

MACHAKOS COUNTY ASSEMBLY**OFFICIAL REPORT****Tuesday, 24th November, 2015**

The House met at 2.33 p.m.

*[The Deputy Speaker (Mr. Nganga) in the Chair]***PRAYERS****Hon. Deputy Speaker:** Proceed, Clerk.**COMMUNICATION FROM THE CHAIR****TECHNICAL APPEARANCES**

Hon. Deputy Speaker: There is a communication from the Chair, Hon. Members about biometric attendance registration. Hon. Members, the Chair has on very many instances made communication on the disorderly conduct of making technical appearances during plenary sessions and committee meetings just to sign the attendance register.

On 28th July, 2015, the Speaker issued a communication to the effect that the reports generated from the biometric system will be used in computation of members' allowances and that members will be required to log out when leaving the meetings. The same was communicated again on 8th October, but I have information that members are still logging in at the start of the plenary or committee sittings and leaving almost immediately thereafter.

Such acts of misconduct will not be tolerated and all members will be required to log in at the start of the plenary and committee sittings and log out at the end of the sittings, failure to which, the said members' attendance will not be registered. Furthermore, unless a plenary or a committee sitting goes for less than 30 minutes, no member will receive their allowances if they log out before half of an hour lapses. The powers and Privileges committee is now in place and disciplinary procedures will be instituted to the letter against the members who engage in disorderly conduct.

About the official *Whatsapp* group, Hon. Members, a *Whatsapp* group was created to ease communication between the office and members of the county assembly. The page is only meant for official communication but it has now degenerated to a tool for a members and officers to advance their political, social as well as religious persuasions.

It is important to note that this digression from the purpose behind the creation of the group, will not be tolerated and going forward, any member or officer posting irrelevant information in the group will be blacklisted. Therefore Hon. Members, take note.

On Leadership and Integrity code, Hon. Members, the Ethics and Anti-corruption Commission is mandated to enforce and ensure compliance with the provisions of Chapter Six of the Constitution of Kenya 2010 and the Leadership and Integrity Act of 2012. Under section 37 of the Act, each public entity with the state officers is obliged to develop a specific leadership and integrity code for the state officers serving in that public entity. The same is required to be submitted to the commission for approval before each public entity publishes their approved code in the Kenya gazette.

Upon publication in the gazette, those state officers serving in that entity are required to sign and commit to the code. This is a mandatory legal requirement and non-compliance of which, would constitute a violation of Chapter Six of the constitution and the Leadership and Integrity Act of 2012. To this end, the Assembly Rules and Procedure committee together with the powers and privileges committee are in the process of customizing the generic Leadership and integrity code developed by the Ethics and Anti-corruption Commission and the document will be laid in the House on Thursday, this week.

In the mean time, I direct the Clerk to circulate copies of the integrity code to members for information. Thank you. Proceed, Clerk

BILL

Second Reading

MACHAKOS COUNTY REVENUE ADMINISTRATION BILL NO. 3 OF 2015

Hon. Nzeki: Thank you Hon. Speaker. Hon Speaker, I would like to bring this Bill for the second time. Mr. Speaker, Sir, pursuant to standing order 121(1), I wish to move the motion that the Machakos County Administration Bill No. 3 of 2015, be now read a second time. Thank you, Mr. Speaker, Sir.

Hon. Deputy Speaker: Who seconds? You need to call for a seconder.

Hon. Nzeki: I call upon my vice-chairperson, Hon. Bibiana to come and second this Bill.

Hon. (Ms.) B. Nduku: Thank you Mr. Speaker, Sir. I stand here to second the Machakos County Revenue Bill to be read for the second time. Thank you Mr. Speaker, Sir.

Hon. Deputy Speaker: Proceed, Chairman.

Hon. Nzeki: Thank you, Mr. Speaker, Sir

Introduction

Mr. Speaker, Sir, the Machakos County Revenue Administration Bill, 2015 seeks to provide for general administration of taxation and other revenue raising laws, establishment of the office of the County Revenue Collector and also makes provision for related purposes. The Bill was read for the first time in the House pursuant to Standing Order 119 on 29th April, 2015 and thereafter committed to the Finance and Revenue Collection Committee pursuant to Standing Order No. 120 (1).

