

**SPECIAL ISSUE**

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***KENYA GAZETTE SUPPLEMENT***

**SENATE BILLS, 2018**

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**SCHEDULE**

**THE DETERMINATION OF THE NATURE OF  
BILLS (PROCEDURE) BILL, 2018**

**A Bill for**

**AN ACT of Parliament to give effect to Articles 109 (5), 110 (3) and 114 of the Constitution; to provide procedure for the Speakers of the National Assembly and the Senate to determine the nature of a Bill; and for connected purposes.**

**ENACTED** by the Parliament of Kenya, as follows—

**1.** This Act may be cited as the Determination of the Nature of Bills (Procedure) Act, 2018.

Short title.

**2.** In this Act—

Interpretation.

“Houses” means the National Assembly and the Senate;

“Joint Committee” means the joint committee established under section 6;

“mediation committee” means a mediation committee established under Article 113 of the Constitution;

“Session” means the sittings of either the National Assembly or the Senate commencing when either House first meets after a General Election or on a day provided for in the relevant Standing Orders on the Regular Sessions of the relevant House and terminating when either House adjourns at the end of a calendar year or at the expiry of the term of Parliament; and

“Speaker” means the Speaker of the National Assembly or the Senate.

**3.** The object of this Act is to provide—

Object.

- (a) a framework for determining the nature of a Bill;
- (b) for the procedure for determining whether a Bill concerns counties; and
- (c) a framework for resolving a dispute as to whether a Bill concerns counties.

**4.** This Act applies to all Bills originating in the National Assembly and the Senate.

Application.

**5.** (1) Upon the publication of a Bill, and before the Bill is read a First Time in the House originating the Bill, the Speaker of that House shall, pursuant to Article 110 (3)

Procedure upon publication.

of the Constitution, seek the concurrence of the Speaker of the other House on whether the Bill-

- (a) is a Bill concerning counties: and
- (b) if it concerns counties, whether it is a special or an ordinary Bill.

(2) The Speaker from whom concurrence is sought under subsection (1) shall respond to the request for concurrence within a period of seven days from the date of receipt of the request.

(3) Where no response is received within the period specified under subsection (2), the Speaker of the House originating the Bill may direct that the Bill be Read a First time.

**6.** (1) Where the Speakers of both Houses fail to concur on the nature of a Bill as provided in section 5, the Speakers shall refer the Bill to a Joint Committee established to determine the nature of the Bill.

Joint Committee.

(2) Each Speaker shall appoint, from amongst members of the respective House, three members to sit in the Joint Committee.

(3) The Joint Committee shall, at its first meeting, elect a chairperson and a vice-chairperson from amongst its members.

(4) The chairperson and vice-chairperson shall not be members of the same House.

(5) In the absence of the chairperson or the vice-chairperson at a meeting of the Joint Committee, the members of the Joint Committee shall elect, from amongst its membership, a person to chair that meeting.

(6) The quorum of any meeting of the Joint Committee shall be at least two members from the National Assembly and two members from the Senate.

(7) The Clerks of the Houses of Parliament shall be the joint secretaries to the Joint Committee.

**7.** (1) The Joint Committee shall, within seven days of its constitution consider the Bill and submit a report to each of the Speakers with its recommendations on whether the Bill is—

Determination of the nature of a Bill.

- (a) a Bill concerning counties;
- (b) if it is a Bill concerning counties, whether it is a special or an ordinary Bill; or
- (c) a money Bill.

(2) The Joint Committee shall be guided by the criteria set out under sections 8, 9 and 10 in determining whether a Bill –

- (a) contains provisions affecting the functions and powers of the county governments set out in the Fourth Schedule to the Constitution; and
- (b) is a Bill referred to in Chapter Twelve of the Constitution affecting the finances of county governments.

**8.** (1) A Bill shall be a Bill concerning county governments under Article 110(1)(a) of the Constitution if the Bill –

Criteria for a Bill concerning county government.

