


REPUBLIC OF KENYA

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THE SENATE

THE STANDING COMMITTEE

ON

DEVOLUTION AND INTERGOVERNMENTAL RELATIONS

REPORT ON CONSIDERATION OF

THE COUNTY GOVERNMENTS (AMENDMENT) BILL, 2017 (SENATE BILLS
NO. 11 OF 2017)

Clerk's Chambers,
First Floor,
Parliament Buildings,
NAIROBI.

MARCH, 2018

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ABBREVIATIONS

CAF	County Assemblies Forum
COG	Council of Governors
CRA	Commission on Revenue Allocation
S.O	Standing Order
SEN.	Senator

EXECUTIVE SUMMARY

The County Governments (Amendment) Bill, 2017 (Senate Bills No. 11 of 2017) was read a First time in the Senate on 14th December, 2017.

Following the First Reading of the Bill, it stood committed to the Committee on Devolution and Intergovernmental Relations for facilitation of public participation and consideration. Consequently, the Committee, pursuant to Article 118 of the Constitution and Standing Order 134 (5), invited submissions from members of the public on the Bill via an advertisement on the Daily Nation Newspaper on Tuesday, 27th February, 2018. The Committee received both oral and written submissions on the Bills during its meetings with the members of public held on 28th February, 2018 in the Commission Board Room, First Floor, County Hall, Parliament Buildings, on 6th March 2018 in Committee Room 10, Parliament Buildings and on 8th March, 2018 in Committee Room 9, Parliament Buildings.

CHAPTER ONE

1. INTRODUCTION

1.1. The County Governments (Amendment) Bill, 2017(Senate Bills No. 11 of 2017)

The County Governments (Amendment) Bill, 2017 (Senate Bills No. 11 of 2017) is sponsored by Sen. Kipchumba Murkomen, MP (Leader of the Majority Party in the Senate). The Bill seeks to amend the County Governments Act, No. 17 of 2012 to provide for-

- (a) Clarify on commencement and sitting of a county assembly;
- (b) Put in place the legal framework for the establishment of the office of a deputy speaker of a county assembly;
- (c) Clarify on removal of the speaker of a county assembly;
- (d) Clarify on recall of members of a county assembly;
- (e) Ensure clarity as regards the powers of the governor to appoint and dismiss a county executive committee member;
- (f) Provide for the legal framework for assumption of office of governor by the deputy governor and the appointment of a new deputy governor; and
- (g) Ensure the independence, professionalism, transparency and promotion of equity in the functioning of county public service boards.

The Bills were committed to the Standing Committee on Devolution and Intergovernmental Relations for facilitation of public participation. Subsequently, the Committee, pursuant to Article 118 of the Constitution and Standing Order 130 (4), invited submissions from members of the public on the above Bills via an advertisement

on the Daily Nation Newspaper on Tuesday, 27th February, 2018. The Committee received both oral and written submissions on the Bills during its meeting with the members of public held on 28th February, 2018 in the Commission Board Room, First Floor, County Hall, Parliament Buildings.

OVERVIEW OF THE BILL

1.2. The County Governments (Amendment) Bill, 2017 (Senate Bills No. 11 of 2017)

Section 4(1) of the County Governments Act, 2012 gives each county power to enact legislation prescribing the county symbols that is, the county flag, the county coat of arms and the county public seal. Section 4(2) gives the county executive the power to develop the symbols of the county through a consultative process for approval by the county assembly by legislation.

Clause 2 of the Bill seeks to provide uniformity for all counties in the development of county symbols. The Bill provides that further to the process outlined in the Act, the county executive committee members shall apply to the College of Arms for a grant of arms in accordance with section 4 of the College of Arms Act.

Section 4 of the College of Arms Act provides that any person who desires a grant of arms may apply therefor to the College of Arms, submitting full particulars of the design of the arms applied for together with the prescribed fee. The College of Arms comprises the Cabinet Secretary or their deputy who shall be chairperson, four persons appointed by the Cabinet Secretary and a registrar.