Mandate of the Committee

Mr. Speaker, Sir, Finance and Revenue Collection Committee was established under the Second Schedule of Standing Orders with specific mandate on all matters relating to the management of county public finance and revenue collection. The committee further draws its mandate from Standing Order No. 190 (5) which outlines the functions of a Sectoral Committee as:- (a) to investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned department; (b) study the programme and policy objectives of departments and the effectiveness of the implementation; (c) study and review all county legislation referred to it;

(d) study, assess and analyze the relative success of the departments as measured by the results obtained as compared with their stated objectives; (e) investigate and inquire into all matters relating to the assigned departments as they may deem necessary, and as may be referred to them by the Assembly; (f) to vet and report on all appointments where the constitution or any law requires the Assembly to approve, except those under Standing Order 184 (*Committee on Appointments*) and ; (g) make reports and recommendations to the assembly as often as possible, including recommendation of proposed legislation.

Committee Membership

Mr. Speaker, Sir, the Finance and Revenue Collection Committee as currently constituted comprises of the following Honorable Members:-

1. Hon. Nzeki Munyaka - Chairperson
2. Hon. Bibianna Nduku - Vice Chairperson
3. Hon. Raphael Mutuku - Member
4. Hon. Nathaniel Nganga “
5. Hon. Peter Nzioki “
6. Hon. Alice Nzioka “
7. Hon. David Manyolo “
8. Hon. Philip Ndolo “

9. Hon. Benedette Mueni “
10. Hon. Nina Mbithe “
11. Hon. Veronica Mbithe “
12. Hon. Alphonse Wambua “
13. Hon. Amina Mutio “

Consideration of the Bill

Mr. Speaker, Sir, the Committee discussed the Bill and also facilitated public participation pursuant to Standing Order No. 120 (3).

Recommendations Public Participation

Mr. Speaker, Sir, the Committee conducted public participation on the Bill from 21st to 23rd and 27th July, 2015 in all eight Sub-Counties pursuant to Standing Order 120 (3) which states that the Sectoral Committee to which a Bill is committed shall facilitate public participation and take into account the views and recommendations of the public when the committee makes its report to the County Assembly.

Mr. Speaker, Sir, members of public urged the committee to ensure that there was a clause that required the County Government to publish quarterly reports in the media. They also urged the County government to have well planned markets whereby specific goods were given a particular location to operate from. This method was noted as would help curb evasion of paying revenue.

Mr. Speaker, Sir, the public also proposed that the revenue collector should prepare revenue accounts and reports, forward copies to the Auditor General and Assembly as well as publish them in the newspapers and other media for public awareness and consumption. They further recommended that where possible the revenue collector should enter into private public partnership (PPP) agreements to ensure efficiency in revenue collection and the agreements to be approved by the Assembly.

The public also commented on inspection of business premises and proposed that if the owner of the business was not present the revenue collector to leave a notice on when to come back for inspection and that the revenue collector should not enter the premise without having notified the owner of such action.

Mr. Speaker, Sir, on clauses 8 (3), 9 (2) and 10 (4) concerning fines to be imposed to a trader who violated the clauses, the public recommended the amounts to be reduced to Ksh. 50,000. They also recommended that the relevant Executive Committee Member to decide the information to be contained in the revenue register and the form in which to be kept instead of the revenue collector.

Finally, Mr. Speaker Sir, members of the public proposed that those being served with notice to be named in the notice and also that the revenue enforcers be trained on the enforcement of the laws.

Committee Observations and Recommendations

Mr. Speaker, Sir, the Committee went through the Bill and members noted that its enactment would bring efficiency and accountability in the collection of revenue. Members recommended that provisions be made for the title of revenue collector to be known as Director of Revenue Collection and should be answerable to the Chief Officer responsible to Finance and Revenue Collection.

Further, members recommended that new clauses be provided for the qualifications of the Director and to have such qualifications as Bachelor's Degree (minimum) in Law, Economics, Finance, Business Administration or Public Administration and to be a member of professional bodies. He should also have post-graduate specialization in financial matters including CPA (K) or ACCA.