- (a) directly or indirectly affects the operations of the county governments;
- (b) would have a direct or indirect impact on the functions of county governments under part 2 of the Fourth Schedule to the Constitution;
- (c) would have an impact on the exercise by any person upon whom a function or power is conferred under the Bill on any institution or office of the county government, the finances of the county government or the property held by or vested in the county government;
- (d) confers a function or power on a person that would affect the exercise of the functions and the powers of the county governments;
- (e) seeks to transfer a function or power between the national government and the county governments under Article 187 of the Constitution; or
- (f) provides for any other matter that would affect the functions and powers of the county governments.

(2) A Bill shall be a Bill that affects the finances of a county government under Article 110(1)(c) of the Constitution if–

- (a) the Bill provides for –
  - (i) the equitable sharing of revenue under Article 202(1) of the Constitution;
  - (ii) a matter set out under Article 204 of the Constitution;
  - (iii) the withdrawal of money from the Consolidated Fund under Article 206 of the Constitution that affects the finances of county governments;
  - (iv) the withdrawal of money from a County Revenue Fund;
  - (v) of public funds by counties and the management of those funds;
  - (vi) advances from the Contingencies Fund under Article 208 of the Constitution that affects the finances of county governments;
  - (vii) the imposition of a tax, duty or charge by the national government;
  - (viii) borrowing by the national government that affects the finances of county governments;
  - (ix) the terms and conditions under which the national government may guarantee a loan under Article 212 (a) of the Constitution.; or
  - (x) any other matter referred to in Chapter Twelve of the Constitution affecting the finances of county governments.

- (b) the Bill is –
  - (i) the annual Division of Revenue Bill; or
  - (ii) the annual County Allocation of Revenue Bill.

**9.** A Bill shall be a Special Bill if the Bill –

- (a) provides for the election of members of a county assembly or a county executive; or
- (b) is a County Allocation of Revenue Bill.

Criteria for determining a special or ordinary Bill.

**10.** (1) A Bill shall be a money Bill within the definition of Article 114 of the Constitution if the primary object of the Bill is to provide for–

Criteria for determining a money Bill.

- (a) the imposition, abolition, remission, alteration or regulation of any tax;
- (b) the imposition of charges on a public fund or the variation or repeal of any of those charges;
- (c) the appropriation, receipt, custody, investment or issue of public money;
- (d) the raising or guaranteeing of any loan or its repayment; or;
- (e) matters incidental to any of the matters specified under paragraphs (a) to (d).

(2) A Bill shall not be a money Bill if the Bill provides for—

- (a) the imposition of taxes by a county government;
- (b) the imposition of charges on a public fund or the variation or repeal of such charges by a county government;
- (c) the appropriation, receipt, custody, investment or issue of public money by a county government; or
- (d) the raising or guaranteeing of any loan or its repayment by a county government.

**11.** Within five days of receipt of a report of the Joint Committee under section 7 (1), the Speakers of the respective Houses shall each signify on a certificate of joint concurrence in the form set out under the Schedule on whether they concur with the recommendations contained in the report of the Joint Committee on the nature of the Bill.

Report of the Joint Committee.

**12.** (1) Where the Speakers of both Houses fail to concur with the recommendations of the report of the Joint Committee on whether-

Reference to the Supreme Court

- (a) a Bill concerns counties; or
- (b) a Bill is a money Bill,

the Joint Committee shall prepare a report to the Speakers requesting Parliament to refer the Bill to the Supreme Court for advisory opinion on the matter.

**13.** Where the two Speakers concur on the nature of the Bill, the Bill shall be introduced in the originating

Concurrence on the nature of the Bill.

House and shall be processed in accordance with the Constitution and the standing orders of that House.

**14.** When a Bill concerning county governments is referred to a House of Parliament pursuant to Article 110 (4) of the Constitution, and the relevant House fails to pass the Bill in one Session, the Bill shall be processed in accordance with Article 113 of the Constitution.

Mediation  
committees.

**15.** A Bill presented for presidential assent shall be accompanied with a certificate of joint concurrence by the Speakers of both houses on the Bill.

Presidential  
assent.

**16.** A Select Committee of the Senate may hold a joint sitting with the corresponding Select Committee of the National Assembly to deliberate on matters of mutual interest and concern.

