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**THE COUNTY GOVERNMENTS (AMENDMENT)
BILL, 2021**

A Bill for

**AN ACT of Parliament to amend the County
Governments Act; and for connected purposes**

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the County Governments (Amendment) Act, 2021.

Short title.

2. Section 12 of the County Governments Act, in this Act referred to as “the principal Act” is amended by inserting the following new subsection immediately after subsection (4) —

Amendment of sec
12 of No. 17 of 20

(4A) At any time when the office of the Speaker is vacant or the holder of the office is unable for any reason to carry out the duties and exercise the powers and functions of that office, the deputy speaker acting as Speaker shall not assume the office of chairperson of the Board.

(4B) In the absence of the chairperson, the vice-chairperson shall preside over the meetings of the Board, and in the absence of the chairperson and the vice-chairperson, the Board shall elect a member to chair the meeting.

3. Section 47 of the principal Act is amended—

Amendment of sec
47 of No. 17 of 20

(a) by deleting subsection (3) and substituting therefor the following new subsection (3) “The Governor shall, within three months of the close of the financial year, submit the annual performance reports of the county executive committee and public service to the County Assembly and the Senate for consideration”.

4. The principal Act is amended by deleting section 91A and substituting therefor the following new section—

Amendment of sec
91A of No. 17 of 2

County leaders’
forum.

91A. (1) There is established, in each county, a County Leaders Forum, consisting of the following persons:

- (a) the Governor who shall be the chairperson of the forum;
- (b) the Senator of the respective county elected under Article 98(1)(a) of the Constitution and who shall be the vice-chairperson of the forum;
- (c) members of National Assembly elected under Article 97(1)(a) of the constitution representing constituencies within the county;
- (d) the woman member of the National Assembly representing the county elected under Article 97(1)(b) of the Constitution;
- (e) the Speaker of the County Assembly;
- (f) the Leader of the Majority Party in the County Assembly;
- (g) the Leader of the Minority Party in the County Assembly;
- (h) the Chairperson of the County Assembly Committee responsible for Budget, Finance and Planning;
- (i) the County Attorney, who shall be an ex-officio member;
- (j) the Chairperson of the County Public Service Board, who shall be an ex-officio member;
- (k) the County Commissioner, who shall be an ex-officio member; and
- (l) the County Secretary who shall be the Secretary to the Forum.

Functions of the forum.

91B. The Forum shall—

- (a) determine issues of engagement between the national and county governments and propose a common legislative and development agenda.

- (b) consider and advise on any issues of concern that may arise within the county and that may require cooperation, consultation and coordination between the two levels of government.
- (c) Consider the views of the county government on—
 - (i) the Budget Policy Statement before it is adopted by Parliament in line with Article 221 of the Constitution;
 - (ii) the formula for revenue allocation before it is adopted by Parliament in line with Article 217 of the Constitution;
 - (iii) the Annual Division of Revenue Bill and County Allocation of Revenue Bills before adoption by Parliament in line with Article 218 of the Constitution;
 - (iv) appropriations from the Equalization Fund before adoption by Parliament in line with Article 204 of the Constitution.

Quorum.

91C. (1) The forum is properly constituted when the Governor, the Senator, the County Assembly Speaker and at least one third of members of the National Assembly from the county are present.

(2) The forum shall convene at least twice in every year.

(3) The first meeting of the Forum shall be held within sixty days following a General Election.

Management of the forum.

91D. The office of the Governor shall provide administrative support to the Forum.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The principal purpose of the Bill is to amend the County Governments Act, 2012 to provide clarity in the operations of the County Assembly Service Board in instances where the office of a Speaker becomes vacant. Section 12(3) of the County Governments Act provides that the Speaker of the county assembly shall serve as the chairperson of the Board with a vice-chairperson being elected by the Board from the members.

In recent times, there have been instances in several county assemblies where the Deputy Speakers acting as Speakers have assumed the office of the Chairperson of the Board. The Bill therefore seeks to address this challenge.

Further, the Bill seeks to provide a framework for consultation between members of Parliament, the county executive, county assembly and the national executive. The Bill proposes a platform through which leaders at the two levels of government can meet and deliberate on the legislative and development agenda of the respective county government. The Bill is also a fulfillment of Article 189 of the Constitution which requires national and county governments to consult, coordinate and cooperate in the performance of their respective functions.

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 of how the Bill concerns County Governments

The Bill seeks to provide a formal mechanism for regular consultation between leaders drawn from the different levels of government within the county and to provide a platform through which the leaders at the two levels of government can meet and deliberate on the development and financial agenda of the respective county government. A coordinated approach to development at the national and county level of government will guarantee the effective delivery of services by county governments in discharge of the functions as set out in the Constitution. Further, the County Assembly Service Board is an integral office in the management of county governments

The Bill is therefore one that concerns county governments in terms of Article 110(1)(a) of the Constitution as its provisions affect the functions and powers of county governments as set out in the Fourth Schedule to the Constitution.

Statement that the Bill is not 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 May, 2021.

MOSES OTIENO KAJWANG,
Senator.