Mr. Speaker, Sir, under clause 3, the committee recommended addition of new provisions to cater for competitive recruitment by Public Service Board and three nominees forwarded to the Governor to nominate one name to the Assembly for Approval. In addition, the Director should hold office for five years and may be reappointed once subject to approval by the Assembly. The committee also recommended that the holder of the office of revenue collector to have an experience of five years in collection of revenue and that his remuneration to be determined by the Public Service Board upon advice by Salaries Remuneration Commission.

On clause 4, members recommended that a new sub-clause be inserted whereby the collector will oversee and supervise all revenue collection staff. The committee further recommended that clause 6 to be amended to have the Assembly approve agreements to third party contracts to collect revenue. Clauses 7 (2) and (3) were proposed for amendment to clearly define the time the collector will submit his annual report to the Executive Committee Member and the time the Executive Committee Member will forward the report to the Assembly for approval. Members recommended for 60 days after the end of the financial year for the collector to prepare and submit report to the CEC and the CEC to have 30 days to forward the report to the Assembly.

Further, members agreed that the phrase 'revenue payer' in clause 8 (1) and (3) be substituted with phrase 'County Revenue Collector'. In addition, fines stated in 8 (3) were deleted and substituted with the phrase that 'the officer will be guilty of offences as per employees code of conduct'. This was seen as a way of giving the person a fair hearing as per the rules of natural justice. Moreover, the committee recommended the phrase "Books of Accounts and Records to be made and kept" appearing immediately after part III and before clause (8) (1)

to be deleted as it was irrelevant. The Committee further recommended that clause 10 to be deleted.

Members had issues with entry to business premises to inspect and determine the amount of tax or rate to be paid. Members observed that powers to enter into business premises for purposes of inspection had been abused previously and they did not want the County to go back to those dark days when county council staff would enter traders' premises and even confiscate goods without following due process of the law. They further observed that other laws like Licensing and Rating Acts had addressed the problem. The committee also proposed deletion of twentieth day in clause 15(1) since money collected was to be forwarded to the County fund account immediately.

Mr. Speaker, Sir, on offences the committee proposed insertion of the sub-clause binding the revenue collector to be solely liable and responsible on all revenue collected and should deposit it to the County fund account. Further, a revenue collector should not handover revenue collected to any other revenue officer. The committee also proposed provisions to be included in the bill stating that the revenue clerks should bank the money collected in person; not any other person or office and forward banking slip to the office of revenue collector for accounting. In addition, every collection point should have a banking opportunity such as e –banking. Members underscored the importance of automation of revenue collection.

Mr. Speaker, Sir, the Committee recommends the report to the House for approval together with the amendments therein. (Also see clauses with amendments as annexed to the report).

Conclusion

Mr. Speaker, Sir, it is my duty and privilege, on behalf of the Committee of Finance and Revenue Collection to present the report in this Hon. House for consideration. Thank you, Mr. Speaker, Sir.

Hon. Deputy Speaker: Thank you Hon. Chairman. The report is properly before the house. I will invite a few deliberations, observations, recommendations or contributions to the same before we convert in to a committee of the whole house, so the floor is open. Contributions over the matters raised? Hon. Alice, you appear to want to say something.

Hon. (Ms.) Nzioka: Asante Bw. Spika. Nimesimama kuunga mkono hio ripoti, pia mimi ni mmoja wa mwanakamati katika hiyo kamati ya fedha. Bw. Spika, sisi kama kaunti, tuna uwezo wa kukusanya kodi ambayo inwaweza kudumisha hali safi katika kaunti yetu, lakini ukunyasaji wa kodi unapoendelea kufanywa unakuta kuna ufisadi mwingi. Bw. Spika, kama kamati tulitembea Syokimau/Mlolongo ili kuona katika kware zetu tuone ambavyo kodi

ukusanywa. Dakika chache tukagundua, kodi inakusanywa na inapotelea katika mifuko ya wanao kusanya.

Ripoti ambayo imeletwa leo, imeleta mikakati mizuri na mipangilio na ikaonyesha kwamba, kodi ikikusanywa, inapelekwa kwenye benki. Bw. Spika, mpango uliopo sasa unakuta, karani anayekusanya kodi imewekwa mpango anapelekea mwingine, huyo pia anapelekea mwingine, na mwishowe unakuta tunapoteza pesa nyingi. Kwa hivyo Bw. Spika tukiunga hii ripoti mkono na tuipitisha, tutaokoa kaunti yetu.

