

THE COUNTY GOVERNMENTS (AMENDMENT) BILL, 2023

A Bill for

AN ACT of Parliament to amend the County Governments Act, 2012; and for connected purposes

ENACTED by Parliament of Kenya, as follows—

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| Short title. | 1. This Act may be cited as the County Governments (Amendment) Act, 2023. |
| Amendment of section 23 of No. 17 of 2012 | 2. The principal Act is amended in section 23 by—
(a) deleting the word “county <i>Gazette</i> and the” appearing in section 23;
(b) renumbering the section as subsection (1) and inserting the following new subsection — |
| Amendment of section 24 of No. 17 of 2012. | 3. The principal Act is amended in section 24 by—
(a) inserting the words “within fourteen days” immediately after the words “the county assembly may” appearing in subsection (3);
(b) inserting the words “and the respective county assembly standing orders” immediately after the words “this section” appearing at the end of subsection (3). |
| Amendment of section 25 of No. 17 of 2012. | 4. The principal Act is amended in section 25 by—
(a) deleting the words “county <i>Gazette</i> and” appearing immediately before the words “Kenya <i>Gazette</i> ” in subsection (1);
(b) deleting the words “county <i>Gazette</i> and” appearing immediately before the words “Kenya <i>Gazette</i> ” in subsection (2); |

(c) inserting the following new subsection immediately after subsection (2) —

Amendment of section 27 of No. 17 of 2012.

5. The principal Act is amended by repealing section 27 and substituting therefor the following—

Right of recall

27.(1) The electorate in a ward may recall their member of county assembly before the end of the term of the assembly on any of the grounds specified in subsection (2).

(2) A member of county assembly may be recalled where the member—

(a) is found, after due process of the law, to have violated the provisions of Chapter Six of the Constitution;

(b) is found, after due process of the law, to have mismanaged public resources;

(c) is convicted of an offence under this Act.

(3) A recall of a member of county assembly under subsection (1) shall only be initiated upon a judgement or finding by the court confirming the grounds specified in subsection (2).

(4) A recall under subsection (1) may only be initiated twenty-four months after the election of the member of county assembly and not later than twelve months immediately preceding the next general election.

(5) A recall petition shall not be filed against a member of Parliament more than once during the term of that member in Parliament.

(6) A person who unsuccessfully contested an election under this Act shall not be

eligible, directly or indirectly, to initiate a petition under this section

Petition for recall

27A. (1) A recall under section 45 shall be initiated by a petition which shall be filed with the Commission and which shall be—

- (a) in writing;
- (b) signed by a petitioner who—
 - (i) is a voter in the ward in respect of which the recall is sought; and
 - (ii) was registered to vote in the election in respect of which the recall is sought;
- (c) accompanied by an order of the court issued in terms of section 45(3).

(2) The petition referred to in subsection (1) shall—

- (a) specify the grounds for the recall as specified under section 27A (2);
- (b) contain a list of such number of names of voters in the ward which shall represent at least thirty percent of the registered voters; and
- (c) be accompanied by the fee prescribed for an election petition.

(3) The list of names referred to in subsection (2) (b) shall contain the names, address, voter card number, national identity card or passport number and signature or thumb prints of the voters supporting the petition.

(4) The voters supporting a petition under subsection (3) shall represent the diversity of the people in the ward.

(5) The petitioner shall collect and submit to the Commission the list of names under

subsection (2) (b) within a period of thirty days after filing the petition.

(6) The Commission shall verify the list of names within a period of thirty days of receipt of that list.

(7) The Commission, if satisfied that the requirements of this section are met, shall within fifteen days after the verification, issue a notice of the recall to the Speaker of the relevant county assembly.

(8) The Commission shall conduct a recall election within the ward within ninety days of the publication of the question.

Recall
elections

27B. (1) Where a member of county assembly is to be recalled under this Part, the Commission shall frame the question to be determined at the recall election.

(2) A question referred to in subsection (1) shall be framed in such a manner as to require the answer "yes" or the answer "no".

(3) The Commission shall assign a symbol for each answer to the recall question.

