



**13TH PARLIAMENT | 4TH SESSION
THE SENATE**

**IN THE MATTER OF CONSIDERATION OF THE CONSTITUTION OF KENYA
(AMENDMENT) BILL, 2025 (SENATE BILLS NO. 13 OF 2025)**

BILLS DIGEST

Sponsor: Senate Majority Leader & Senate Minority Leader

Type of Bill: Ordinary Bill

A. Background

The Constitution of Kenya (Amendment) Bill, 2025, seeks to enhance the devolved system of government by amending key constitutional provisions. The amendments are aimed at clarifying the roles of the National Assembly and the Senate and strengthening legislative processes. The Bill also expands the Senate's role in budget-making and provides for special procedures for passage of financial legislation. Through these reforms, the Bill aims to entrench a more balanced, accountable, and functional system of devolution in Kenya's constitutional framework.

B. Purpose of the Bill

The principal object of the Bill is to strengthen bicameralism and secure devolution. The Bill seeks to provide a framework to achieve this purpose by —

- (a) reviewing the mandate of the Senate and the National Assembly in order to clarify the shared role of the Houses of Parliament and the special role assigned to each House of Parliament;
- (b) refining the legislative process set out in the Constitution in order to ensure that both Houses of Parliament play an effective role in legislation, representation and oversight; and
- (c) ensuring that the Senate and the National Assembly play an effective role in the budget making process in order to safeguard the implementation of the system of devolved government.

C. Justification of the clauses in the Bill

1. Proposed amendment to Article 94 of the Constitution

The Bill proposes to amend Article 94 to—

- (a) insert a new clause (1A) which affirms that Parliament has a tripartite role of legislation, representation, and oversight. This articulation of Parliament’s oversight and representational mandate strengthens constitutional accountability;
- (b) insert a new clause (1B) to provide clarity that legislative authority at the national level belongs to both the National Assembly and the Senate. The existing Article 94(1) refers generally to Parliament but does not explicitly delineate the dual role of both Houses in exercising legislative power. The proposed amendment helps cement bicameralism in law-making and enhances legal certainty, especially in the context of legislative role of the two Houses;
- (c) insert a new clause (1C) to clarify that when making laws, Parliament is bound by the division of functions between the national and county governments under the Fourth Schedule and the national values and principles of governance in Article 10 of the Constitution. The amendment seeks to ensure constitutional fidelity in legislation by protecting the devolution framework from encroachment by national laws and helps prevent legal conflicts and duplication of roles between the two levels of government. The proposed amendment also emphasizes value-based law-making, pushing Parliament to factor in equity, inclusiveness, participation, human rights, transparency, and accountability when performing its functions; and
- (d) insert a new clause (2A) to provide that Parliament oversees how national revenue allocated to the national government is spent. The proposed new clause also provides for the parliamentary role of overseeing the activities and decisions of State organs and other public entities. The amendment seeks to bolster fiscal accountability by conferring on Parliament an express role in scrutinizing national revenue expenditure. While Parliament already performs these functions in practice, codifying them enhances transparency, clarifies institutional roles, and ensures budgetary discipline. The reference to state organs and public entities ensures wider oversight coverage beyond just the executive addressing issues in state corporations, Semi-Autonomous Government Agencies and regulatory bodies.

2. Proposed amendment to Article 95 of the Constitution

The Bill proposes to amend Article 95 by deleting clause (4). This clause currently outlines the financial oversight and appropriation functions of the National Assembly, including determining revenue sharing, appropriating funds, and overseeing national revenue. This clause has presented a challenge in the past and present where it has been interpreted to limit the role of the Senate in the allocation of national revenue between the levels of government and appropriation of funds for expenditure.

The proposed deletion of clause (4) is intended to —

- (a) eliminate redundancy. These functions are already proposed to be restructured and clarified under the amended Article 94, particularly in new clause (2A). Moving such fiscal oversight to Article 94 where Parliament’s overarching roles are defined creates a coherent and centralized framework for legislative functions;
- (b) strengthen bicameralism. Article 95 focuses specifically on the National Assembly, but oversight of revenue and state organs is a bicameral function. By deleting clause (4), the amendment aims to reassert the Senate’s equal constitutional footing, especially where intergovernmental finance is concerned; and
- (c) align with devolution. Financial matters such as the division of revenue between levels of government inherently involve the interests of counties, where the Senate has a constitutional role under Article 96. The amendment therefore ensures that the Senate participates in financial matters that ultimately affect the functioning of county governments.