Bw. Spika kama ambavyo unajua rahisi wetu jana alitangaza ufisadi kama janga na tunapoteza pesa nyingi kwenye ufisadi. Pia usalama umeharibika na umezorota kwa ajili ya ufisadi. Tukipitisha huu mswada uwe sheria, tutaokoa kaunti na tutakusanya kodi kwa njia ambayo inapaswa. Kwa hivyo Bw. Spika, naomba wabunge wezangu tushikane mkono pamoja tuwaze pamoja, tuende pamoja na tupitisha hii ripoti na tutaokoa kaunti yetu. Asante.

Hon. Deputy Speaker: Thank you. Any other deliberation? It appears members are in agreement with the report, the way it has been structured? Then with that, I proceed to put the question for the adoption of the report.

(Question put and agreed to)

The report is therefore adopted and therefore we proceed in to the committee of the whole house and then get the matters adopted and enacted as stipulated right there. Thank you.

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[Mr. Deputy Speaker left the Chair]

IN THE COMMITTEE

[Mr. Chairman (Hon. Raphael Mutuku) took the Chair]

Hon. Chairman: Hon. Members, let us resume our seats. You are in a committee of whole house. This is a very crucial session where we will be amending clauses and also inserting new clauses that may have positive or negative repercussion to our county. So we need to be careful in this session. We will start with clauses with amendments.

(Clause 2 agreed to)

Clauses with Amendments

Clause 3

Director Revenue administration, there is established an office of director revenue administration whose office shall be an office within the county public service. The person is qualified for appointment as director revenue administration if that person possesses a minimum of Bachelors degree in public finance or a related field from a recognized university, working experience of not less than five years and is a member of professional body in the related field.

(Question of the amendment proposed)

(Question that clause 3 be amended as proposed put and agreed to)

Clause 4

Delete clause 4 and substitute thereof with the clause “functions; the director is responsible for the administration and enforcement of revenue laws including the assessment collection and accounting for all revenue payable under the revenues law. The director shall advise the county government on all matters relating to the administration and enforcement of the county revenue laws. The director shall have all the powers necessary for the proper performance of the functions under this Act or other revenue laws.

(Question of the amendment proposed)

(Question that clause 4 be amended as proposed put and agreed to)

Clause 5

Delete clause 5 and substitute thereof with “the director revenue administration may subject to such conditions imposed in writing, delegate any power and assign any duty to an officer of the directorate.

((Question of the amendment proposed)

(Question that clause 5 be amended as proposed put and agreed to)

Clause 6

Delete clause 6 and substitute thereof with “the director may with the approval of the county executive committee, appoint an agent, be collector of county government revenue on such terms and conditions as may be agreed in writing in accordance with this Act.

(Question of the amendment proposed)

(Question that clause 6 be amended as proposed put and agreed to)

Clause 7

Delete clause 7 and substitute thereof with

1. For each financial year, the director shall prepare and keep proper books of accounts in accordance with section 165 of the PFM Act.
2. The director shall prepare an annual revenue collection report, indicating total collections in the different categories of revenue and an assessment of the operation and administration of all revenue laws.
3. The director shall submit the annual report to the county executive member responsible for finance within 60 days after the end of the year to which the report relates.
4. The county executive committee member shall not later than 30 days after the report from the director, submit it to the county assembly.

(Question of the amendment proposed)

(Question that clause 7 be amended as proposed put and agreed to)

Clause 9

- a) Delete the words “if any” from sub-clause 1 of 9 appearing immediately after the word liability.
- b) Delete the term “county revenue collector” appearing before the word 'may' in sub-clause 1 of clause 9 and replace it with the word “director.”
- c) Delete the phrase “the relevant person to do either or both the following” appearing after the phrase 'relevant person required' from sub-clause 1 of clause 9 and substitute thereof with the phrase “that person to provide any specified information.”
- d) Delete paragraph (a) and (b) of sub clause of 1 of clause 9.
- e) Delete sub clause 2 of clause 9 and substitute thereof with sub-clause “a person who knowingly fails to comply with the notice given under sub section 1 commits an offence and he is liable upon conviction to a fine not exceeding Ksh. 100,000 or to an imprisonment to a term not exceeding one year or both.”

