

**PARLIAMENT OF KENYA
THE SENATE**

SENATE BILLS DIGEST

**THE STATUTORY INSTRUMENTS (AMENDMENT) BILL, SENATE BILLS
NO. 24 OF 2018**

Sponsor:	Sen. Samuel Poghisio
Date of Publication:	10 th August, 2018
Date of First Reading:	12 th September, 2018
Committee referred to:	Standing Committee on Justice, Legal Affairs and Human Rights
Type of Bill:	Ordinary Bill

1. Purpose of the Bill

The purpose of the Bill is to amend the Statutory Instruments Act in order to expressly include the Senate in the statutory instruments scrutiny process. As part of the Parliament of Kenya, the Senate of Kenya has a role in the making of the laws of Kenya which includes statutory instruments. Excluding the Senate from such an important aspect of law making would deny the Counties the right to be represented.

2. Background

Article 94(1) of the Constitution provides that “*the legislative authority of the Republic is derived from the people and, at the national level, is vested in and exercised by Parliament*”. Further Article 94(5) of the Constitution provides that “*no person or body, other than Parliament, has the power to make provision having the force of law in Kenya except under authority conferred by this Constitution or by legislation*”. The import of these provisions of the Constitution is that Parliament has the sole prerogative to make law. However, it is well established that legislation may not take into account all the nuances that would affect its effective implementation. Therefore, Parliament may in certain instances delegate its law-making power to another authority for instance a Cabinet Secretary.

Once the power to make laws has been delegated however, it is still incumbent upon Parliament to ensure that the delegatee exercises this power in the manner in which it was intended. The Statutory Instruments Act therefore provides for the process through which Parliament scrutinizes and approves statutory instruments. Presently however, section 11 of the Statutory Instruments Act provides that-

(1) Every Cabinet Secretary responsible for a regulation-making authority shall within seven (7) sitting days after the publication of a statutory instrument, ensure that a copy of the statutory instrument is transmitted to the responsible Clerk for tabling before the relevant House of Parliament.

(2) Notwithstanding subsection (1) and pursuant to the legislative powers conferred on the National Assembly under Article 109 of the Constitution, all regulation-making authorities shall submit copies of all statutory instruments for tabling before the National Assembly.

The law is ambiguous in its present form as it does not clearly state whether statutory instruments shall be considered by both the Senate and the National Assembly. Article 93(1) establishes a Parliament consisting of the National Assembly and the Senate. It would therefore follow that the Senate should be involved in scrutinizing and approving statutory instruments that would have the force of law in Kenya.

3. Overview of the Bill

The Bill proposes an amendment to section 11 of the Statutory Instruments Act to provide as follows-

- (a) every Cabinet Secretary responsible for a regulation-making authority shall within seven (7) sitting days after the publication of a statutory instrument, ensure that a copy of the statutory instrument is transmitted to the Clerk of the Senate and the Clerk of the National Assembly;
- (b) to delete subsection (2) which currently provides that all Statutory Instruments shall be forwarded to the National Assembly;
- (c) that the Clerk of each House shall register or cause to be registered every statutory instrument transmitted to the respective House for tabling or laying under this Part.

The Bill further proposes to amend section 15 of the Act to provide that an extension given by the either House of Parliament to a Committee on Delegated Legislation to report on the consideration of a statutory instrument shall not exceed twenty-one days. In its present form, section 15 makes reference only to extensions of time given by the National Assembly.

4. Consequences of the Bill

The Bill seeks to expressly provide for the involvement of the Senate in the process of scrutiny and approval of statutory instruments. This will ensure that the interests of counties, delegated legislation, are protected. Consequently, counties will effectively discharge their functions under Part 2 of the Fourth Schedule to the Constitution.

Way Forward

Pursuant to standing order 140(5) of the Senate Standing Orders, the Standing Committee on Justice, Legal Affairs and Human Rights 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.

Further, pursuant to standing order 143(1) of the Senate Standing Orders, the Committee is required to submit its report to the Senate within thirty (30) calendar days of the committal of the Bill to the Committee, therefore, **by 12th 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 made after publication of the Bill.
2. The Digest does not have any official legal status.