

**PARLIAMENT OF KENYA
THE SENATE**

BILLS DIGEST

THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2024

Sponsor: Sen Samson Cherarkey
Committee referred to: Justice, Legal Affairs and Human Rights
Date of referral: 26th March, 2024

Background and Purpose of the Bill

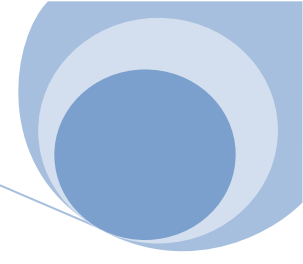
The principal object of the Constitution of Kenya (Amendment) Bill, 2024 is to amend the Constitution in order to, among other, expand the mandate of the Senate, and increase the equitable share of revenue allocated to counties from fifteen percent to forty percent. The role of the Senate as currently provided for in the Constitution limits the Senate in addressing issues that have hampered the implementation of the constitution. Therefore, there is need to ensure that the Senate participates more in legislative and oversight roles with a view to strengthening the devolved system of governance.

Overview of the Bill

Clause 2 of the Bill proposes to amend Article 58 of the Constitution to provide for the involvement of both the Senate and the National Assembly as the Houses of Parliament in the approval of an extension of a state of emergency. A state of emergency affects the stability functioning of the Nation as a whole including county governments.

Whereas Article 132(4)(d) of the Constitution gives the President powers to declare a state of emergency, under Article 58 of the Constitution such a declaration shall be for a period of fourteen days but the National Assembly may extend the said period. Additionally, the National Assembly may pass laws as a consequence of the state of emergency. It is therefore important that both Houses be involved in this process.

Clause 3 of the Bill proposes to amend Article 96 of the Constitution which provides for the role of the Senate. Pursuant to Article 96(3) of the Constitution, the Senate is to exercise oversight over revenue allocated to county governments. This mandate requires clarity so that the Senate exercises oversight over revenue allocated, raised by, or otherwise received by the county governments and its expenditure. The Bill proposes that the Senate shall exercise oversight over all revenue of county governments and that Parliament shall enact legislation setting out the parameters of overseeing revenue received from the National Government and own source revenue.



Clause 4 of the Bill proposes to amend of Article 101 of the Constitution so as to extend the term of a Member of Parliament from five years to seven years.

Clause 5 of the Bill proposes to amend of Article 108 of the Constitution to provide for the leadership and the order of precedence in the Senate. Currently, Article 108 of the Constitution only provides for the leadership and the order of precedence in the National Assembly.

Clause 6 of the Bill proposes to amend Article 109 of the Constitution by deleting clauses (2), (3), (4) and (5) which provides for the manner of origination and consideration of Bills in the National Assembly and the Senate. Currently, any Bill may originate in the National Assembly and the Senate only originates and considers Bills concerning county governments.

The Bill proposes that any Bill may originate in either House of Parliament, save for a money Bill which may only originate in the National Assembly before going to the Senate. Once a Bill has been passed by Parliament, it is proposed that the Speakers of Parliament shall jointly refer the Bill together with a certificate confirming that it has been passed in accordance with the Constitution to the President for assent.

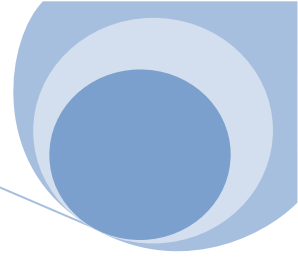
Clause 7 of the Bill proposes to repeal Article 111 of the Constitution which provides for special Bills concerning county governments and replace it with a provision providing for the procedure for county allocation of revenue Bill. The proposed amendment sets out the procedure for the consideration of a Division of Revenue Bill and a County Allocation of Revenue Bill by both Houses of Parliament. It is proposed that the Division of Revenue Bill shall originate in the National Assembly while the County Allocation of Revenue shall originate in the Senate.

Clause 8 of the Bill proposes to insert a new Article 111A to provide for the procedure for the consideration and approval of an Appropriation Bill and a Supplementary Appropriation Bill by both Houses of Parliament. Currently, an Appropriation Bill and a Supplementary Appropriation Bill are provided under Articles 221 and 223 of the Constitution.

Clause 9 of the Bill proposes to repeal Article 114 of the Constitution which provides for ‘money Bills’ and replace with a new provision so as to provide clarity regarding the definition of a ‘money Bill’ and the manner in which such a Bill is considered in Parliament. The issue of a ‘money Bill’ has been subject to multiple interpretations. The amendment seeks to limit the definition of a ‘money Bill’ to a Bill addressing tax related matters only.

Clause 10 of the Bill proposes to amend of Article 136 of the Constitution which provides for election of the President to increase the term of President from five years to seven years.

Clause 11 of the Bill proposes to amend the Constitution by inserting a new Article 151A which proposes to create the office of the Prime Minister. It is proposed that the Prime Minister shall be appointed by the President from amongst the members of Parliament, and that he or she shall be the leader of the largest party or coalition of parties in Parliament.



