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REPUBLIC OF KENYA


THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – THIRD SESSION - 2024

DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND INTERNAL SECURITY

REPORT ON:

THE COUNTY GOVERNMENTS (AMENDMENT) BILL, 2023 (SENATE BILLS NO. 25 OF 2023)

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DATE: 09 OCT 2024			
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TABLED BY:	<i>Vice Chairman Hon. Dielo Rao</i>		
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CHAIRPERSON'S FOREWORD

The County Governments (Amendment) Bill Senate No. 25 of 2023 sponsored by Sen. Samson Cherarkey and Hon. Timothy Kipchumba, MP seek to amend Section 40 of the County Governments Act, Cap 265 to increase the threshold for removal of a member of such as member from the required "one-third" of the members of the County Assembly to "two-thirds" of the members of the County Assembly.

The Bill was published on 16th June 2023. It was processed in the Senate pursuant to Article 118 of the Constitution and transmitted to the National Assembly pursuant to National Assembly Standing Order 143.

On 5th June 2024, the Bill was committed to the Departmental Committee on Administration and Security. The Committee placed a newspaper advertisement calling for submission of memoranda on 16th July 2024. The Committee received memoranda from the State Department for Devolution, the Council of Governors and the County Assemblies Forum.

In considering the Bill, on 8th August 2024, Hon. Timothy Toroitich appeared before the Committee and made submissions on the Bill

The Committee having considered the Bill and taking into consideration the views and recommendations of stakeholders pursuant to National Assembly Standing Order 127(3A) made observations and recommendations contained in section 4.0 and 5.0 of this Report.

The Committee is thankful to the Office of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded during the sittings. The Committee further wishes to thank the sponsors of the Bill and all the stakeholders who submitted their comments on the Bill. Finally, I wish to express my appreciation to the Honourable Members of the Committee and Secretariat who made useful contributions towards consideration of the Bill and production of this report.

On behalf of the Departmental Committee on Administration and Internal Security, and pursuant to provisions of Standing Orders 199 (6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the County Governments (Amendment) Bill Senate No. 25 of 2023.



HON. GABRIEL TONGOYO, MP
CHAIRPERSON
DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND INTERNAL
SECURITY

CHAPTER ONE

1.0 PREFACE

1.1 Mandate of the Committee

1. The Departmental Committee on Administration and Internal Security is constituted pursuant to the provisions of Standing Order No. 216(1) of the National Assembly Standing Orders. The functions of the Committee are to: -
 - a. *investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;*
 - b. *study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation; on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;*
 - c. *study and review all legislation referred to it;*
 - d. *study, assess and analyze the relative success of the Ministries and departments by the results obtained as compared with their stated objectives;*
 - e. *investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;*
 - f. *vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);*
 - (fa) *examine treaties, agreements and conventions;*
 - g. *make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
 - h. *consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
 - i. *examine any questions raised by Members on a matter within its mandate.*
2. In executing its mandate, the Committee is mandated to consider the following subjects:
 - a. Home affairs, internal security – including police services and coast guard services;
 - b. Public administration; and
 - c. Immigration and citizenship.

1.2 Committee Membership

3. The Committee comprises of the following Members: -

Hon. Gabriel Tongoyo, MP
Chairperson
Narok West Constituency

Hon. Col. (Rtd.) Dido Rasso, MBS, MP
Vice Chairperson
Saku Constituency

Hon. Kaluma George Peter, MP
Homa Bay Constituency

Hon Protus Ewesit Akujah, MP
MP Loima Constituency

Hon. Aduma Owuor, MP
Nyakach Constituency

Hon. Rozaah Akinyi Buyu, MP
Kisumu West Constituency

Hon. Fred C. Kapondi, MP
Mt. Elgon Constituency

Hon. Caroline Ng'elechi, MP
Elgeyo-Marakwet County

Hon. Liza Chepkorir Chelule, MP
Nakuru County

Hon. Fatuma Jehow, MP
Wajir County

Hon. Sarah Paulata Korere, MP
Laikipia North Constituency

Hon. Francis Sigei, EBS, MP
Sotik Constituency

Hon. Oku Kaunya, MP
Teso North Constituency

Hon. Hussein Weytan, MP
Mandera East Constituency,

Hon. Mburu Kahangara, MP
Lari Constituency

4. The Committee Secretariat consists of the following:

Mr. John Mugoma
Head of Secretariat

Ms. Grace Wahu
Clerk Assistant II

Mr. Edison Odhiambo
Fiscal Analyst I

Ms. Delvin Onyancha
Research Officer II

Ms. Judith Kanyoko
Legal Counsel II

Mr. Rodgers Kilungya
Audio Officer

Mr. Gideon Kipkogei
Clerk Assistant II

Ms. Clara Kimeli
Legal Counsel I

Mr. Benson Kimanzi
Serjeant at Arms

Ms. Ivy Maritim
Media Relations Officer III

CHAPTER TWO

2.0 BACKGROUND

5. The County Governments (Amendment) Bill. (Senate Bill. No. 25 of 2023) is a Bill originating from the Senate and was passed by the Senate on 2nd May 2024. It was subsequently referred to the National Assembly in accordance with the provisions of Article 110(4) of the Constitution, which provides—

110(4) When any Bill concerning county government has been passed by one House of Parliament, the Speaker of that House shall refer it to the Speaker of the other House.