Section 12 of No. 17 of 2012 which it is proposed to amend—

12. The county assembly service board

(1) There shall be a county assembly service board for each county assembly.

(2) The county assembly service board shall be a body corporate with perpetual succession and a common seal.

(3) The Board consists of —

- (a) the Speaker of the county assembly, as the chairperson;
- (b) a vice-chairperson elected by the Board from the members appointed under paragraph (c);
- (c) two members of the county assembly nominated by the political parties represented in the county assembly according to their proportion of members in the county assembly; and
- (d) one man and one woman appointed by the county assembly from amongst persons who are experienced in public affairs, but are not members of the county assembly.

(3A) The members of the Board appointed under section 12(3)(d) shall serve on a part-time basis.

(4) The county assembly clerk shall be the secretary to the county assembly service board.

(5) A member of the county assembly service board shall vacate office —

- (a) if the person is a member of the county assembly—
 - (i) at the end of the term of the county assembly; or
 - (ii) if the person ceases to be a member of the county assembly; or
- (b) if the person is an appointed member, on revocation of the person's appointment by the county assembly or
- (c) if the person is the Speaker, when the person ceases to be such Speaker.

(6) Despite subsection (5), when the term of the county assembly ends, a member of the county assembly service board under subsection (3)(d) shall continue in office until a new member has assumed office in the member's place in the next assembly.

(7) The county assembly service board is responsible for—

- (a) providing services and facilities to ensure the efficient and effective functioning of the county assembly;
- (b) constituting offices in the county assembly service, and appointing and supervising office holders;
- (c) preparing annual estimates of expenditure of the county assembly service and submitting them to the county assembly for approval, and exercising budgetary control over the service;
- (d) undertaking, singly or jointly with other relevant organizations, programmes to promote the ideals of parliamentary democracy; and
- (e) performing other functions –
 - (i) necessary for the well-being of the members and staff of the county assembly; or
 - (ii) prescribed by national legislation.

Section 47 of No. 17 of 2012 which it is proposed to amend—

47. Performance management plan

(1) The county executive committee shall design a performance management plan to evaluate performance of the county public service and the implementation of county policies.

(2) The plan shall provide for among others—

- (a) objective, measurable and time bound performance indicators;
- (b) linkage to mandates;
- (c) annual performance reports;
- (d) citizen participation in the evaluation of the performance of county government; and
- (e) public sharing of performance progress reports.

(3) The governor shall submit the annual performance reports of the county executive committee and public service to the county assembly for consideration.

(4) The performance management plan and reports under this section shall be public documents.

Section 91A of No. 17 of 2012 which it is proposed to amend—

91A. Establishment of County Development Boards

- (1) There is established, for each county, a board to be known as the County Development Board, consisting of the following persons —
- (a) the member of the Senate for the county elected under Article 98(1)(a) of the Constitution, who shall be the chairperson of the Board and convener of the Board's meetings;
 - (b) the members of the National Assembly elected under Article 97(1) (a) of the Constitution representing the constituencies located in the county;
 - (c) the woman member of the National Assembly for the county elected under Article 97 (1) (b) of the Constitution;
 - (d) the governor, as the chief executive officer of the county government who shall be the vice-chairperson of the Board, and in his absence, the deputy governor of the county shall be the vice-chairperson;
 - (e) the deputy governor of the county;
 - (f) the leader of the majority party in the county assembly;
 - (g) the leader of the minority party in the county assembly;
 - (h) the chairperson of the county assembly committee responsible for finance and planning;
 - (i) the chairperson of the county assembly committee responsible for budget;
 - (j) the chairperson of the County Public Service Board, who shall be an *ex-officio* member;
 - (k) the County Secretary, who shall be the secretary of the Board and shall also provide Secretariat services to the Board, as an *ex-officio* member;
 - (l) the County Commissioner, as an *ex-officio* member; and
 - (m) the head of a department of the national government or the county government or any other person invited by the Board to attend a specific meeting of the Board.
- (2) The County Development Board, for each county, shall —
- (a) provide a forum, at the county level, for consultation and co-ordination between the national government and the county governments on matters of development and projects in accordance with the Constitution and, more specifically, Article 6(2), Article 10 and Article 174. of the Constitution;

- (b) consider and give input on any county development plans before they are tabled in the county assembly for consideration;
- (c) consider and give input on county annual budgets before they are tabled in the county assembly for consideration;
- (d) consider and advise on any issues of concern that may arise within the county.

(3) The quorum for any meeting of the County Development Board shall be one-third of all the members of the Board and for the purposes of this section, an immediate former member shall remain a member of the Board until a new member is elected or appointed, as the case may be.

(4) Meetings of the County Development Board shall be held at the County headquarters at least once in each quarter.

(5) In the absence of the chairperson, the vice-chairperson shall preside over the meetings of the Board, and in the absence of the chairperson and the vice chairperson, the Board shall elect a member to chair the meeting.

(6) County Development Boards shall be constituted within sixty days after the date of a general election.

(7) Despite sub-section (6), a County Development Board shall be established in each county within thirty days of the commencement of this Act.