

BILLS SUPPLEMENT

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Bill No. 17 *The Physical Planning (Amendment) Bill*

2018

THE PHYSICAL PLANNING (AMENDMENT) BILL, 2018

MEMORANDUM

1. THE PRINCIPLES OF THE BILL

The objects and principles of this Bill are to amend the Physical Planning Act, 2010, Act No.8 of 2010 to provide for the functions and powers of the Board; to establish a secretariat of the Board; to provide for the appointment of the Executive Director and staff of the Board; to streamline the composition of physical planning committees; to provide for offences and deterrent penalties for contravention of Act and for other related matters.

2. DEFECTS IN THE EXISTING LAW

The current law on Physical Planning in Uganda is the Physical Planning Act, 2010 which commenced on 28th May, 2010. Although the law is relatively new, a number of challenges have been encountered by the Board and the Ministry in the implementation of the Act thus necessitating this amendment. The law is ineffective especially in the light of the present-day Government policies and rapid urbanisation.

In its current form, the Physical Planning Act, 2010 impedes meaningful development of the country. There is, therefore, need for radical changes in the law if physical planning is to contribute to the journey to a middle income status of Uganda by 2020.

**3. REMEDIES PROPOSED TO DEAL WITH THE DEFECTS
IN THE EXISTING LAW**

It is proposed to amend the Physical Planning Act, 2010 to strengthen the Board to enable it to perform its functions effectively. The following are among the issues addressed in the Bill—

- (a) the prescription of clear functions of the Board to address the overlaps in the current functions;
- (b) the prescription of the powers of the Board to enable it to enforce its decisions and ensure implementation;
- (c) the establishment of the Secretariat of the Board;
- (d) the provision for effective public participation in physical planning matters;
- (e) the requirement for all local governments to prepare and implement physical development plans; and
- (f) the provision for rewards and sanctions for developers, land owners and other key players in physical planning and urban development with a view to improving physical development plan implementation.

4. PROVISIONS OF THE BILL

Clause 1 of the Bill seeks to amend section 2 of the Physical Planning Act, 2010 to describe the terms as used in the Bill.

Clause 2 seeks to insert a new section 2A to provide for the right of every Ugandan to a clean and healthy environment and the duty to create, maintain and enhance a well-planned environment.

Clause 3 seeks to substitute section 4 of the principal Act to clarify on the establishment of National Physical Planning Board as a body corporate and the conduct of its proceedings.

Clause 4 seeks to amend section 5 of the principal Act to increase the tenure of office of members of the Board from three years to four years to give the members reasonable time to implement their programs.

Clause 5 seeks to substitute section 6 of the principal Act to clarify the functions of the Board and address overlaps in the current functions of the Board and the functions of other agencies involved in physical planning in Uganda.

Clause 6 seeks to insert a new section 6A in the principal Act to provide for the powers of the Board. This will enable the Board to enforce its decisions in order to be more effective in the implementation of its mandate.

Clauses 7, 8, 9 and 10 seek to amend the principal Act to provide for the Secretariat of the Board, the Executive Director and his or her functions; and the power of the Board to appoint other staff.

Clauses 11 and 12 seek to amend the principal Act to ensure that the urban physical planning committees and local physical planning committees are constituted with qualified members in order to be more effective.

Clause 13. This clause seeks to amend section 17(3) of the principal Act to require the district, urban or local physical planning committee to submit their record of proceedings to the Executive Director.

Clause 14 seeks to amend section 18 of the principal Act to clarify on a physical development plan and to require the national physical development plan to cover the entire country.

Clause 15 seeks to amend section 25 of the principal Act to require district, urban and sub county councils to prepare physical development plans or to cause the Board to prepare the relevant physical development plans.

Clause 16 seeks to substitute Part VI of principal Act to provide for the financial matters of the Board including funds, bank accounts, estimates, accounting, audit, annual reports and financial year.

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Clause 17 seeks to amend the principal Act by inserting new sections 47A and 47B to provide for rewards and sanctions for implementing physical development plans.

Clauses 18, 19 and 21 seek to amend the principal Act to clarify on the power of the Board on appeal from the decision of a physical planning committee and the right to fair hearing to the parties to an appeal; in addition to other consequential amendments resulting from the establishment of the Secretariat of the Board that will be headed by the Executive Director.

Clauses 22 and 23 seek to amend the principal Act to provide for other offences and stringent penalties for breach of the provisions of the Act and Regulations.