Section 136(1) of the County Governments Act provides for the first sitting of a county assembly after the first election under the new Constitution. The provision gave the Independent Electoral and Boundaries Commission the powers to set the place, time and date of the first sitting of a county assembly. This was a transitional provision whose effect lapsed upon the constitution of county governments after the first elections in 2013.

Clause 3 of the Bill therefore seeks to entrench in law the location of the first sitting of a county assembly which shall be appointed by the governor, by notice in the Gazette and shall not be more than thirty days from the date on which the county assembly is fully constituted after a general election.

Clause 5 seeks to amend section 9 of the Act to align the timelines for swearing in of Members of a county assembly to the first sitting of the county assembly.

Article 178 of the Constitution provides for the election of the Speaker of a county assembly. Section 9(4) of the County Governments Act provides that in the absence of the speaker of the county assembly, the county assembly shall elect a member from its members to act as Speaker. Such person so elected shall in the absence of the Speaker preside over the sittings of the assembly for the term of the county assembly.

Clause 6 of the Bill seeks to embed in law the appointment of the deputy speaker of a county assembly who shall be elected by the county assembly in accordance with standing orders of the respective county assemblies from among the members of that county assembly.

Section 11 of the County Governments Act provides for the process for the removal from office of a speaker of a county assembly. It is however silent on how the office becomes vacant, the grounds for removal and a clear process on how the removal is to be effected. Clause 7 of the Bills therefore resolves the challenges faced in the removal of a speaker of a county assembly while at the same time providing the speaker an opportunity to be heard before the removal from office is finalized. Further, clause 7 outlines the process for the removal from office of a deputy speaker of a county assembly.

The recall of a member of a county assembly is provided for under sections 27 and 28 of the County Governments Act. These provisions provide that a recall can only be initiated upon the judgment by a High Court. It further provides that a person who unsuccessfully contested for elections cannot initiate a recall and that the recall must be signed by a

person who was a voter in the election in respect of which the recall is sought. These provisions are discriminatory especially since they lock out certain persons from initiating a recall of a member of a county assembly. The enactment of clauses 8 and 9 will help streamline the recall process in the county assembly.

A county governor may dismiss a county executive committee member at any time if the governor considers that it is appropriate or necessary to do so pursuant to section 31 of the County Governments Act. Clause 10 amends the provision to give the governor power to re-assign a county executive committee member.

Clause 11 of the Bill provides for the inability of the governor or their deputy to assume office, the assumption to the office of the governor by the deputy governor, vacancy in the office of the deputy governor and appointment of a deputy governor where the deputy governor assumes the office of the governor.

The Bill provides that in case a vacancy occurs in the office of the governor, the deputy governor shall be sworn in as governor within fourteen days from the date the office of governor became vacant. A vacancy in the office of the deputy governor shall be filled by the governor nominating a person qualified to be elected as governor and approved by the county assembly.

Article 123 of the Constitution provides for voting in the Senate by county delegations and that when the Senate votes on a matter that does not affect counties, each Senator shall have one vote. Clause 12 of the Bill seeks to amend the section 33(7) of the County Governments Act on voting by a majority of all the members of the Senate to uphold any impeachment charges to align it with the provisions of the Constitution.

Clauses 14 to 17 seek to streamline certain appointment process in the counties as follows

- (a) Clause 14 – Governor to constitute a selection panel in recruiting a county secretary;

- (b) Clause 15 – circumstances under which the office of a chief officer becomes vacant;
- (c) Clause 16 – streamline the process for the recruitment and appointment of the members of a County Public Service Board and enhancing the qualifications for appointment; and
- (d) Clause 17 – clearly outlines the procedure for the appointment of members of the Board.

Clause 21 introduces a new provision that sets the framework for promoting equity by the county public services boards during appointments by among others preparing and implementing public service employment equity plan.