(4) The voting at a recall election shall be by secret ballot.

(5) A recall election shall be decided by a simple majority of the voters voting in the recall election.

(6) Where a recall election results in the removal of a member of county assembly, the Commission shall conduct a by-election in the affected ward.

(7) A member of county assembly who has been recalled may run in the by-election conducted under subsection (6).

Validity of
recall election

27C. A recall election shall be valid if the number of voters who concur in the recall election is at least fifty percent of the total number of registered voters in the affected county or constituency.

(a)

Amendment of
section 28 of
No. 17 of 2012.

6. The principal Act is amended by repealing section 28.

Amendment of
section 50 of
No. 17 of 2012.

7. The principal Act is amended in section 50 by—

(a) inserting the words “which shall be an office in the county public service” at the end of subsection (1); and

(b) inserting the word “recruited” immediately before the word “competitively” appearing in subsection (2).

Amendment of
section 51 of
No. 17 of 2012.

8. The principal Act is amended in section 51 by—

(a) inserting the words “which shall be an office in the county public service” at the end of subsection (1); and

(b) inserting the word “recruited” immediately before the word “competitively” appearing in subsection (2).

Amendment of
section 52 of
No. 17 of 2012.

9. The principal Act is amended in section 52 by—

(a) inserting the words “which shall be an office in the county public service” at the end of subsection (1); and

(b) inserting the word “recruited” immediately before the word “competitively” appearing in subsection (2).

Amendment of
section 58 of
No. 17 of 2012.

10. The principal Act is amended in section 58 by—

(a) deleting subsection (1) (b) and substituting therefor with the following—

- (b) not less than five and not more than seven competitively recruited in accordance with the Fourth Schedule;
- (b) deleting subsection (1)(c) and substituting therefor with the following new subsection—
 - “(1) (c) a Secretary competitively recruited and appointed by the Board, who shall be an *ex officio* member of the Board.”

Repeal of section 91A of No. 17 of 2012.

11. The principal Act is amended by repealing section 91A.

Repeal of section 91B of No. 17 of 2012.

12. The principal Act is amended by repealing section 91B.

Repeal of section 91C of No. 17 of 2012.

13. The principal Act is amended by repealing section 91C.

Amendment of section 120 of No. 17 of 2012.

14. The principal Act is amended in section 120 by inserting the following new subsection immediately after subsection (1A)—
“(1B) The tariffs imposed by a county government shall not in a way prejudice national economic policies, economic activities across county boundaries or the national mobility of goods, services, capital or labour or occasion double taxation to the payer.

No. 12 of 2010.

Amendment of section 135 of No. 17 of 2012.

15. The principal Act is amended in section 135 by inserting the following new subsection immediately after subsection (1) —
(1A) Without prejudice to the generality of section 135, the Regulations referred to under subsection (1) shall include—
(a) the procedure on the manner in which the national government may support county governments; and
(b) any other Regulations required under this Act.

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons

The principal object of this Bill is to amend the County Governments, 2012 Act No. 17 of 2012, to align the provisions of the Act with court decisions and to incorporate lessons learnt in the implementation of the Act.

The structure of the Bill I as follows:

Clause 1 provides for short title.

Clause 2 amends section 23 to remove reference to county gazette in line High Court (Constitutional and Human Rights Division) Petition No. 295 of 2014 decision.

Clause 3 proposes to amend section 24 of the Bill to provide timelines within which the county assembly must consider the governor's memorandum and determine whether to amend the Bill taking into account the issues raised by the governor or pass the Bill without amendment.

Clause 4 provides for the mandatory requirement to publish an Act of county assembly in the Kenya Gazette in line High Court (Constitutional and Human Rights Division) Petition No. 295 of 2014.

Clause 5 proposes to amend section 27 in line with court's decision in Constitutional Petition No. 209 of 2016 harmonizes the provisions on recall with those under the Elections Act..

Clause 7 of the Bill proposes to delete section 28 (on recall).