Clause 24 proposes to amend the Second Schedule to the principal Act in paragraph 2 (1) to reduce the quorum for a meeting of the Board from six members to five members.

HON. AMONGI BETTY ONGOM (MP)
Minister of Lands, Housing and Urban Development.

THE PHYSICAL PLANNING (AMENDMENT) BILL, 2018

ARRANGEMENT OF CLAUSES

Clause

1. Amendment of section 2 of the Physical Planning Act, 2010.
2. Insertion of new section 2A in principal Act.
3. Substitution of section 4 of principal Act.
4. Amendment of section 5 of principal Act.
5. Substitution of section 6 of principal Act.
6. Insertion of new section 6A in principal Act.
7. Substitution of cross heading.
8. Substitution of section 7 of principal Act.
9. Substitution of section 8 of principal Act.
10. Amendment of section 9 of principal Act.
11. Amendment of section 11 of principal Act.
12. Substitution of section 13 of principal Act.
13. Amendment of section 17 of principal Act.
14. Amendment of section 18 of principal Act.
15. Amendment of section 25 of principal Act.
16. Substitution of Part VI of principal Act.
17. Insertion of new sections 47A and 47B in principal Act.
18. Amendment of section 48 of principal Act.
19. Amendment of section 52 of principal Act.
20. Amendment of section 53 of principal Act.
21. Amendment of section 55 of principal Act.
22. Substitution of section 57 of principal Act.
23. Amendment of section 60 of principal Act.
24. Amendment of Second Schedule to principal Act.

A Bill for an Act

ENTITLED

THE PHYSICAL PLANNING (AMENDMENT) BILL, 2018

An Act to amend the Physical Planning Act, 2010; to provide for the functions and powers of the Board; to establish a secretariat for the Board; to provide for the appointment of the Executive Director and staff of the Board; to streamline the composition of physical planning committees; to provide for offences and deterrent penalties for contravention of the Act and for other related matters.

BE IT ENACTED by Parliament as follows:

1. Amendment of section 2 of the Physical Planning Act, 2010.

The Physical Planning Act, 2010 in this Act referred to as the principal Act is amended—

- (a) in section 2 by repealing the definition of “head of the national physical planning department;”
- (b) in section 2 by inserting immediately after the definition of the word “subdivision” the following—

“subject plan” means a thematic plan that covers a particular subject, such as housing, transportation network or industrial development;”

2. Insertion of new section 2A in principal Act.

The principal Act is amended by inserting immediately after section 2 the following—

“2A. Right to a clean and healthy environment.

(1) Every Ugandan has a right to a clean and healthy environment in accordance with article 39 of the Constitution.

(2) Subject to subsection (1), every Ugandan has a duty to create, maintain and enhance a well-planned environment.

(3) A person may, where the right referred to in subsection (1) is threatened as a result of an act or omission by any person which has or is likely to breach a physical development plan or physical planning standards or in the enforcement of the duty referred to in subsection (2), report to the relevant authorities or file a civil suit against the person whose act or omission has breached or is likely to breach a physical development plan or physical planning standards.

(4) A person proceeding under subsection (3) may file a civil suit notwithstanding that the person cannot prove that the act or omission of another person has caused or is likely to cause personal harm or injury.”

3. Substitution of section 4 of principal Act.

The principal Act is amended by substituting for section 4, the following—

“4. Establishment of National Physical Planning Board.

(1) There is established the National Physical Planning Board.

(2) The Board is a body corporate with perpetual succession and a common seal and may, for the purposes of discharging its functions under this Act—

- (a) acquire, hold and dispose of moveable and immovable property;
- (b) sue and be sued in its corporate name; and
- (c) do all acts and things as a body corporate may lawfully do.

(3) The Board shall be appointed by the Minister on such terms and conditions as the Minister may determine.

(4) The Minister shall appoint the chairperson of the Board from among the members.

(5) At least one third of the members of the Board shall be women.

(6) The members of the Board may be paid remuneration or allowances approved by the Minister, in consultation with the Minister responsible for finance and the Minister responsible for public service.

(7) The proceedings of the Board shall be in accordance with the Second Schedule to this Act.”

4. Amendment of section 5 of principal Act.

The principal Act is amended in section 5—

- (a) in subsection (1) by substituting for the word “three” the word “four”;
- (b) in subsection (3)—
 - (i) by substituting for paragraph (a) the following—
 - (a) “for inability to perform his or her functions arising from infirmity of body or mind”
 - (ii) by inserting immediately after paragraph (e) the following—

“(f) for incompetence.”