6. Upon being referred to the Speaker of the National Assembly, the Bill was read a first time on Wednesday, 5th June 2024 and committed to the Departmental Committee on Administration and Internal Security for review and reporting to the House.
7. The Committee received memoranda from the State Department for Devolution, the Council of Governors and the County Assemblies Forum.

2.1 Object of the Bill

8. The primary objective of this Bill is to increase the threshold required to remove a member of the County Executive Committee by increasing the proportion of members required to support a proposal to remove a County Executive Committee member from one-third to two-thirds and increasing the proportion of members required to support the finding of a select committee from a simple majority to two thirds.

2.2 Analysis of Clauses

The Bill contains two clauses as analyzed below—

9. **Clause 1** of the Bill is the short title.
10. **Clause 2** of the Bill proposes to amend section 40 of the County Governments Act in subsection (2) by deleting the words “one-third” appearing immediately after the words “supported by at least” and substituting therefor the words “two-thirds”. Section 40 of the County Government Act provides for the procedure for the removal of a county executive committee member. It provides as follows—

(2) A member of the county assembly, supported by at least one-third of all the members of the county assembly, may propose a motion requiring the Governor to dismiss a county executive committee member on any of the following grounds —

- (a) gross violation of the Constitution or any other law;*
- (b) incompetence;*
- (c) abuse of office;*
- (d) gross misconduct; or*
- (e) if convicted of an offence punishable by imprisonment for at least six months.*

11. The effect of the proposed amendment would be to increase the threshold of members required to propose a motion for removal from one third of all members to two thirds.

12. The Bill further proposes to amend section 40 Of the County Government Act in subsection (3) by deleting the words “one third” appearing immediately after the words “supported by at least” and substituting therefor the words “two-thirds”. Subsection (3) provides for the threshold of Members of the County Assembly required to support a motion for removal of a member of the County Executive Committee and to thus, set in motion the appointment of a select committee to investigate the matter. It provides—

(3) If a motion under subsection (2) is supported by at least one-third of the members of the county assembly—

(a) the county assembly shall appoint a select committee comprising five of its members to investigate the matter; and

(b) the select committee shall report, within ten days, to the county assembly whether it finds the allegations against the county executive committee member to be substantiated.

13. The effect of amending subsection (3) as proposed would be to increase the threshold of members required to support a motion for removal from one third of members of the assembly to two thirds and to thus, set in motion the appointment of a select committee to investigate the matter.

14. The Bill also proposes to amend Section 40 of the County Governments Act in subsection (6) by deleting the words “a majority” appearing immediately after the words “supported by” and substituting therefor the words “at least two-thirds”. Subsection (6) provides for the threshold of the members of the county assembly required to support a finding of substantiated allegations by the select committee. It provides—

(6) If a resolution under subsection (5)(b) is supported by a majority of the members of the county assembly—

(a) the speaker of the county assembly shall promptly deliver the resolution to the Governor; and

(b) the Governor shall dismiss the county executive committee member.

15. The effect of amending subsection (6) would be to increase the threshold of members required to support a finding of substantiated allegations by the select committee from a simple majority of the members of the Assembly to at least two-thirds of the Members.

CHAPTER THREE

3.0 PUBLIC PARTICIPATION OF THE COUNTY GOVERNMENTS (AMENDMENTS) BILL, 2023 (SENATE BILLS NO 25 OF 2023)

16. In consideration of the Bill, the Committee met with the co-sponsor of the Bill and the following stakeholders;
- i. County Assemblies Forum (CAF)
 - ii. Council of Governors
 - iii. State Department for Devolution

3.1 Submissions from the Hon. Timothy Toroitich, M.P

17. The Hon. Timothy Toroitich appeared before the Committee on 8th August 2024 and 10th September 2024. He submitted as follows—
- (a) Kenya has a presidential system of government, in which county governors are sometimes elected from the minority party;
 - (b) The Members of the County Executive Committee are appointed by the Governor;
 - (c) Where a county assembly consists of members from the majority party and a governor from the minority party, the County Executive Committee Members are often forced into acceding to the demands of the county assembly thus hampering service delivery by the County Executive;
 - (d) A higher threshold is therefore justified to ensure that the County Executive Committee Members perform their functions effectively;

3.2 County Assemblies Forum

18. Represented by their Legal Counsel Mr. Austine Munene, the County Assemblies Forum appeared before the Committee and submitted that Section 40 of the County Government Act should remain as it is for the following reasons:
- a) For preservation of Oversight Authority; the County Assemblies serve as the primary oversight bodies for county governments, acting as the voice of the people and the custodians of their interests. The existing threshold for CEC removal is essential tool that empowers County Assemblies to exercise authority effectively.
 - b) Accountability and transparency: County Assemblies understand that accountability is the cornerstone of good governance. The current threshold enables County Assemblies to hold CECs accountable for their actions and decisions. maintaining this threshold ensures transparency in the management of county resources and execution of county functions.
 - c) Checks and balances; The current threshold serves as a necessary check and balance within the county government structure. It prevents the concentration of power and ensures that CECs are answerable to the representatives of the people.
 - d) Ward representatives; MCAs are elected to represent the interests of their constituents at county level. The existing threshold allows MCAs to act on behalf of their constituents when they perceive misconduct, incompetence or other issues that warrant the removal of CEC.