(Question of the amendment proposed)

(Question that clause 9 be amended as proposed put and agreed to)

Clause 10

- a) Delete sub-clause 1 of clause 10 and substitute thereof with the sub clause “for purpose of determining the liability of a revenue payer under any revenue law, the director may enter any premises at all reasonable times and exercise any of the following hours.”
- b) Delete the words “enter and” from paragraph (a) of sub-clause 1 of clause 10 appearing immediately before the word inspect.
- c) Delete the phrase “county revenue collector” from sub-clause 2 of clause 10 and substitute thereof with the words “director.”
- d) Delete the word “view” from sub-clause 2 of clause 10.
- e) Delete sub-clause 3 of clause 10 and substitute thereof with the sub-clause 3 “whenever required to do so, a relevant person shall give all reasonable assistance to the director in exercise of the functions under this Act.”
- f) Delete sub-clause 4 of clause 10 and substitute thereof with the sub-clause “a person commits an offence if the person being a relevant person.”
- g) Delete the term county revenue director from paragraph (a) of sub-clause 4 of clause 10 and substitute thereof with the term “director revenue administration.”
- h) Delete the term “county revenue collector” from paragraph (b) of sub-clause 4 of clause 10.
- i) Delete the word “his or her” from paragraph (b) of sub-clause 4 of clause 10.
- j) Delete the terms “be or” from paragraph (b) of sub-clause 4 of clause 10
- k) Delete paragraph (c) of sub clause 4 of clause 10

(Question of the amendment proposed)

(Question that clause 10 be amended as proposed put and agreed to)

Clause 11

Delete phrase “the county revenue collector may take into his or her position any property other than land and substitute thereof with the phrase “the director may take in to possession any moveable property” from sub-clause 1 of clause 11.

Delete sub-clause 2 of clause 11 and substitute thereof with the sub-clause the phrase “when property is no longer required under sub-clause 1 if the property is no longer required, the property shall be returned as soon as practicable to the relevant person.”

(Question of the amendment proposed)

(Question that clause 11 be amended as proposed put and agreed to)

Clause 12

Delete clause 12 and substitute thereof with the clause “in the performance of the function under this Act, any officer of the directorate shall whenever so required, produce written identification establishing their position if requested by any person.”

(Question of the amendment proposed)

(Question that clause 12 be amended as proposed put and agreed to)

Clause 13

Delete sub-clause 1 of clause 13 and substitute thereof with the sub-clause “the director shall establish and maintain an up to date revenue register. Delete the term “county revenue director” from sub clause 2 of clause 13 and substitute thereof with the term “county executive committee member.”

(Question of the amendment proposed)

(Question that clause 13 be amended as proposed put and agreed to)

Clause 16

Delete clause 16 and replace thereof with the clause 7 “a person who commits an offence which no other penalty has been provided, shall on conviction be liable to a fine not exceeding Ksh. 200,000 or to imprisonment to a term not exceeding two years or both.”

(Question of the amendment proposed)

(Question that clause 16 be amended as proposed put and agreed to)

Clause 17

Delete the phrase “however, if the county revenue collector” from sub-clause 3 of clause 17 and substitute thereof with the phrase “if the director.” Delete the term “county revenue collector” appearing after the words addressed the and immediately before the words may advertise from sub-clause 3 of clause 17 and substitute thereof with the word “director.”

(Question of the amendment proposed)

(Question that clause 17 be amended as proposed put and agreed to)

Clause 19

Delete clause 19 and substitute thereof with the clause “h (1) the county executive committee member shall, with the approval of the county Assembly, make regulations generally for the better carrying out of the provisions and purposes of this Act. (2) Without limiting the

generality of sub-section 1, the county executive committee member may in consultation with the director:-

- a) Prescribe forms to be used under this or other revenue law.
- b) Issue guidelines for giving effect the provisions of this Act.

((Question of the amendment proposed))

(Question that clause 19 be amended as proposed put and agreed to)

Clauses to be Deleted

Clauses 8, 14, 15 and 18 deleted

New Clauses

Clause 4

There shall be appointed in the office of the director such other officers and staff as are necessary for the discharge of the functions under this Act.