5. Substitution of section 6 of principal Act.

The principal Act is amended by substituting for section 6, the following—

“6. Functions of the Board.

(1) The functions of the Board are—

- (a) to cause to be prepared national and regional physical development plans for the orderly and sustainable development of Uganda;
- (b) to ensure the coordination of the preparation of physical development plans made by local governments;
- (c) to hear and determine appeals lodged by a person or local government aggrieved by the decision of a physical planning committee;
- (d) to determine and resolve physical planning matters referred to it by physical planning committees;
- (e) to advise the Government on all matters relating to physical planning and urban development, including physical planning policies and physical planning standards;
- (f) to study and give guidance and recommendations on issues relating to physical planning which transcend more than one local government for purposes of co-ordination and integration of physical development planning;
- (g) to approve urban or district physical development plans;
- (h) to recommend to the Minister, regional and national physical development plans for approval by Cabinet;
- (i) to advise the Minister responsible for local governments on the declaration and upgrading of urban authorities and cities;

- (j) to advise the Minister on the declaration of special planning areas;
- (k) to monitor and evaluate the implementation of physical development plans;
- (l) to ensure the implementation of local government physical development plans;
- (m) to ensure the integration of physical planning with social and economic planning at the national and local government levels;
- (n) to exercise general supervisory powers over all physical planning committees;
- (o) to co-ordinate physical planning related activities in Uganda to ensure the orderly and sustainable development of human settlements in rural and urban areas;
- (p) to sensitise the public on matters of physical planning;
- (q) to issue guidelines to ensure effective participation and engagement of the public in physical planning; and
- (r) to cause to renew urban areas and improve slums and other informal settlements.

(2) The Board shall, to the greatest extent possible and consistent with this Act, consult and co-operate with ministries, departments and agencies of Government including the Uganda Police Force and other agencies having duties, aims or functions related to those of the Board.

(3) It shall be the duty of any organisation to which subsection (2) relates to cooperate with the Board in the carrying out of its functions under this Act.”

6. Insertion of new section 6A in principal Act.

The principal Act is amended by inserting immediately after section 6, the following—

“6A. Powers of the Board.

(1) The Board may, in the performance of its functions, exercise and discharge the following powers—

- (a) control, supervise and administer the assets of the Board in such manner and for such purposes to promote the purpose for which the Board is established;
- (b) conduct any investigation or inquiry relevant to physical planning development in Uganda;
- (c) issue guidelines, directives or instructions to physical planning committees for the proper conduct of physical planning and urban development; and
- (d) order the demolition of any building or structure constructed in contravention of this Act.

(2) The Board may, by instrument of delegation, delegate to the Chairperson, a member of the Board or an officer of the Board, any of the powers, duties or functions of the Board under this Act.”

7. Substitution of cross heading.

The principal Act is amended by substituting for the crossheading appearing immediately after section 6 the following—

“Secretariat and Staff of the Board.”

8. Substitution of section 7 of principal Act.

The principal Act is amended by substituting for section 7, the following—

“7. Secretariat of the Board.

(1) The Board shall have a Secretariat which shall be headed by an Executive Director.

(2) The Executive Director shall be appointed by the Minister on the recommendation of the Board, on terms and conditions specified in the instrument of appointment.

(3) The Executive Director shall be a person of high moral character and proven integrity, who has qualifications and experience in physical planning and with experience and competence to manage the affairs of the Board.

(4) The Executive Director shall be the secretary to the Board.

(5) The Executive Director shall hold office for five years and is eligible for reappointment for one more term only.

(6) The Executive Director shall cease to hold office if—

- (a) he or she resigns;
- (b) he or she is declared bankrupt or insolvent, or has made an arrangement with his or her creditors;
- (c) he or she is convicted of an offence and sentenced to imprisonment for six months or more by a competent court in Uganda or outside Uganda without the option of a fine;
- (d) he or she is removed from office by the Minister on the recommendation of the Board for—
 - (i) inability to perform the functions of his or her office arising from infirmity of body or mind;
 - (ii) abuse of office;

- (iii) misbehavior or misconduct; or
- (iv) incompetence.

(7) The Board may, on the advice of the Executive Director, appoint other officers and staff of the Board as may be necessary for the effective performance of the functions of the Board.

(8) The employees appointed under this section shall hold office on such terms and conditions as the Board may determine and specify in their instruments of appointment.”

