

SPECIAL ISSUE

Kenya Gazette Supplement No. 159 (Senate Bills No. 39)

PARLIAMENT
OF KENYA
LIBRARY



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

SENATE BILLS, 2023

NAIROBI, 1st September, 2023

CONTENT

Bill for Introduction into the Senate—

PAGE

The County Public Finance Laws (Amendment) Bill, 2023 877



GOVERNMENT OF KENYA

KENYA GAZETTE SUPPLEMENT

SENATE BILL NO. 2023

Nairobi, 1st September, 2023

CONTENTS

Part I - Bills and Ordinances

1

Part II - Notices and Orders

2

**THE COUNTY PUBLIC FINANCE LAWS
(AMENDMENT) BILL, 2023**

A Bill for

AN ACT of Parliament to amend the County Assembly Services Act and the Public Finance Management Act; and for connected purposes

ENACTED by the Parliament of Kenya, as follows —

1. This Act may be cited as the County Public Finance Laws (Amendment) Act, 2023.

Short title.

2. Section 2 of the County Assembly Services Act is amended by deleting the definition of the word “fund”.

Amendment of section 2 of No. 24 of 2017.

3. Section 31 of the County Assembly Services Act is amended by deleting subsection (5).

Amendment of section 31 of No. 24 of 2017.

4. Section 32 of the County Assembly Services Act is amended by deleting subsection (3).

Amendment of section 31 of No. 24 of 2017.

5. The County Assembly Services Act is amended by deleting section 34.

Deletion of section 34 of No. 24 of 2017.

6. The Public Finance Management Act is amended by inserting the following new sections immediately after section 109 —

Insertion of new sections in No. 18 of 2012.

Establishment of County Assembly Fund.

109A. (1) There is established for each county a fund to be known as the County Assembly Fund.

(2) There shall be paid into the County Assembly Fund —

- (a) such monies as may be appropriated by the County Assembly from the County Revenue Fund established for each county;
- (b) any grants, gifts, donations or bequests;
- (c) such money as may be allocated for that purpose from investments, fees, or levies administered by the County; and

(d) monies accruing to or received by the County Assembly from any other source.

(3) The Clerk of a County Assembly shall be the administrator of the County Assembly Fund.

(4) The administrator of a County Assembly Fund shall ensure that the earnings and accruals of the Fund are retained in the Fund and spent only for the purposes for which the Fund is established.

(5) The administrator of a County Assembly Fund shall—

(a) arrange for the County Assembly Fund to be kept in the Central Bank of Kenya in an account to be known as the County Assembly Fund Account; and

(b) ensure that all money authorised to be paid by the County Assembly for a public purpose is paid from that account without undue delay.

(6) The administrator of a County Assembly Fund shall ensure that at no time is the County Assembly Fund Account overdrawn.

(7) The administrator of a County Assembly Fund shall obtain the written approval of the Controller of Budget before withdrawing money from the County Assembly Fund Account under the authority of—

(a) an Act of the County Assembly that appropriates money for a public purpose;

(b) an Act of Parliament or county legislation that imposes a charge on that County Assembly Service Fund; or

(c) this Act in accordance with sections 134 and 135.

(8) The approval of the Controller of Budget to withdraw money from a County Assembly Fund, together with written instructions from the administrator of the Fund requesting for the withdrawal, is sufficient authority for the approved bank where that County Assembly Service Fund Account is held to pay amounts from this account in accordance with the approval and the instructions.

(9) The administrator of a County Assembly Fund shall ensure that all payments made from the County Assembly Fund subject to approvals from the Controller of Budget shall be strictly in line with the requisitions made and for the purpose requested.

(10) Any unutilised balances in the County Assembly Fund shall not lapse at the end of the financial year but shall be retained for the purposes for which it was established.

(11) Financial reports shall be submitted to the Commission on Revenue Allocation with a copy to the Controller of Budget.

Utilization of the Fund.

109B. The Fund shall be used —

(a) to defray the administrative expenses of the County Assembly;

(b) for the acquisition and proper maintenance of buildings, grounds and other assets of the County Assembly;

(c) administrative expenses as may be incurred by the Fund under this Act or under any other law; and for any other purpose provided for in the Constitution or any other written law.

Monies to be retained in the Fund.

109C. All receipts, savings and accruals to and the balance of the County Assembly Fund at the end of each financial year shall be retained in the County Assembly Fund and applied in accordance with the Constitution and this Act.

Authority to incur expenditure.

109D. (1) The Clerk of a County Assembly may, in writing, authorize a member of staff of the County Assembly to incur expenditure for the efficient management of the County Assembly.

(2) The authority to incur expenditure shall be accompanied by guidelines on its usage.

Disbursement to county assembly fund.

109E. (1) The County Treasury shall, at the beginning of every month, and in any event not later than the fifteenth day from the commencement of the month, disburse monies to the County Assembly Fund for the expenditure of the following month.

(2) The disbursement referred to in subsection (1) shall be done in accordance with a schedule prepared by the County Treasury and submitted to the County Assembly for approval together with the County Appropriation Bill under section 129(7).

7. The Public Finance Management Act is amended by inserting the following new section immediately after section 119—

Insertion of new section in No. 18 of 2012.

Access to Internet Banking user rights.

119A. The Controller of Budget shall have viewer rights access to all bank accounts maintained by the county executive, the county assembly and all other county government entities.

8. Section 134 of the Public Finance Management Act is amended in subsection (1) by inserting the words “or County Assembly Service Fund” immediately after the words “County Revenue Fund”.

Amendment of section 134 of No. 18 of 2012.

9. Section 136 of the Public Finance Management Act is amended by deleting subsection (2) and substituting therefor the following new subsection—

Amendment of section 136 of No. 18 of 2012.

(2) If, at the end of a financial year, a county government entity is holding appropriated money that was withdrawn from the County Exchequer Account or the County Assembly Fund Account but has not been spent, it shall repay the unspent money to the County Exchequer Account or the County Assembly Fund Account as the case may be and prepare a refund statement which shall be forwarded to the Controller of Budget.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The principle of separation of powers requires that county assemblies ought to be independent in the discharge of their functions. However the situation currently is that county assemblies submit their requisitions for funds to the Controller of Budget and thereafter rely on the county treasury to disburse funds to them. The reliance on the county executive for finances occasions delays and other conflicts between the two arms of government. In this regard, the financial autonomy of county assemblies is lacking as they rely on the whims and caprices of their respective county executives and as such cannot be said to be independent.

Section 17 of the County Assembly Services Act, 2017 designates the Clerk of the County Assembly as the administrative head of the county assembly. There is therefore need to establish a County Assembly Service Fund under the Public Finance Management Act in each county in order to provide the much required financial independence for the forty seven counties.

The Bill seeks to amend section 109 of the Public Finance Management Act, 2012 to establish a County Assembly Service Fund in order to have monies for the running of county assemblies being separated from the county treasury. The Bill also seeks to provide for instances where the county assemblies can be able to spend money in emergencies.

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

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

Statement as to whether the Bill does concerns county governments

This Bill provides a mechanism through which county assemblies will fund their activities independently of the county treasury. As such, the Bill directly affects the functions of county governments. The Bill therefore concerns county governments in terms of Article 110(1) (a) of the Constitution.

Statement as to whether the Bill is 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 10th August, 2023.

KATHURI MURUNGI,
Senator.