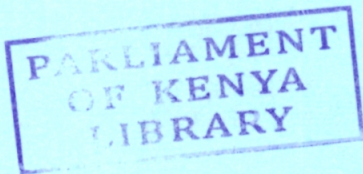


SPECIAL ISSUE

Kenya Gazette Supplement No. 92 (Senate Bills No. 25)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

SENATE BILLS, 2023

NAIROBI, 16th June, 2023

CONTENT

Bill for Introduction into the Senate—	PAGE
The County Governments (Amendment) Bill, 2023	573

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CONTENT

— Bill for Introduction into the Senate —

PAGE

The County Governments (Amendment) Bill, 2023 273

THE COUNTY GOVERNMENTS (AMENDMENT) BILL, 2023

A Bill for

AN ACT of Parliament to amend the County Governments Act to increase the threshold for removal of a member of a county executive committee; and for connected purposes.

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the County Governments (Amendment) Act, 2023.

Short title:

2. Section 40 of the County Governments Act, is amended—

Amendment of
section 40 of No.
17 of 2012.

(a) in subsection (2) by deleting the words “one-third” appearing immediately after the words “supported by at least” and substituting therefor the words “two-thirds”;

(b) in subsection (3) by deleting the words “one-third” appearing immediately after the words “supported by at least” and substituting therefor the words “two-thirds”; and

(c) in subsection (6) by deleting the words “a majority” appearing immediately after the words “supported by” and substituting therefor the words “at least two-thirds”.

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 2nd May, 2023.

CHERAKKEY SAMSON K.,
Senator.

MEMORANDUM OF OBJECTS AND REASONS

Article 10 of the Constitution provides for the national values and principles applicable to State officers when exercising public power. These values and principles include good governance, integrity, transparency and accountability. One of the means of ensuring accountability in the exercise of public power is oversight of members of the executive by the legislature at both levels of government.

In this regard section 40 of the County Governments Act provides for the procedure for the removal of a member of the County Executive by a County Assembly. However, cognizant that the office of county executive committee member is established by the Constitution and noting the adverse consequences of removal by impeachment of a member of a county executive committee, the threshold for voting for such a removal in the Act are low. This Bill therefore proposes to enhance the threshold of voting in a County Assembly for the removal of a member of a county executive committee.

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

The Bill neither delegates legislative powers to the Cabinet Secretary nor limits fundamental rights and freedoms.

Statement of how the Bill concerns county governments

The Bill proposes to enhance the voting threshold in a county assembly for the removal of a member of a county executive committee. Members of a County Executive are appointed to head various dockets in the county executive charged with discharging of devolved functions as set out in Part 2 of the Fourth Schedule to the Constitution. The Bill therefore affects the powers and functions of the county government and it is therefore a Bill that concerns counties 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.

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

Dated the 2nd May, 2023.

CHERARKEY SAMSON K.,
Senator.

Section 40 of Act No. 17 of 2012 which it is proposed to amend—

40. Removal of member of executive committee

(1) Deleted by Act No. 11 of 2020, s. 14.

(2) A member of the county assembly, supported by at least one-third of all the members of the county assembly, may propose a motion requiring the governor to dismiss a county executive committee member on any of the following grounds —

- (a) gross violation of the Constitution or any other law;
- (b) incompetence;
- (c) abuse of office;
- (d) gross misconduct; or
- (e) if convicted of an offence punishable by imprisonment for at least six months.

(3) If a motion under subsection (2) is supported by at least one-third of the members of the county assembly —

- (a) the county assembly shall appoint a select committee comprising five of its members to investigate the matter; and
- (b) the select committee shall report, within ten days, to the county assembly whether it finds the allegations against the county executive committee member to be substantiated.

(4) The county executive committee member has the right to appear and be represented before the select committee during its investigations.

(5) If the select committee reports that it finds the allegations —

- (a) unsubstantiated, no further proceedings shall be taken; or
- (b) substantiated, the county assembly shall vote whether to approve the resolution requiring the county executive committee member to be dismissed.

(6) If a resolution under subsection (5) (b) is supported by a majority of the members of the county assembly —

- (a) the speaker of the county assembly shall promptly deliver the resolution to the governor; and
- (b) the governor shall dismiss the county executive committee member.

Section 40 of Act No. 17 of 2012 which is proposed to amended—

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(1) Deleted by Act No. 11 of 2020, s. 14.

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- (a) the county assembly shall appoint a select committee comprising five of its members to investigate the matter; and
- (b) the select committee shall report, within ten days, to the county assembly whether it finds the allegations against the county executive committee member to be substantiated.

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- (a) unsubstantiated, no further proceedings shall be taken; or
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(6) If a motion under subsection (5) (b) is supported by a majority of the members of the county assembly—

- (a) the members of the county assembly shall promptly deliver the resolution to the governor; and
- (b) the governor shall dismiss the county executive committee