9. Substitution of section 8 of principal Act.

The principal Act is amended by substituting for section 8, the following—

“8. Functions of Executive Director.

(1) The Executive Director is responsible for the day to day operations and administration of the Board.

(2) Subject to this Act and to the general supervision of the Board, the Executive Director shall—

- (a) implement the policy decisions of the Board;
- (b) be responsible for the day to day administration and management of the affairs of the Board and the control of the staff of the Board;
- (c) arrange the business of the Board, record and keep the minutes of all decisions and proceedings of the Board at its meetings;
- (d) ensure the proper management of the funds and property of the Board;
- (e) develop strategic plans to guide the Board in achieving its objectives;

- (f) develop an economic, efficient and cost effective internal management structure for approval by the Board; and
- (g) perform any other function which may be assigned to him or her by the Board.

(3) The Executive Director is, in the performance of his or her functions answerable to the Board.”

10. Amendment of section 9 of principal Act.

The principal Act is amended in section 9 by substituting for paragraph (m) the following—

“(m) a physical planner in private practice appointed by the council on the advice of the Executive Director.”

11. Amendment of section 11 of principal Act.

The principal Act is amended in section 11—

- (a) by substituting for paragraph (f), the following—

“(f) the officer responsible for public health;”

- (b) by repealing the word “district” in paragraph (d); and

- (c) by repealing paragraph (g).

12. Substitution of section 13 of principal Act.

The principal Act is amended by substituting for section 13 the following—

“13. Establishment of local physical planning committees.

Each sub county council shall establish a local physical planning committee which shall consist of—

- (a) the sub county chief, who shall be the chairperson;
- (b) the district physical planner, or his or her representative, who shall be the secretary;
- (c) the community development officer;
- (d) the officer responsible for health at the sub county; and
- (e) the officer responsible for agriculture at the sub county.”

13. Amendment of section 17 of principal Act.

The principal Act is amended in section 17 by substituting for subsection (3) the following—

“(3) The record of proceedings of a district, urban or local physical planning committee shall be submitted to the Executive Director.”

14. Amendment of section 18 of principal Act.

- (a) The principal Act is amended in section 18 (1) by inserting immediately after paragraph (e) the following—

“(f) detailed physical development plans, area action plans and subject plans.”

- (b) The principal Act is amended in section 18 by substituting for subsection (2) the following—

“(2) The national physical development plan shall be developed to cover Uganda and all other physical development plans shall conform to the national physical development plan.”

15. Amendment of section 25 of principal Act.

The principal Act is amended in section 25—

- (a) by substituting for subsection (1) the following—

“(1) A district, urban and sub county council shall prepare a district physical development plan, urban physical development plan and local physical development plan, respectively.”

- (b) by inserting immediately after subsection (1) the following—

“(1A) A district physical planning committee, urban physical planning committee and sub county physical planning committee shall cause to be prepared the physical development plan referred to in subsection (1).”

- (c) by substituting for subsection (2) the following—

“(2) The Board may, at the request and cost of a local government through the district physical planning committee, urban physical planning committee or sub county physical planning committee, prepare—

- (a) a district physical development plan;
- (b) a city, municipality or town physical development plan; or
- (c) a sub county physical development plan.”

16. Substitution of Part VI of principal Act.

The principal Act is amended by substituting for Part VI the following—

“PART VI—FINANCES.

41. Funds of the Board.

The funds of the Board shall consist of —

- (a) monies appropriated by Parliament for the purposes of the Board;
- (b) fees, fines and other money paid to the Board for services rendered under this Act;
- (c) loans to the Board with the approval of the Minister, the Minister responsible for finance and Parliament;
- (d) grants, gifts or donations to the Board with the approval of the Minister and the Minister responsible for finance; and
- (e) any revenue derived from the sale of any property; movable or immovable, by or on behalf of the Board.

42. Power to open and operate bank accounts.

(1) The Board shall, with the authority of the Accountant General, open and maintain bank accounts as are necessary for the performance of the functions of the Board.

(2) The bank accounts of the Board shall be operated in accordance with the Public Finance Management Act, 2015.

43. Estimates.

(1) The Board shall, in accordance with the Public Finance Management Act, 2015, cause to be prepared and submitted to the Minister for approval, estimates of the income and expenditure of the Board and the operating plan of the Board for the next financial year.

(2) The Board shall not incur any expenditure exceeding its budget without the written approval of the Minister and the Minister responsible for finance.