3. Proposed amendment to Article 96 of the Constitution

This Bill proposes to amend clause (1) in Article 96 to expand the Senate’s representation role to include special interest groups in addition to county governments. This proposed amendment recognizes the Senate as a protector of marginalized persons, including women, persons with disabilities, youth and minority groups, ensures inclusivity and equity in line with the national values in Article 10 and provides a constitutional anchor for the nomination of special interest Senators as provided in Article 98(1)(d).

The Bill also proposes to insert new clauses (1A) and (1B) to provide for the Senate’s role in law making, and deliberation and resolution of issues of public interest. While the Senate already performs those roles in practice, codifying them in the Constitution clarifies and formalizes the Senate’s core legislative, representation and oversight function and enables the Senate to initiate or shape laws, especially where counties and national interest intersect.

The Bill proposes to delete clause (2) which limited the Senate’s role to Bills concerning counties only. By this deletion, the Bill frees the Senate to contribute meaningfully on all legislative matters.

The Bill proposes to amend clause (3) to expand and clarify the Senate’s oversight role over national revenue allocated to counties to also include revenue raised locally by counties. This enables full-spectrum financial oversight, not just of allocations from the national pot but also own-source revenue at the county level. It is noted that this matter was subject to the decision of the Supreme Court in *Senate v Council of County Governors & 6 others (Petition 24 & 27 of 2019 (Consolidated)) [2022] KESC 57 (KLR)* where the Court held that the Senate has oversight over all revenue raised by county governments, in addition to having oversight over nationally allocated revenue. In this matter, the Respondents had argued that the oversight role of the Senate does not extend to revenue raised locally by county governments. The proposed amendment will support better accountability and addresses misuse of local funds that may escape scrutiny under the current law.

The Bill proposes to delete and substitute clause (4) to give the Senate power to consider resolutions to remove the President and Deputy President as per Article 145 and other state officers at the national level (except those to whom Article 251 applies). This amendment gives the Senate a more robust oversight mandate, ensuring top State officers can be held accountable through a bicameral removal process.

The Bill also proposes to enact a new clause (5) to require Parliament to enact a law detailing the procedure for removal of state officers. Grounding the process in a statutory framework will ensure due process, legal clarity, and fairness in removal proceedings and prevents *ad hoc* or politically motivated removals from office.

4. Proposed amendment to Article 108 of the Constitution

The Bill proposes to amend Article 108 to establish various offices in the leadership of the Senate. Even though currently the Senate has party leaders, Article 108 only recognises party leaders in the National Assembly. Anchoring party leadership in the Senate in the Constitution affirms parity between both Houses, ensuring formal recognition and functional equality and prevents constitutional interpretations that may exclude or diminish the Senate's leadership roles in terms of privileges, responsibilities, or public visibility.

5. Proposed amendment to Article 109 of the Constitution

Currently, Article 109 limits who can introduce a Bill, where certain Bills originate, the process of passing and transmitting Bills between Houses and the Senate's involvement in consideration of Bills. The Bill proposes to delete clauses (2) to (5) and replace with new clauses that —

- (a) grant both Houses equal power to initiate legislation, either through individual members or committees. This would enable the Senate to play a more proactive legislative role and enable it participate in the consideration of all legislation originating from the National Assembly. By eliminating barriers to introduction of Bills, the Bill supports diversity and improves legislative mandate of both Houses;
- (b) allow for origination of any Bill in any House with exception of a Bill for raising national revenue which may originate in the National Assembly. This is a departure from the current provision whose wording limits money Bills (which have been defined very broadly) from being originated in the Senate. In the past, this broad definition has been applied to stifle Bills that are not money Bills from introduction in the Senate;
- (c) formalise the two step passage process of all Bills. In this proposal, both Houses must pass every Bill. This is an important proposal that solidifies bicameral consent promoting collaboration, enhancing checks and balances within the legislature and enhances the national legitimacy of laws passed by Parliament;
- (d) provide for the process of submission of a Bill for assent. Under the proposal, a Bill will only be referred for assent after it has been passed by both Houses. Further, a Bill shall be referred for assent by the Speaker of the originating House. The Bill referred for assent

shall be accompanied by a certificate signed by both Speakers certifying that the Bill has been passed in accordance with the Constitution. These amendments will enhance transparency and prevent unilateral passage of Bills, as has been the case even on Bills where the Senate should have been involved. The requirement for certification also adds a layer of formal verification, ensuring both Houses are in recorded agreement before presidential assent.

