

**THE COUNTY GOVERNMENTS (AMENDMENT)
(No. 2) BILL, 2016**

A Bill for

AN ACT of Parliament to amend the County Governments Act to provide for the procedure for the disposal of a report of a Commission of Inquiry established under Article 192(2) of the Constitution and to provide for the termination of a suspension of a county government under Article 192(4) of the Constitution; and for connected purposes.

ENACTED by the Parliament of Kenya as follows—

1. This Act may be cited as the County Governments (Amendment) (No. 2) Act, 2016.

Short title

2. The County Governments Act, in this Act referred to as the “principal Act”, is amended in section 123 by deleting subsections (7), (8), (9) and (10) and substituting therefor the following new subsections—

Amendment of
section 123 of No.
17 of 2012.

(7) The Commission shall inquire into the matters before it within three months of its appointment and report on the facts and submit its recommendations to the President.

(8) Where the Commission does not recommend the suspension of a county government, the President shall, within seven days of receipt of the report of the Commission under subsection (7), submit to the Speaker of the Senate—

(a) the report and the recommendations of the Commission; and

(b) the petition for suspension of the county government.

(9) Where the Commission recommends the suspension of the county government, the President shall, within seven days of receipt of the report of the Commission under subsection (7), submit to the Speaker of the Senate—

(a) a memorandum stating whether or not the President is satisfied that justifiable grounds exist for suspension of the county government;

- (b) the report and the recommendations of the Commission; and
- (c) the petition for suspension of the county government.

(10) Where the President, in the memorandum submitted under subsection (9)(a), is satisfied that justifiable grounds exist for the suspension of a county government, the Speaker of the Senate shall refer the documents received under subsection (9) to the relevant committee of the Senate for consideration.

(11) The committee shall, within fourteen days of receipt of the documents under subsection (10), consider the documents and make its recommendations to the Senate on whether or not the Senate should authorise the suspension of the county government.

(12) An authorisation by the Senate under subsection (11) shall be by a resolution adopted in accordance with the provisions of Articles 122 and 123 of the Constitution.

(13) Upon authorisation of the suspension of a county government by the Senate in terms of Article 192(2) of the Constitution, the President shall, by notice in the *Gazette*, suspend the county government for a period not exceeding ninety days, or until the suspension is terminated earlier by the Senate in accordance with Article 192(4) of the Constitution.

(14) Where the Commission does not recommend the suspension of a county government or where the President is not satisfied that justifiable grounds exist for suspension of a county government, the Senate may consider any other recommendations of the Commission not relating to whether or not the county government should be suspended and make a determination on the way forward with respect to those recommendations.

3. The principal Act is amended by deleting section 129 and substituting therefor the following new section

Amendment of
section 129 of No.
17 of 2012.

Termination of
suspension by the
Senate.

129. (1) Pursuant to Article 192(4) of the Constitution, the Senate may at any time terminate the suspension of a county government.

(2) A member of the Senate may move a motion for the termination of a suspension under subsection (1).

(3) Where a member gives notice of a motion under subsection (2), the Speaker of the Senate shall refer the proposed motion to the relevant select committee of the Senate to consider the proposed termination of the suspension of the county government and to make recommendations as to whether or not the Senate should terminate the suspension of the county government.

(4) The committee under subsection (3) shall report to the Senate within ten days of referral of the proposed motion to the committee.

(5) In considering the proposed termination under subsection (3), the committee shall invite representations from the members of public, the Interim County Management Board and any other relevant person.

(6) A motion under subsection (2) shall be moved upon the tabling of the report of the committee under subsection (4).

(7) If the motion is supported by a majority of all the county delegations of the Senate, the suspension of the county government shall stand terminated.

(4) Upon the termination of a suspension of the county government—

- (a) the Interim County Management Board appointed under section 126 shall stand dissolved; and
- (b) the governor, the deputy governor, and the members of the county executive committee, the speaker and the members of the county assembly shall resume their functions and continue to receive

their benefits in full from the date of termination of the suspension and shall hold office for the remainder of their term.

