



REPUBLIC OF ZAMBIA

REPORT

OF THE

COMMITTEE ON ENERGY, WATER DEVELOPMENT AND TOURISM

ON

THE RURAL ELECTRIFICATION BILL, N.A.B. NO. 5 OF 2023

FOR THE

SECOND SESSION OF THE THIRTEENTH NATIONAL ASSEMBLY

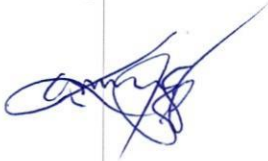
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FOREWORD

Honourable Madam Speaker, the Committee on Energy, Water Development and Tourism, has the honour to present its Report on the consideration of the Rural Electrification Bill, N.A.B. No. 5 of 2023, for the Second Session of the Thirteenth National Assembly. The Committee is mandated to consider any Bills that may be referred to it by the House, as per Standing Order No. 198(j) of the National Assembly Standing Orders, 2021.

In order to acquaint itself with the ramifications of the Bill, the Committee sought both written and oral submissions from different stakeholders, the list of which is at Appendix II. The Report highlights a summary of submissions from stakeholders; concerns raised by stakeholders; and the observations and recommendations made by the Committee.

Madam Speaker, the Committee is grateful to the stakeholders who tendered both written and oral submissions. The Committee also wishes to thank you, for affording it the opportunity to scrutinise the Rural Electrification Bill, N.A.B. No. 5 of 2023. Further, appreciation is extended to the Clerk of the National Assembly and his staff for the support and guidance rendered throughout the Committee's deliberations.



Mr Romeo Kang'ombe, MP
CHAIRPERSON

March, 2023
LUSAKA

TABLE OF CONTENTS

Item	Page
Foreword	i
Composition of the Committee	1
Background	1
Objects of the Bill	1
Salient Provisions of the Bill	1
Stakeholders' Submissions and Concerns	3
Committee's Observations and Recommendations	5
Conclusion	7
Appendix I – List of National Assembly Officials	9
Appendix II – List of Witnesses	10

1.0 COMPOSITION OF THE COMMITTEE

The Committee consisted of: Mr Romeo Kang’ombe, MP (Chairperson); Mr Chanda A B Katotobwe, MP (Vice-Chairperson); Ms Miriam C Chonya, MP; Mrs Kampamba S Mulenga, MP; Mr Pavyuma Kalobo, MP; Mr Michael J K Katambo, MP; Mr Gregory Ngowani, MP; Eng Raphael S Mabenga, MP; Mr Lameck Hamwaata, MP; and Mr Christopher C Kang’ombe, MP.

2.0 BACKGROUND

Rural Electrification had long been identified as a vehicle to eradicate poverty by stimulating the rural economy in the Republic of Zambia. *The Rural Electrification Act, No. 20 of 2003* was the primary legislation regulating rural electrification in Zambia. The law created the Rural Electrification Authority (“the Authority”) whose mandate was to provide electricity infrastructure to all rural areas using appropriate technologies in order to increase access, productivity and contribute to improved quality of life. The Authority was further mandated to increase electricity availability and access in rural areas from 3 per cent to 51 per cent by the year 2030.

In the Act, the Authority had the sole mandate to make all administrative and policy decisions. For all intents and purposes, the Authority performed the functions of a Board. In this regard, the Government had recognised the need to align the law with best practices of corporate governance and fiscal management by, among other things, providing for the constitution of a board of the Authority.

The Bill, once enacted, would provide a clear distinction in the governance structure of the Authority and the Board, thereby leading to the efficient and effective management of the Authority. In addition, the use of technology in rural electrification would enhance the supply of electricity to rural communities.

3.0 OBJECTS OF THE BILL

The objects of the bill were to:

- (i) promote and enhance rural electrification;
- (ii) continue the existence of the Rural Electrification Authority and redefine its functions;
- (iii) constitute the Board of the Authority and provide for its functions;
- (iv) continue the existence of the Rural Electrification Fund;
- (v) repeal and replace the *Rural Electrification Act, No. 20 of 2003*; and
- (vi) provide for matters connected with, or incidental to the foregoing.

