

COUNTY GOVERNMENT OF NAIROBI CITY



*Repared by
Chair Budget
Committee on
30/7/19
H. J. J. J.
SCCA
30/7/19*

NAIROBI CITY COUNTY ASSEMBLY

SECOND ASSEMBLY – THIRD SESSION

17TH REPORT OF THE SELECT COMMITTEE ON COUNTY FINANCE,
BUDGET AND APPROPRIATIONS

ON

THE NAIROBI CITY COUNTY CORPORATIONS BILL, 2019

JULY 2019

1.0. PREFACE

Mr. Speaker Sir, the provisions of the Fourth Schedule of the Constitution provides in general the functions that should be undertaken by the County Government. These functions can be undertaken by the County Government itself or through entities assigned by the County Government to perform such functions. The proposed Nairobi City County Corporations Bill 2019 is therefore meant to provide a framework for establishment and dissolution of a County corporation and for connected purposes. To achieve this, the Bill proposes among others provide the guiding principles for establishment of a county corporation, the management of such corporations and the control of finances of corporations.

The Bill was read for the first time on 13th June 2019 and duly committed to the Select Committee on County Finance Budget and Appropriations. The Committee is established pursuant to the provisions of Standing Order 199 with a specific mandate which is to:

- a) Investigate, inquire into and report on all matters related to coordination, control and monitoring of the of the county budget;*
- b) Discuss and review the estimates and make recommendations to the County Assembly;*
- c) Examine the County Fiscal Strategy Paper presented to the County Assembly;*
- d) Examine Bills related to the county budget, including Appropriations Bills; and*
- e) Evaluate tax estimates, economic and budgetary policies and programs with direct budget outlay*

Mr. Speaker Sir, during the scrutiny of the Bill, the comprised of the following 19 Members:

- | | |
|-----------------------------|-------------|
| 1. Hon. Robert Mbatia, MCA | Chair |
| 2. Hon. Patrick Karani, MCA | Vice- Chair |
| 3. Hon. Michael Ogada, MCA | |
| 4. Hon. Osman Adow, MCA | |

5. Hon. Daniel Ngengi, MCA
6. Hon. Anthony Ngaruiya, MCA
7. Hon. Kariuki Wanjiru, MCA
8. Hon. J.M Komu, MCA
9. Hon. Paul Ndungu, MCA
10. Hon. James Kariuki, MCA
11. Hon. Susan Makungu, MCA
12. Hon. Catherine Okoth, MCA
13. Hon. Emily Oduor, MCA
14. Hon. Paul Shilaho, MCA
15. Hon. Nancy Muthami, MCA
16. Hon. Elias Okumu, MCA
17. Hon. Nimo Hajji, MCA
18. Hon. Jane Muasya, MCA
19. Hon. Fredrick Okeyo, MCA

Mr. Speaker Sir, the Committee is sincerely grateful to: -

- a) Offices of the Clerk and the Speaker for the support received throughout this process;
- b) The Sponsor of the Bill for his availability during the entire time of scrutiny;
- c) Stakeholders who submitted written memoranda on the Bill; and
- d) The County Assembly Legal Department and the Budget Office who continually provided guidance to the Committee on the Bill.

Mr. Speaker Sir

On behalf of the Committee, it is my pleasant duty to table the Report of the Select Committee on Finance, Budget and Appropriations on the consideration of the Nairobi City County Corporations Bill, 2019.

I thank you.

Signed.....



Date.....

24/07/2019

Hon. Robert Mbatia, MCA

Chairperson: Finance, Budget and Appropriations Committee

2.0. SCRUTINY OF THE NAIROBI CITY COUNTY CORPORATIONS BILL, 2019

1. **Mr. Speaker Sir,** the Committee reviewed the County Corporations Bill together with the submissions from the County Attorney, Nairobi City Water and Sewerage Company and the various stakeholders and came up with the following proposals on the respective clauses of the Bill.