6. Proposed repeal of Article 110 of the Constitution

Article 110 currently defines what constitutes a Bill concerning county governments, requires joint concurrence of both Speakers in determining whether a Bill concerns counties. This decision has been left to the Speakers of both Houses to determine in a concurrence process. In the past, the National Assembly and the Senate have repeatedly arrived at different conclusions regarding whether certain bills concerned counties. The National Assembly has in the past argued that most bills do not concern counties while the Senate has maintained the position that most bills indirectly or directly affected counties, and as such, ought to be considered by the Senate.

There have also been numerous instances where the concurrence of the Speakers is not sought, notwithstanding the clear provisions of Article 110(3) of the Constitution. The effect of this has been to deny the Senate the power to debate and consider Bills that are either directly or indirectly concerning to counties. The Courts have also issued conflicting judgments on the concurrence process and definitions on what Bills concerning counties are. Attention is hereby drawn to the following judgments—

- (a) *Speaker of the Senate & another v Attorney-General & another; Law Society of Kenya & 2 others (Amicus Curiae) (Advisory Opinion Reference 2 of 2013) [2013]* where the Supreme Court held that the Speakers of both Houses must jointly resolve whether a Bill concerns counties before a Bill is introduced in either House;
- (b) *Senate & Others v The National Assembly & Another Supreme Court Petition No. 19 (E027) Of 2021* where the Supreme Court departed from its long established position and held that the mandatory process under Article 110(3) does not need to be applied to all Bills. The court stated that a determination by the two Speakers is only required if there is uncertainty or disagreement about the nature of the Bill. If there is no dispute or question, the need for joint resolution does not arise.

The Bill proposes to eliminate this confusion by repealing Article 110. The proposed repeal will—

- (a) eliminate structural bias against the Senate: Article 110(3) has been used to restrict the Senate from participating in numerous legislative processes by contesting the definition of a “*Bill concerning counties*.” This wording has undermined bicameralism leading to frequent legal and institutional battles, including conflicting Supreme Court interpretations on what qualifies as a “*Bill concerning counties*” and whether the concurrence process is a condition precedent before introduction of Bills in any House or an optional process;

- (b) harmonise with the proposed amendments to Article 109: The newly amended Article 109 makes both Houses equal participants in law-making and with this new framework, Article 110 becomes redundant; and
- (c) simplify the legislative process: By requiring passage of all Bills by both Houses, there's no need for classification of Bills into Bills concerning counties and Bills not concerning counties.

7. Proposed amendment to Article 111 of the Constitution

The current Article provides for the procedure of consideration of special Bills concerning county governments. The proposed amendment repeals the current Article 111 and introduces a new structure that —

- (a) enables either House of Parliament to originate certain fiscal legislation. In this case, the Senate may originate Allocation Bills (defined to be either a County Allocation of Revenue Bill or a County Governments Additional Allocations Bill) while the National Assembly may originate Appropriation Bills (defined to be either an Appropriation Bill or a Supplementary Appropriation Bill);
- (b) enabling the receiving House to propose and pass amendments to fiscal Bills.
- (c) introducing a veto mechanism if one House disagrees with the amendments made by the other House. If a House disagrees with amendments from the other, it may veto them by a supermajority (two-thirds vote). In the Senate, by a two-thirds of all county delegations while in the National Assembly, by a two-thirds of all members; and
- (d) clarifying when such a Bill proceeds to Presidential assent. A Bill is sent to the President if the originating House accepts the amendments or the originating House vetoes the amendments.

The proposed amendment explicitly confers legislative authority over financial legislation to both Houses, correcting the current position where financial legislation is only considered in the National Assembly under the provisions of Articles 109 and 114. It also recognizes that allocation Bills (which affect counties) are best handled by the Senate, while appropriation Bills remain under the National Assembly's purview.

The proposed amendments also strengthen bicameral collaboration by providing that either House of Parliament can amend financial legislation originating from the other House. The use of the supermajority for veto ensures that a House can only override amendments with strong consensus, limiting arbitrary rejection.

8. Proposed amendment to Article 112 of the Constitution

The Bill proposes to amend Article 112 as a consequential amendment to align it with the proposed legislative procedure under Articles 109 and 111.

9. Proposed amendment to Article 113 of the Constitution

The Bill seeks to amend Article 113 to align it with the procedure proposed under the new Article 109 in the Bill. Of note is that this amendment ensures that allocation and appropriation Bills, which are governed by a distinct dispute-resolution mechanism under Article 111, are excluded from the mediation process under Article 113. The exclusion of financial legislation from the mediation process recognises their sensitive time bound nature, especially in terms of intergovernmental revenue, budgeting and appropriation.

10. Proposed repeal of Article 114 of the Constitution

Article 114 of the Constitution sets out the definition of “a money Bill” to mean a Bill other than the Division and Allocation of Revenue Bills which contains provisions dealing with—

- (a) taxes;
- (b) the imposition of charges on a public fund or the variation or repeal of any of those charge;
- (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 those matters.

