PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 5th December, 2018

The House met at the Senate Chamber, Parliament Buildings, at 2.30 p.m.

[The Deputy Speaker (Sen. (Prof.) Kindiki) in the Chair]

PRAYER

Sen. Olekina: Thank you, Mr. Deputy Speaker, Sir**.** I am a Member of the Committee on Energy andI wish to state that we have been looking at this matter. Infact, we had the Minister appearing before us where we interrogated the matter of the Lake Turkana Wind Project. Some of the challenges which were expressed by the Minister had to do with the completion of the transmission line.

I think with the Statement now having been requested, we will then further have a sitting and meet with the Minister because we expect him to come to us and give us feedback. This is because we had challenges with the issue of land compensation.

I am also aware that there are challenges with the issue of financing; that one of the companies that had won the tender had gone belly-up and there is another company that the tender was given to. So, it is a matter that now as a Committee we are waiting in order to come up with a report because this is a matter that we took over as a Committee and I am sure the Chairperson and the Vice-Chairperson of the Committee will bear me witness that we have been actively investigating this matter.

Thank you.

The Temporary Speaker (Sen. Halake): Proceed, Sen. Olekina.

Sen. Olekina: Thank you, Madam Temporary Speaker for giving me an opportunity to contribute to this very important Bill. I will go straight to the point without deliberating. I support the Bill. I love this Senate because what we do here is to protect the interests of our counties and their governments.

This Bill is quite timely. I am sure during the Third Reading of this Bill we will be proposing some amendments. I am happy that this Bill is proposing to set up an umbrella pension scheme with better benefits than what currently exists.

I always sympathize with employees of the national Government who are transferred to work in the county governments. Looking at this Bill, I am concerned about employees who are 50 years and above and are about to retire because they will be excluded from joining this Scheme. My proposal would be to amend that provision of this Bill, so that everyone who has been seconded to the county governments benefits.

My proposal is that if you have been working for the national Government for all those years, you must be paid your retirement benefits once you retire. It pains me to see people who have worked for this Government for many years chasing their retirement, day in day out, with less success. Some die even before they receive their benefits.

Clause 53(3) of the Bill says:

> "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 Cap.189, the Scheme and shall have his or her pension paid out under Cap. 195 of the provisions of the Pensions Act and the Widows and Children Pensions Act or any other relevant legislation."

I will be proposing amendments to provide that all those employees who are seconded to the county governments, the Director of the Pension Services who sits at the National Treasury should calculate everything that is due to those employees and forward to this new Scheme which is being set up.

It is very uncouth and uncomfortable for people who have retired to keep coming to Nairobi chasing their unpaid dues. In fact, in this legislation that we are proposing, we should come up with an amendment that sets up a time limit on when someone should receive their payment. I should not come and follow up my retirement dues.

This is one of the provisions which I will be recommending; that we bring in some amendments so that everyone, regardless of age, can join this pension fund. I am happy that this Bill is trying to bring in some order.

There are a few provisions which are provided for in the Public Finance Management (PFM) Act, if you look at Section 157(2) which says-

> "(2) A receiver of county government revenue is responsible to the County Executive Committee member for Finance for ensuring that the revenue for which the receiver is responsible, is collected or recovered, and is accounted for."

I would like to borrow something from the PFM Act, which we can put here based on the Fund manager. I heard my sister, Sen. Farhiya talking a lot about the Fund manager. I wanted to clarify that a Fund manager is someone like Britam, who invests the money on behalf of the Scheme – which I support. When I was in the United States of America (USA), I used to contribute under the 41K. I used to get monthly statements showing how much I had contributed and how much I had earned in returns from the Fund manager.

What this Bill does not provide for – which is something that concerns me – is where and when the profits are being redistributed. The Bill is silent on the issues of losses. Suppose whatever has been invested out there, the Fund managers in that particular year did not make any money and you are supposed to pay these fund managers from the profits of the investments, how are you going to be able to pay them from the losses of the investment?

Madam Temporary Speaker, that is one of the things that we have to be very careful, so that the money that our county government staff are contributing, which is being proposed is 7.5 per cent--- In fact, what I would even suggest is that the 7.5 per cent should be an option, because some people would want to contribute more. For example, when I came to *Bunge* there were so many companies coming here telling me to join their Sacco and contribute a certain amount of money.

I am sure that there are so many Members of Parliament here who are contributing to three or four Saccos because by the time they retire, they can go to them and try to claim their money. The provision that proposes to reduce the contribution from 12 to 7.5 per cent, that should actually be left open. It should be an option where, as an employee of the county government you are given an option; you are asked whether you willing to contribute 12 per cent or 7.5 per cent. There should be some form of flexibility in the employees' contribution.