CHAPTER TWO

2. SUBMISSIONS FROM MEMBERS OF THE PUBLIC/ STAKEHOLDER CONSULTATIONS

2.1. SUBMISSIONS ON THE COUNTY GOVERNMENTS (AMENDMENT) BILL, 2017 (SENATE BILLS NO. 11 OF 2017)

The Committee received submissions on the County Governments (Amendment) Bill, 2017 as follows-

NO.	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT
1.	7 11(1)(c)	County Assemblies Forum	The threshold for the removal from office of a County Assembly Speaker should be seventy five per cent and not two thirds as proposed
2.	7 11(2)(e)	County Assemblies Forum	The following ground for removal from office of a Speaker - Inability to perform the functions of the office speaker for whatever reason be deleted and replaced with physical and mental inability to perform the functions of the office of Speaker.
3.	7	County Assemblies Forum	Introduce new clauses on the removal from office of a Speaker. CAF proposes that the once the motion for removal is passed, the County Assembly should appoint a select committee to investigate the matter and report to the Assembly. If substantiated, the County Assembly shall afford the Speaker an opportunity to be heard, consider the report of the select committee and vote whether to approve the resolution. For a Speaker to cease to hold office, the resolution must be supported by at least 75% of all Members of the County Assembly.
4.	8	County Assemblies Forum	Incompetence should not be a ground for recall of a Member of a County Assembly
5.	11 (32A)	Council of Governors	Amend the marginal note to read <i>death or otherwise before assuming office.</i>
6.	11 (32A)	Deputy Governors Forum	The Forum is concerned as to what happens to a deputy governor who assumes the office of governor if the governor declared elected is unable to assume office. The Bill provides that the deputy governor will be sworn in as acting governor and a fresh election to the

NO.	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT
			office of governor will be held within sixty days after the death of the governor-elect.
7.	11 (32D)	Ngatia and Associates Advocates	In appointing a deputy governor where a deputy governor assumes office of governor, the political party which sponsored the governor who has ceased to hold office shall nominate 3 persons for appointment as deputy governor. The names shall be forwarded to the county assembly to vote and the nominee with most votes shall be declared the deputy governor. In the event the governor who ceased to hold office was an independent candidate, the person who assumes office of governor shall nominate the three persons for position of deputy governor and forward the names to the county assembly for approval.
8.	11 (32D)	Council of Governors	Amend the marginal note to read <i>filling of the vacancy in the office of deputy governor</i> .
9.	11 (32D)	Council of Governors	Redraft the clause to cater for all appointments following vacancies arising in the office of deputy governors.
10.	11	County Assemblies Forum	The same provisions discussed above for removal from office of a Speaker should apply to those of the Deputy Speaker
11.	New provision	Council of Governors	Amend section 25(2) of the County Governments Act on the publication of county laws in the Gazette to align it with the High Court judgement which declared the provision inconsistent with Article 199(1) of the Constitution
12.	New provision	Council of Governors	Amend section 44 of the County Governments Act to entrench the position of a County Attorney in law

CHAPTER THREE

3.0 COMMITTEE RECOMMENDATIONS

The Committee upon deliberation recommends the following amendments-

I. COMMITTEE STAGE AMENDMENTS TO THE COUNTY GOVERNMENTS (AMENDMENT) BILL, 2017 (SENATE BILLS NO 11 OF 2017)

CLAUSE 7

THAT clause 7 of the Bill be amended in section 11(2) by deleting paragraph (e) and substituting therefor the following new paragraph -

(e) inability to perform the functions of the office of speaker arising from mental or physical incapacity;

CLAUSE 11

THAT clause 11 of the Bill be amended in section 32D by –

(a) deleting the introductory phrase in sub section (1) and inserting therefor the following new introductory phrase -

Where a vacancy arises in the office of a deputy governor as provided for under section 32C, the governor shall -

(b) deleting the marginal note and inserting therefor the following new marginal note -
Filling of a vacancy in the office of deputy governor.

New Clauses

THAT clause 7 of the Bill be amended by inserting the following new clause immediately after clause 7 –

7A. The Principal Act is amended in section 25 by deleting subsection (2) and substituting therefor the following new subsection -

(2) Subject to subsection (3), the county assembly legislation shall come into force on the fourteenth day after its publication in the Kenya Gazette and the county Gazette, unless the legislation stipulates a different date on, or time at which, it shall come into force.

