

SPECIAL ISSUE

Kenya Gazette Supplement No. 97 (Senate Bills No. 27)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

SENATE BILLS, 2024

NAIROBI, 7th May, 2024

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— CONTENT —

Bill for introduction into the Senate

The Public Finance Management (Amendment) Bill, 2024



THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL, 2024

A Bill for

AN ACT of Parliament to amend the Public Finance Management Act to provide for the submission, consideration and passage of County Finance Bills.

ENACTED by Parliament of Kenya, as follows—

1. This Act may be cited as the Public Finance Management (Amendment) Act, 2024.

Short title.

2. Section 129 of the Public Finance Management Act, 2012, in this Act referred to as the “principal Act” is amended in sub section (2)(a), by deleting the words, “except the Finance Bill”.

Amendment of section 129 of Cap. 412A.

3. The principal Act is amended by inserting the following new section immediately after section 131—

Insertion of a new section in Cap. 412A

Submission,
Consideration and
Passing of the
Finance Bill.

131A. (1) The County Executive Committee member for finance shall, with the approval of the County Executive Committee, on or before 30th April, make a pronouncement of the revenue raising measures for the county government and submit to the County Assembly, the Finance Bill.

(2) Following submission of the Finance Bill by County Executive Committee member for finance, the relevant committee of the County Assembly shall introduce the Bill in the County Assembly.

(3) The County Assembly shall consider and pass the Finance Bill, with or without amendments, in time for it to be presented for assent by 30th June each year.

(4) Any recommendations made by the relevant committee of the County Assembly or resolution passed by the County Assembly on revenue matters shall—

(a) ensure the total amount of revenue raised is consistent with the approved fiscal framework;

- (b) take into account the principles of equity, certainty and ease of collection;
- (c) consider the impact of the proposed changes on the composition of the tax revenue with reference to direct and indirect taxes;
- (d) consider domestic, regional and international tax trends;
- (e) consider the impact on development, investment, employment and economic growth; and
- (f) take into account the taxation and other tariff arrangements and obligations that Kenya has ratified, including taxation and tariff arrangements under the East African Community Treaty.

(5) The recommendation of the County Executive Committee member for finance shall be included in a report and tabled in the County Assembly.

132. 4. The principal Act is amended by repealing section
133. 5. The principal Act is amended by repealing section

Repeal of section
132 of Cap. 412A.

Repeal of section
133 of Cap. 412A.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The primary objective of this Bill is to amend the Public Finance Management Act, Cap. 412A, to rectify ambiguities and inconsistencies within the existing legislation, particularly concerning the submission and passage timelines of a County Finance Bill. The Bill mandates that the County Executive Committee Member for finance is required to submit a County Finance Bill to the respective County Assembly by April 30th each year, ensuring it is passed before the end of the financial year on June 30th. This amendment aligns with the stipulations of section 129(1)(b) of the Public Finance Management Act, which outlines the responsibilities of the County Executive Committee member regarding the submission of budget estimates and legislative requirements for the implementation of the county government budget.

This legislation addresses the current legislative ambiguity where, on one hand, the County Executive Committee member for finance is expected to submit budget estimates along with necessary draft bills to the County Executive Committee, including the Finance Bill, while on the other, they are instructed to submit all required bills to implement the budget—excluding the Finance Bill—to the County Assembly by April 30th. This discrepancy has led to delays and inefficiencies in county financial management, with some counties failing to meet the critical timeline for passing the County Finance Bill as outlined in section 133 of the Public Finance Management Act.

The necessity for this amendment is further underscored by the precedence set by the National Assembly following the case of *Petition No. 253 of 2018 (Okiya Omtatah Okoiti V Cabinet Secretary, National Treasury & 3 Others)*. The judicial decision highlighted the violation of the statutory timelines by the Cabinet Secretary and resulted in the amendment of the Public Finance Management Act through the Statute Law (Miscellaneous Amendments) Act, 2019, introducing section 39A to rectify similar issues at the national level.

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

The Bill does not contain any provisions limiting any fundamental rights or freedoms in the Bill of Rights and it does not delegate legislative powers.

Statement on whether the Bill concerns County Governments

This Bill concerns county governments in terms of Article 110(1)(a) of the Constitution as it directly impacts the functions and powers of county governments as set out in the Fourth Schedule to the Constitution.

Specifically, the Bill addresses the legislative and financial management responsibilities of county governments, ensuring a streamlined process for the preparation, submission, and approval of the County Finance Bill.

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 30th April, 2024.

AARON CHERUIYOT,
Senate Majority Leader.

Section 129(2)(a) of Cap. 412A which it is proposed to amend—

129. County Executive Committee member to submit budget estimates and other documents to County Executive Committee for approval

- (1) A County Executive Committee member for finance shall submit to the County Executive Committee for its approval—
 - (a) the budget estimates and other documents supporting the budget of the county government, excluding the county assembly; and
 - (b) the draft Bills at county level required to implement the county government budget, in sufficient time to meet the deadlines prescribed by this section.
- (2) Following approval by the County Executive Committee, the County Executive Committee member for finance shall—
 - (a) submit to the county assembly the budget estimates, supporting documents, and any other Bills required to implement the budget, except the Finance Bill, by the 30th April in that year; and
 - (b) ensure that the estimates submitted in subsection (a) are in accordance with the resolutions adopted by county assembly on the County Fiscal Strategy Paper.

Section 132 of Cap. 412A which it is proposed to delete—

132. Submission and consideration of the revenue raising measures in the county assembly

- (1) Each financial year, the County Executive member for finance shall, with the approval of the County Executive Committee, make a pronouncement of the revenue raising measures for the county government.
- (2) The County Executive Committee member for finance shall, on the same date that the revenue raising measures are pronounced, submit to the county assembly the County Finance Bill, setting out the revenue raising measures for the county government, together with a policy statement expounding on those measures.
- (3) Any recommendations made by the relevant committee or adopted by the county assembly on revenue matters shall—
 - (a) ensure that the total amount of revenue raised is consistent with the approved fiscal framework and the County Allocation of Revenue Act;

- (b) take into account the principles of equity, certainty and ease of collection;
- (c) consider the impact of the proposed changes on the composition of tax revenue with reference to direct and indirect taxes;
- (d) consider domestic, regional and international tax trends;
- (e) consider the impact on development, investment, employment and economic growth; and
- (f) take into account the taxation and other tariff agreements and obligations that Kenya has ratified, including taxation and tariff agreements under the East African Community Treaty.

Section 133 of Cap. 412A which it is proposed to delete—

133. Approval of the Finance Bill

Not later than ninety days after passing the Appropriation Bill, the county assembly shall consider and approve the Finance Bill with or without amendments.