these departments, on my capacity as the chairperson of the committee and on behalf of the committee members I wish to register my appreciation.

Mr. speaker sir, on behalf of the Committee, I now wish to dutifully table the report and urge the members of this respected house to adopt it and its recommendations therein. Speaker sir, I wish to mention that as much as I implore upon this honorable house to adopt this report, it should not be construed to mean that the committee adopted it in its entirety but rather as attached herewith, several recommendations were made both by the public and committee members. I, on my capacity as the chairperson still appeal to this respected and honored House to see it prudent to further suggest any concerned that might have been overlooked.

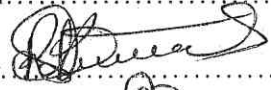
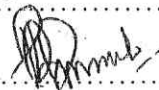
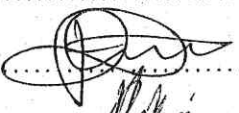
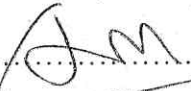
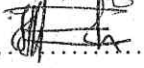
HON. CHEPKOECH LEAH, Chairperson, Trade, Tourism, Industry and Cooperatives' Committee.

SIGNED 

DATE 30-04-2014

OWNERSHIP OF THE REPORT

We members of the Trade, Tourism, Industry and Cooperatives do hereby append our signatures against our names to this report to affirm the correctness of the contents and support for the report

1. Hon. Chepkoech Leah.....
2. Hon. Serbai Robert.....
3. Hon. Metet Robert.....
4. Hon. Korir Joyce.....
5. Hon. Chepkwony Patrick.....
6. Hon. Korir Philip.....
7. Hon. Molel John.....
8. Hon. Rotich Taplelei.....
9. Hon. Kipsiele Sammy.....

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REPORT OF THE COMMITTEE ON TRADE, TOURISM, INDUSTRY AND COOPERATIVES ON PUBLIC PARTICIPATION ON THE BOMET COUNTY ESTABLISHMENT BILL, 2014.

EXECUTIVE SUMMARY

The County Assembly committee on Trade, Tourism, Industry and Cooperatives resolved that The Bomet County Agencies Establishment Bill, 2014 be debated on and further amendments, which will be seen by the House to be befitting, be adopted. Honorable members this report has taken the committee their valuable time and they have wholeheartedly contributed to their level best.

This report gives detail information that entails The Bomet County Agencies Establishment Bill, 2014 forwarded to the County Clerk of the Assembly by Executive member through the County Attorney on 14th March 2014. The main object of this Bill is to make provisions for the establishment, control management and regulation of the County Agencies. In a synopsis, the Bill seeks to;

Part I: Provides for preliminary matters.

Part II: Provides for establishment and powers of County Agencies.

Part III: Provides for the composition of the Boards, its management and general meetings of the Boards. The part also sets the quorum for the meetings of the Board. The financial year of the County Agencies is also provided for in this part. The part further provides for the method of removing a Board member of the County Agency. It also provides that the majority shall make the decisions of the Board meetings and that a member or the chief executive shall have a right to have his or her opinion recorded.

Part IV: Provides for the financial provisions of the county agencies.

Part V: Provides for the establishment of the County Agencies Advisory Committee whose main function is to advise on all matters relating to the county agencies and specifically to advise on all matters relating to the county agencies and specifically to advise on all running of the counties, transfer of staff, advise the Governor on the establishment, reorganization or dissolution of county agencies etc.

Part VI: Deals with the miscellaneous provisions.

VIEWS CRITIQUES AND RECOMMENDATION OF THE PUBLIC MEMBERS

Generally the public participated albeit once but contributed immensely. Some of the concerns the public raised have been in cooperated with the views of the committee members.

PROPOSED AMMENDMENTS ON THE BOMET COUNTY AGENCIES ESTABLISHMENT BILL

Honorable speaker sir;

Members deliberated on the Bill, did in-cooperate the views of the public after carefully interrogating the validity of such contribution in respect to the Constitution of Kenya and any other written laws to ensure that such amendments are de jure. The public contributions that were not consistent with the written laws were not given special consideration.