APPENDICES

1. Minutes of the Meetings
2. Attendance Lists for the Public Hearing
3. Matrix of Committee Resolutions on Submissions

**MINUTES OF THE 5TH MEETING OF THE STANDING COMMITTEE ON
DEVOLUTION AND INTERGOVERNMENTAL RELATIONS HELD ON
WEDNESDAY, 7TH MARCH, 2018 IN COMMITTEE ROOM 9, PARLIAMENT
BUILDINGS FROM 10.00 A.M.**

MEMBERS PRESENT

- | | |
|-----------------------------|--------------|
| 1. Sen. Nderitu John Kinyua | -Chairperson |
| 2. Sen. Boy Issa Juma | -Member |
| 3. Sen. Cherarkey Samson | -Member |
| 4. Sen. Iman Falhada Dekow | -Member |

ABSENT WITH APOLOGIES

- | | |
|---------------------------------|-------------------|
| 5. Sen. Wario Golich Juma | -Vice Chairperson |
| 6. Sen. Boniface Mutinda Kabaka | -Member |
| 7. Sen. Sitswila Amos Wako | -Member |
| 8. Sen. Ephraim Mwangi Maina | -Member |
| 9. Sen. James Orengo | -Member |

ATTENDANCE BY NON-MEMBER OF COMMITTEE (S.O. 203)

- | | |
|---------------------------|--------------------------|
| 1. Sen. Adan Dullo Fatuma | - Senator, Isiolo County |
| 2. Sen. Johnes M. Mwaruma | - Senator, Taita-Taveta |

COMMITTEE SECRETARIAT

- | | |
|------------------------|-----------------------------|
| 1. Mr. Julius Ariwomoi | - Principal Clerk Assistant |
| 2. Mr. Jeremy Chabari | - Legal Counsel |
| 3. Ms. Regina Munyao | - Legal Pupil |
| 4. Ms. Lucianne Limo | - Media Relations Officer |

MINUTE SEN/SCDIR/24/2018: PRAYERS

The meeting was called to order at 10.00 am by the Chairperson followed by a word of prayer.

MINUTE SEN/SCDIR/25/2018: ADOPTION OF AGENDA

The agenda of the meeting was adopted after it was proposed by Sen. Iman Falhada Dekow and seconded by Sen. Boy Issa Juma as follows;

1. Prayer;
2. Adoption of the Agenda;
3. Public Hearings for consideration of the following bills: -
 - a. The Assumption of Office of County Governor Bill, 2018;
 - b. The County Boundaries Bill, 2017;
4. Any Other Business;
5. Date of Next Meeting & Adjournment.

**MINUTE SEN/SCDIR/26/2018: PUBLIC HEARINGS FOR
CONSIDERATION OF BILLS**

The Committee received public views on the following bills: -

- a. The County Boundaries Bill, 2017 (Senate Bills No.6 of 2017) read a first time in the Senate on 30th November, 2017;
- b. The Assumption of Office of County Governor Bill, 2018 (Senate Bills No.1 of 2018) read a first time in the Senate on 15th February, 2018;

The Committee received views from the following groups/persons: -

(1) Isiolo Community

- (i) Yusuf H. Jillo
- (ii) Hassan Wako Wario
- (iii) Dr. Abdullahi Dima Jillo

This group noted that the boundaries of Meru and Isiolo Counties were very contentious, emotive and sensitive. They presented a memorandum and documents (including Court rulings) on the matter and requested the Committee to give consideration to the plea of Isiolo Community when looking at the County Boundaries Bill, 2018. They also noted that development projects in the contested boundaries such as LAPSSET Corridor development project (among others in the area) may be affected if the matter is not well addressed. The group further noted the need to amend the Constitution to consider historical boundaries dating way back into 1963 since the 1991 boundaries recognized in the Constitution presented overlaps and marginalization in some Counties.

