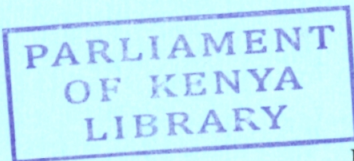


SPECIAL ISSUE

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THE COUNTY GOVERNMENTS (AMENDMENT) BILL, 2024

A Bill for

AN ACT of Parliament to amend the County Governments Act to provide for inter-county transfers of county public officers, the establishment of the county public service boards consultative forum and for connected purposes

ENACTED by the Parliament of Kenya, as follows —

1. This Act may be cited as the County Governments (Amendment) Act, 2024.

Short title.

2. Section 2 of the County Governments Act, (hereinafter referred to as “the principal Act” is amended by inserting the following new definitions immediately after the definition of the term “Disciplinary Control;”—

Amendment of section 2 of Cap. 265.

“Forum” means the County Public Service Boards Consultative Forum established under section 86A;

3. Section 12 of the Intergovernmental Relations Act is amended in paragraph (a) by inserting the words “, County Public Service Boards Consultative Forum” immediately after the words “administration of the Summit”

Amendment of section 12 of Cap. 265F.

4. The principal Act is amended by inserting the following new section immediately after section 73—

Insertion of section 73A in Cap. 265.

Inter-county transfer.

73A. (1) A county public officer desirous of transferring his or her services from one county to another may apply in writing to their respective County Public Service Board, through the authorised officer from which the officer is coming, for a transfer of service.

(2) A County Public Service Board shall, within twenty-one days of receipt of an application, make recommendations subject to any relevant written law in force relating to retirement benefits.

(3) Subject to sub-section (2), in order to be considered for transfer, an officer shall be required to have served at a duty station for a continuous period of at least three years.

(4) Despite subsection (3), a County Public Service Board may determine an officer's transfer without due regard to the period prescribed in paragraph (3).

(5) Where a county public officer is offered an appointment in another county, the request for transfer of service shall be made in writing to the relevant county public service.

(6) In making a decision to recommend the transfer of a county public officer, the County Public Service Board shall take into account the—

- (a) written application from the county public officer;
- (b) efficiency and effectiveness of public service delivery;
- (c) existing skills and competencies in the receiving county so as not to disadvantage public officers already serving in the county; and
- (d) promotion of representation of Kenya's diverse communities, men and women, the members of all ethnic groups and persons with disabilities.

(7) Where a county public officer is transferred from one county public service to another, the public officer's accrued benefits relating to the previous period in public service shall not be lost.

(8) For purposes of subclause (7), the benefits include—

- (a) accrued pension in accordance with relevant written law relating to pension;
- (b) retirement benefits;
- (c) accrued leave;
- (d) or any other benefit as may be agreed upon by the concerned county public service boards.

(9) A transfer shall not be arbitrary and shall be based on necessity and shall be carried out in a manner that shall not disrupt the operations of a county public service.

5. The principal Act is amended by inserting the following new sections immediately after section 86—

Insertion of
new Part
VIII.

PART VIIIA – COUNTY PUBLIC SERVICE BOARDS CONSULTATIVE FORUM

Insertion of section
86A in Cap. 265.

Establishment of the
County Public
Service Board
Consultative Forum.

86A. (1) There is established a County Public Service Boards Consultative Forum.

(2) The Forum shall comprise –

- (a) a representative from each of the forty-seven County Public Service Boards; and
- (b) a secretary to the Forum who shall be an ex-officio member and shall have no right to vote at any meeting of the Forum.

(3) The representative referred to in subsection 2(a) shall be drawn from the membership of the Board appointed under section 58(1)(a) or (b).

(4) At the first meeting, the Forum shall elect a chairperson and a vice-chairperson amongst their membership and regard shall be taken to ensure that the chairperson and vice-chairperson shall be of the opposite gender.

(5) The position of chairperson and vice-chairperson of the Forum shall be held by the various county public service boards on a rotational basis in such manner as the Forum may determine.

(6) A member of the Forum appointed under subsection (2)(a) shall hold office for a term of three years and shall not be eligible for reappointment.

Insertion of section 86B in Cap. 265. Purpose of the Forum.

86B. (1) The Forum shall —

- (a) develop criteria and framework for determining County public service matters requiring inter-county consultation;
- (b) develop inter-county agreements for joint implementation of any activities related to efficient county public service delivery; and
- (c) be a platform for mutual consultation, coordination and collaboration among the forty-seven County Public Service Boards on all matters related to the public service.
- (d) provide linkages with other relevant stakeholders for the furtherance of the functions of the Forum; and
- (e) mediate any disputes arising from the respective County Public Service Boards.

Insertion of section 86C in Cap. 265. Meetings of the Forum.