Mr. Speaker Sir,

2. Clause 4(1) of the Bill proposes establishment of a County Corporation by the responsible CECM, upon taking into account the recommendations of the County Treasury regarding the financial implications of establishing the County Corporation to perform the functions specified. The Committee notes that the guiding principles for the establishment of County Corporation and the criteria for establishing a County Corporation, where the responsible CECM shall submit a written proposal to the County Executive Committee Member for Finance, with detailed justification for establishing the County Corporation were contained in Clause 5 and 6 respectively. The Committee wishes to point out that formation of Corporations entails the transfer of the constitutional mandates of the County to another legal entity and for such an undertaking, there is need to seek and take into account views of Members of the public. The Bill has not provided the guidelines for public input and stakeholder engagements in that regard and the Committee shall be proposing amendments to satisfy this legal requirement.
3. Clause 7 of the Bill provides the dissolution of a County Corporation be with approval of the CECM for Finance. It provides for transfer of the assets and liabilities of the County Corporations to the relevant County department as guided by then CECM for Finance. The Committee noted that, Regulations 204 decree that a County Corporation may only be dissolved with prior approval of

the County Executive Committee and in reference to the relevant legislation. The Committee observed that the Bill refers to the prior approval by the CECM for Finance instead of the County Executive Committee. The CECM for Finance is required to approve recommendations for dissolution of County Corporations. The Committee wishes to draw the attention of the house to the provisions of the regulations on the need to refer to instruments of establishment especially the anchoring legislation of respective corporations.

4. Clause 8 of the Bill proposes the management of County Corporations through an establishment a Board, which shall supervise and control the business, property, and affairs of the County Corporation. The Board shall be headed by the Chairperson appointed by the Governor and the Board Members appointed by the responsible County Executive Committee Member whom shall possess the minimum qualifications, skills and experience as advised by the County Public Service Board. The Board shall comprise of members not be more than nine. The role of the Board, role of the Chairperson, term limits, vacation of office, Committees of the Board, evaluation and remuneration of the Board is contained in Clauses 10, 11, 12,15,17,18 and 19 respectively.
5. With respect to the above provisions the Committee noted that while the Bill provides for the overall process of identifying the Members of the Board and the number it's very shallow on composition of the Board. The Committee shall hence be proposing amendments to the Bill to ensure that key Members are included as part of the Boards including the relevant Chief Officer, the Chief Officer finance or an appointee, the Chief Executive Officer of the corporations and relevant stakeholder's representative.
6. The provision of the Clause 9 (2) requires that the Board consist of a representative of the County Executive Committee Member for Finance who is

a qualified Accountant. The Committee was hard pressed to understand what this provision aims to achieve as the interest of the County Government and the County Treasury can be represented in the Boards by the Chief Officer for Finance. Further, whereas Clause 9 (8) provides that the Board Members shall be appointed by name and shall sit in the Board on their personal capacity, it ignores the fact that the Boards shall have representatives of various organizations and Chief Officers representing various County Government entities. The Committee shall hence be proposing amendments to the proposed law to address the gaps identified.

7. Clause 18 of the Bill provides for evaluation of the performance of the Board by the CPSB. The Committee noted that the County Public Service Board is established solely for the responsibility of developing and implementing human resource policies and framework for the County Government in line with the relevant laws. The County Public Service Board mandate is limited to the Public officers working within the County Organogram. It is the considered view of the Committee that Boards of Corporations should to be independent and do not link to the CPSB neither report to it. The Committee hence agreed that the evaluation criteria should be for the Boards of Corporations to do internally.
8. Clause 19 of the Bill provides that the Board shall in consultation with the CPSB and on advise of SRC develop a remuneration policy on allowances, Members fees, attendances allowances and bonuses. The committee noted that this would contravene the independence of the Board. Individual Boards should be empowered to set their remuneration in consultation with the Salaries Remuneration Commission as per the provisions of Article 230 (b) of the Constitution

9. Clause 20 (2) (c) (i) dictates that the CEO shall responsible for carrying into effect the decisions of the County Corporation. The decision-making organ is the Board and not the Corporation. Further and for effective discharge of mandates, there may be requirement that CEOs to possess degrees in fields related to the role of the Corporations in which they are being appointed to.
10. Clause 35 of the proposed Bill provides that the County Executive Committee Member for Finance may make regulations for the better carrying into effect the provisions of the act. The Committee noted that while the CECM Finance is being rightfully required to develop regulations to better carry into effect the provisions of the Act. The Bill could further require that any Corporations that is to be formed be entrenched in an Act of the County Assembly and regulations to clearly define its role, mandate and transition from County Departments
11. **Mr. Speaker Sir**, on other salient matters, the Committee noted that the role of approval of annual estimates is a function that should be assigned to the County Executive Committee Member for Finance and not the larger County Treasury. In general, the Committee noted that the Bill appears to interchange the County Treasury and the County Executive Committee Member for Finance in various clauses implying that they refer to the same thing which may not be the case. Further the Committee was concerned that the penalty of ten thousand shillings for offences under the Bill is too paltry.