Further, the committee members also made their contributions in form of amendments. Here therein are the amendments of the Bill.

PART I – PRELIMINARY

THAT “Public Investment Committee” means Public Investment Committee of Bomet County. (This amendment be introduced between the “Government” and the “Tribunal”)

PART II: ESTABLISHMENT AND POWERS OF COUNTY AGENCIES

The amendment(s) on section 3 is;

Sub-section 1

The sub-section after amendment should thus read;

- (1) The Governor shall, by an act of the County Assembly establish a county agency as a body corporate to perform the functions specified in the order.

PART III – BOARDS AND MANAGEMENT OF COUNTY AGENCIES

The amendment(s) on section 6 is;

Sub-section (2)

The Sub-section after amendments should thus read;

- (2) In the appointment under subsection (1) (e), the Executive Member responsible shall have regard to the principle of gender equity and persons with disability.

The amendment(s) on section 8 is;

Sub-section (1) (a) and (b)

The sub-section after amendment should thus read;

- (a) the Chairperson for a period of three years;

(b) a member appointed under section 6 (1) (e) for a period of three years.

The amendment(s) on section 10 is;

(The introduction of subsection (2));

This sub-section after amendment should thus read;

(2) To provide that a member can be removed after serving for a period of two and half years.

PART IV CONTROL OF THE FINANCES, ETC. OF COUNTY AGENCIES

The amendment(s) on section 24 is;

Sub-section (2) and (4)

These sub-sections after amendments should thus read;

(2) Subject to sub-section (1), the Executive Member for the time being responsible for finance may, in consultation with the Committee, make rules for the acquisition and disposal of assets by county agencies and different county agencies; and such rules shall be brought to the notice of the county agencies and other persons affected thereby; and copies of the rules shall be made available to the public.

(Sub-section (4) be amended to read (3))

This section after amendment should thus read;

(3) This section does not apply with respect to procurement or disposal to which the Public Procurement and Disposal Act applies.

The amendment(s) on section 26 is;

Sub-section (2)

This sub-section after amendment should thus read;

(2) The chief executive of a county agency may be summoned by the Public Investments Committee to answer on behalf of the Board any question arising from a report, including a special report, of the Director of Audit or the Auditor- General concerning the county agency.

The amendment(s) on section 29 is;

Sub-sections (1), (2), (3), (4) and (5) plus the side note.

(Members recommended that sub-sections (1), (2) and (5) be deleted in its entirety.)

(Sub-section (3) should therefore read section 29 subsection (1))

This sub-section after amendment should thus read;

29 (1) The Director of Audit shall have the following powers without prejudice to any other written laws.

(Sub-section (4) should therefore read subsection (2))

This sub-section after amendment should thus read;

(2) The Committee or the Director of Audit may, if they consider it desirable, conduct special investigations of any county agency

The side note

The side note of section 29 after amendment should thus read;

Powers of the Director of Audit.

The amendment(s) on section (30) is;

Sub-section (1) plus the side note.

This sub-section after amendment should thus read;

(1) In any investigation conducted under this Act, the Director of Audit shall have power

The side note

The side note of section 30 after amendment should thus read;

Powers of Director of Audit

The amendment on section 31

Side note

The side note of this section after amendment(s) should thus read;

Application for written reasons for Director of Audit's decision

The amendment(s) on section 32 is;

Side note

The side note of section after amendment should thus read

Appeals against decision of the Director of Audit

The amendment(s) on section 33 is;

Sub-section (3) (b) (i) and (ii), (9) and (11).

These sub-section after amendments should thus read

- (i) the Council of the Law Society of Kenya from amongst advocates of not less than three year's standing; and
- (ii) the Council of the Institute of Certified Public Accountants of Kenya from amongst accountants of not less than three year's standing.

(9) Any costs not recovered from security ordered under paragraph (i) of sub-section (8) shall be recoverable as a civil debt.