Article 114(1) further provides that a money Bill may not deal with matters other than the ones specified above. The interpretation given to this provision has often been restrictive to include clauses to Bills whose overall objective does not include the items specified under Article 114(3) of the Constitution and are not incidental to the list. The determination of whether a Bill falls under the definition of a money Bill has been left to the unilateral exclusive determination of the Speaker of the National Assembly.

In practice, a significant number of Senate Bills have been deemed to be money Bills. The effect of this has been to restrict the legislative mandate of the Senate whereby, Bills that do not deal exclusively with the list in Article 114(3), are determined to be money bills.

The Bill therefore proposes to repeal Article 114. The proposed repeal aligns with the proposed amendments in Articles 109 - 111 allowing either House to initiate most types of Bills, including appropriation and allocation Bills under the new Article 111. Keeping Article 114 would directly conflict with this proposed new legislative structure.

11. Proposed amendment to Article 115 of the Constitution

The Bill proposes to amend Article 115 to anchor the presidential assent process within the proposed new Article 109, ensuring consistency with the bicameral legislative framework.

12. Proposed amendment to Article 116 of the Constitution

Currently, Article 116 of the Constitution provides the coming into force of laws after assent. The current provision does not provide for instances in which laws will come into force automatically (i.e. on lapse of the time for assent). The Bill therefore proposes to amend this to account for situations where the President neither assents nor refuses to assent within the constitutionally provided timeframe under Article 115. This guarantees automatic progress of legislation without indefinite delays.

13. Proposed amendment to Article 157 of the Constitution

The Bill proposes to amend Article 157(2) to replace the phrase “the National Assembly” with “Parliament,” meaning that the appointment of the Director of Public Prosecutions (DPP) will now require the approval of both the National Assembly and the Senate, rather than only the National Assembly.

This amendment enhances bicameral accountability and strengthens checks and balances by involving both Houses of Parliament in approving the appointment of such a critical state officer. Given that the Director of Public Prosecution plays a central role in upholding justice, public confidence in the office is vital. Including the Senate ensures broader representation in the approval process, fostering inclusivity and legitimacy in the office.

14. Proposed amendment to Article 173 of the Constitution

Article 173 focuses on the Judiciary Fund and how financial estimates for the judiciary are processed and approved. The proposed amendments to this Article ensure that judiciary estimates are—

- (a) tabled in both the National Assembly and the Senate;
- (b) approved by both Houses of Parliament.

The proposed amendments align with earlier amendments to Articles 109–115, where both Houses play an equal role in legislative and budgetary processes. Additionally, bicameral consideration of judicial estimates enhances the checks and balances in the process and safeguards judicial independence from being subject to one chamber.

15. Proposed amendment to Article 199 of the Constitution

The Bill proposes to insert a new Article 199A which establishes a County Assembly Fund for each county. This fund will be dedicated to financing the administrative operations and functions of county assemblies. Under this new Article, the Bill provides that each county assembly shall prepare and approve its own budget estimates and that upon approval, the funds will be charged directly from the County Revenue Fund into the County Assembly Fund. The Article also requires county assemblies to enact legislation providing for the fund’s regulation.

This amendment strengthens financial autonomy and operational independence of county assemblies, ensuring that the assemblies have predictable and dedicated resources to execute their legislative, oversight, and representative mandates effectively. It mitigates risks of budgetary manipulation by the county executive, which has often compromised the independence and efficiency of county assemblies.

16. Proposed amendment to Article 215 of the Constitution

The Bill proposes to amend Article 215(2)(a) of the Constitution to replace the reference to “the National Assembly” with “Parliament” in the process of approving the Chairperson of the Commission on Revenue Allocation.

The Commission of Revenue Allocation makes recommendations on the equitable sharing of national revenue between the national government and the county governments, and among the counties themselves. Specifically, the Commission—

- (a) proposes the Revenue Sharing Formula for dividing nationally raised revenue between the national and county levels of government and among the 47 counties;
- (b) advises Parliament, the national and county governments on financial matters that affect devolution, including marginalized areas and equalization funds;
- (c) promotes fiscal responsibility and transparency in the management of public finances across both levels of government; and
- (d) monitors how county governments use their allocated funds and advises on the sustainability of public finances.

The Commission on Revenue Allocation is crucial to the success of devolution. It ensures that counties have the resources to provide services like healthcare, roads, water, sanitation and education, and that the revenue is distributed fairly and transparently. The proposed amendment that includes the Senate in the approval process ensures that the interests of counties are fairly represented in the leadership of the Commission.