3.0. SUMMARY OF CONSIDERATION OF THE NAIROBI CITY COUNTY CORPORATIONS BILL, 2019

12. The Committee deliberated on the Bill as follows: -
- | | |
|-------------|--------------------------|
| Short title | _____ Agreed to |
| Clause 2 | _____ Agreed to |
| Clause 3 | _____ Agreed to |
| Clause 4 | _____ Proposed Amendment |

Clause 5	_____ Proposed Amendment
Clause 6	_____ Proposed Amendment
Clause 7	_____ Proposed Amendment
Clause 8	_____ Agreed to
Clause 9	_____ Proposed Amendment
Clause 10	_____ Agreed to
Clause 11	_____ Agreed to
Clause 12	_____ Agreed to
Clause 13	_____ Agreed to
Clause 14	_____ Agreed to
Clause 15	_____ Agreed to
Clause 16	_____ Agreed to
Clause 17	_____ Proposed Amendment
Clause 18	_____ Proposed Amendment
Clause 19	_____ Proposed Amendment
Clause 20	_____ Proposed Amendment
Clause 21	_____ Agreed to
Clause 22	_____ Agreed to
Clause 23	_____ Agreed to
Clause 24	_____ Agreed to
Clause 25	_____ Agreed to
Clause 26	_____ Proposed Amendment
Clause 27	_____ Agreed to
Clause 28	_____ Agreed to
Clause 29	_____ Proposed Amendment
Clause 30	_____ Agreed to
Clause 31	_____ Agreed to
Clause 32	_____ Agreed to
Clause 33	_____ Agreed to

Clause 34 _____ Agreed to
Clause 35 _____ Agreed to
New Sub Clauses _____ 2A
New Paragraphs _____ 5

4.0. COMMITTEE STAGE AMENDMENTS AND MATRIX ON CONSIDERATION OF STAKEHOLDERS SUBMISSIONS

13. **Mr. Speaker Sir**, the Committee stage amendments and the matrix on how the submissions by various stakeholders were considered have been attached to the report.

The Clerk
Nairobi City County Assembly
NAIROBI.

24th July, 2019

**RE: COMMITTEE STAGE AMENDMENT REPORT TO THE NAIROBI CITY COUNTY
CORPORATIONS BILL, 2019**

NOTICE is given that the Chairperson of the Select Committee on Finance, Budget and Appropriations intends to move the following amendments to the Nairobi City County Corporations Bill, 2019, at the Committee Stage.

CLAUSE 4

THAT Clause 4 of the Bill be amended as follows: -

- (i) In sub clause (1) by inserting the words “and the County Assembly” immediately after the word “Committee”
- (ii) In sub clause (1) by inserting the expression “conducting stakeholder engagements and” immediately after the word “upon”.

CLAUSE 5

THAT Clause 5 of the Bill be amended as follows: -

- (i) In paragraph (d) by inserting the following new paragraph immediately after paragraph (d) as follows: -

NEW PARAGRAPH

“da” the County Corporation shall be a public corporation with the County Government having the majority share of not less than 75%”

CLAUSE 6

THAT Clause 6 of the Bill be amended as follows: -

- (i) In sub clause (4) by inserting the expression “in accordance with the Public Finance Management Act,2012 and the Regulations thereof” immediately after the word “Corporation”.

CLAUSE 7

THAT Clause 7 of the Bill be amended as follows; -

- (i) In sub clause (1), by deleting the words “for finance” appearing immediately after the word “Committee” and by inserting the words “and the County Assembly” immediately after the word “Committee”.
- (ii) In sub clause (7) by deleting the expression “relevant department in the county” and substituting therefor the following “responsible County Government entity”

CLAUSE 9

THAT Clause 9 of the Bill be amended as follows; -

- (i) In sub clause (2) by deleting the expression “the representative of the County Executive Committee Member responsible for Finance, who is”
- (ii) In sub clause (2) by inserting a new sub clause immediately after sub clause (2) as follows:

NEW SUB CLAUSE

2A “The chief officer of the relevant sector and the chief officer for finance shall be members of the Board”

- (iii) In sub clause (5) by inserting the words “non-executive” immediately before the word “chairperson”
- (iv) In sub clause (5) by deleting the expression “the qualifications, skills and experience as advised by the County Public Service Board” and substituting therefor the expression “a degree from a university recognized in Kenya ”

