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SENATE BILLS, 2019

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**THE FISHERIES MANAGEMENT AND
DEVELOPMENT (AMENDMENT) BILL, 2019**

A Bill for

AN ACT of Parliament to amend the Fisheries Management and Development Act; and for connected purposes.

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Fisheries Management and Development (Amendment) Act, 2019.

Short title.

2. Section 201 of the Fisheries Management and Development Act, hereinafter referred to as the “principal Act”, is amended by deleting subsection (2).

Amendment of section 201 of No. 35 of 2016.

3. Section 206 of the principal Act is amended—

Amendment of section 206 of No. 35 of 2016.

(a) by deleting subsection (1) and substituting therefor the following new subsection-

(1) The Chief Executive Officer of the Authority shall be competitively recruited and appointed by the Board of Directors.

(b) in subsection (3) by deleting the word “three” appearing immediately after the words “ a term of” and substituting therefor the word “four”.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The principal object of this Bill is to amend the Fisheries Management and Development Act, 2016 on the appointment of the Chairperson and Chief Executive Officer of the Fish Marketing Authority to align their appointment with best practice on appointment of Chairpersons and Chief Executives of corporations as enunciated in the *Mwongozo Code* for State corporations.

The provisions of the principal Act that are sought to be amended have assigned the responsibility of appointment of the Chairperson and the CEO on the President and the Cabinet Secretary, respectively, with the approval of the National Assembly. This is not aligned with the recommended practice on governance in State corporations which recommends that Chairpersons be appointed by the President and the CEO be competitively recruited by the Board. The amendment therefore provides that the Chairperson shall be appointed by the President while the CEO shall be recruited and appointed competitively by the Board. It is also proposed that the CEO serves for a term of four years that would be renewable once.

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

The Bill does not delegate legislative powers nor does it limit the fundamental rights and freedoms.

Statement on how the Bill concerns county governments

“Fisheries” is a devolved function under paragraph 1(e) of the Fourth Schedule to the Constitution. Provisions relating to the appointment of the members of the Fish Marketing Authority have an impact on how effectively the Authority would carry out its functions and thereby affect the powers and functions of county governments in respect of the fisheries function.

The Bill is therefore is a Bill concerning county governments in terms of Article 110 (1) (a) of the Constitution.

Statement that the Bill is not a money Bill, within the meaning of Article 114 of the Constitution

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 2nd September, 2019.

MOSES OTIENO KAJWANG',
Senator.

Section 201 of No. 35 of 2016 which it is proposed to amend—

201. Board of Directors

(1) There shall be a Board of Directors of the Fish Marketing Authority which shall consist of—

- (a) a chairperson appointed by the President;
- (b) the Principal Secretary of the Ministry for the time being responsible for matters relating to fisheries or his representative;
- (c) the Principal Secretary of the ministry for the time being responsible for matters relating to finance or his representative;
- (d) The Principal Secretary for the time being responsible for matters related to Trade and Industry;
- (e) The Principal Secretary in the ministry for the time being responsible for planning and economic development, or his representative;
- (f) one person, who has knowledge and experience in matters relating to fisheries, nominated by the Council of Governors;
- (g) the Chief Executive Officer of the Fund;
- (h) the Chief Executive Officer of the Fish Marketing Authority, who shall be the secretary; and
- (i) four other members nominated or selected through a competitive process taking into consideration regional balance and gender parity and appointed by the Cabinet Secretary, of whom—
 - (i) two shall be nominated by the registered national fisheries associations; and
 - (ii) two shall be persons with knowledge or experience in matters relating to international fisheries, finance, business administration, law, marketing or a related discipline.

(2) The names of persons proposed for appointment under subsection (1)(a) and (h) shall, before they are appointed, be laid before the National Assembly for approval.

(3) The members of the Board of Directors shall be appointed at different times so that the respective expiry dates of their terms of office shall fall at different times.

(4) The Board of Directors shall ensure the proper and effective performance of the functions of the Fish Marketing Authority.

(5) The Board of Directors may enter into partnership with other body or organization within or outside Kenya as it may consider appropriate, in furtherance of the objects of the Fish Marketing Authority.

(6) The members of the Board of Directors shall be paid remuneration and allowances determined by the Minister, in consultation with the Minister responsible for matters relating to finance.

Section 206 of No. 35 of 2016 which it is proposed to amend—

206. Appointment of chief executive and other staff

(1) The Cabinet Secretary shall, in consultation with the Board of Directors and subject to subsection (2), through a competitive process, appoint a person to be the Chief Executive Officer of the Fish Marketing Board.

(2) A person shall not be qualified for appointment as the Chief Executive Officer under subsection (1) unless that person has an advanced degree in marketing, business administration or related discipline and has at least ten years' experience at a senior management level in matters relating to Fisheries, marketing or other related sector.

(3) The chief executive officer shall hold office for a term of three years and shall be eligible for re-appointment for one further term.

(4) The Board of Directors may appoint such officers and other staff as may be necessary for the proper and effective performance of the functions of the Fish Marketing Authority.