(2) Mount Elgon Sabaot Community Representative

Mr. Martin Simotwo: Presented a memorandum on the County boundaries bill, 2017.

(3) Africa Art Group

Mr. Wanjohi Nyamu made oral presentation to the Committee. He explained the need to respect Independent Commissions such as IEBC in undertaking their constitutional mandates. He also noted the need to consider reviewing the Constitution.

Some memoranda sent by the public were also received through mails sent via the office of the Clerk of the Senate and via the official email address given to the public during the advertisement.

MINUTE SEN/SCDIR/27/2018: DATE OF NEXT MEETING & ADJOURNMENT

The Committee resolved to hold its next meeting on Thursday 8th March, 2018.

There being no other business, the meeting was adjourned at 12.10 p.m.

SIGNATURE.....

(CHAIRPERSON: SEN. NDERITU JOHN KINYUA, M.P.)

DATE..... 13/3/2018

SENATE STANDING COMMITTEE ON DEVOLUTION & INTER-GOVERNMENTAL RELATIONS

VENUE: Committee Room 9.....

DATE: 8/3/2018.....

REGISTRATION FORM

NO.	NAME	INSTITUTION/ORGANIZATION	DESIGNATION	Tel. No.	SIGN
1.	Governor Stephen Saura	Council of Governors	Chair, Intergovernmental Relations Committee		
2.	Dg. JOASH NAAABI	Deputy Governor's Forum	Chair of the D's Forum	0719543303	[Signature]
3.	JOHN MWANIKI	Deputy Governor	Chair Committee on Senate Bill	072281103	[Signature]
4.	Benson Lekemai	Council of Governors	Legal Officer	0702050207	[Signature]
5.	Eva Sawa	CoG	Legal officer	0721406302	[Signature]
6.	Mukami Kibara	CoG	Legal Officer	0704197752	[Signature]
7.	Rosemary Njirau	CoG	Legal Officer	0722481736	[Signature]
8.	Eugene Njiru	CoG	Legal Officer	0727301448	[Signature]
9.	Zindorah Muthama	CoG	Legal Officer	0702-635636	[Signature]
10.	MUTUA KILONO JUMBE	Senate			[Signature]
11.	Gitich Juma Wamati	Senator	Vice Chair Dev	0722223828	[Signature]
12.	Sen. John Kirigori	Senator	Chair Dev Sub-Committee	0722783014	[Signature]

Matrices of Committee Resolutions on Submissions

NO.	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	COMMITTEE RESOLUTION
4.	11 (32A)	Council of Governors	Amend the marginal note to read <i>death or otherwise before assuming office.</i>	
5.	11 (32A)	Deputy Governors Forum	The Forum is concerned as to what happens to a deputy governor who assumes the office of governor if the governor declared elected is unable to assume office. The Bill provides that the deputy governor will be sworn in as acting governor and a fresh election to the office of governor will be held within sixty days after the death of the governor-elect.	
6.	11 (32D)	Ngatia and Associates Advocates	<p>In appointing a deputy governor where a deputy governor assumes office of governor, the political party which sponsored the governor who has ceased to hold office shall nominate 3 persons for appointment as deputy governor.</p> <p>The names shall be forwarded to the county assembly to vote and the nominee with most votes shall be declared the deputy governor.</p> <p>In the event the governor who ceased to hold office was an independent candidate, the person who assumes office of governor shall nominate the three persons for position of deputy governor and forward the names to the county assembly for approval.</p>	
7.	11 (32D)	Council of Governors	Amend the marginal note to read <i>filling of the vacancy in the office of deputy governor.</i>	

NO.	CLAUSE	STAKEHOLDER	PROPOSED AMENDMENT	COMMITTEE RESOLUTION
8.	11 (32D)	Council of Governors	Redraft the clause to cater for all appointments following vacancies arising in the office of deputy governors.	
9.	8	County Assemblies Forum	Incompetence should not be a ground for recall of a Member of a County Assembly	
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