CLAUSE 17

THAT Clause 17 of the Bill be amended as follows; -

- (i) In sub clause (1) paragraph (b) sub paragraph (iii) by inserting a new sub paragraph immediately after sub paragraph (iii) as follows: -

NEW SUB PARAGRAPH

“iii a” Risk Management

CLAUSE 18

THAT Clause 18 of the Bill be amended as follows: -

- (i) By deleting the words “County Public Service Board” wherever it appears and substituting therefor the following expression “responsible County Executive Committee member”

CLAUSE 19

THAT Clause 19 of the Bill be amended as follows: -

- (i) By deleting the expression “in consultation with the County Public Service Board and” in its entirety.

CLAUSE 20

THAT Clause 20 of the Bill be amended as follows:

- (i) In sub clause 3 paragraph (c) sub paragraph (i) by deleting the word “County Corporation” and substituting therefor the word “Board”

CLAUSE 26

THAT Clause 26 of the Bill be amended as follows;

- (i) In sub-clause (1), by deleting sub clause (1) in its entirety and substituting therefor the following: -

“Every County Corporation shall not later than January in every year, cause to be prepared estimates of the County Corporation’s revenue and expenditure for the following financial year and shall submit to the responsible County Executive Committee Member who, after approving it shall forward to the County Executive Committee Member for finance”
- (ii) In sub clause (3) by inserting the word “finance” immediately after the words “Member for”

CLAUSE 29

THAT Clause 29 of the Bill be amended as follows;

- (i) By deleting Clause 29 in its entirety and substituting therefore the following: -

“The assets of a County Corporation may be acquired or disposed of subject to the provisions of the Public Procurement and Asset Disposal Act, 2015”

MATRIX OF STAKEHOLDER SUBMISSIONS ON THE NAIROBI CITY COUNTY CORPORATIONS BILL, 2019

COMMENTS FROM THE COUNTY ATTORNEY			
Clauses	Proposed Amendments	Justifications	Committee's Resolution
5(a)	The role of the County Corporation should be for a particular specific function for which the County is responsible for.	Fulfills section 6(5) (a) of the County Government Act	Disagreed. Clause 5(b) provides that the activities of the corporation shall have clear and consistent objectives.
5(e)	Add "shall be a public corporation with majority share ownership shall be by the County Government	Because it is a public body for the provision of particular services for which the County is responsible for.	Agreed. Amended as proposed.
6(vi)	Insert the phrase, "county integrated" after the word "term"	Activities of the corporation ought to fit be incorporated in the CIDP	Disagreed. The medium term strategy is not similar to the CIDP.
6(3)	The PFM Acts mandates the CEC finance to establish corporations through the use of regulations (align with section 5 of the PFM Act). If corporation is for the purposes of the PFM Act and paragraph 201,202,203 of the PFM regulations 2015	Align with the PFM Act	Disagreed. Establishment processes is not the same as establishing a corporation which is the role of the County Executive Committee with the approval of the County Assembly.
6(4)	Add "in accordance with the PFM Act" and regulations at the end of the section	To align with the PFM Act and regulations	Agreed.

7(7)	Amend by replacing the word department with sector	To align with paragraph 204(7) of the regulations	Agreed. However, Regulation 204(7) and (8) of the PFM Act states refers to the entity as opposed to the Department. Amendment to include the word entity.
7(8)	Delete. As 7 above	As above	Disagreed. Regulation 204(8) contains this provision therefore it is important to retain it. However it is the role of the CEC for finance to give prior approval.
9	Not more than nine, not less than seven	To align with government policy on state corporations	Disagreed. The Phrase not more than 9 implies that the membership should not exceed 9 therefore they can have a membership of less than 9.
9(2)	Indicate the appointing authority for the representative of CECM Finance. Is it the CECM or the professional body?	To provide clarity regarding the appointing authority	Clause 9(6) provides the appointing authority as the CEC responsible for the sector.