86C. (1) The Forum shall meet at least once every year on a rotational County basis

(2) The forum shall prescribe its own procedures for its meetings.

Insertion of section 86D in Cap. 265. Qualifications for appointment of Secretary to the Forum.

86D. A person shall be qualified for appointment as a secretary to the Forum if that person —

- (a) holds a degree from a university recognised in Kenya;

- (b) has knowledge and at least ten years work experience in a senior management position;
- (c) is an employee of the Intergovernmental Relations Technical committee;
- (d) meets the requirements of Chapter Six of the Constitution;
- (e) has not been adjudged bankrupt; and
- (f) has not been convicted of an offence and sentenced to imprisonment for at least six months.

Insertion of section 86E in Cap. 265.

Functions of the secretary to the Forum.

86E. In exercise of functions under this Act, the secretary to the Forum shall, subject to the direction of the Forum —

- (a) be responsible for the day-to-day management of the Forum;
- (b) oversee and coordinate the implementation of the policies, programmes and objectives of the Forum;
- (c) cause to be prepared for the approval of the Forum —
 - (i) the strategic plan and annual plan of the Forum; and
 - (ii) the annual budget and audited accounts of the Forum; and
- (d) perform such other duties as may be assigned to the secretary by the Forum.

Insertion of section 86F in Cap. 265.

Term of office of secretary to the Forum.

86F. The secretary to the Forum shall hold office for a term of three years and shall be eligible for reappointment for one further term.

Insertion of section 86G in Cap. 265.

Removal from office of secretary to the Forum.

86G. (1) The Forum may terminate the appointment of the secretary to the Forum for—

- (a) inability to perform the functions of the office arising out of physical or mental incapacity;
- (b) gross misconduct or misbehaviour;
- (c) incompetence or neglect of duty; or
- (d) is no longer an employee of the Intergovernmental Relations Technical Committee.

(2) The termination under Subsection (1) Shall not affect the employment terms of the Secretary to Intergovernmental Relations Technical Committee.

Insertion of section 86H in Cap. 265. Staff of the Forum.

86H. (1) The Forum may appoint such officers in consultation with the Intergovernmental Relations Technical Committee, agents and staff as are necessary for the proper and efficient discharge of the functions of the Forum under this Act.

(2) The staff appointed under subsection (1) shall serve on such terms and conditions as the Forum may, in consultation with the Intergovernmental Relations Technical Committee, determine.

Insertion of section 86I in Cap. 265. Protection from personal liability.

86I. (1) In accordance with Article 236, No matter or thing done by an officer or an employee of the Forum shall, if the matter or thing is done bona fide for executing the functions, powers or duties of the Forum, render the officer or employee so acting, personally liable for any action, claim or demand.

(2) Subsection (1) shall not relieve the Forum from liability to pay compensation or damages to any person for any injury to that person, or other loss caused by the exercise of any power conferred by this Act or any other written law or by the failure of any works of the Forum.

Insertion of section 86J in Cap. 265. Funds of the Forum.

86J. (1) The funds of the Forum shall consist of monies as may be lawfully granted or donated to the Forum.

Insertion of new
section 86K in Act
Cap. 265.

Accounts and audit.

86K. (1) The Forum shall cause to be kept proper books and other records of accounts of the income, expenditure and the assets of the Forum.

(2) The accounts of the Forum shall be audited and reported upon in accordance with the provisions of the Public Audit Act.

Insertion of section
86L in Cap. 265.

Annual report and
programme.

86L. (1) The Forum shall, within a period of four months after the end of each financial year, submit to the Senate, the County Assemblies and the Council of County Governors an annual report on the activities and operations of the Forum in the preceding financial year.

(2) A report of the Forum submitted under subsection (1) shall include an annual programme outlining a comprehensive plan of action for the subsequent financial year.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to provide a legislative framework that will facilitate the inter-county transfer of pensionable county public officers. It seeks to allow for the seamless movement of these officers between county public services without compromising their accrued benefits, thus promoting efficiency, national integration, cohesion, and the effective delivery of public services across counties. The proposed legislation opens the avenue for counties to send and receive experienced officers based on specific needs. By allowing officers to transfer between counties, the Bill ensures that expertise and competencies can be evenly distributed, thus enhancing the efficiency and effectiveness of public service delivery across the nation.

The Bill further seeks to establish a county public service board consultative forum which recognizes the critical role played by the individual County Public Service Boards and seeks to offer a more robust and collaborative platform to facilitate their functions.

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

The Bill does not contain any provisions limiting any fundamental rights or freedoms in the Bill of Rights and it does not delegate legislative powers.

