

SPECIAL ISSUE

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REPUBLIC OF KENYA

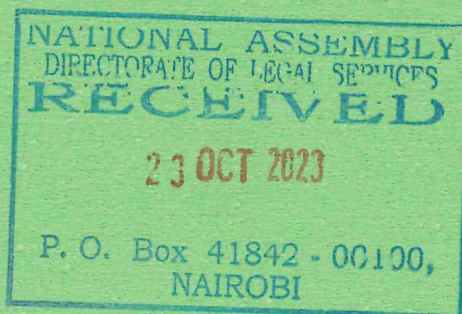
KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2023

NAIROBI, 13th October, 2023

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**THE UNIVERSITIES (AMENDMENT) (NO. 3) BILL,
2023**

A Bill for

AN ACT of Parliament to amend the Universities Act and for connected purposes.

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Universities (Amendment)(No. 3) Act, 2023.

Short title.

2. The Universities Act, (in this Act referred to as the “principal Act”), is amended in section 53(4) by deleting paragraph (b).

Amendment of section 53 of No. 42 of 2012.

3. Section 54 of the principal Act is amended in subsection (4) by—

Amendment of section 54 of No. 42 of 2012.

(a) deleting paragraph (b) and substituting therefor the following new paragraph—

(b) in consultation with the Cabinet Secretary, develop a transparent and fair criterion for the allocation of funds to public universities;

(b) deleting paragraph (c) and substituting therefor the following new paragraph—

“(c) apportion funds to public universities;”

4. Section 56 (1) of the principal Act is amended by inserting the word “public” immediately before the word “universities” appearing in paragraph (a).

Amendment of section 56 of No.42 of 2012.

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons

The principal object of the Bill is to amend the Universities Act, No. 42 of 2012 to abolish funding of private universities using public funds and to bar the Kenya Universities and Colleges Central Placement Service (KUCCPS) from placement of students to private universities. The object of the Bill is to safeguard public funds from misuse by private entities which have not been brought under the regulatory framework of the Public Finance Management Act, 2015 and the regulations thereunder.

Clause 2 of the Bill proposes to amend section 53(4) (b) of the principal Act to abolish the issuance of conditional grants to private universities.

Clause 3 of the Bill proposes to amend sections 54(4) (b) and (c) of the principal Act to abolish the issuance of conditional grants to private universities.

Clause 4 proposes to amend 56(1) (a) of the Principal Act to bar the Kenya Universities and Colleges Central Placement Service (KUCCPS) from placement of students to private universities.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not contain any provisions limiting any fundamental rights or freedom.

Indication of whether the Bill concerns County Governments

The Bill seeks to amend the Universities Act so as to abolish funding of private universities using public funds and to bar the Kenya Universities and Colleges Central Placement Service (KUCCPS) from placement of students to private universities.

Paragraph 16 of Part 1 of the Fourth Schedule to the Constitution provides that university, tertiary educational institutions and other institutions of research and high learning is a function of national governments. In view of this, the Bill does not concern county governments in terms of Article 110(1)(a) of the Constitution as it does not affect the functions and powers of County Governments recognized in the Fourth Schedule to the Constitution and is therefore not a Bill concerning county governments.

Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill will not occasion additional expenditure of public funds.

Dated the 13th October, 2023.

CHRISTOPHER ASEKA WANGAYA,
Member of Parliament.

Section 53 of No. 42 of 2012 which it is proposed to amend—

Establishment of Fund

53. (1) There shall be established a Fund to be known as the Universities Fund.

(2) The object and purpose of the Fund shall be to provide funds for financing universities.

(3) There shall be paid into the Fund—

- (a) monies provided by Parliament;
- (b) such sums of money as may be received by the Board in the form of donations;
- (c) such sums of money as may be specifically designated for the Fund by the Board out of its own Funds;
- (d) income generated by investments made by the Trustees; and;
- (e) endowments, grants and gifts from whatever source designated for the Fund.

(4) There shall be paid out of the Fund—

- (a) any expenditure approved by the Trustees for the funding of the public universities;
- (b) any expenditure approved by the Trustees for conditional grants and loans to private universities; and
- (c) any expenditure authorized by the Trustees to be incurred in connection with the administration of the Fund.

Section 54 of No. 42 of 2012 which it is proposed to amend—

Board of Trustees

54. (1) The Fund shall be managed by a Board of Trustees which shall consist of nine members appointed by the Cabinet Secretary as follows—

- (a) a chairperson who has knowledge and experience in matters related to finance, investment and fundraising;
- (b) the Principal Secretary in the Ministry responsible for finance;
- (c) the Principal Secretary in the Ministry for University Education;
- (d) six persons who have proven knowledge and experience in financial matters of which at least two and not more than three will be of the same gender.

(2) In appointing the members referred to in subsection (1)(d) the Cabinet Secretary shall have regard to—

- (a) the objects of the Fund;
- (b) the need for balanced competencies among the Trustees;
- (c) gender equity; and
- (d) the inclusion of persons with disabilities, minorities and other marginalized groups.

(3) The provisions relating to the appointment of the members of the Commission as set out in section 6 shall apply, mutatis mutandis, to the Trustees.

(4) The function of the Trustees shall be to generally manage the University Fund established under section 53, and more particularly to—

- (a) advise the Cabinet Secretary in matters of university education funding and related policy issues;
- (b) in consultation with the Cabinet Secretary, develop a transparent and fair criterion for allocation of funds to public universities and issue conditional grants to private universities;
- (c) apportion funds to public universities and issuance of conditional grants to private universities in accordance with criteria established;
- (d) in consultation with the Chairpersons of Councils of public universities, propose and establish for approval by the Cabinet Secretary and the Auditor-General the maximum differentiated unit cost for the programmes offered;
- (e) establish the minimum discipline differentiated remuneration for academic staff of universities, which shall be fair and globally competitive, and advise the Government accordingly;
- (f) mobilize and receive funds for purposes of the Fund from the Government, donors, and from any other source; and
- (g) exercise any other power for the better performance of its functions under this Act.

(5) The Trustees may invest any unutilized balances in the Fund in such manner as trustees may lawfully invest public funds.

(6) Deleted by Act No. 48 of 2016, s. 20.

(7) Deleted by Act No. 48 of 2016, s.20.[Act No. 48 of 2016, s. 20.]

Section 56 of No. 42 of 2012 which it is proposed to amend—

Functions of Placement Board

56. (1) The functions of the Board shall be to—

- (a) co-ordinate the placement of the government sponsored students to universities and colleges;
- (b) disseminate information on available programmes, their costs, and the areas of study prioritized by the Government;
- (c) collect and retain data relating to university and college placement;
- (d) advise the Government on matters relating to University and college student placement;
- (e) develop career guidance programmes for the benefit of students; and
- (f) perform any other function assigned to it under this Act.

(2) The Placement Board shall in the performance of its functions promote equity and access to university and college education, by among other things, developing criteria for affirmative action for the marginalized, the minorities and persons with disabilities.

(3) The placement Board shall establish criteria to enable students access the courses for which they applied taking into account the students' qualifications and listed priorities.