9(5)	The qualifications of then Chairperson ought to be delineated clearly.	This is a County corporate body and qualifications of those in charge of its steering out to have their qualifications clearly spelt out for transparency and accountability. See article 10 of the constitution	Agreed. Amended as such
9(9)	Amend to read the CECM responsible for finance shall..	CECM finance is responsible for establishment of county corporations under section 5 of the PFM Act	Disagreed. This clause is not on establishment of the Corporation but rather on the development of guidelines for the inclusion of alternate members to the Board.
9	Amend by adding a section on; Appointment of Corporation Secretary Role of the Corporation Secretary Removal of Corporation Secretary	Corporation Secretary is a key officer in running of the corporation.	Disagreed. The appointment of the Board Secretary is provided as the role of Chief Executive Officer under Clause 20(3) (a) of the bill. This clause also includes the appointment and qualifications of the CEO.
9	Common seal- ought to be kept in the custody of Corporation secretary and		Disagreed. The common seal shall be kept by

	authenticated by both the Corporation Secretary and the Chief Executive Officer		the CEO as is the practice In other National Legislations.
17	Add “risk” in subsection 1(b)	Risk management is major component of the audit function	Agreed.
18	Amend to include the responsibility for monitoring financial performance of County Corporation lies with the CECM for that entity/sector as provided for under Section 184.	To align with sector 184 of the PFM Act	Agreed.
Part IV	This part of the bill needs to be aligned with the provisions of the PFM Act which is the governing law on county government entities of which the County Corporations are included a section on Appointment of an accounting officer in accordance with section 148 of the PFM Act	Align with PFM Act as the governing legislation	Disagreed. The appointment of the Accounting officer is provided for under Clause 20(3) (b) which role is assigned to the CEO of the Board.
26	Annual estimates; align with section 149 of PFM Act	To comply with the relevant national enabling legislation	Agreed.
27	Expenditure not included in annual Estimates- align with section 151 and 152 of PFM Act	To comply with the relevant national enabling legislation	Disagreed. Section 149(h) of the PFM Act provides that the Accounting officer shall prepare estimates of expenditure which estimates must be approved before expenditure. Section 149(2) (j) further states that the

			accounting officer shall submit the estimates of the entity to the CEC for the sector who after approving it shall forward to the CEC Finance. Once approved, the accounting officer may incur the expenditure
28	Borrowing from County Corporations- Align with section 142 PFM Act		Disagreed. The Provisions are in line with Section 142 of the PFM Act.
29 and 32	Assets-align with section 153 of PFM Act		Agreed. Clause is aligned to the PPAD Act.
30	Books of accounts records audits- align with Section 155 PFM Act		Disagreed. The Clause is in line with Section 149(2)b of the PFM Act on keeping of proper financial records for the entity which is the role of the Accounting Officer.
31	Accountability- align with section 148 PFM Act		Disagreed. The Board has a role, through its accounting officer to ensure management of the affairs of a

			county corporation.
COMMENTS ON THE PROPOSED BILL FROM NAIROBI WATER & SEWERAGE COMPANY			
Clause	Summary of issue	Remarks	
3c	The bill to 'provide a uniform code of governance for county corporations'	A code of governance is separate from a statutory enactment. Codes are more detailed, Eg CMA code of governance for issues of securities to the Public; Mwongozo Code of governance for State corporations; Water sector corporate Governance Guidelines etc	Disagreed. A Code of governance does not have the legislative authority like a statute. Regulations or statutory instruments may be used to deal with the administrative issues to operationalize an Act.
7(7)	Dissolution of County Corporation	There is need for clarity on what happens to the services provided by and the human capital of the dissolved Corporation	This is provided under Clause 7(7) of the Bill.
Part III	Manner of appointment and composition of the Board and Directors contradict existing enactment	The Water Act 2015, through regulations issued by the sector Regulator (the Corporate Governance Guidelines, gazette Notice No. 7045) give a detailed mode of appointment of Boards of Directors for Water Service providers as well as the compositions, size and qualifications. Appointment entails participations by stakeholder's and representation of those	Disagreed. The Water Act cannot be used as a comparative law to this bill but rather the State Corporations Act is an Act that is similar to the County Corporations Bill. Regulations in the Water Act cannot be the

