

**PARLIAMENT OF KENYA
THE SENATE**

SENATE BILLS DIGEST

THE COUNTY STATUTORY INSTRUMENTS BILL, 2018

SENATE BILLS NO. 21 OF 2018

Sponsor:	Sen. Samuel Poghiso
Date of Publication:	10 th August, 2018
Date of First Reading:	12 th September, 2018
Committee referred to:	Standing Committee on Justice, Legal Affairs and Human Rights
Type of Bill:	Ordinary Bill

Purpose of the Bill

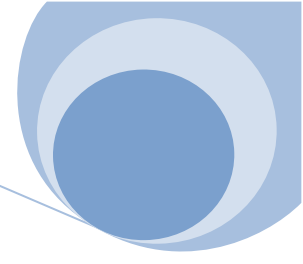
Article 185 of the Constitution provides that-

- (1) The legislative authority of a county is vested in, and exercised by, its county assembly.*
- (2) A county assembly may make any laws that are necessary for, or incidental to, the effective performance of the functions and exercise of the powers of the county government under the Fourth Schedule.*

The import of the provisions of article 185 of the Constitution is that the power to make county laws vests exclusively in the county assemblies. However, it is a well-established principle in law-making that a legislature may be unable to enact a law that would be responsive to every present and future circumstance. It is in this context that the implementers of legislation such as the executive arm of government are usually given the power to make subsidiary legislation. The legislature delegates its law making power to the executive or any other body charged with implementing the law.

The delegation of law-making power however is coupled with the requirement that such power must be exercised within the limits contemplated by the legislature in the principle Act. A legislature therefore must ensure that the authority to whom power to make delegated legislation is given exercises such power prudently.

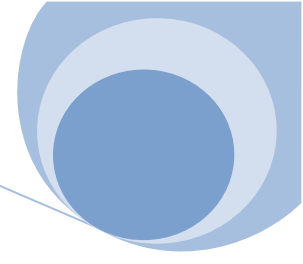
Currently, at the national level, the Statutory Instruments Act sets out the procedure through which Parliament considers and approves statutory instruments. There is no law that provides



for a similar process for county assemblies. This Bill therefore seeks to provide for the procedure of consideration of statutory instruments by county assemblies.

Salient provisions of the Bill

- (a) the Bill provides that all statutory instruments shall be subject to the provisions of the proposed new law. In this respect, the Bill defines a statutory instruments as “*any rule, order, regulation, direction, form, tariff of costs or fees, letters, patent, commission, warrant, proclamation, resolution, guideline or other statutory instrument issued, made or established in the execution of a power conferred by or under an Act of a County Assembly under which that statutory instrument or subsidiary legislation is expressly authorized to be issued*”;
- (b) the Bill requires that before publishing a statutory instrument, a regulation-making authority shall consult with persons who are likely to be affected by the proposed instrument and invite members of the public to give their views within a prescribed period;
- (c) the Bill further requires that the regulation-making authority shall, prior to making the statutory instrument, prepare a regulatory impact statement regarding the instrument if a proposed statutory instrument is likely to impose significant costs on the community or a part of the community. In preparing the regulatory impact assessment, the regulation-making authority is required to obtain independent advice as to the adequacy of the statement and of the assessment included in the statement in accordance with the guidelines;
- (d) the Bill however seeks to exempt certain types of statutory instruments from the requirement of preparation of a regulatory impact assessment. These include statutory instruments that deal with matters that are not of a legislative character, does not operate to the disadvantage of any person, an amendment of statutory instrument to take account of the prevailing Kenyan legislative drafting practice or the commencement of an Act or provision of an Act of the county assembly or subsidiary legislation;
- (e) the Bill proposes that every regulation-making authority shall within seven sitting days after the publication of the instrument, transmit a copy of the statutory instrument and an explanatory memorandum to the clerk of the county assembly for tabling before the county assembly. If an instrument is not laid before the county assembly in this manner, it shall cease to have effect immediately after the last day on which it should have been



laid. However, any act done under the instrument before it ceases to have effect shall not be prejudiced;

- (f) the Bill proposes that the respective county assembly Committee on Delegated Legislation shall scrutinize the statutory instrument to ensure that, *inter alia*, it accords with the provisions of the Constitution and other laws, imposes taxes, infringes on fundamental rights and freedoms of the public; contains a matter which in the opinion of the committee should more properly be dealt with in an Act of the county assembly, involves expenditure from the Consolidated Fund or other public revenues, inappropriately delegates legislative powers or appears for any reason to infringe on the rule of law. The Committee is required where possible to confer with the regulation-making authority during the scrutiny of a statutory instrument.
- (g) The Bill further proposes that the Committee shall table a report of its findings and the county assembly may resolve that the statutory instrument is void. In this case the statutory instrument shall stand revoked. The regulation making authority is required to publish the revocation within fourteen days

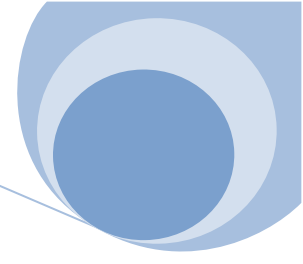
Consequences of the Bill

County legislation and statutory instruments made thereunder enable county governments discharge their functions as set out under Part 2 of the Fourth Schedule to the Constitution. This Bill therefore seeks to provide a process through which instruments proposed to have the force of law within counties may be scrutinized by county assemblies. This will ensure that statutory instruments conform to the Constitution and other written law and are made for purposes of ensuring effective delivery of services and maintenance of law and order in the counties.

Way Forward

Pursuant to standing order 140(5) of the Senate Standing Orders, the Standing on Justice, Legal Affairs and Human Rights shall facilitate public participation and shall take into account the views and recommendations of the public when the committee submits its report to the Senate.

Further, pursuant to standing order 143(1) of the Senate Standing Orders, the Committee is required to submit its report to the Senate within thirty (30) calendar days of the committal of the Bill to the Committee, therefore, **by Friday, 12th October, 2018.**



Any comments on the Bill may be submitted to the Office of the Clerk of the Senate, 1st Floor, Main Parliament Buildings, Nairobi, Kenya, through P.O. Box 41842-00100, Nairobi, Kenya or email: senatebills@parliament.go.ke.

Note:

1. This Digest reflects the Bill as proposed prior to pre-publication scrutiny and does not cover any subsequent amendments to the Bill made after pre-publication scrutiny of the Bill.
2. The Digest does not have any official legal status.