(11) Every appointment under this section other than an appointment under sub-section (5) shall be by name and by notice in the Gazette and shall be a renewable term of not more than five years with respect to the chairperson and not more than three years with respect to the members.

The amendment(s) on section 34 is;

Sub-section (1) plus the side note

The sub-section (1), (2), and (3) after amendments should thus read

- (1) The Director of Audit or the person surcharged may, if aggrieved by the decision of the Tribunal, within thirty days appeal to the court which shall have power to confirm, vary or annul the decision of the Tribunal.
- (2) The procedure in relating to appeals in civil matters from subordinate courts to the courts and the powers of the court in such appeals shall govern appeals from the Tribunal to the court.
- (3) The decision of the court under this section shall be final and shall not be subject to further appeal.

Side note after amendments should thus read

Appeals to the court.

The amendment(s) on section 35 is;

Sub-section (1), (2), (3) and (4).

These sub-sections after amendments should thus read;

- (1) Every sum certified by the Director of Audit to be due from a person shall be paid by that person to the county agency within thirty days after it has been certified or, if an

appeal with respect to the sum has been made, within fourteen days after the appeal has been disallowed, abandoned or has failed by reason of the non-prosecution thereof.

(2) The Director of Audit shall take all necessary steps in any competent court to recover from the persons surcharged any sum which is not paid in accordance with subsection (1)

(3) In any proceedings for the recovery of any sum which is not paid in accordance to subsection (1) the certificate of Director of Audit shall be conclusive evidence that the sum is due and payable by the person surcharged.

(4) On the production of the Director of Audit's certificate, the Court shall give a decree for the sum sued for and the decree under the Civil Procedure Act any rules made thereunder.

The amendment(s) on section 36 is;

Sub-section (1) and (2) plus the side note

These sub-sections after amendment should thus read;

(1) Any expenses incurred by the Director of Audit in the defence of any allowance, disallowance or surcharged shall, so far as not recovered from any other party and except as may otherwise be ordered by the court or the Tribunal, be reimbursed to him by the agency the subject of investigation.

(2) The costs and expenses incurred by the Director of Audit in any legal proceedings taken under section 35 (2) shall if not recovered from any other source, be borne by the county agency that is the subject of investigation.

Side note should thus read after amendment

Expenses of the Director of Audit

PART V- THE COUNTY AGENCIES ADVISORY COMMITTEE

The amendment(s) on section 37

Sub-section 37 (1) (d), (e), (3), (4) and (5)

This sub-section after amendment should thus read

(d) the Director of Audit;

(e) four other members appointed by the Governor with the approval of the County Assembly.

(sub-section (2) be deleted in its entirety.)

(Rearrangements of sub-sections after amendments should thus read; subsection (3) be (2), (4) be (3) and (5) be (4).

The amendment(s) on section 38 is;

Section 38, 38 (c)

(the number (1) be removed)

This section after amendment should thus read;

38. The Committee shall advise on the matters relating to county agencies and perform any function it is required by this Act to perform and in addition shall-

(c) unless written law provides, advise on the appointment, removal or transfer of officers and staff of county agencies, the secondment of public officers to county agencies and the terms and conditions of any appointment, removal, transfer or secondment;

PART VI-MISCELLANEOUS PROVISIONS

The amendment on section 40.

Section 40 and side note.

This section after amendment should thus read;

40. A county agency which, or an officer thereof who, fails to render or submit or make available for inspection any record, book, account or information required by or pursuant to this Act, or which or who restricts the Director of Audit in the performance of his duties commits an offence cognizable to the police and punishable by a fine of five hundred thousand shillings or imprisonment for a term of five years or both and section 23 of the Penal Code shall, where the offence is committed by a county agency, apply mutatis mutandis.

Side note

Side note of section 40 after amendment should thus read;

Offences and penalty.

The amendment(s) on Section 41

Section 41.

This section after amendment should thus read;

41. The Governor may make regulations generally with the approval of the County Assembly for the better carrying into effect of the Provisions of this Act and the powers conferred by this section may be assigned to any person in accordance with the law.