		<p>stakeholders in the Board of Directors.</p> <p>The chair is elected by the Board from among the independent members.</p> <p>The proposal in the bill contradicts the regulations.</p> <p>The applicability of the regulations has been upheld by the High Court.</p> <p>It is also not clear what clause 9(2) means. The clause also seems to be a contradiction with clause 9(8) - appointment by name and sitting in personal capacity.</p>	<p>yardstick for comparison as they do not have the legislative authority that an Act has.</p>
10	Role of the Board	<p>It is not clear why the role would be in statute. Ordinarily, roles are contained in a Code of Governance and they are not conclusive (as is the case in the Bill); they are numerous and can be added to as need arises hence the need to have them handled in a document that is more flexible to amend eg a code rather than a statute. See eg Clause 1.2 of Mwongozo</p> <p>With regard to duties, these have been stipulated over time in common law(and are now codified in statutes like the companies Act)- see eg clause 1.3 of Mwongozo</p> <p>The bill conflates 'roles' and 'duties' and in so doing leaves out the</p>	<p>Disagreed. The role of the Board is contained in the Mwongozo Code of Governance which the bill has borrowed some of the roles therein.</p>

		critical duties (which ought to be clearly captured in statute).	
11	Role of the Chairman	As above, this would best be dealt with in a Code (not Statute). The Bill has borrowed from Clause 1.4 of Mwongozo but then left out some key roles ascribed under Mwongozo.	Disagreed. The Role of the chairperson is a vital provision in the bill.
8(12)	Term limit and terms of service of their Chair	It appears that the intention is to have a Chair that is full time and Executive. In that case, there is need to delineate the roles of the chair and the separation of roles between the Executive Chair and the CEO. It's contrary to any practice in the public sector.	Agreed. Amended to state that the chairperson will be non executive.
14	Board Independence	This is a matter for a Code of Governance. On (2) where is the provision for stakeholder representation? Does this also not contract clause 9(8) on appointment by name and sitting in personal capacity?	The stakeholders' representation is provided under Clause 9(3) and (4)
16	Meeting and Procedures	This would be best dealt with under the constitutive law of each individual corporation or in a Code of Governance. In addition, Clause 9 (d) conflicts with clause 16(4) the size of the Board.	Disagreed. To avoid ambiguity, it is vital that we provide a general guideline on meetings and procedure. Clause 9(d)

			does not conflict with 16(4) as the board membership can be less than 9 and not more than 9.
18	Board Evaluation	<p>In line with best practice and existing codes of Governance, a Board of Directors is required to evaluate its performance per set criteria. This is the requirement under the Corporate Governance Guideline, Mwongozo, CMA Code and all other codes. For instances, the provision on Mwongozo is as follows;</p> <p>1.4 roles of the Chairperson The chairperson should:</p> <p>a).....</p> <p>.....</p> <p>f)lead the annual Board Evaluation process</p> <p>1.12 Board Evaluation The boards should;</p> <p>a) Determine its performance criteria</p> <p>b) Undertake an annual evaluation of its performance</p> <p>2.....</p> <p>The proposal in the Bill erodes Board independence and is contrary to best practice.</p>	Agreed. The CEC for the sector is responsible for evaluating the performance of the Board and the members thereof.

		Clause 18(3) erodes authority of the Board over the CEO if the CEO is to be evaluated by the CPSB.	
20	CEO to be Secretary to the Board	<p>This contravenes best practice and the provisions of Mwongozo which require separation of roles. In particular Clause 1.22 provides;</p> <ol style="list-style-type: none"> 1. The role of the Board should clearly be separated from that of the management. 2. The office of the Chairperson and that of the CEO should be held by different persons. 3. The office of the CEO and that of the Corporations Secretary should be held by different persons <p>See also Gazette Notice No. 1420 (CMA Code of Governance Practices for Issuance of Securities to the Public.</p>	Disagreed. The CEO can be the secretary of the Board as long as he has the requisite qualifications. Similar to the Nairobi County Assembly Public Service Board whereby the CGA Act provides that the Accounting officer and the CEO shall be the secretary to the Board.
21(b)	<p>Qualifications of CEO</p> <p>b)- possess degree in 'related' field</p> <p>c)- five years' experience</p>	<p>The sector regulator has, under the Water act, given the minimum requirements for various key positions in the sector. The bill needs to be harmonized with these. In addition, it is not clear what the proposed qualifications in the Bill are. Eg, what constitutes 'a degree in any related</p>	A degree in the related field means that he must possess the relevant qualifications for the corporation being established.