- e) Balancing Accountability and Fairness; the County Assemblies emphasize on the need to protect the rights of the CECs and maintaining accountability. The current threshold has already incorporated the due process, investigations and grounds for removal, ensuring fairness in the impeachment process.

19. The County Assemblies Forum further submitted the list of motions to remove County Executive Committee Members since 2013. It shows that since 2013, there have been introduced 82 motions, with the highest number being 7 motions in Tharaka Nithi County Assembly. Of the 82 motions, 39 motions (47.6%) were successful. Of the successful motions, petitions in sixteen counties were challenged in court and fourteen were decided in the Petitioners' favour.

3.3 State Department for Devolution

The Council of Governors submitted that;

- 20. In Section 40 (2), while the Governor is the senior most office in the County, the threshold is one-third. The threshold for removal of the county executive member should not be higher than that of the Governor.
- 21. The voting in Section 40(3) is to allow for investigations to be conducted by a select committee. The voting to either remove County Executive Committee Members (CECMs) from office or not will still be conducted at a later stage. At this point, a higher threshold (two-thirds) is not necessary. In case of a Governor, this is the final voting at the county level thus the higher threshold of two-thirds.
- 22. In Section 40(6), the threshold for removal of a Governor is a majority. The Governor is the senior most office at the county and so the threshold for removal of CECs should not be higher than that of the Governor. The threshold should be maintained.

3.4 Council of Governors

- 23. The Council of Governors submitted that they supported the Bill that seeks to amend Section 40(2), (3) and (6) to increase the voting threshold required in a county assembly to remove CECMs to at least two-thirds of the assembly because;
 - a) CECMs are appointed to oversee various departments in the County Government and are responsible for the effective discharge of devolved functions as defined in Part 2 of the Fourth Schedule of the Constitution. By raising the voting threshold for the removal of CECMs, the proposed amendments will enhance stability and reduce the potential for politically motivated or arbitrary removals. This change will contribute to a more robust governance structure and foster a more stable administrative environment.
 - b) There is need for rationalization of the Bill with County Governments (State Officers 'Removal from Office) Procedure Bill, 2024, (Senate Bills No. 34 of 2024) which proposes that tabling a motion for removal of CECM requires a third of the members of county assembly and the same passes if supported by simple majority.

CHAPTER FOUR

4.0 COMMITTEE OBSERVATIONS


24. Upon reviewing the Bill and submissions received, the Committee made the following observations:

- (a) The removal of a Member of a County Executive Committee is integral in the County Assemblies' role to ensure accountability of the County Executive;
- (b) Increasing the threshold at all stages of the removal process will hamper the County Assemblies' oversight function by making it difficult to remove a Member of the County Executive Committee;
- (c) A majority of successful motions for the removal of a Member of a County Executive Committee have been successfully challenged in Court;
- (d) There is need to balance the role of the County Assemblies to provide oversight and ensure accountability and the right of a Member of a County Executive Committee to fair administrative action under Article 47 of the Constitution; and
- (e) At the National level, the threshold for removal of a Cabinet Secretary is one quarter of the Members of the National Assembly to propose a motion for removal, one third to support a motion for removal and a majority of the members to support the resolution for dismissal;

CHAPTER FIVE

5.0 COMMITTEE RECOMMENDATIONS

The Committee, having considered the County Governments (Amendment) Bill Senate No. 25 of 2023 and the submissions from the sponsor of the Bill, the members of the public and stakeholders, recommends that the House approves the Bill with amendments contained in the Schedule of Amendments forming CHAPTER SIX.

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CHAPTER SIX

6.0 SCHEDULE OF AMENDMENTS

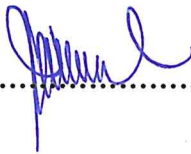
CLAUSE 2

THAT clause 2 of the Bill be amended—

- (a) in paragraph (a), by deleting the expression “two-thirds” and substituting therefor the expression “one-quarter”;
- (b) by deleting paragraph (b); and
- (c) by deleting paragraph (c)

JUSTIFICATION

To reflect the threshold for removal of a Cabinet Secretary under Article 152(6), (7) and 10 of the Constitution by providing for a gradual increase in the threshold for removal of a Member of the County Executive Committee, with the lowest threshold at the initiation of the process and the highest threshold at the final stage.

SIGN  DATE 02/10/2024

HON. GABRIEL TONGOYO, MP
CHAIRPERSON
DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND INTERNAL SECURITY