4.0 SALIENT PROVISIONS OF THE BILL

The salient provisions of the Bill were as set out below.

Part I: Preliminary Provisions – Clauses 1 to 2

This part provided for the short title and interpretation.

Clause 1 provided for the short title which was basically the name of the Act. The clause did not provide for a commencement date of the Act. This meant that once the Bill was assented to by the President and published in the *Gazette*, it would immediately become operational.

Clause 2 provided for interpretation of terms used in the Bill.

Part II: Rural Electrification Authority – Clauses 3 to 14

This part provided for the continuation of the Rural Electrification Authority and its functions. It also provided for the constitution of the Board of the Authority and its functions, among others.

Clause 5 provided for the functions of the Authority and went further to expand the functions by promoting the utilisation of available rural electrification technological options to enhance the contribution of electricity to the development of social and economic activities in rural areas.

Clause 7(1) constituted the Board of Authority, which was not previously provided for, while Clause 7 (6) empowered the Minister to enter into performance contracts with the Board.

Clause 10 (3) required the Chairperson of the Board to call for a meeting by giving notice of not less than seven (7) days, while Clause 12 empowered the Emoluments Commission to determine the Board's allowances on a recommendation by the Minister.

Part III: Rural Electrification Fund – Clauses 15 to 21

This Part provided for the continuation of the Rural Electrification Fund, management and administration of the Fund; and control of use of Fund, among others.

Clause 16 required the Board with the approval of the Minister to use monies in the Fund to increase and sustain the availability of electricity in rural areas.

Part IV: Financial Provisions – Clauses 22 to 25

This Part provided for the funds of the Authority, financial year, accounts and annual report.

Clause 22 provided that any monies received for the Fund from either within or outside the country were with the approval of the Minister, while Clause 24 (2) provided that the accounts of the Authority shall be audited by the Auditor-General or auditors appointed by the Auditor-General.

Part V: General Provisions – Clauses 26 to 30

This part provided for immunity; execution of judgment; regulations; and the repeal of the Rural Electrification Act, 2003.

Clause 28 prohibited the execution of any judgment or court order obtained against the Authority or its property. Instead, the Fund would be used to pay for any judgment or court order issued against the Authority.

5.0 STAKEHOLDERS' SUBMISSIONS AND CONCERNS

Most stakeholders who appeared before the Committee supported the Bill, and expressed their concerns as outlined hereunder.

Clause 2 – Interpretation

The Committee was informed that this section did not correctly define 'rural area' as it defined it as "an area that is not declared a city or established as a municipality under the *Local Government Act, No. 2 of 2019*." However, the principal Act, which was being repealed provided for peri-urban areas to be declared as rural areas. The principal Act defined "rural area" as "(a) any area which is not an area declared a city or municipality under the Local Government Act; or (b) such other area as the Minister may, by statutory order and in consultation with the Minister responsible for local government, declare as a rural area. The stakeholders, therefore, recommended that the definition in the Act, be adopted.

Clause 4 – Seal of Authority

The stakeholders observed that clause 4(2) of the Bill provided for any other member of the Board to authenticate the affixing of the seal in the absence of the Chairperson or the Vice Chairperson. The stakeholders submitted that the affixing of the common seal should be authenticated by the Chief Executive Officer and the Secretary and not by any member of the Board. The stakeholders recommended that the affixing of the common seal was an administrative issue which should vest in management only.

Clause 5 – Functions of the Authority

The Committee was informed that clause 5(1)(b), which provided that one of the functions of the Authority would be to "develop mechanisms for the procurement of grid extension networks, on grid and off grid systems, for rural electrification", lacked the involvement of other relevant stakeholders. In this regard, it was submitted that clause 5(1)(b), should be re-worded as follows:" in collaboration with stakeholders, develop mechanisms for the procurement and implementation of grid extension networks, on-grid and off-grid systems, for rural electrification".

