

REPUBLIC OF KENYA



COUNTY GOVERNMENT OF KITUI

THE COUNTY ASSEMBLY

FIRST ASSEMBLY- FIFTH SESSION

SECTORAL COMMITTEE ON HEALTH AND SANITATION

**REPORT ON CONSIDERATION OF THE KITUI COUNTY HEALTH
FACILITIES MANAGEMENT COMMITTEES (AMENDMENT) BILL, 2016**

DATED: 16TH MARCH 2017

**PRINTED BY;
THE CLERKS OFFICE,
KITUI COUNTY ASSEMBLY.
MARCH 2017**

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1.0 PREAMBLE.

Mr. Speaker Sir, the Kitui County Health Facilities Management Committees (Amendment) Bill, 2016, was published in the Kitui County Gazette Supplement No. 6 (Bills No. 4) on 18th October, 2016, pursuant to Section 23 of the County Government Act No. 17, of 2012.

Mr. Speaker Sir, The purpose of the Bill is to amend Sections 5,8,22 and 25 of the Kitui County Health Facilities Management Committees Act, 2014 (Principal Act), which was passed by the Assembly on 24th July, 2014. The principal Act was forwarded to the Governor for assent on 19th August, 2014. The Governor declined to assent to the Bill and returned the same with a memorandum on 6th October, 2014.

Mr. Speaker Sir The Assembly however declined to consider the memorandum as it was time barred as per the provisions of section 24(2) (b) of the County Government Act, 2012 which states in part that ‘the Governor shall within fourteen days after receipt of a Bill assent to the Bill or refer the Bill back to the County Assembly with a memorandum outlining the reasons for the referral’.

Mr. Speaker Sir Section 24(6) of the County Government’s Act stipulates that if the Governor does not refer the Bill back to the County Assembly within fourteen days after receiving it, the Bill is deemed to have been assented to on the expiry of that period and therefore becomes law. However the Kitui County Health Facilities Management Committees Bill, 2014 could not take effect since it was not published in the Gazette in accordance with Article 199(1) of the Constitution. Article 199(1) provides that county legislation does not take effect unless published in the Kenya Gazette.

Mr. Speaker Sir, after publication, the Bill, was introduced to the Assembly on 13th December, 2016 through first reading, and stood committed to the Health and Sanitation Committee in line with the County Assembly Standing Orders No. 120 (1).

Mr. Speaker Sir, pursuant to the provisions of Article 196(1) (b) of the Constitution and Standing Order No.120 (3), the committee facilitated public participation through a forum held on 14th February, 2017 in KEFRI chambers as publicized in the Daily Nation Newspaper of 7th February, 2017.

Mr Speaker sir, the Committee on Health and Sanitation would like to appreciate the member of the public who submitted his memorandum pertaining the Bill. The committee considered his views and recommendations before coming up with this final report.

2.0 MANDATE OF THE COMMITTEE

Mr. Speaker Sir, Standing Order No. 190(5) establishes Sectoral committees with specific mandate to among others: **study and review all County Legislation referred to it and make reports and recommendations to the Assembly of proposed legislation**

3.0 COMPOSITION OF THE COMMITTEE.

Mr. Speaker Sir, the current composition of the committee for Health and Sanitation is as follows:

| | |
|-------------------------|------------------|
| Hon Joyce Mutemi | Chairperson |
| Hon Jenniffer Munuve | Vice Chairperson |
| Hon Mary Mbandi | Member |
| Hon John Nyamai | Member |
| Hon Allan Kavindi | Member |
| Hon Vestantinah Chawana | Member |
| Hon Nelson Kitema | Member |
| Hon Stansilous Mulongo | Member |
| Hon Velesi Musyoka | Member |
| Hon Samuel Ikunga | Member |
| Hon Bernard Munyasya | Member |

4.0 OBJECTIVES OF THE KITUI COUNTY HEALTH FACILITIES MANAGEMENT COMMITTEE (AMENDMENT) BILL NO.4, 2016.

Mr. Speaker Sir, The main objective of the Bill is to amend section 5,8,22 and 25 of the Kitui County Health Facilities Management Committee Act 2014 in order to ensure that the County Assembly of Kitui is not directly involved with the functioning of the executive arm of the County Government in line with Article 185 of the Constitution which provides for the principle of separation of powers.