(Question of the new clause proposed)

(New clause read the First Time)

(Question, that the new clause be read a Second Time, proposed)

(Question, that the new clause be read a Second Time, put and agreed to)

(The new clause was read a Second Time)

(Question, that the new clause be added to the Bill, put and agreed to)

Clause 6

All revenue collected, raised or received by or on behalf of the county government shall be paid in to the county revenue fund.

(Question of the new clause proposed)

(New clause read the First Time)

(Question, that the new clause be read a Second Time, proposed)

(Question, that the new clause be read a Second Time, put and agreed to)

(The new clause was read a Second Time)

(Question, that the new clause be added to the Bill, put and agreed to)

Clause 9

1. A person who pays more than the required revenue may apply to the director for a refund of the excess of the amount paid.
2. The director shall upon receiving an application made under sub section 1 consider and inquire into the accuracy of the application.
3. Upon being satisfied that the revenue payer has paid an excess of the due revenue, the director shall direct that the excess amount be refunded.

(Question of the new clause proposed)

(New clause read the First Time)

(Question, that the new clause be read a Second Time, proposed)

(Question, that the new clause be read a Second Time, put and agreed to)

(The new clause was read a Second Time)

(Question, that the new clause be added to the Bill, put and agreed to)

Clause 10

The director, staff of the directorate or agent shall not be liable for loss or damages incurred as a result of any act or omission done or made in good faith and without negligence in the performance or exercise of any functions or power imposed by or conferred under this Act.

(Question of the new clause proposed)

(New clause read the First Time)

(Question, that the new clause be read a Second Time, proposed)

(Question, that the new clause be read a Second Time, put and agreed to)

(The new clause was read a Second Time)

(Question, that the new clause be added to the Bill, put and agreed to)

(Cover page agreed to)

(Title agreed to)

(Clause 1 agreed to)

Hon. Nzeki: Thank you Mr. Speaker. I wish to move that the committee to report its considerations of the Machakos county Revenue Administration Bill 2015 and its approval thereof with amendments.

Hon. Chairman: Hon. Members, we have adopted the Bill in the committee of the Whole House and we will proceed when the Speaker is in the Chair.

(Question proposed)

(Question put and agreed to)

(The House resumed)

[The Deputy Speaker (Mr. Nathaniel Nganga) in the Chair]

REPORT AND THIRD READING

MACHAKOS COUNTY REVENUE ADMINISTRATION BILL

Hon. R. Mutuku: Thank you Hon. Speaker. I wish to report that the Committee do report to the house its consideration of the Machakos County Revenue Administration Bill 2015 and its approval thereof with amendments. Thank you Mr. Speaker, Sir.

(Question proposed)

(Question was put and agreed to)

Hon. Nzeki: Thank you Hon. Speaker, pursuant to standing order 131(1), I wish to move that the Machakos County Revenue Administration Bill 3 of 2015 be now read a third time. Thank you, Hon. Speaker. I call upon Hon. Mueni to second.

Hon. (Ms.) Mueni: Thank you Mr. Speaker, Sir, I stand to second.

(Question put and agreed to)

*(The Bill was accordingly read the
Third Time and passed)*

(Question put and agreed to)

Hon. Deputy Speaker: Thank you. I believe there are no further deliberations over the same so maybe, chairperson, any final sentiments?

Hon. Nzeki: Thank you, Mr. Speaker, I only thank the members of Finance committee for what they have done. They have gone tirelessly discussing about this Bill and one important thing I want to mention to this house is that, the revenue collection, we recommend that it be handed over to the public partnership, that they be collecting money on behalf of the county because it seems as though a lot of money is being lost between the collector and the banking section. Therefore, Hon. Speaker, I thank all the members who have contributed and may God bless them. Thank you, Hon. Speaker.

(Question put and agreed to)

*(The Bill was accordingly read the
Third Time and passed)*

(Question put and agreed to)

ADJOURNMENT

Hon. Deputy Speaker: Okay members, there being no any other business, the house adjourns until tomorrow morning at 10.00. Thank you.

The House rose at 3.34 p.m.