

**PARLIAMENT OF KENYA**

**THE SENATE**

**SENATE BILLS DIGEST**

**THE COUNTY GOVERNMENTS (STATE OFFICERS REMOVAL FROM OFFICE)**

**PROCEDURE BILL, 2024**

**(SENATE BILLS NO. 34 OF 2024)**

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<b>Sponsor/Promoter:</b>	Sen. Karungo Paul Thang'wa, MP
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<b>Date of First Reading:</b>	6 <sup>th</sup> August, 2024
<b>Committee referred to:</b>	Standing Committee on Justice Legal Affairs & Human Rights
<b>Type of Bill:</b>	Ordinary Bill

**1. PURPOSE OF THE BILL**

The Bill seeks to put in place a legal framework for the removal from office of a county governor, a county speaker, a county deputy governor, a county executive committee member and a county secretary. It achieves this by clearly providing a procedure for removal of a county governor and a county deputy governor either by impeachment or for incapacity and the procedure for removal of a county speaker, a county executive committee member and county secretary through a resolution of the respective county assembly.

**2. BACKGROUND OF THE BILL**

During the 12<sup>th</sup> Parliament, the Senate originated the Impeachment Procedure Bill, 2018 which sought to put in place a legal framework for the removal of State officers from office serving in the National and county governments. This Bill was passed by the Senate on 12<sup>th</sup> June, 2019 and forwarded to the National Assembly for consideration. However, the Bill lapsed in the National Assembly when the term of the 12<sup>th</sup> Parliament ended before the Assembly finalized its consideration on the Bill.

While considering the proposed removal from office, by impeachment, of Hon. Kawira Mwangaza, the Governor of Meru County, it was recommended that the draft Impeachment Procedure Bill be split into two legislative proposals; the County Governments (State Officers' Removal from Office) Procedure Bill to regulate the process of removal of State Officers serving in county governments from office and the National Government (State Officers' Removal from Office) Procedure Bill to regulate the process of removal of State Officers serving in the National Government from office.

Further, it was proposed that the timeline for consideration of an impeachment resolution by a Senate Committee be increased to fourteen days and that section 33 of the County Governments Act, 2012 be amended to ensure that the report of a special committee is considered by the Senate whether or not the Committee finds any charge to have been substantiated.

**Current law**

Article 200(2)(c) of the Constitution contemplates legislation to provide for the manner of election or appointment of persons to, and their removal from, offices in county governments, including the qualifications of voters and candidates. Parliament enacted the County Governments Act, No. 17 of 2012 which makes provision for appointment and removal of a county governor, deputy county governor, a county assembly speaker, a county executive committee member as well as the county secretary. Section 3 of the County Governments Act provides that the objects of the Act are to, among others—

*(d) provide for the removal from office of the speaker of the county assembly in accordance with Article 178 of the Constitution;*

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*(j) provide, pursuant to Article 200 of the Constitution, for—*

*(i) the manner of nomination or appointment of persons to, and their removal from, offices in county governments, including the qualifications of voters and candidates;*

Article 181(1) of the Constitution provides that a county governor may be removed from office on any of the following grounds—

*(a) gross violation of this Constitution or any other law;*

*(b) where there are serious reasons for believing that the county governor has committed a crime under national or international law;*

*(c) abuse of office or gross misconduct; or*

*(d) physical or mental incapacity to perform the functions of office of county governor.*

Article 181(2) requires Parliament to enact legislation providing for the procedure of removal of a county governor on any of the grounds specified in clause (1). In this regard, section 33 of the Act provides the procedure for the removal of the governor and deputy governor. As regards removal on grounds of incapacity, the procedure for removal of the President and Deputy President on account of incapacity is to be followed with necessary modifications.

With regard to speakers of a county assembly, Article 178(3) of the Constitution provides that Parliament shall enact legislation providing for the election and removal from office of speakers of the county assemblies. Additionally, section 11 of the County Governments Act provides for the procedure for removal of a county speaker. Once the motion is moved, the County Assembly has 14 days to consider the motion for removal, which motion may be passed by a two-thirds majority of the members of the county assembly. With respect to the deputy governor, section 11A (2) of the County Governments Act provides that the procedure for removal of a speaker shall, with necessary modifications, apply to the removal of a deputy speaker.

Sections 40 and 44 of the County Governments Act, on their part provides the procedure for the removal of a member of executive committee and the county secretary, respectively.

In addition to the Constitution, the County Governments Act, the Standing Orders of the Senate and those of the respective county assembly provide for the removal of a county governor or a deputy governor from office. In the case of a county assembly speaker and county executive committee member the respective county assembly standing orders also govern the removal from office of such officers.

### **The rationale for the Bill**

The various impeachment process relating to a county governor or a deputy county governor that have been undertaken since the inception of devolution have revealed gaps in the law. These gaps include, short timelines within which the process ought to be concluded, the type and extent of public participation in such a process, the role of the Senate once a special committee has found that none of the charges has been substantiated, connection between the charges and the governor or deputy governor, and threshold for determining and impeachment.

In addition to the above, removal of State officers serving in county governments on the ground of incapacity has not been comprehensively provided for in law. There is therefore need to put in place a comprehensive legal framework setting out the procedure for the removal from office of a county governor, a speaker of a county assembly, a county deputy governor, a county executive committee member and a county secretary.

