

SPECIAL ISSUE

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SENATE BILLS, 2021

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**THE INTERGOVERNMENTAL RELATIONS
(AMENDMENT) BILL, 2021**

A Bill for

AN ACT of Parliament to amend the Intergovernmental Relations Act to streamline the procedure for the transfer and delegation of powers, functions and competencies between the two levels of government and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Intergovernmental Relations (Amendment) Act, 2021.

Short title.

2. Section 26 of the Intergovernmental Relations Act, in this Act referred to as “the principal Act” is amended —

Amendment of section 26 of No. 2 of 2012.

- (a) in subsection (2) by inserting the following new paragraphs immediately after paragraph (i) —
 - (j) the challenges facing the implementation of the function, power or competency transferred or delegated and the interventions necessary to address the challenge;
 - (k) the roles and responsibilities of each level of government in implementing the function, power or competency transferred or delegated;
 - (l) the relevant human resources to be deployed or seconded from one level of a government to the other;
 - (m) the institutional framework for the execution of the transferred function, power or competency transferred or delegated;
 - (n) the duration of the agreement;
 - (o) the necessary instruments to facilitate the secondment or deployment of the necessary human resources;
 - (p) the priorities, aims and desired outcomes;
 - (q) indicators to measure the effective implementation of the function, power or competency transferred or delegated; and

(r) the oversight mechanisms and procedures for monitoring the effective implementation of the function, power or competency transferred or delegated.

(b) by deleting subsection (3);

(c) by deleting subsection (4); and

(d) by deleting subsection (5).

3. The principal Act is amended by inserting the following new sections immediately after section 26 —

Insertion of new section 26A in No. 2 of 2012.

Approval of county assembly.

26A (1) The county executive committee member shall submit an agreement under section 26 to the clerk of the respective county assembly for tabling before the county assembly.

(2) The county assembly shall, within a period of thirty days from the date of tabling under subsection (1), consider the agreement and may, by resolution supported by a majority of the members of the county assembly, approve, with or without amendment or reject the agreement.

(3) A county assembly shall, in considering the agreement, conduct public participation.

(4) Where a county assembly resolves to approve the Agreement the Speaker of the county assembly shall inform the Speaker of the Senate, in writing, of that resolution within seven days of the resolution.

(5) A county assembly shall exercise oversight over a power, function or competency transferred or delegated by a county government.

Role of the Senate.

26B (1) Within seven sitting days after receiving notice of a resolution under section 26A (4) from the Speaker of the county assembly, the Speaker of the Senate shall convene a meeting of the Senate to

consider the agreement together with the resolution.

(2) The Senate shall –

(a) consider the agreement within a period of thirty days from the date of receipt of the notice of resolution under subsection (1); and

(b) either approve, with or without amendment, or reject the agreement supported by a majority of the county delegations in the Senate.

(3) The Senate may in considering the agreement submitted to it under subsection (1), conduct public participation.

(4) The Speaker of the Senate shall notify the Speaker of the respective county assembly of the resolution of the Senate within a period of seven days of the resolution.

(5) The Senate shall exercise oversight over the implementation of the agreement by the National Government and the respective county government.

Role of the National Assembly.

26C (1) The Cabinet Secretary shall submit an agreement to transfer a power, function or competency of the National Government to a county government to the Speaker of the National Assembly for tabling before the Assembly.

(2) The National Assembly shall, within a period of thirty days of tabling before the Assembly, consider the agreement and may, by a resolution supported by a majority of the members of the Assembly approve, with or without amendment or reject the agreement.

(3) If the National Assembly passes a motion to transfer a national government

power, function or competency to a county government, the Speaker of the National Assembly shall inform the Speaker of the Senate, in writing, of that resolution within seven days.

(4) The Senate shall vote on a motion to transfer a National Government power, function or competency to a county government within thirty days of its introduction in the Senate.

(5) A resolution to transfer a national government's power, function or competency to a county government shall be supported by a majority of the county delegations in the Senate.

(6) Where one House fails to approve the agreement for the transfer of a national government's power, function or competency to a county government, the matter shall be referred for mediation under Article 113 of the Constitution, applied with the necessary modifications.

(7) Parliament shall facilitate public participation on a motion to transfer a national government power, function or competency to a county government.

(8) The National Assembly shall exercise oversight over a power, function or competency transferred or delegated by the national government to a county government.

Budget for a transferred power, function or competency.

26D. The National or county government which transfers a power, function or competency shall appropriate such monies as are necessary for the execution of the transferred power, function or competency.

Execution of a transfer agreement.

26E. An agreement under this Part shall be —

- (a) signed by an authorized person or officer; and

- (b) published in the Kenya *Gazette* and the county *Gazette* in respect of the county to which it relates, at least fourteen days before the effective date of the transfer or delegation.

Expiry of a transfer agreement.

26F. An agreement entered into under this Part shall, notwithstanding the provisions of an agreement, lapse on the date of the next general election.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The principal objective of this Bill is to amend the provisions of the Intergovernmental Relations Act, 2012 to provide a comprehensive framework on the transfer of powers, functions or competences by either National or County governments. The Bill seeks to address the following issues that are not provided for in the Intergovernmental Relations Act, 2012 —

- (a) the belated involvement of Parliament or the County Assemblies in the transfer of functions processes;
- (b) lack of an elaborate framework for public participation in the entire process of transfer of functions; and
- (c) lack of a clear process of costing of the transferred functions.

The Bill therefore proposes amendments on —

- (a) financing of the functions that have been transferred including the appropriation of funds;
- (b) the involvement of the Senate and the respective County Assembly in the transfer of functions of County Governments;
- (c) the involvement of the National Assembly in the transfer of functions of the National Government; and
- (d) the general conduct of public participation during the transfer of functions.

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 fundamental rights and freedoms.

Statement of how the Bill concerns County Governments

The Bill concerns county governments in terms of Article 110(1)(a) of the Constitution as it contains provisions that deal with the process of transfer or delegation of the functions and powers of either the National Government or a County Government.

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 10th May, 2021.

MOSES OTIENO KAJWANG',
*Chairperson, Standing Committee on
Devolution and Intergovernmental Relations.*

Section 26 of No. 2 of 2012 which it is proposed to amend -

26. Agreements on transfer or delegation of powers, functions or competencies

(1) A transfer or delegation of powers, functions or competencies under this Part shall be by a written agreement.

(2) The agreement for the transfer or delegation under subsection (1) shall include —

- (a) the function, power or competency transferred or delegated;
- (b) the specific legal provisions supporting the transfer or delegation;
- (c) the reasons for the transfer or delegation;
- (d) the performance standards and frameworks in respect of the transfer or delegation;
- (e) the capacity of the receiving entity to exercise or perform the powers, function, or competency transferred or delegated;
- (f) the capacity building framework for enhancing any deficits identified in the entity to which the transfer or delegation has been effected;
- (g) the method of resolving any dispute that may arise under the agreement; and
- (h) the terms and conditions for the exercise or performance of the power, function or competency including the time frame.

(3) The agreement shall be —

- (a) signed by an authorized person or officer; and
- (b) published in the *Kenya Gazette* and the county *Gazette* in respect of the county to which it relates, at least fourteen days before the effective date of the transfer or delegation.

(4) The National Assembly shall be notified of the decision to transfer a national government power, function or competency.

(5) A county assembly shall be notified of the decision to transfer a county government power, function or competency.