

SPECIAL ISSUE

Kenya Gazette Supplement No. 69 (Senate Bills No. 18)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

SENATE BILLS, 2014

NAIROBI, 14th May, 2014

CONTENT

Bill for Introduction into the Senate—

PAGE

The County Governments (Amendment) (No. 4) Bill, 2014 307

*(This Bill Supercedes the County Governments (Amendment)
(No. 3) Bill, Senate Bills No. 8 of 2014)*

**THE COUNTY GOVERNMENTS (AMENDMENT)
BILL, 2014**

A Bill for

**AN ACT of Parliament to amend the County
Governments Act.**

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the County Governments (Amendment) Act, 2014.

Short title.

2. The County Governments Act, hereinafter referred to as the “principal Act”, is amended in section 7 by inserting the following new sub-section immediately after sub-section (3)—

Amendment of section 7 of No. 17 of 2012.

(4) There shall be a Deputy Speaker for each county assembly, who shall be elected by the assembly in accordance with the Standing Orders of the assembly, from among the members of that assembly.

3. The principal Act is amended in section 11 by inserting the following new sub-section immediately after sub-section (4)—

Amendment of section 11 of No. 17 of 2012.

(5) Sub-sections (1) to (4) shall, with necessary modifications, apply to the removal of a Deputy Speaker from office.

4. The principal Act is amended in section 30(3) by inserting the following new paragraph immediately after paragraph (a)—

Amendment of section 32 of No. 17 of 2012.

(aa) consult the Deputy Governor;

5. Section 32 of the principal Act is amended—

(a) by deleting sub-section (2) and substituting therefor the following new sub-section—

Amendment of section 33 of No. 17 of 2012.

(2) The deputy governor shall be the principal assistant of the governor and shall

deputise for the governor in the execution of the governor's functions.

- (b) by deleting sub-section (3) and substituting therefor the following new sub-sections—

(3) The deputy governor shall co-ordinate the functions of the county executive committee.

(3A) The deputy governor shall co-ordinate service delivery in the county.

- 6.** Section 33 of the principal Act is amended—

- (a) in sub-section (7) by deleting the words “members” appearing immediately after the words “of all the” and substituting therefor the words “county delegations”.

- (b) by inserting the following new sub-section immediately after sub-section (9)—

(9A) Sub-sections (1) to (9) shall, with necessary modifications, apply to the removal from office of a deputy governor.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The Bill seeks to amend the County Governments Act, No.17 of 2012, in order to provide—

- (a) for the election of a deputy speaker of a county assembly;
- (b) further clarity on the functions of a deputy governor;
- (c) that a majority of all county delegations of the Senate vote is required to uphold any impeachment charge
- (d) against a governor; and for the process for the removal of a deputy governor from office.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

This Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms.

Statement on 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 affect the functions and powers of the county governments as set out in the Fourth Schedule to the Constitution. The Bill makes provisions relating to the offices of deputy speaker of a county assembly and deputy governor, offices that are integral to the functions of the county governments.

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 12th March, 2014.

KIPCHUMBA MURKOMEN,
Senator.

Section 7 of the Act that the Bill proposes to amend—

7. Membership of the county assembly

(1) In addition to the members who are elected under Article 177(a), or nominated under Article 177(b) of the Constitution, a county assembly shall comprise—

- (a) six nominated members as contemplated in Article 177(c) of the Constitution; and
- (b) the speaker, who is an *ex officio* member elected in accordance with Article 178 of the Constitution.

(2) The political party nominating persons under subsection (1) shall ensure that—

- (a) community and cultural diversity of the county is reflected in the county assembly; and
- (b) there is adequate representation to protect minorities within the county in accordance with Article 197 of the Constitution.

(3) The number of members nominated under subsection (1)(a) shall be reviewed to accord with the number of Wards determined by the Independent Electoral and Boundaries Commission under section 27(3)(a).

Section 11 of the Act that the Bill proposes to amend—

11. Removal of speaker from office

(1) A speaker of a county assembly may be removed from office by the county assembly through a resolution supported by not less than seventy five percent of all the members of the county assembly.

(2) A notice of the intention to move a motion for a resolution to remove the speaker shall be given in writing to the clerk of the county assembly, signed by at least one third of all the members of the county assembly stating the grounds for removal.

(3) A motion for a resolution to remove the speaker shall be presided over by a member of the county assembly elected under section 9(4).

(4) Before the debate and voting on a motion under subsection (3), the speaker shall be accorded an opportunity to respond to the allegations on the floor of the county assembly.