Clauses 7, 8 and 9 of the Bill propose to amend section 50 to 53 of the Act to clarify that the establishment of the office of the sub-county, ward

administrators and village administrators as public office so as to avert the assumption that such are political offices and therefore the need to cushion the officers from political interests.

Clauses 11 to 13 repeals sections 91A, 91B and 91C relating to County Development Boards. Petition No. 381 of 2014 (as consolidated with Petition 430 of 2014) declared County Government (Amendment) Act, 2014 unconstitutional, null and void.

Clause 14 amends section 120 of the Act and provides that tariffs imposed by a county government shall not hinder national trade.

Clause 37 amends section 121 to give the Cabinet Secretary the power to make Regulations to support by national government to county governments.

Clause 15 of the Bill gives powers to the Cabinet Secretary to make Regulations.

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

The Bill does not limit fundamental rights and freedoms neither does it delegate any legislative power.

Statement on how the bill concerns county governments

This Bill concerns county governments in terms of Article 110(1) (a) of the Constitution.

Statement that the Bill is not a money Bill, within the meaning of Article 114 of the Constitution

The Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the, 2019.

**CHAIRPERSON,
Judicial and Legal Affairs Committee**

Provisions of the County Governments Act, No. 17 of 2012 that it is proposed to amend—

Section 23 of No. 17 of 2012, which it is proposed to amend:

23. Publication of a Bill

A Bill shall be published by including the Bill as a supplement in the county Gazette and the Kenya Gazette.

Section 24 of No. 17 of 2012, which it is proposed to amend:

24. Assenting to a Bill

(1) The Speaker shall, within fourteen days, forward a Bill passed by the county assembly to the governor.

(2) The governor shall within fourteen days after receipt of a Bill—

(a) assent to the Bill; or

(b) refer the bill back to the county assembly with a memorandum outlining reasons for the referral.

(3) If the governor refers a Bill back to the county assembly, the county assembly may, following the appropriate procedures under this section—

- (a) amend the Bill taking into account the issues raised by the governor; or
 - (b) pass the Bill without amendment.
- (4) If a county assembly amends the Bill taking into consideration the issues raised by the governor, the speaker shall within fourteen days submit the Bill to the governor for assent.
- (5) If a county assembly passes the Bill a second time, without amendment, or with amendments which do not accommodate the governor's concerns by a vote supported by two-thirds of members of the county assembly, the speaker shall within seven days re-submit the Bill to the governor and the governor shall within seven days assent to the Bill.
- (6) If the governor does not assent to a Bill or refer it back within the period referred to under this section, the Bill shall be taken to have been assented to on the expiry of that period.

Section 25 of No. 17 of 2012, which it is proposed to amend:

25. Coming into force of a law

- (1) A legislation passed by the county assembly and assented to by the governor shall be published in the county Gazette and Kenya Gazette within seven days after assent.
- (2) Subject to subsection
- (3), the county assembly legislation shall come into force on the fourteenth day after its publication in the county Gazette and Kenya Gazette, whichever comes earlier, unless the legislation stipulates a different date on or time at which it shall come into force.
- (3) A county assembly legislation that confers a direct benefit whether financial or in kind on members of the county assembly shall come into force after the next general election of members of the county assembly.

(4) Subsection (3) does not apply to an interest that members of county assembly have as members of the public.

Section 27 of No. 17 of 2012, which it is proposed to amend:

27. Recall of a county assembly member

(1) The electorate in a county ward may recall their member of the county assembly before the end of the term of the member on any of the grounds specified in subsection (2).

(2) A member of a county assembly may be recalled where the member—

- (a) is found, after due process of the law, to have violated the provisions of Chapter Six of the Constitution;
- (b) is found, after due process of the law, to have mismanaged public resources;
- (c) is convicted of an offence under the Elections Act (No. 24 of 2011).

(3) A recall of a member of the county assembly under subsection (1) shall only be initiated upon a judgment or finding by the High Court confirming the grounds specified in subsection (2).

(4) A recall under subsection (1) shall only be initiated twenty-four months after the election of the member of the county assembly and not later than twelve months immediately preceding the next general election.