MEMORANDUM OF OBJECTS AND REASONS

The suggested amendment for Memorandum of Objects and Reasons is the statement "The enactment of this Bill will not occasion additional expenditure of public funds" be deleted.

Robert Bett be substituted with Chepkoech Leah. Thus to read;

CHEPKOECH LEAH, Chairperson, Trade, Tourism, Industry and Cooperatives Committee.

REFERENCES

County Government Act 2012 volume 1A

Constitution of Kenya 2012

Appendix: Minutes

MINUTES OF THE COMMITTEE ON TRADE, TOURISM, INDUSTRY AND COOPERATIVES HELD AT KISUMU SUNSET HOTEL ON 25TH APRIL 2014 AS FROM 1520 HOURS

Members present

1. Hon Leah Chepkoech
2. Hon. Robert Serbai
3. Hon. Rotich Taplelei
4. Hon. Patrick Chepkwony

Members absent

1. Hon. Korir Joyce
2. Hon. Metet Robert
3. Hon. Kipsiele Sammy
4. Hon. Philip Korir
5. Hon. Molel John

Agenda

1. Preliminaries
2. Report Ratification on The Bomet County Agencies Establishment Bill, 2014.
3. A.O.B

Min 82/04/2014 PRELIMINARIES

The chairperson called the meeting to order then requested hon. Rotich Taplelei to open the meeting with a word of prayer. The chairperson then said that the members are late and the inconveniencies were occasioned by the finance department which filed to pay them in time. She was however, happy that the meeting was still to go on in spite of the challenges.

Min 83/04/2014 Report Ratification on The Bomet County Agencies Establishment Bill, 2014.

The chair then welcomed the committee's clerk to highlight areas that had been hitherto suggested for amendments. The committee's clerk went through areas that were suggested for amendments.

The following sections in the relevant parts were brought to the attention of the honorable members for their consideration on the kind of amendments to be done.

PART I

THAT the word Public Investment Committee be introduced between the sentence of the "Government" and the sentence of "Tribunal"

The Public Investment Committee is to mean a County Public Investment Committee.

PART II

THAT section 3 (1) be amended to read "The Governor shall, by an act of the County Assembly establish a county agency as a body corporate to perform the functions specified in the order."

PART III

THAT The amendment to adopted on section 6 be;

Sub-section (2)

The bill after amendments should thus read;

6 (2) In the appointment under subsection under subsection (1) (e), the Executive member responsible shall have regard to the principle of gender equity and persons with disability.

The amendments on section 8 are as follows;

Sub section (1) (a) and (b)

The bill after amendments should thus read;

8 (1) (a) the Chairperson for a period of three years;

(b) a member appointed under section 6 (1) (e) for a period of three years.

The amendment on section 10 is the introduction of subsection (2);

This section after amendment should thus read;

10 (2) To provide that a member can be removed after serving for a period of two and half years.

PART IV

THAT The amendment on section 24 be;

Sub-section (2)

This section after amendments should thus read;

24 (2) Subject to subsection (1), the Executive member for the time being responsible for finance may, in consultation with the Committee, make rules for the acquisition and disposal of assets by county agencies and different county agencies; and such rules shall be brought to the notice of the county agencies and other persons affected thereby; and copies of the rules shall be made available to the public

Sub-section (4) be amended to read (3)

This section after amendments should thus read;

(3) This section does not apply with respect to procurement or disposal to which the Public Procurement and Disposal Act applies.

The amendment on section 26 be;

Sub-section (2)

This section after amendments should thus read;

(2) The chief executive of a county agency may be summoned by the Public Investments Committee to answer on behalf of the Board any question arising from a report, including a special report, of the Director of Audit or the Auditor- General concerning the county agency.

(Members recommended that section 29 sub-section (1), (2) and (5) be deleted in its entirety.)

Section 29 subsection (3) should therefore read section 29 subsection (1)

This section after amendments should thus read;

29 (1) The Director of Audit shall have the following powers without prejudice to any other written law.