Clauses 12, 13, 14, 15, 21, 25, 26, 27, 29 and 30 of the Bill proposes to amend Article 152, 156 157, 166, 215, 228, 229, 245 and 250 the Constitution to assign the responsibility of approval for appointment of various State officers between the Senate and the National Assembly as follows –

1. The Senate to vet and approve for appointment cabinet secretaries, the Attorney-General, the Director of Public Prosecutions, the Chief Justice and judges, the Chairperson of the Commission on Revenue Allocation, Controller of Budget, Auditor-General members of the Public Service Commission, the Inspector-General of Police, and members of constitutional commissions; and
2. The National Assembly shall vet and approve for appointment nominees for offices relating to High Commissioners, Ambassadors and Diplomatic and Consular Representatives.

Clauses 16 and 17 of the Bill proposes to amend Articles 177 and 180 of the Constitution to increase the term of members of county assemblies and that of governors from five to seven years.

Clause 18 of the Bill proposes to amend Article 181 of the Constitution to provide for the procedure for removal from office of a county governor from office or a deputy county governor. The proposed amendment deletes Article 181(1) which gives Parliament powers to enact legislation providing for such a procedure and replaces it with the procedure.

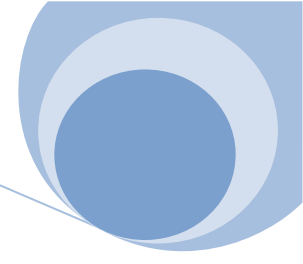
Clause 19 of the Bill proposes to insert a new Article 181A to provide for challenging the decision of the Senate to remove a county governor from office before the Supreme Court. Such a matter shall be determined within thirty days.

Clause 20 of the Bill proposes to amend Article 203 of the Constitution to increase the percentage of the equitable share of revenue allocated to counties from fifteen percent to forty percent.

Clause 22 of the Bill proposes to amend Article 218 of the Constitution to provide for the process of consideration of a Division of Revenue Bill and a County Allocation of Revenue Bill by both the Senate and the National Assembly while providing timelines within which the Bills are to be passed by Parliament to enable the county assemblies to prepare and pass their budgets before the end of the financial year. It is proposed that the Division of Revenue Bill shall be introduced in the National Assembly at least four months before the end of each financial year, and the County Allocation of Revenue shall be introduced in the Senate thirty days from the date of enactment of the Division of Revenue Act.

Clause 23 of the Bill proposes to amend Article 224 of the Constitution to clarify that the basis for the preparation of budgets by county Governments is a County Allocation of Revenue Bill and not the Division of Revenue Act.

Clause 24 of the Bill proposes to amend Article 226(2) of the Constitution which provides for a mechanism of accountability with regard to accounting officers both the National and county



governments. The amendment seeks to include the Senate in addition to a county assembly in respect of the institution accounting officers in a county government are accountable to.

Clause 26 of the Bill, in addition to proposing that the Auditor-General be vetted by the Senate, also proposes to amend Article 229 of the Constitution to provide for the submission of the annual estimates of expenditure for the Office of the Auditor-General directly by the Auditor-General to Parliament for approval.

Clause 28 of the Bill proposes to amend Article 241 of the Constitution to require the approval of both Houses of Parliament before the deployment of the Kenya Defence Forces in any part of Kenya. Under the current provision, the National Assembly approves such deployment.

Clause 29 of the Bill proposes to amend Article 251 of the Constitution to provide the Senate as the forum for filing petition for removal of a member of a constitutional commission office or a holder of an independent office as opposed to the National Assembly as currently provided.

Consequences of the Bill

The Bill seeks to strengthen devolution by aligning the roles and functions of Parliament and all entities at the national and county levels of government in a manner that would promote the effective administration of the devolved system of governance. In addition, the Bill proposes ensure that adequate resources are allocated to the county governments for the carrying out of their functions as set out under the Fourth Schedule to the Constitution.

Way Forward

Standing order 130(3) of the Senate Standing Orders provides that, where a legislative proposal is not sponsored by a Committee, the Speaker shall refer the legislative proposal to the relevant Committee for pre-publication scrutiny and comments and **the Committee shall submit its comments to the Speaker within fourteen days.**

Pursuant to these provisions, vide letters Ref. Nos. DLS(S)/GEN-CORR.VOL.I/2024/023 and dated 26th March, 2024 the Rt. Hon. Speaker of the Senate referred the legislative proposals to the Standing Committee on Justice, Legal Affairs and Human Rights for pre-publication scrutiny and comments.

In examining a legislative proposal, the Committee may seek the views of the sponsor and any other person on the likely impact, effect, outcome and consequence of the legislative proposal; and may suggest variations with a view to improving the legislative proposal. However, the sponsor is not bound to incorporate such variations.

After expiry of fourteen days, the Speaker may direct the publication of the Bill, with or without the comments of the Committee.

Note:

1. This Digest reflects the Bill as forwarded to the standing Committee Justice, Legal Affairs and Human Rights.
2. The Digest does not have any official legal status.