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons

The principal object of this Bill is to amend the County Governments Act, No. 17 of 2012 so as to provide for the procedure for the disposal of a report of a Commission of Inquiry established under section 123(4) of the County Governments Act, 2012, and in particular, to govern scenarios where a Commission of Inquiry does not recommend the suspension of a county government or situations where the President is not satisfied that justifiable reasons exist for the suspension of a county government.

This Bill therefore seeks to ensure that the Senate, being the body that is constitutionally mandated to protect the interests of the counties and their governments, receives the report of a Commission of Inquiry on all occasions, regardless of the nature of the recommendations of the Commission of Inquiry so as to conclusively deliberate on the recommendations that require the action of the Senate and other institutions, such as recommendations of a policy or legislative nature that would require the intervention of the Senate.

The Bill further provides for the procedure for the termination of a suspension of a county government under Article 192(4) of the Constitution which is currently not provided for in the County Governments Act.

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 seeks to amend the County Governments Act, 2012 on matters relating to the suspension of a County Government. The Bill therefore directly affects the functions and powers of the county governments set out in the Fourth Schedule to the Constitution.

The Bill is therefore one that 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

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

Dated the 25th May, 2016.

MUTULA KILONZO, JNR.

Member, Committee on Legal Affairs and Human Rights.

Section 123 of No. 17 of 2012 which it is proposed to amend—

123. Suspension of county government in exceptional circumstances

(1) Subject to subsection (2), a person may petition the President to suspend a county government in accordance with Article 192 (1) (b) of the Constitution if the county government engages in actions that are deemed to be against the common needs and interests of the citizens of a county.

(2) A petition under subsection (1) shall be supported by the signatures of not less than ten percent of the registered voters in the county.

(3) The President shall, within fourteen days after receiving a petition against a county government under subsection (1), submit a report on the averments made and grounds giving rise to suspension of a county government before the apex inter-governmental body (hereinafter referred to as the apex body) established under the law governing inter-governmental relations for approval.

(4) Upon approval by the apex body, the President shall nominate members of a Commission to inquire into and investigate the situation in the county and make recommendations on the suspension of the county government and shall, after approval by Senate, appoint the members of the Commission by notice in the Gazette.

(5) The Commission shall comprise —

- (a) a chairperson, who shall be an advocate of the High Court of Kenya with at least fifteen years' experience;
- (b) the chairperson of the National Police Service;
- (c) two persons resident in the affected county and who have not for the last ten years stood for an elective office in the affected county government, or have been an officer or employee of the affected county government; and
- (d) two other persons not resident in the affected county with experience in conflict management.

(6) The Commission shall have all or any of the powers vested in a Commission under the Commissions of Inquiry Act, and at any inquiry directed under this section, the county government in question and any member thereof shall be entitled to be heard.

(7) The Commission shall inquire into the matters before it expeditiously and report on the facts and make recommendations to the President.

(8) Upon receipt of the report of the Commission and upon being satisfied that justifiable grounds exist for suspension of a county government, the President shall within seven days forward the report and the recommendations of the Commission, together with the petition for suspension of the county government to the speaker of the Senate.

(9) The speaker shall cause a motion for the suspension of the county government to be laid before the Senate within seven days and approval by Senate shall be by a resolution adopted in accordance with the provisions of Articles 122 and 123 of the Constitution.

(10) Upon approval by Senate, the President shall, by notice in the Gazette, suspend the county government for a period not exceeding ninety days, or until the suspension is terminated earlier by the Senate in accordance with Article 192 (4) of the Constitution.

Section 129 of No. 17 of 2012 which it is proposed to amend—

129. Termination of suspension

The suspension of a county government shall be terminated in the following ways—

- (a) in the circumstances described in Article 192(4) and (5); or
- (b) upon termination by the Senate by a resolution adopted in accordance with Articles 122 and 123 of the Constitution.