(5) A recall petition shall not be filed against a member of the county assembly more than once during the term of that member in the county assembly.

(6) A person who unsuccessfully contested an election under the Elections Act (No. 24 of 2011) shall not be eligible, directly or indirectly, to initiate a petition under this section.

Section 28 of No. 17 of 2012, which it is proposed to amend:

28. Petition for recall

(1) A recall under section 27 shall be initiated by a petition which shall be filed with the Independent Electoral and Boundaries Commission and which shall be—

- (a) in writing;
- (b) signed by a petitioner who—
 - (i) is a voter in the Ward in respect of which the recall is sought; and
 - (ii) was registered to vote in the election in respect of which the recall is sought;
- (c) accompanied by an order of the High Court issued in terms of section 27(3).

(2) The petition referred to in subsection (1) shall—

- (a) specify the grounds for the recall as specified under section 27(2);
- (b) contain a list of such number of names of voters in the Ward which shall represent at least thirty percent of the registered voters in that Ward; and
- (c) be accompanied by the fee prescribed for an election petition.

(3) The list of names referred to in subsection (2) (b) shall contain the names, address, voter card number, national identity card or passport number and signature of the voters supporting the petition.

(4) The voters supporting a petition under subsection (3) shall represent the diversity of the people in the Ward.

(5) The petitioner shall collect and submit to the Commission the list of names under subsection (2) (b) within a period of thirty days after filing the petition.

(6) The Commission shall verify the list of names within a period of thirty days of receipt of that list.

(7) The Commission, if satisfied that the requirements of this section are met, shall within fifteen days after the verification, issue a notice of the recall to the speaker of the county assembly.

(8) The Commission shall conduct a recall election within the Ward within ninety days of the publication of the question.

Section 120 of No. 17 of 2012, which it is proposed to amend:

120. Tariffs and pricing of public services

(1) A county government or any agency delivering services in the county shall adopt and implement a tariffs and pricing policy for the provision of public services.

(1A) Notwithstanding subsection (1), a county government or any agency delivering services in the county shall adopt and implement tariffs and pricing policy subject to the existing National Government laws and policies.

(2) A county government or agency delivering services through service delivery agreements, shall comply with the provisions of this section.

(3) A tariff policy adopted under subsection (1) shall reflect the following guidelines—

- (a) users of county services should be treated equitably in the application of tariffs, fees, levies or charges;
- (b) the amount individual users pay for services should generally be in proportion to their use of that service;
- (c) poor households shall have access to at least basic services through —
 - (i) tariffs that cover only operating and maintenance costs;
 - (ii) special tariffs or life line tariffs for low levels of use or consumption of services or for basic levels of service; or

- (iii) any other direct or indirect method of subsidies of tariffs for poor households;
 - (d) tariffs shall reflect the costs reasonably associated with rendering the service, including capital, operating, maintenance, administration and replacement costs, and interest charges;
 - (e) tariffs shall be set at levels that facilitate the financial sustainability of the service, taking into account subsidy from sources other than the service concerned;
 - (f) provision may be made in appropriate circumstances for a surcharge on the tariff for a service;
 - (g) provision may be made for the promotion of local economic development through special tariffs for categories of commercial and industrial users;
 - (h) promotion of the economic, efficient, effective and sustainable use of resources, the recycling of waste and other appropriate environmental objectives; and
 - (i) full disclosure of the subsidies on tariffs for poor households and other categories of users.
- (4) A tariff policy may differentiate between different categories of users, debtors, service providers, services, service standards, geographical areas and other matters as long as the differentiation does not amount to unfair discrimination.
- (5) A county government may make laws and regulations to give effect to the implementation and enforcement of tariff policies.

Section 135 of No. 17 of 2012, which it is proposed to amend:

135. Regulations

- (1) The Cabinet Secretary may make regulations for the better carrying out of the purposes and provisions of this Act and such Regulations may be made in respect of all county governments and further units of decentralization generally or for any class of county governments and further units of decentralization.

(2) Regulations made under this section shall be tabled before the Senate for approval, and shall not take effect until such approval is obtained.