Statement on how the Bill concerns county governments

The Bill concerns county governments as stipulated under Article 110(1)(a) of the Constitution. The Bill addresses the inter-county movement of pensionable county public officers, a matter directly linked to the human resource functions of county governments as highlighted in the Fourth Schedule. By providing a framework for the transfer of officers between counties, the Bill has a direct bearing on the powers and responsibilities of counties to manage their personnel for effective service delivery. Furthermore, the safeguarding of rights and benefits for transferring officers also impacts county financial obligations and administrative functions. Therefore, the Bill affects the functions and powers of county governments as enumerated in the Fourth Schedule of the Constitution.

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

The enactment of this Bill shall not occasion additional expenditure of public funds.

Dated on the 15th May, 2024.

GEORGE MBUGUA,
Senator.

Section 2 of Cap 265 of the laws of Kenya, which it proposes to amend—

2. Interpretation in this Act, unless the context otherwise requires—

“analysis of functions” means processes of, and mechanisms for reviewing and reassigning powers and competencies between the national government and county governments in accordance with the provisions of the Constitution generally and in particular, the provisions of the Fourth Schedule thereto;

“apex body” means the body established under the law governing inter- governmental relations;

“appointment” includes an acting appointment, reappointment, promotion and re-designation;

“authorized officer” includes—

- (a) the holder of the office of county chief officer in a county department; or
- (b) in case of a department that is not assigned or under direct administration of a county chief officer, the head of that department; and
- (c) any other public officer appointed by the County Public Service Board to be an authorized officer with respect to a specified public body including a city or urban area;

“Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to inter-governmental relations;

“city” has the meaning assigned to it under the Urban Areas and Cities Act (Cap. 275);

“code of conduct” means any written standard issued by a lawful authority to guide the conduct of any county public officer or category of county public officers;

“competencies” means powers given to a public authority in respect of a specific activity which is key to ensuring the provision of a public service and includes powers of planning, regulating, setting standards, constructing, financing, managing, monitoring and evaluating, sanctioning or intervening in any way to ensure that a function is discharged;

“conditions of service” include any criterion or circumstance or factor for a person’s—

(a) appointment, secondment, deployment, promotion or discipline with respect to a public office;

(b) retention in employment as a public officer; or

(c) remunerative, retirement and other benefits;

“Constitution” means the Constitution of Kenya, 2010;

“county assembly” means a county assembly established under Article 176 of the Constitution;

“county assembly member” means a member elected or nominated in accordance with Article 177(1) of the Constitution;

“county chief officer” means a county chief officer appointed under section 45;

“county executive committee” means a county executive committee established in accordance with Article 176 of the Constitution;

“county Gazette” means a Gazette published by the authority of the county government or a supplement of such Gazette;

“county government” means the county government provided for under Article 176 of the Constitution;

“county government election” means an election of Governor and county assembly members;

“county public office” means an office in the county public service or an office in a public body but does not include any office specifically exempted by the Constitution from the powers of the county government;

“county public officer” means any person appointed by the county government and holding or acting in any county public office whether paid, unpaid, or on contractual or permanent terms but does not include a person engaged on a part-time basis in a county public body paid at an hourly or daily rate;

“county public service” means the collectivity of all individuals performing functions within any department of the county government or its agency, but does not include the Governor, deputy Governor, members of the county executive committee and the members of the county assembly;

“deputy Governor” means a person nominated by the Governor in accordance with Article 180 of the Constitution;

“disciplinary control” means the imposition of any punishment against a public officer on account of breach of a code of conduct;

“GIS based database system” means a geographical information management system that integrates hardware, software and data for capturing, managing, analyzing and displaying forms of geographically referenced information;

“Governor” means a county Governor elected in accordance with Article 180 of the Constitution;

“input indicator” means an indicator that measures the costs, resources or time used to produce an output;

“marginalised group” has the meaning assigned to it by Article 260 of the Constitution;

“merit” when used with reference to a person who is a candidate for appointment, promotion or re-designation to a county public office, means—

(a) the abilities, qualifications and personal qualities required to satisfy any prescribed criteria for appointments in the county public service, or to carry out the duties of the county public office; and

(b) the person’s potential for development;

“outcome indicator” means an indicator that measures the quality or impact of an output in achieving a particular objective;

“output indicator” means an indicator that measures the results of activities, processes and strategies of programmes or projects of a county government;

“promotion” means the conferment upon a person in the county public service of an office to which is attached a higher salary or salary scale than that attached to the previous office substantively held by that person;

“public officer” has the meaning assigned to it in Article 260 of the Constitution;

“qualification” means any prescribed factor of eligibility or ineligibility attached to holding or acting in a county public office;

“re-designation” means the conferment upon a person, of a county public office at a grade equal to or substantially equal to the one previously held by that person and whose major consequence is to change from one cadre to the other to facilitate that person’s horizontal mobility characterized with change in career path;

