

PARLIAMENT OF KENYA
THE SENATE

SENATE BILLS DIGEST

Issue No...../2018

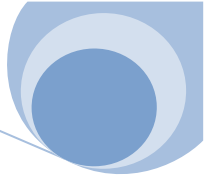
**THE COUNTY LAW COMPLIANCE AND ENFORCEMENT BILL, SENATE BILLS
NO. 25 OF 2018**

Sponsor: Sen. George Khaniri.
Date of Publication: 20th August, 2018
Date of First Reading: 25th September, 2018
Committee referred to: National Security, Defence and Foreign Relations
Type of Bill: Ordinary Bill

1. BACKGROUND AND PURPOSE OF THE BILL

Pursuant to Article 185 of the Constitution, county governments have power to make laws for the effective performance of the functions and the exercise of the powers allocated to counties under Part 2 of the Fourth Schedule to the Constitution. To ensure compliance with the laws enacted, counties require enforcement officers as well as systems. Indeed counties have in place units, commonly referred to as *county askaris*, responsible for enforcement county laws. However, in the performance of their functions *county askaris* lack professionalism, violate human rights, and the standards differ across the counties.

The main purpose of this Bill is to put in place a legal framework for the establishment of a county law compliance and enforcement unit (the Unit) in each county, and for the administration and management of those units. It seeks to provide for the appointment, functions and uniform code of conduct for the enforcement officers.



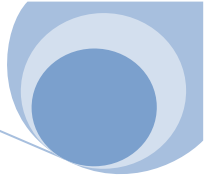
2. OVERVIEW OF THE BILL

Part II of the Bill provide for the establishment of the county law compliance and enforcement unit, functions and powers of the unit. A county government may establish a Unit. Where a county has established a Unit, it shall be the responsibility of the County Public Services Board to appoint enforcement officers. Enforcement officers shall subscribe to a code of conduct set out in the Schedule to the Bill. The code of conduct incorporates principles such as impartiality, respect for human rights, confidentiality, conflict of interest, openness and accountability.

The functions of the Unit shall be to ensure compliance with and enforcement of county laws, inspect premises to ensure compliance with trade licenses and permits issued by county government, ensure compliance with county revenue collection requirements, protect county property, assist the police or any other authority in investigating violations of county laws, and sensitize the consumers and business persons in the county.

In the performance of the functions, an enforcement officer shall have the power to –

- (i) enter, during working hours, premises where a regulated activity is carried out to determine compliance with the law. Where premises are found non-compliant, the enforcement officer with written approval of the officer in charge may order closure of the premises, require the owner or operator to undertake remedial measures or to cease unlawful activity;
- (ii) seize property with or without a court order if reasonably suspected that the property is used to carry out a regulated activity contrary to the law. A court may order for the release of detained property on failure to prove that the property was being used to commit an offence or if no proceedings with respect to the property are initiated in court within a period of six months. Property seized shall be recorded in an inventory, be preserved by the Unit and dealt with in accordance with the directions of the court;
- (iii) impound a vessel reasonably believed to be controlled or parked contrary to the law;
- (iv) impound an animal kept contrary to the law; and



- (v) arrest a person reasonably believed to have committed an offence and immediately surrender the arrested person to the nearest police station.

It shall be a requirement for an enforcement officer to produce a service identity document when exercising the powers. Enforcement officers' uniform shall be embedded with distinctive identification for purposes of recognition by the public and distinguishing enforcement officers from non-law enforcement personnel. The Bill also requires the county executive committee member to publish fines to be imposed on persons whose goods or vessels have been impounded.

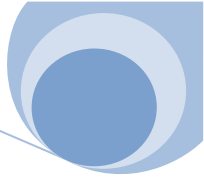
Part III sets out the offences. A person who impersonates an enforcement officer or obstructs an enforcement officer from performing the functions commits an offence. A person who commits an offence may, upon conviction, be required to pay not more than five hundred thousand shillings or serve not more than years in jail.

Part III of the Bill contains miscellaneous provisions which provide for collaboration with other agencies, enactment of county specific legislation, and limitation of certain rights. The county executive committee member shall put in place mechanisms for collaboration with other agencies such as the Director of Public Prosecutions, the Judicial Service Commission, and other relevant public authorities. On enactment of county legislation, a county may enact a law to address matters not provided for in the Act, the conduct of enforcement officers, and for effective implementation of the Act.

Regarding limitation of fundamental rights, the Bill limits the right to privacy, the right to property, and the right to freedom of movement. These rights are limited only for purposes of preventing commission of an offence, investigating an offence, maintaining public order, maintaining public health and safety, and protecting the rights of others. These limitations are in compliance with the requirements under Article 24 of the Constitution.

3. WAY FORWARD

Pursuant to standing order 140(5), the Standing Committee on National Security, Defence and Foreign Relations shall facilitate public participation and shall take into account the views and



recommendations of the public when the Committee submits its report to the Senate. Standing order 140(1) requires that the report of the Committee be submitted to the Senate within a period of thirty (30) calendar days of the committal of the Bill to the Committee. The thirty days lapse on 25th October, 2018.

Any comments on the Bill may be submitted to the Office of the Clerk of the Senate, 1st Floor, Main Parliament Buildings, Nairobi, Kenya through P.O Box 41842-00100, Nairobi, Kenya or email: senatebills@parliament.go.ke.

Note:

1. This Digest reflects the Bill as published and does not cover any subsequent amendments to the Bill after publication.
2. The Digest does not have any official legal status.