The Committee was further informed that clause 5(2)(c), provided for the Rural Electrification Authority to be mandated to develop tariff structures for electricity supply to consumers in collaboration with the Energy Regulation Board and in accordance with the *Energy Regulation Act, No. 12 of 2019*. Stakeholders were concerned that in its form, the provision would create conflict, as it appeared to give authority to the Rural Electrification Authority to develop tariff structures for all consumers and not limited to rural consumers, as per its mandate. In this regard, they recommended that this provision should be streamlined to restrict this function to rural consumers.

The Committee was informed that section 15(2)(b) of the principal Act, provided for the formation of appropriate institutions to generate, distribute or supply electricity to specific localities in rural areas. In this regard, it was submitted that Clause 5 of the Bill would complement the functions of the Rural Electrification Authority by providing for the formation

of institutions which would generate and supply electricity to specific localities in rural areas of the country.

Clause 7 – Board of the Authority

The Committee was informed that the Bill did not specify the qualifications of the three persons that were to be appointed by the Minister. The stakeholders were of the view that clause (7)(f) was not adequate and gave room for the appointment of unqualified persons. According to the stakeholders, such persons would not contribute effectively towards the Authority’s mandate as they would lack the needed qualifications for the job. In this regard, the stakeholders proposed that the qualifications of the appointees to the Board should be specified in the Bill.

Clause 8 – Functions of the Board

The stakeholders submitted that clause 8(1) was at variance with the rules of corporate Governance, as the Board should not perform the functions of the Authority, but only provide strategic policy direction and oversight to the Authority. This was notwithstanding that clause 8 (4) provided for delegation of its functions to the Director. In this regard, stakeholders proposed that this provision should be revised to reflect the rules of good corporate governance.

Clause 15 – Continuation of Rural Electrification Fund

The Committee was informed that clause 15(2)(b) stated that one of the sources of the Rural Electrification Fund was electricity levy, yet in the Bill there was no provision which explicitly provided for the Authority to receive electricity levy. The Committee was further informed that most of the funds for the Authority would be in form of grants and donations. In this regard, the stakeholders recommended that the clause should be amended to state explicitly that the Authority would receive the electricity levy charged by ZESCO Limited.

Clause 16 – Purpose of the Fund

The stakeholders observed that clause 16 which provided for the Minister to approve the use of funds in the Rural Electrification Fund should be changed as it was likely to cause:

- (i) an administrative hindrance or slow down the implementation of rural electrification projects; and
- (ii) political interference and political favouritism leading to projects being done on the basis of political expediency.

The Committee was further informed that clause 16 contradicted clause 17(1), which stated that “the Fund shall vest in the Authority and shall be administered and managed by the Authority in the manner that the Board may determine, and the Board shall establish criteria for the application of the monies from the Fund”. The stakeholders, therefore, recommended that this contradiction be cleared.

Clause 22 – Funds of the Authority

The Committee was informed that the definition of what amounted to funds of the Authority in terms of the *Public Finance Management Act, No. 1 of 2018* implied that the funds of the Authority constituted public funds that would have to be remitted to the Consolidated Fund at the end of a particular year. However, there was an exception under Article 200(2) of the *Constitution of Zambia (Amendment) Act, No. 2 of 2016*, where funds allocated were prescribed

for a public fund established for a specific purpose. In this regard, the stakeholders recommended that there was need for Part IV of the Bill to provide for the ring-fencing of the funds of the Authority by inclusion of a statement that the funds were prescribed for a specific purpose, in order to protect it from being mopped up and directed to the Consolidated Fund.