		field'? What is relevant experience? The Bill seems to lower the current minimum qualifications for the position of CEO.	
23	Separation of roles	The Chairman as proposed is Executive. As such, it is not clear how roles are separated.	Agreed. The chairperson should be non-executive.
26, 27, 28	The roles of the Board of Director	It appears that the Bill has assigned the roles of the Board of Director to other officers. What then is the roles of the Board in financial management, asset management, budgeting, borrowing etc	Agreed. Amended to align with the PFM Act.
29	Acquisition and disposal of assets	All public procurement and asset disposal is governed by the PPADA. In view of this Clause 29(3) is either superfluous or in potential conflict with the Public Procurement and Asset Disposal Act. In addition, sub-clauses 3) and 4) contradictory. Further, isn't County Service Board for human resource matters?	Agreed.
31	Board accountability	In light of the above, how is the Board accountable without requisite authority?	The Board has authority to incur expenditure as provided in Clause 27 and 28 and 29 of the Bill.
32	Disposal of surplus funds	This should be subject to other written laws eg Water Act 2016	Disagreed. The Water Act cannot be used as a

			comparative tool.
33	Restriction on Loans	This would be a stipulation in the Corporations Human Resource or Finance Policy, not a statutory pronouncement.	Disagreed. Issuance of loans on behalf of the corporation involves incurrence of expenditure. Therefore it is vital that we provide for it in the Bill.
34	Transitional clauses	In view of the fact that NCWSC has been in existence and in operation as an entity registered under the Companies Act(referenced in Clause 2(a) of the Bill) there is a need for a clear transition framework to address human capital, assets, finances and related matters	Disagreed. The definition of the term "County Corporation" under clause 2 is that a county corporation is a body corporate established before or after the commencement of the Act therefore the bill does not require a transitional clause.

MINUTES OF THE 80TH SITTING OF 2019 OF THE NAIROBI CITY COUNTY ASSEMBLY
FINANCE, BUDGET AND APPROPRIATIONS COMMITTEE (SECOND ASSEMBLY) HELD
ON WEDNESDAY 24TH JULY 2019 AT 12.00PM AT COMMITTEE ROOM FOUR, CITY
HALL BUILDINGS.

PRESENT

- | | |
|------------------------------|----------|
| 1. Hon. Fredrick Okeyo, MCA | Chairing |
| 2. Hon. Susan Makungu, MCA | |
| 3. Hon. Wanjiru Kariuki, MCA | |
| 4. Hon. J.M Komu, MCA | |
| 5. Hon. Emily Oduor, MCA | |
| 6. Hon. Michael Ogada, MCA | |
| 7. Hon. Daniel Ngengi, MCA | |
| 8. Hon. Osman Adow, MCA | |

ABSENT

1. Hon. Paul Shilaho, MCA
2. Hon. Nancy Muthami, MCA
3. Hon. Jane Muasya, MCA
4. Hon. Elias Okumu, MCA
5. Hon. Robert Mbatia, MCA
6. Hon. Patrick Karani, MCA
7. Hon. Anthony Ngaruiya, MCA
8. Hon. Catherine Okoth, MCA
9. Hon. James Kariuki, MCA
10. Hon. Nimo Hajji, MCA
11. Hon. Paul Ndungu, MCA

IN ATTENDANCE

- | | |
|-----------------------|-----------------|
| 1. Mr. Martin Mugendi | – Legal Counsel |
|-----------------------|-----------------|

SECRETARIAT

- | | |
|-------------------------|-------------------------|
| 1. Mr. Erick Otieno | -Fiscal Analyst I |
| 2. Ms. Precious Njeru | -Consultant, AHADI |
| 3. Mr. Mohammed Galgalo | -Fiscal Analyst, Intern |

MIN 347/FBAC/JULY/2019: Preliminaries

The Chairperson called the meeting to order at 12.30pm and opened the sitting with a word of prayer.

The following agenda for the day was adopted after being proposed by Hon. Wanjiru Kariuki and Seconded by Hon. Michael Ogada

1. Preliminaries
2. Confirmation of Minutes
3. Matters Arising
4. Finalization of Consideration of the Corporations Bill 2019
5. Any Other Business
6. Adjournment

MIN 348/FBAC/JULY/2019: Confirmation of Minutes

The agenda was deferred to the next meeting.