Joint Committees  
of Parliament



**SCHEDULE**

*(Section 8)*

**CERTIFICATE OF CONCURRENCE**

Pursuant to Article 110(3) of the Constitution, I hereby certify that the  
..... Bill is –

- (a) a Bill concerning/not concerning counties; and
- (b) a special/an ordinary Bill.

*Speaker of the [originating House]*

Pursuant to Article 110(3) of the Constitution, I hereby certify that the  
..... Bill is –

- (a) a Bill concerning/not concerning counties; and
- (b) a special/an ordinary Bill.

*Speaker of the [other House]*

**FORM A: Where the Bill concerns county governments**

I certify that this printed impression is a true copy of the Bill as passed by the [Originating House] on .....and by the [other House] on ..... and that the two Speakers concurred, pursuant to Article 110(3) of the Constitution, that this is a Bill concerning county governments.

*Clerk of the [originating House]*

*Speaker of the [originating House]*

*Clerk of the [other House]*

*Speaker of the [other House]*

Presented for assent in accordance with the provisions of the Constitution of Kenya on the .....day of ..... at the hour of .....

*Speaker of the [originating House]*

**FORM B: Where the Bill does not concern county governments**

I certify that this printed impression is a true copy of the Bill as passed by the [Originating House] on .....and by the [other House] on ..... and that the two Speakers concurred, pursuant to Article 110(3) of the Constitution, that this is not a Bill concerning county governments in terms of Article 110(1) of the Constitution.

*Clerk of the [originating House]*

*Speaker of the [originating House]*

*Clerk of the [other House]*

*Speaker of the [other House]*

Presented for assent in accordance with the provisions of the Constitution of Kenya on the .....day of ..... at the hour of .....

*Speaker of the [originating House]*

## **MEMORANDUM OF OBJECTS AND REASONS**

### **Statement of the Objects and Reasons for the Bill**

The principle object of the Bill is to give effect to Article 110 (3) of the Constitution which provides—

*Before either House considers a Bill, the Speakers of the National Assembly and Senate shall jointly resolve any question as to whether it is a Bill concerning counties and, if it is, whether it is a special or an ordinary Bill.*

The Bill provides a framework through which both Houses of Parliament can resolve issues on whether a Bill is a Bill concerning counties and, if it is, whether it is a special or an ordinary Bill. Presently there is no legal framework on how the Speakers of both Houses of Parliament are to enforce concurrence on all the Bills presented to both Houses of Parliament.

The Bill therefore provides for the procedure for concurrence on all Bills tabled in either House of Parliament, the dispute resolution on concurrence, and the consequences of non-concurrence on a Bill.

The Bill provides for nomination of a joint committee by the Speakers of both Houses of Parliament to resolve any dispute on concurrence on a Bill. The resolution of a joint committee shall bind the Speakers of both Houses of Parliament.

The Bill provides that for a Bill to be published in the *gazette*, the Bill has to be accompanied by a certificate of concurrence from the Speakers of both Houses of Parliament.

The Bill also provides for referral of an ordinary Bill concerning counties, after the Bill has been passed by one House and transmitted to the other House, to a mediation committee established under Article 113 of the Constitution if a session elapses from the date of the reception of the Bill by the other House without the Bill being passed by it.

The Bill also provides for referral of a Bill to the Supreme Court for advisory opinion in instances where the two Speakers fail to concur on whether a Bill is a Bill concerning counties and, if it is, whether it is a special or an ordinary Bill.

The Bill also provides that a Bill taken for Presidential Assent has to be accompanied with certificate of concurrence from Speakers of both Houses of Parliament.

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

The Bill does not limit any fundamental rights or freedoms.

**Statement on how the Bill concerns county governments**

The Bill is expected to provide a framework for determining the Bills that concern counties and therefore ensure that devolution, and powers and functions of counties are protected during the law-making process in Parliament

The Bill is therefore a Bill concerning 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 27th September, 2018.

KILONZO MUTULA JUNIOR,  
*Senator.*

SAKAJA JOHNSON ARTHUR,  
*Senator.*