Section 29 subsection (4) should therefore read section 29 subsection (2)

This sub-section after amendments should thus read;

(2) The Committee or the Director of Audit may, if they consider it desirable, conduct special investigations of any county agency

The side note of section 29 should thus read powers of the Director of Audit.

The amendment on section (30) be;

Sub-section (1) and the side note.

This section after amendments should thus read;

(2) In any investigation conducted under this Act, the Director of Audit shall have power

(Side note)

Powers of Director of Audit

The amendment on section 30 be;

Sub-section (1)

Section 30 (1) In any investigation conducted under this Act, the Director of Audit shall have power-

The side note of section 30 should thus read powers of Director of Audit after investigations.

The amendment on section 31 be;

Side note

The side note after amendment should thus read;

Application for written reasons for Director of Audit's decision

Amendments on section 32 be;

Side note

The side note after amendment should thus read Appeals against decision of the Director of Audit.

Amendments on section 33

Sub-section (3) (b) (i), (ii)

The subsection after amendments should thus read

Subsection (3) (b) (i) the Council of the Law Society of Kenya from amongst advocates of not less than three year's standing; and

Section 33 subsection (3) (b) (ii) the Council of the Institute of Certified Public Accountants of Kenya from amongst accountants of not less than three year's standing.

PART V

THAT Section 37 The amendment on this section be;

Subsection (1) (d) and (e), (2) (3), (4) and (5)

Subsection (1) (d) be amended

This sub-section after amendment should thus read

(d) the Director of Audit;

Subsection (1) (e) be amended

This sub-section after amendment should thus read *

(e) four other members appointed by the Governor with the approval of the County Assembly.

Section 37 (2) be deleted in its entirety.

Section 37 subsection (3), (4) and (5) after amendments should thus be (2), (3) and (4)

Section 38 (c) unless written law provides, advise on the appointment, removal or transfer of officers and staff of county agencies, the secondment of public officers to county agencies and the terms and conditions of any appointment, removal, transfer or secondment;

THAT The amendments on this section be;

Subsection (1) (e)

The subsection after amendment should thus read

(c) unless written law provides, advise on the appointment, removal or transfer of officers and staff of county agencies, the secondment of public officers to county agencies and the terms and conditions of any appointment, removal, transfer or secondment;

PART VI

THAT The amendments on this section be;

Section 40 and side note.

40. A county agency which, or an officer thereof who, fails to render or submit or make available for inspection any record, book, account or information required by or pursuant to this Act, or which or who restricts the Director of Audit in the performance of his duties commits an offence cognizable to the police and punishable by a fine of five hundred thousand shillings or imprisonment for a term of five years or both and section 23 of the Penal Code shall, where the offence is committed by a county agency, apply mutatis mutandis.

Side note

The side note after amendment should thus read

Offences and penalty.

MEMORANDUM OF OBJECTS AND REASONS

The suggested amendment for Memorandum of Objects and Reasons is the statement "The enactment of this Bill will not occasion additional expenditure of public funds" be deleted in its entirety.

Robert Bett be substituted with Chepkoech Leah.

After amendment, the memorandum of objects and reasons should thus read

CHEPKOECH LEAH, *Chairperson, Trade, Tourism, Industry and Cooperatives Committee.*

The statement "The enactment of this Bill will not occasion additional expenditure of public funds be deleted in its entirety

Min 84/04/2014 A.O.B

Members suggested that some legal implications on their suggested amendments be sought before the report is tabled.

There being no other business the meeting was adjourned at 1823 hours after the last prayers from hon. Leah Kirui.

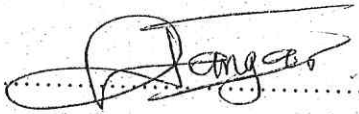
CONFIRMATION

Chepkoech Leah (Committee's Chairperson)

Signature 

Date 20-04-2014

Mr. Kiplang'at Nehemiah (Committee's Clerk)

Signature  date 20/4/2014