Clause 28 – Execution of judgment

The stakeholders submitted that clause 28 prohibited levying of execution against the Rural Electrification Authority in the event of a Judgment against it. Stakeholders were of the view that this provision would affect other entities and individuals in their operations for failure to execute judgments against the Rural Electrification Authority in an event that it owed them. For example, an institution such as ZESCO Limited would be unable to execute judgment against the Rural Electrification Authority as the clause provided. In this regard, the stakeholders recommended that this provision should be modified to limit it to the property of the Rural Electrification Authority only.

6.0 COMMITTEE’S OBSERVATIONS AND RECOMMENDATIONS

Having considered submissions from stakeholders and noting that the Bill is progressive, the Committee observes that it has some ramifications which need to be addressed. The Committee, therefore, makes its observations and recommendations as outlined below.

- (i) In clause 2, the Committee observes that the definition for rural area in the Bill does not include ‘peri-urban area’ which, is likely to disadvantage many areas in the country that are not necessarily rural areas but are peri-urban but experiencing similar difficulties as those experienced in rural areas of the country.

In this regard, the Committee strongly recommends that the definition of ‘rural area’ under clause 2, should adopt the definition in *the Rural Electrification Act No. 20 of 2003*. This definition will encompass both rural and peri-urban areas for holistic coverage and in turn enhance the provision and implementation of electrification in all affected areas.

- (ii) The Committee observes, with great concern, that clause 5(1)(b) does not provide for stakeholders’ involvement in the development of mechanisms for the procurement of grid extension networks, on grid or off grid systems, for rural electrification.

The Committee, therefore, recommends that there should be a provision for stakeholder involvement in the development of mechanisms for the procurement of grid extensions, on grid or off grid systems, for rural electrification. In this regard, clause 5(1)(b), should be re-cast to read as follows: “in collaboration with stakeholders, develop mechanisms for the procurement and implementation of grid extension networks, on-grid and off-grid systems, for rural electrification”.

- (iii) The Committee observes that clause 5(2)(c) provides for the Rural Electrification Authority to be mandated to develop tariff structures for electricity supply to consumers in collaboration with the Energy Regulation Board and in accordance with the *Energy*

Regulation Act, No. 12 of 2019. The Committee is concerned that in its current form the provision will create conflict, as it appears to give authority to the Rural Electrification Authority to develop tariff structures for all consumers, and not just limited to rural consumers as per its mandate.

In this regard, the Committee urges the Government to consider recasting the clause so that it precisely provides that the Rural Electrification Authority will only develop tariff structures for rural consumers and not for all electricity consumers, a mandate that belongs to the Energy Regulation Board.

- (iv) The Committee observes that the provision in clause (7)(f) does not clearly define the qualifications of the three persons appointed by the Minister and feels that the stated provision may lead to the appointment of unqualified persons who may not contribute effectively to the mandate of the authority.

In this regard, the Committee strongly recommends that clause (7)(f) should highlight professional qualifications of at least two, out of the three persons to be appointed by the Minister.

- (v) The Committee observes that clause 15(2)(b) states that one of the sources of the Rural Electrification Fund is electricity levy, yet the Bill does not explicitly provide for the Authority to receive electricity levy for use in its operations.

In this regard, the Committee recommends that the Government should explicitly state in the Bill that 3 per cent of the electricity levy that ZESCO collects, should within 30 days, be remitted into a separate account under the management of the Rural Electrification Authority. This will help in the Authority executing its operations in a timely and efficient manner without the delays that tend to occur when all the money collected remained under the management of Control 99.

- (vi) The Committee observes that clause 16, which provides for the Minister to approve the use of funds of the Rural Electrification Fund, is frivolous as it is likely to cause an administrative hindrance and will slow down the implementation of rural electrification projects as approval will require to be awaited from the Minister. Also, this is likely to trigger political interference and political favouritism where projects will be done on the basis of political expediency. Further, the Committee observes that clause 16 is contradicting clause 17(1) which states that “the Fund shall vest in the Authority and shall be administered and managed by the Authority in the manner that the Board may determine, and the Board shall establish criteria for the application of the monies from the Fund”.