The Bill also seeks to bring on board the County Ministry of Culture, Youth, Sports and Social Services in the management and running of the County's health sector.

5.0 ACKNOWLEDGEMENT

Mr. Speaker Sir, The Committee on Health and Sanitation extends its gratitude to the Speaker of Kitui County Assembly for his guidance, the Office of the Clerk and the staff attached to the committee for the continuous support, assistance and commitment.

Mr. Speaker Sir, on behalf of the Committee on Health and Sanitation, I am privileged to present to the Assembly the report on the Kitui County Health Facilities Management Committees (Amendment) Bill, 2016 for consideration and subsequent approval.

HON JOYCE MUTEMI

CHAIRPERSON, COMMITTEE ON HEALTH AND SANITATION

COUNTY ASSEMBLY OF KITUI.

Report Compiled By: Doris M. Nyamai-Records Management Officer.

6.0 COMMITTEE'S RECOMMENDATIONS ON THE KITUI COUNTY HEALTH FACILITIES MANAGEMENT COMMITTEE (AMENDMENT) Bill, 2016.

Mr Speaker Sir, The Kitui County Health Facilities Management Committees (Amendment) Bill, 2016 was introduced in the Assembly on 13th December, 2016 and stood committed to the committee on Health and Sanitation Pursuant to the provisions of Standing Order No 120(1).

Mr Speaker Sir, The amendment bill seeks to amend section 5,8,22 and 25 of the principal Act. The Governor failed to assent to the bill and returned it with a memorandum citing his reasons for refusal. In the memorandum, His Excellency the Governor raised a constitutional concern that the members of the County Assembly had included themselves in the Nomination Coordinating Committee for level four hospitals, health centers and dispensaries. The Governor was of the view that this amounted to breach of principle of separation of powers as enshrined in the Constitution under Article 185.

Mr Speaker Sir, section 5 and 25 of the principal Act provides that, the area member of the County Assembly in the Sub-County and ward where the hospital, health centre and dispensary is situated, shall be at liberty to attend any meeting of the committee in furtherance of their oversight role under the Constitution and any other relevant role. Further section 8 and 22 of the principal Act provides that the member of the County Assembly will be a Member of the Nomination Coordinating Committee. The problem arises from the fact that the Nomination Coordinating Committee comprises of the member of the County Assembly. The members of the County Assembly are constitutionally mandated to legislate, oversight and represent. They however cannot be part of the implementation process as this would offend the principal of separation of powers. Consequently, the members of the County Assembly cannot be member of the nomination coordinating committee.

Mr Speaker Sir, the County Government Act, 2012 Section 9(2) provides that;

“a member of the County Assembly shall not be directly involved in the executive functions of the County Government and its administration, delivery of services as if the member was an officer or employee of the County Government.

Mr Speaker Sir, through an advisory legal opinion to the County Assembly by the Kenya law reforms Commission, the members of the Nomination Coordinating Committee should be replaced since the coordination committee here is participating in the implementation of the law which amounts to the members of the committee participating in the enactment of the law and in its enforcement which is unconstitutional.

This will serve to ensure the County Assembly of Kitui is not directly involved with the functioning of the Executive Arm of the County Government.

The amendment bill therefore proposes;

- i. Deletion of section 8 and 22 of the principal Act in its entirety.
- ii. Replacing area member of the County Assembly in clause 5 with; ***the County Executive Committee Member for Culture, Youth, Sports and Social Services***
- iii. Replacing area member of the County Assembly in clause 25 with; ***any person appointed from the ministry of Culture, Youth, Sports and Social Services***

7.0 CONCLUSION

Mr Speaker sir, it is the feeling of the committee that the proposed amendments enclosed herein will address the issues raised by his Excellency the Governor in his memorandum. Further, the committee urges the members of the Assembly to pass the amendment bill for it will help in proper management of hospital committees which will lead to proper service delivery in the Health Facilities within the County.