43A. Financial year of Board.

The financial year of the Board is the period of twelve months beginning on the 1st day of July in each year and ending on the 30th day of June in the next calendar year.

43B. Accounts.

The Board shall—

- (a) keep proper books of accounts and all records relating to the transactions and affairs of the Board;
- (b) within two months after the end of the financial year, prepare annual financial statements of the Board for the preceding financial year; and
- (c) within two months after the end of each financial year, submit the annual accounts to the Auditor General.

43C. Audit.

The Auditor General or an auditor appointed by the Auditor General shall, in each financial year, audit the accounts of the Board in accordance with the National Audit Act, 2008.

43D. Annual report.

(1) The Board shall submit to the Minister, as soon as practicable but not later than three months after the end of each financial year, a report detailing the activities and operations of the Board during the year to which the report relates; including the audited accounts.

(2) The Minister shall, within two months after receipt of the annual report, submit the report to Parliament with any statement which he or she considers necessary.

(3) The Board shall publish the annual report and the report on the audited accounts within six months after the end of each financial year.”

17. Insertion of new sections 47A and 47B in principal Act.

The principal Act is amended by inserting immediately after section 47 the following-----

“47A. Rewards for implementing physical development plan.

(1) The Board may reward a local government, land owner or any person involved in physical planning for complying with the physical development plan under this Act.

(2) The Minister shall by statutory instrument make regulations to give effect to subsection (1).

47B. Certificate of compliance with physical development plan.

(1) The Minister shall, in consultation with the Board, issue a certificate of compliance to each local government for the implementation of a physical development plan for the previous year by 30th October each year.

(2) The Minister shall, before issuing a certificate of compliance under subsection (1) assess the performance of a local government in implementing the physical development plan.

(3) Where a local government fails to implement a physical development plan, the Minister may recommend to the Minister responsible for finance that funding for the local government concerned be reduced or withheld until the relevant local government complies with the physical development plan.”

18. Amendment of section 48 of principal Act.

The principal Act is amended in section 48-----

- (a) by substituting for section 48 (4), with the following—

“(4) Subject to subsection (3), the relevant physical planning committee or the Board may reverse, confirm or vary the decision appealed against and may make such order as it thinks necessary or expedient to give effect to its decision.”

- (b) by substituting for section 48 (5), with the following—

“(5) The Board or relevant physical planning committee shall, before making any order under subsection (4), give the physical planning committee an opportunity to make representations regarding the appeal and shall afford the appellant an opportunity to respond to the representations of the physical planning committee.”

19. Amendment of section 52 of principal Act.

The principal Act is amended in section 52 by substituting for the words “secretary to the Board” the words “Executive Director”.

20. Amendment of section 53 of principal Act.

The principal Act is amended in section 53(2) by substituting for the words “the secretary” the words “the Executive Director”.

21. Amendment of section 55 of principal Act.

The principal Act is amended in section 55 (1) by repealing the words “head of the national physical planning department”.

22. Substitution of section 57 of principal Act.

The principal Act is amended by substituting for section 57, the following—

“57. Offences.

(1) A person who—

- (a) knowingly makes a false statement or gives false information in respect of an application or appeal under this Act;
- (b) obstructs or resists an officer or a person authorised under this Act, in the course of his or her duty;
- (c) fails to paint his or her building, place litter bins at his or her building, place a sign with the street name on his or her plot as prescribed by the local government or builds in a road reserve or environmentally sensitive area as defined under the National Environment Act; or

(d) fails to comply with any order issued under this Act, commits an offence and is liable, on conviction, to a fine not exceeding twenty four currency points or imprisonment not exceeding one year or both.

(2) A person convicted of a subsequent offence under this section is liable to a fine not exceeding forty eight currency points or imprisonment not exceeding two years or both and in case of a continuing offence, to a fine not exceeding twenty five currency points for every day or part of a day during which the offence continues.”

23. Amendment of section 60 of principal Act.

The principal Act is amended by substituting for section 60 (2), the following—

“(2) Regulations made under this section may prescribe penalties not exceeding forty eight currency points or imprisonment not exceeding two years or both for the contravention of offences under the Regulations.”

24. Amendment of Second Schedule to principal Act.

The principal Act is amended in Second Schedule by substituting for paragraph 2 (1), the following—

“(1) The quorum for a meeting of the Board is five members.”

Cross references

National Audit Act, 2008, Act 7 of 2008

Public Finance Management Act, 2015, Act 3 of 2015