Madam Temporary Speaker, I am happy with what the employer will contribute; 15 per cent is very good. However, on that note, I am happy that this Bill introduces punitive measures for counties that fail to contribute. In fact, my proposal would be that, just like in the PFM Act, where a fund receiver on behalf of the county government provides quarterly reports to the National Treasury and to the Commission on Revenue Allocation (CRA), we should find a way of ensuring that anyone or any county government that deducts money for the pension and their contribution, must on a quarterly basis submit their returns of the deductions to the Controller of Budget.

That should also be pegged on the equitable share of revenue; such that before the Controller of Budget approves money to be sent to the county government, the first thing that they have to check is whether that county government behaved. They will also check whether the county government remitted their entire deductions. This is because you have no business deducting money from me, keeping it and not forwarding it to the fund. Therefore, that flexibility of 12 per cent should be maintained.

On the issue of punitive sanctions for county governments, it should be put in such a way that it is mandatory. I am not so happy about the penalties that are charged to county governments, because this is money that can be used in other things. The national Government can deduct some of that money and send it directly to the fund. Therefore, if the county government can be made to also submit the quarterly returns of their members' deductions, then the fund must also agree that they have received this money. If so, it is fair enough and the Controller of Budget can release the entire amount which is due to the counties. However, in the event that some counties have become clever; they have deducted money and used it for other things, arguing that the Controller of Budget has not released the money, then the Controller of Budget should deduct that money at source. This is because we have been complaining.

Earlier on today, Madam Temporary Speaker, we were about to debate the issue of the Managed Equipment Scheme (MES), which most governors do not understand whether that money is being deducted from their equitable share or not. In this case, it should be made very clear because we are busy fighting about our welfare. What is important about our current welfare when we can hustle? The most important time is when we have retired because you know that you worked.

You will know, as a county government employee, that you went to the office very early in the morning; you appeared with your governor, clerk or the speaker of the county assembly. You were also grilled at the Senate and you worked for days and then, at the end of the day, you have nothing to show to your family. Therefore, this has to be made very clear; that if you deduct money from me, you must make sure that you remit it to the fund. If you contribute, as you are supposed to contribute for my retirement, then you must remit that money. Otherwise, penalizing them or telling them to pay a certain amount of fee as penalty will not help.

Madam Temporary Speaker, the other important thing that is lacking in this Bill, and I hope we can be very serious with it, has to do with the issue of the money not remitted either to the Local Authorities Provident Fund (LAPFUND) or the Local Authorities Pensions Trust (LAPTRUST), depending on which scheme county governments were contributing. I know, as a fact, that the figure is at the rate of about Kshs30 billion. This is a figure that we need to figure out. During this transition period, this Fund should compute how much money has not been forwarded to them by the county governments. The National Treasury should then deduct this money, because there is no way that these county governments can remit that money to the Fund. The Kenya Revenue Authority (KRA) has taken that step; they have started deducting money from these county governments. Therefore, that is one of the most important things that I noted in the provisions of the transitional clause.

Madam Temporary Speaker, my last point on this Bill has got to do with Clause 43 of the Bill, which states-

> "The annual investment income earned by the Scheme shall, after deduction of all expenses and costs properly paid out of the Scheme and any appropriation to a reserve account approved by the Board, be credited to members' accounts on a pro-rata basis."

I want to reiterate the point I made that it is important that we amend this Bill, to ensure that when members contribute to this Fund, they should be alive to the fact that when their money is invested out there, there are risks. In the event the fund managers are not able to return any profits, they should be okay with some of the money being paid from their earnings. I know that people will be wary about their contributions because they are protected, but we should also ensure that the fund managers who run this Fund are cushioned in a way. This will ensure that they do not bring about losses every time. We need to think about how to add that.

Clause 45 states-

> "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."

I will bring an amendment to delete this Clause, because if will are trying to be neat, there is no point of us saying that there is another superior legislation than this, which is supposed to be taking care of my welfare.

Madam Temporary Speaker, I just want to summarize by saying that I support this Bill fully. I believe that everyone who cares about the counties and the future of their constituents will support this Bill. I hope that when passed, it will bring to an end to the nasty competition, which is out there, between private bodies and state-owned corporations in terms of managing the retirement scheme.

Madam Temporary Speaker, with those few remarks, I support.

Sen. Olekina: On a point of information, Madam Temporary Speaker.

The Temporary Speaker (Sen. Halake): Sen Kihika, would you like to be informed by Sen. Olekina?

Sen. Kihika: Sure, Madam Temporary Speaker.

Sen. Olekina: Madam Temporary Speaker, I would like to inform my dear colleague, the distinguished Senator, because I have heard that issue being repeated severally. If you read the Bill properly, which I have read, it says that the Cabinet Secretary shall appoint. However, when you go behind who he or she is appointing from, the Cabinet Secretary is appointing the board Chair from the existing members, and those members are forwarded by the contributors. Sorry, he or she is actually just gazzeting, he or she is not appointing.