Section 30 of the Act that the Bill proposes to amend—

30. Functions and responsibilities of a county governor

(1) The governor shall take and subscribe to the oath or affirmation as set out in the Schedule to this Act before assuming office.

-
- (2) Subject to the Constitution, the governor shall—
- (a) diligently execute the functions and exercise the authority provided for in the Constitution and legislation;
 - (b) perform such State functions within the county as the President may from time to time assign on the basis of mutual consultations;
 - (c) represent the county in national and international fora and events;
 - (d) appoint, with the approval of the county assembly, the county executive committee in accordance with Article 179(2)(b) of the Constitution;
 - (e) constitute the county executive committee portfolio structure to respond to the functions and competencies assigned to and transferred to each county;
 - (f) submit the county plans and policies to the county assembly for approval;
 - (g) consider, approve and assent to bills passed by the county assembly;
 - (h) chair meetings of the county executive committee;
 - (i) by a decision notified in the county Gazette, assign to every member of the county executive committee, responsibility to ensure the discharge of any function within the county and the provision of related services to the people;
 - (j) submit to the county assembly an annual report on the implementation status of the county policies and plans;
 - (k) deliver annual state of the county address containing such matters as may be specified in county legislation; and
 - (l) sign and cause to be published in the county Gazette, notice of all important formal decisions made by the governor or by the county executive committee.
- (3) In performing the functions under subsection (2), the governor shall—
- (a) provide leadership in the county’s governance and development;
 - (b) provide leadership to the county executive committee and administration based on the county policies and plans;
 - (c) promote democracy, good governance, unity and cohesion within the county;

- (d) promote peace and order within the county;
- (e) promote the competitiveness of the county;
- (f) be accountable for the management and use of the county resources; and
- (g) promote and facilitate citizen participation in the development of policies and plans, and delivery of services in the county.

32. Functions of the deputy governor

Section 32 of the Act that the Bill proposes to amend—

32. Functions of the deputy governor

(1) The deputy governor shall take and subscribe to the oath or affirmation as set out in the Schedule to this Act before assuming office.

(2) The deputy governor shall deputize for the governor in the execution of the governor's functions.

(3) The governor may assign the deputy governor any other responsibility or portfolio as a member of the county executive committee.

(4) When acting in office as contemplated in Article 179(5) of the Constitution, the deputy governor shall not exercise any powers of the governor, to nominate, appoint or dismiss, that are assigned to the governor under the Constitution or other written law.

(5) The governor shall not delegate to the deputy governor any of the functions referred to in subsection (4).

Section 33 of the Act that the Bill proposes to amend—

Removal of a governor

(1) A member of the county assembly may by notice to the speaker, supported by at least a third of all the members, move a motion for the removal of the governor under Article 181 of the Constitution.

(2) If a motion under subsection (1) is supported by at least two-thirds of all the members of the county assembly—

- (a) the speaker of the county assembly shall inform the Speaker of the Senate of that resolution within two days; and
- (b) the governor shall continue to perform the functions of the office pending the outcome of the proceedings required by this section.

(3) Within seven days after receiving notice of a resolution from the speaker of the county assembly—

-
- (a) the Speaker of the Senate shall convene a meeting of the Senate to hear charges against the governor; and
 - (b) the Senate, by resolution, may appoint a special committee comprising eleven of its members to investigate the matter.
- (4) A special committee appointed under subsection (3)(b) shall—
- (a) investigate the matter; and
 - (b) report to the Senate within ten days on whether it finds the particulars of the allegations against the governor to have been substantiated.
- (5) The governor shall have the right to appear and be represented before the special committee during its investigations.
- (6) If the special committee reports that the particulars of any allegation against the governor—
- (a) have not been substantiated, further proceedings shall not be taken under this section in respect of that allegation; or
 - (b) have been substantiated, the Senate shall, after according the governor an opportunity to be heard, vote on the impeachment charges.
- (7) If a majority of all the members of the Senate vote to uphold any impeachment charge, the governor shall cease to hold office.
- (8) If a vote in the Senate fails to result in the removal of the governor, the Speaker of the Senate shall notify the speaker of the concerned county assembly accordingly and the motion by the assembly for the removal of the governor on the same charges may only be re-introduced to the Senate on the expiry of three months from the date of such vote.
- (9) The procedure for the removal of the President on grounds of incapacity under Article 144 of the Constitution shall apply, with necessary modifications, to the removal of a governor.
- (10) A vacancy in the office of the governor or deputy governor arising under this section shall be filled in the manner provided for by Article 182 of the Constitution.