### **3. OVERVIEW OF THE BILL**

#### **What is the procedure for removing a governor or deputy governor from office?**

The process starts at a county assembly and ends at the Senate, if a county assembly resolves to impeach. Clause 2 to 16 of the Bill describe the procedure for removal of the Governor for the grounds specified under Article 181 of the Constitution. The procedure

prescribed in the Bill closely resembles the current procedure with a number of significant changes—

- (a) the Speaker of the County Assembly is required to submit evidence that the procedure at the county assembly has been complied with during the removal proceedings, as well as the evidence of compliance, when giving a notice of the resolution of the county assembly to the Speaker of the Senate;
- (b) the timeline for convening a meeting at the Senate to hear charges against the governor or deputy governor has been increased from seven to ten days after receiving the resolution from the Speaker of the County Assembly;
- (c) the proposed Bill does not provide for any removal proceedings for removal on grounds other than incapacity being carried out in plenary, and proposes that a special committee be appointed by resolution of the House to investigate the matter;
- (d) once the Committee is constituted, its first role is to determine, within three days of its first sitting, whether the county assembly complied with the statutory procedures when during the removal process and to report to the House on the same;
- (e) the timeline within which the Committee is to consider the matter is proposed to be expanded from ten days to fourteen days, and the report of the Committee is to be considered by the House and a vote taken whether or not the charges were substantiated. Additionally, the Committee is required to undertake public participation; and
- (f) provision is made for removal on grounds of incapacity unlike section 33(9) of the County Governments Act which provides for the application of the procedure for the removal of the President on grounds of incapacity under Article 144 of the Constitution to apply, with necessary modifications, to the removal of a governor.

The process starts at the county assembly where a motion is considered, if the motion is passed, the Chief Justice will appoint a tribunal to inquire into the matter. Subsequently, a report is submitted to the county assembly for consideration.

Where a report of the tribunal recommends that the governor is capable of performing the functions, the matter ends. However, if the findings are that the governor is incapable of performing the functions, the county assembly will consider the matter and vote. Once a county assembly has resolved to remove a governor, the matter is transmitted to the Senate for consideration.

**What is the procedure for removing a county executive committee member or a county secretary from office?**

The process for removal is commenced at a county assembly where a motion is considered and if approved, it is transmitted to the county governor to act. The procedure for removal as prescribed in the Bill differs with the current procedure as follows—

- (a) existing legislation does not describe all the processes to be under taken, and most of the detail is contained in the county assembly's standing orders and as such, there's a likelihood that the process is not uniform in all counties;
- (b) under existing legislation, a committee of five members is to be formed by the county assembly to investigate the matter and report to the assembly, whereas clause 21(1) of the Bill proposes creation of a committee of not more than nine members;
- (c) clause 23 confers on the governor the power to refer a resolution back to the county assembly noting the governor's reservations on the resolution, and the county assembly is to consider the reservations and vote on whether to approve the resolution for removal despite the governor's reservations; and

(d) clause 24 provides that a person will be deemed to have been dismissed if the governor fails to dismiss the person from office within seven days from the date of receipt of the resolution of the county assembly.

**What is the procedure for removal of a county assembly speaker of deputy county assembly speaker from office?**

A member of a county assembly who intends the removal of a county assembly speaker or a deputy county assembly speaker is required to table a motion setting out the grounds in the assembly for consideration. If a county assembly approves the motion, the speaker of deputy speaker ceases to hold office. The key changes are as follows —

- (a) upon passage of a motion for the removal of the speaker of a county assembly by a simple majority of members of the county assembly, a special committee of not more than nine members is to be established to investigate the matter and establish if the allegations have been substantiated; and
- (b) once the report of the special committee is tabled before the county assembly and considered by it, the county assembly is to vote on whether or not to approve the charges against the speaker or deputy speaker. A two-third majority is required to approve the removal.

**What is the role of the public and that of the courts?**

The key provisions are as follows—

- (a) clause 35 requires the county assembly and the Senate to give public notice, in a newspaper of wide circulation, of the date, place and time of hearings; and
- (b) clause 37 prescribes timelines within which a review of the decision of the county assembly or the Senate is to be filed at the High Court. Such an application shall be made within fourteen days of the decision. The High Court is then required to render its decision within thirty days from the date of filing the application. The clause also provides that appeals to the Court of Appeal and the Supreme Court are to be filed within fourteen days of the decision being made, with the Supreme

Court required to rendered its decision within forty-five days from the date of filing the matter.

#### **4. CONSEQUENCES OF THE BILL**

The current provisions on removal of State officers serving in county governments from office as contained in the County Governments Act are not comprehensive enough. Further, other provisions are contained in the Senate Standing Orders and the county assembly's standing orders with likelihood that the process is not uniform across the counties. Additionally, strict short timelines as well as the issue of involvement of the public have posed serious challenges. For these reasons, the processes sometimes lack the procedural safeguards guaranteed under Article 47 and Article 50 of the Constitution on fair administrative action. The proposed Bill therefore seeks to ensure that the procedures both at the county assembly and at the Senate are clear and procedurally fair.

#### **5. WAY FORWARD**

##### **What next**

The Bill was read a First Time in the Senate on Tuesday, 6<sup>th</sup> August, 2024 and thereafter committed to the Standing Committee on Justice, Legal Affairs and Human Rights for consideration. Pursuant to Article 118 of the Constitution and under standing order 145(5) of the Senate Standing Orders, the Committee is required to facilitate public participation on the Bill and to take into account the views and recommendations of the public when the Committee makes its report to the Senate within thirty (30) days.

In compliance with Article 118 of the Constitution and standing order 145(5) of the Senate Standing Orders, the Standing Committee on Justice, Legal Affairs and Human Rights, through advertisement in at least two newspaper of national circulation inviting interested members of the public to submit any representations that they may have on the Bill by way of written memoranda.

##### **Note:**

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