MIN 349/FBAC/JULY/2019: Finalization of Consideration of the Corporations Bill 2019

The Legal Counsel took the Committee through the compilation of the proposed amendments to the Nairobi City County Corporations Bill, 2019 as had been recommended by the Committee. It was noted that: -

- Clause 4 of the Bill be amended in sub clause (1) by inserting the words “**and the County Assembly**” immediately after the word “**Committee**” and in sub clause (1) by inserting the expression “**conducting stakeholder engagements and**” immediately after the word “**upon**”

- Clause 5 of the Bill be amended in paragraph (d) by inserting the following new paragraph immediately after paragraph (d) as; **“da” the County Corporation shall be a public corporation with the County Government having the majority share**
- Clause 6 of the Bill be amended in sub clause (4) by inserting the expression **“in accordance with the Public Finance Management Act,2012 and the Regulations thereof”** immediately after the word **“Corporation”**
- Clause 7 of the Bill be amended in sub clause (1), by deleting the words **“for finance”** appearing immediately after the word **“Committee”** and by inserting the words **“and the County Assembly”** immediately after the word **“Committee”** and In sub clause (7) by deleting the expression **“relevant department in the county”** and substituting therefor the following **“responsible County Government entity”**
- Clause 9 of the Bill be amended in sub clause (2) by deleting the expression **“the representative of the County Executive Committee Member responsible for Finance, who is”** and in sub clause (2) by inserting a new sub clause immediately after sub clause (2) as follows:

2A “The chief officer of the relevant sector and the chief officer for finance shall be members of the Board”

- (i) In sub clause (5) by inserting the words **“non-executive”** immediately before the word **“chairperson”**
- (ii) In sub clause (5) by deleting the expression **“the qualifications, skills and experience as advised by the County Public Service Board”** and substituting therefor the expression **“a degree in the relevant field”**
- Clause 17 of the Bill be amended in sub clause (1) paragraph (b) sub paragraph (iii) by inserting a new sub paragraph immediately after sub paragraph (iii) as: **“iii a” Risk Management**
- Clause 18 of the Bill be amended by deleting the words **“County Public Service Board”** wherever it appears and substituting therefore the following expression **“responsible County Executive Committee member”**

- Clause 19 of the Bill be amended by deleting the expression “in consultation with the County Public Service Board and” in its entirety.
- Clause 20 of the Bill be amended in sub clause 3 paragraph (c) sub paragraph (i) by deleting the word “County Corporation” and substituting therefor the word “Board”
- Clause 26 of the Bill be amended in sub-clause (1), by deleting sub clause (1) in its entirety and substituting therefor: -“Every County Corporation shall not later than January in every year, cause to be prepared estimates of the County Corporation’s revenue and expenditure for the following financial year and shall submit to the responsible County Executive Committee Member who, after approving it shall forward to the County Executive Committee Member for finance” and in sub clause (3) by inserting the word “finance” immediately after the words “Member for”
- Clause 29 of the Bill be amended by deleting Clause 29 in its entirety and substituting therefore: - “The assets of a County Corporation may be acquired or disposed of subject to the provisions of the Public Procurement and Asset and Disposal Act, 2015”

The Fiscal Analyst noted that: -

- The first amendment of inserting the words “and the County Assembly” immediately after the word “Committee” enables the County Assembly to approve the formation and dissolution of a Corporation;
- On stakeholder engagement, the amendments to Clause 5 establishes that a County Corporation shall be a public corporation with the County Government having majority share and;
- Clause 2 of the Bill had been amended to include the Chief Officer of the relevant sector and the Chief Officer for finance to be members of the Board and deleting the requirement of consulting with the County Public Service Board in Clause 18 and 19, ensuring that the boards are independent.

The Committee resolved to further amend Clause 5 (e) of the Corporations Bill to include a provision that increases the County Government’s shareholding of a Corporation to not

less than 75%. This, the Committee noted, would make a County Corporation a public body that provides particular services for which the County is responsible for.

The Committee also resolved to amend Clause 9 (5) on the qualifications of the Chairperson to be reduced to a minimum of **any** degree as opposed to the previously agreed qualification of a minimum of a **relevant** degree.

The amendments to the Nairobi City County Corporations Bill, 2019 were adopted after being proposed by Hon. Daniel Ngengi and seconded by Hon. Emily Oduor.


MIN 350/FBAC/JULY/2019: Any Other Business

The Fiscal Analyst reminded the members of the Public Participation in Kibra and Langata Sub-Counties on the Finance Bill 2019, that would be held at Uhuru Gardens Primary School on Tuesday, 30th July 2019 from 9.30 a.m.

MIN 351/FBAC/JULY/2019: Adjournment

There being no other business, the Chairman adjourned the meeting at ten minutes past one o'clock.

CONFIRMED AS TRUE RECORD OF PROCEEDINGS

Sign.......... Date.....24/07/2019.....

(CHAIRMAN)

Sign.......... Date.....24/7/19.....

(FISCAL ANALYST/COMMITTEE CLERK)

