

REPUBLIC OF KENYA



13TH PARLIAMENT | THIRD SESSION

THE SENATE

DIRECTORATE OF LEGAL SERVICES

**STANDING COMMITTEE ON DEVOLUTION AND INTERGOVERNMENTAL
RELATIONS**

**PAPER NO. 97 — BRIEF ON THE OFFICE OF THE COUNTY ATTORNEY
(AMENDMENT) BILL, 2024**

**Clerk's Chambers,
The Senate,
Parliament Buildings,
NAIROBI.**

PARLIAMENT OF KENYA
THE SENATE
SENATE BILLS DIGEST

THE OFFICE OF THE COUNTY ATTORNEY (AMENDMENT) BILL, 2024
(SENATE BILLS NO. 47 OF 2024)

Sponsor:	Sen.David Wakoli, MP.
Date of Publication:	26th September, 2024
Date of First Reading:	26 th November, 2024
Committee referred to:	Standing Committee on Devolution and Intergovernmental Relations
Type of Bill:	Ordinary Bill

1. Purpose of the Bill

The principal purpose of the Bill is to amend the Office of the County Attorney Act, Cap. 265E to enhance the qualification for appointment of the County Attorney and the County Solicitor and further to provide for the tenure of office of the County Attorney.

2. Current Law

The Office of the County Attorney Act, Cap. 265E Act establishes the Offices of the County Attorney, County Solicitor and legal counsel working in county governments, it provides for their functions and powers. Currently, a person qualifies to be a County Attorney or County Solicitor if a person is an Advocate of the High Court of Kenya of at least five years standing. The County Attorneys have the status and rank of a member of the County Executive Committee. The law also provides for tenure of office of the County Attorney to be a term of six years.

Rationale for the Bill

The County Attorney is the principal legal adviser to the county government and is assisted by the County Solicitor. The functions of the County Attorney include advising and representing the county governments which involves complicated legal issues.

County governments have a high range of diverse legal issues which most are complex in nature. It is imperative to increase the current years of experience from the current five to ten years' experience.

Currently, county governments are spending a lot of their resources in payment of legal fees to external lawyers who represent them in different legal matters. Having more experienced lawyers as County Attorneys and Solicitors with ten years' experience will reduce reliance on external lawyers by county governments.

The Bill also seeks to provide the tenure of office of the County Attorney from the current fixed tenure of six years to five years, to be the same as the term of a County Governor. The County Attorney being the principal legal advisor to the county government, sits in during County Executive Committee meetings chaired by the County Governor.

While appreciating the role of a County Governor in organizing this or her county government and the critical nature of the meetings of the County Executive Committee it is important that the each County Governor to be given an opportunity to choose the person to advise his or her respective county government.

3. Overview of the Bill

(a) Who is a County Attorney?

A County Attorney is an Advocate of the High Court of Kenya of at least five years

standing who has been appointed by the Governor with the approval of the county assembly as such. They are the principal legal advisers to the county government. They attend the meetings of the County Executive Committee as an *ex-officio* member of the County Executive Committee.

(b) What are the functions of the County Attorney?

Section 7 of the Office of the County Attorney Act provides that the County Attorney—

- (a) is the principal legal adviser to the county government;
- (b) shall attend the meetings of the county executive committee as an *exofficio* member of the executive committee;
- (c) shall, on the instructions of the county government, represent the county executive in court or in any other legal proceedings to which the county executive is a party, other than criminal proceedings;
- (d) shall advise departments in the county executive on legislative and other legal matters;
- (e) shall negotiate, draft, vet and interpret documents and agreements for and on behalf of the county executive and its agencies;
- (f) shall be responsible for the revision of county laws;
- (g) may liaise with the Office of the Attorney-General when need arises; and
- (h)** shall perform any other function as may be necessary for the effective discharge of the duties and the exercise of the powers of the County Attorney.

(c) What are the functions of the County Solicitor?

The County Solicitor is the principal assistant of the County Attorney in the execution of the functions under Section 7 of the Office of the County Attorney Act.

Consequences of the Bill

This Bill proposes a legislative framework to amend the Office of the County Attorney Act, Cap. 265E to enhance the qualification for appointment of the County Attorney and County Solicitor from the current Advocate of the High Court of Kenya of at least five years standing to an advocate of atleast ten years standing. The Bill also intends to provide for the tenure of office of the County Attorney from the current six years to the tenure of a Governor.

4. WAY FORWARD

What next?

Pursuant to standing order 145 of the Senate Standing Orders, the Standing Committee on Devolution and Intergovernmental Relations shall facilitate public participation and shall consider the views and recommendations of the public when the committee submits its report to the Senate.

What is expected of the members of public?

The members of the public are expected to present their views to the Standing Committee on Devolution and Intergovernmental Relations for its consideration.

Next step

The Bill was Read a First Time in the Senate on 26th November, 2024. Pursuant to standing order 148 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 Friday, 27th December, 2024.

Any comments on the Bill may be sent by email to the Clerk of the Senate on the address: clerk.senate@parliament.go.ke and copied to senate.devolution@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.