In this regard, the Committee urges the Government to consider changing clause 16 by way of striking off the approval process of funds by the Minister, and let the approval process of the funds to be administered by the Board of the Rural Electrification Authority.

- (vii) The Committee observes that clause 28 prohibits levying of execution against the Rural Electrification Authority in the event of any judgment against it. The Committee is of the view that this provision will affect operations of other entities and individuals who will be unable to execute judgments against the Authority.

The Committee, therefore, recommends that the clause should be re-cast so that the aspect of immunity is not provided in totality to the Authority. Instead, the Authority should remain accountable to the citizens and institutions that it will enter into agreements with. It is the view of the Committee that giving so much power and immunity to the authority, will insulate it from deserving judgement in case of a breach, thereby deviating it from its mandate of providing the needed service to the citizens in the rural parts of the country.

In view of the above, the Committee further recommends that clause (28)(2) should be deleted from the Bill and an express period of 90 days should, in turn, be added to clause (28) (1). This will afford REA a period within which to compensate any offended party in a situation where judgement is passed against it. Failure to compensate the offended party after the 90 days period, will allow for the judgement initially given against the authority to take effect.

- (viii) The Committee observes that the name ‘Rural Electrification Authority’ does not consider all the other sources of energy that are in existence in the country. The Committee further notes that the current name does not align with the trajectory of the energy transition of the use of cleaner sources of energy that are advocated for in major development documents such as Sustainable Development Goals number 7, the 8th National Development Plan and the Vision 2030.

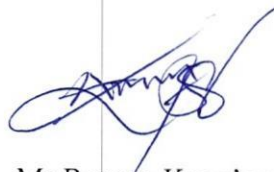
In this regard, the Committee recommends that the name ‘Rural Electrification Authority’ be changed to ‘Rural Energy Authority’, a name that will broaden the functions of the Authority and link them to the goals of the major development documents.

7.0 CONCLUSION

The Bill, once enacted, will provide a clear distinction in the governance structure of the Authority and the Board, leading to the efficient and effective management of the Authority. However, with the few stated inequities that have been identified in the Bill, such as clause 28, the Committee is of the view that this clause be carefully examined and the highlighted amendments reinforced so that a balance between the Authority and any party in agreement with it, may achieve justice in case of any breach.

The Committee is therefore, hopeful that this Bill will prove essential to the overall development of the rural areas and subsequently the nation as a whole, if the stated recommendations are incorporated into the Bill. Finally, the Committee is hopeful that the Bill will receive the needed support of the House.

We have the honour to be, Madam Speaker, the Committee on Energy, Tourism and Water Development mandated to consider the Rural Electrification Bill N.A.B. No. 5 of 2023.



Mr Romeo Kang'ombe, MP
CHAIRPERSON

March, 2023
LUSAKA

APPENDIX I – LIST OF NATIONAL ASSEMBLY OFFICIALS

Mr Charles Haambote, Principal Clerk of Committees (FC)
Mrs Doreen N C Mukwanka, Deputy Principal Clerk of Committees (FC)
Mr Charles Chishimba, Senior Committee Clerk (FC 1)
Ms Chitalu R Mulenga, Acting Senior Committee Clerk (FC 2)
Mr Evans Chilongu, Committee Clerk
Mrs Prisca M Shimalungwe, Committee Clerk
Ms Rachel Mumba, Committee Clerk
Mrs Ruth T Mwila, Administrative Assistant II
Mr Daniel Lupiya, Committee Assistant
Mr Muyembi Kantumoya, Parliamentary Messenger

APPENDIX II – LIST OF WITNESSES

Ministry of Justice
Ministry of Energy
Ministry of Finance and National Planning
Rural Electrification Authority
Engineering Institute of Zambia
ZESCO Limited
Citizens Economic Empowerment Commission
University of Zambia – School of Engineering
Energy Regulation Board
Copperbelt Energy Cooperation PLC
Zambia Development Agency