“retirement” means the removal of an officer from the public service with full separation benefits including pension benefits, gratuity or such other terminal benefits as may be provided for in the applicable law or the contract of service or a special retirement scheme agreed upon between the public officer and the relevant lawful authority;

“Salaries and Remuneration Commission” means the Salaries and Remuneration Commission established under Article 230(1) of the Constitution;

“secondment” means a temporary leave from discharging the duties of a county public office with a view of the concerned county public officer being employed outside the county public service or in another public body;

“shared services” means—

- (a) the centralisation at a county or other level of those administrative functions of a county that could be performed by different units including matters such as supply chain management, human resource management, information technology, purchasing, inventory, payroll, hiring, and information technology; or
- (b) partnerships between counties, a county or counties and national government and public private partnerships to deliver a specified set of public services;

“speaker” means the speaker of a county assembly elected under Article 178 of the Constitution;

“the public”, when used in relation to public participation in this Act, means—

- (a) the residents of a particular county;
- (b) the rate payers of a particular city or municipality;
- (c) any resident civic organisation or non-governmental, private sector or labour organization with an interest in the governance of a particular county, city or municipality;
- (d) non-resident persons who because of their temporary presence in a particular county, city or municipality make use of services or facilities provided by the county, city or municipality;

“urban area” has the meaning assigned to it under the Urban Areas and Cities Act (Cap. 275);

“Ward” means an electoral unit within a constituency delimited in accordance with Article 89 of the Constitution and any other relevant law; and

“Ward representative” means a county assembly member representing a particular Ward.

Section 12 of Cap 265 of the laws of Kenya, which it proposes to amend—

The county assembly service board

12. (1) There shall be a county assembly service board for each county assembly.

(2) The county assembly service board shall be a body corporate with perpetual succession and a common seal.

(3) The Board consists of—

- (a) the Speaker of the county assembly, as the Chairperson;
- (b) a vice-Chairperson elected by the Board from the members appointed under paragraph (c);
- (c) two members of the county assembly nominated by the political parties represented in the county assembly according to their proportion of members in the county assembly; and
- (d) one man and one woman appointed by the county assembly from amongst persons who are experienced in public affairs, but are not members of the county assembly.

(3A) The members of the Board appointed under section 12(3)(d) shall serve on a part-time basis.

(4) The county assembly clerk shall be the secretary to the county assembly service board.

(5) A member of the county assembly service board shall vacate office—

- (a) if the person is a member of the county assembly—
 - (i) at the end of the term of the county assembly; or
 - (ii) if the person ceases to be a member of the county assembly; or
- (b) if the person is an appointed member, on revocation of the person’s appointment by the county assembly; or
- (c) if the person is the Speaker, when the person ceases to be such Speaker.

(6) Despite subsection (5), when the term of the county assembly ends, a member of the county assembly service board under subsection (3)(d) shall continue in office until a new member has assumed office in the member's place in the next assembly.

(7) The county assembly service board is responsible for—

- (a) providing services and facilities to ensure the efficient and effective functioning of the county assembly;
- (b) constituting offices in the county assembly service, and appointing and supervising office holders;
- (c) preparing annual estimates of expenditure of the county assembly service and submitting them to the county assembly for approval, and exercising budgetary control over the service;
- (d) undertaking, singly or jointly with other relevant organizations, programmes to promote the ideals of parliamentary democracy; and
- (e) performing other functions—
 - (i) necessary for the well-being of the members and staff of the county assembly; or
 - (ii) prescribed by national legislation.

Section 73 of Cap 265 of the laws of Kenya, which it proposes to amend—

Secondments

73. (1) The national government shall put in place measures to protect its public officers on secondment to the counties from loss or disadvantage with respect to pension benefits, gratuity or other terminal benefits.

(2) Unless there is an agreement to the contrary, it shall be the responsibility of the national government to pay the salaries, remuneration, allowances and other benefits due to the staff seconded to a county government during the transition period.

(3) If for any reason it is not necessary for an officer on secondment to remain seconded and the secondment period has not lapsed, the officer shall be entitled to revert back to the public office held before secondment.

(4) The County Public Service Board shall not allow a public officer to proceed on secondment if it is not in the interest of the public officer or the concerned county public service.

(5) The County Public Service Board making a decision on secondment shall not allow the secondment unless it has considered the representation by the concerned authorized officer or head of department.

Section 86 of Cap 265 of the laws of Kenya, which it proposes to amend—

Delegation by County Public Service Board

86. (1) The County Public Service Board may delegate, in writing, any of its functions to any one or more of its members and the county secretary, county chief officer, sub-county or Ward administrator, village administrator, city or municipal manager and town administrators.

(2) The provisions of this Part shall apply to the person to whom the powers are delegated under this section.