17. Proposed amendment to Article 221 of the Constitution

Turning to public finance, the Bill proposes to amend Article 221 to provide for the consideration, reviewing, adjusting, and approving budget estimates by both Houses of Parliament. Currently, the National Assembly has sole control over budget matters limiting the Senate's involvement despite its constitutional role in protecting devolution. This amendment recognizes the Senate's role in representing counties, which often bear the brunt of resource allocation decisions. Furthermore, the proposed amendment aligns with the new Article 111 ensuring that Appropriation Bills follow a bicameral legislative process.

18. Proposed amendment to Article 222 of the Constitution

The Bill proposes to amend Article 222 to provide for bicameral approval of withdrawals from the Consolidated Fund in the event of a delay in the assenting of the Appropriations Act. The amendment reinforces bicameral oversight in government spending and aligns with amendments in Articles 109, 111 and 221 which entrench the Senate in budget and appropriation matters.

19. Proposed amendment to Article 223 of the Constitution

The Bill proposes to amend Article 223 to provide for bicameral approval of spending under a supplementary appropriation i.e. where money is withdrawn from the Contingencies Fund or there is spending for a purpose that was not appropriated. The amendment reinforces bicameral oversight in government spending and aligns with amendments in Articles 109, 111 and 221 which entrench the Senate in budget and appropriation matters.

20. Proposed amendment to Article 224 of the Constitution

The Bill proposes to repeal Article 224 of the Constitution and replace it with a new Article that —

- (a) clarifies the process for county governments to prepare and adopt their budgets based on the County Allocation of Revenue Bill and not the Division of Revenue Bill; and
- (b) introduces a contingency mechanism allowing Parliament to authorize temporary withdrawals from the Consolidated Fund if the Division of Revenue Bill or the County Allocation of Revenue Bill is delayed.

These proposed amendments anchor the process of enactment of county appropriations Bills to the County Allocation of Revenue Bill in line with Article 218. The new clause (2) provides a fall back mechanism where counties can still function if the Division of Revenue Bill or the County Allocation of Revenue Bill is delayed. This ensures continuity of essential services in counties while avoiding paralysis of critical functions.

21. Proposed amendment to Article 228 of the Constitution

The Bill proposes to amend Article 228 of the Constitution to change the approving authority of the Controller of Budget from the National Assembly to Parliament. This proposed amendment enhances bicameral oversight and strengthens the role of the Senate in national financial governance. Since the Controller of Budget is a key player in overseeing budget implementation at both national and county levels, it is constitutionally sound to ensure that both Houses of Parliament participate in his or her approval.

22. Proposed amendment to Article 229 of the Constitution

The Bill proposes to amend Article 228 of the Constitution to change the approving authority of the Auditor General from the National Assembly to Parliament. The proposed amendment enhances transparency, legitimacy, and inclusivity in the appointment of the Auditor General, a critical office responsible for auditing public accounts at both the national and county levels.

The inclusion of the Senate—

- (a) ensures that there is balanced representation of both national and county interests in the approval process;
- (b) strengthens bicameral checks and oversight over public financial management; and
- (c) reinforces the Auditor-General's independence and mandate by reflecting a wider parliamentary consensus.

23. Proposed amendment to Article 233 of the Constitution

The Bill proposes to amend Article 228 of the Constitution to change the approving authority of the Chairperson of the Public Service Commission from the National Assembly to Parliament.

Though the Public Service Commission is primarily works with the national government, it has an impact on how counties function. The Commission—

- (a) establishes norms and standards for public service management across Kenya requiring County Public Service Boards to align with these standards;
- (b) evaluates the extent to which the values and principles in Article 10 and Article 232 are complied with in the public service, including in counties. It produces annual reports that evaluate the performance of county governments’ human resource practices;
- (c) hears and determine appeals in respect of county governments’ public service in line with Article 234(2)(i) thereby giving the public an avenue of recourse outside the county structure; and
- (d) supports capacity building for county public services, especially in cases where counties lack the resources or expertise to develop human resource systems.

Given the above roles played by the Public Service Commission, the involvement both Houses ensures that both national and county interests are represented in the Commission and enhances greater public confidence in the Commission.

24. Proposed amendment to Article 250 of the Constitution

The Bill proposes to amend Article 250 of the Constitution to change the approving authority of the chairpersons and members of commissions and holders of independent offices from the National Assembly to Parliament. The proposed amendment strengthens the role of the Senate in oversight and appointments to public offices. The amendment also reflects the principle that matters of national importance, especially appointments to independent bodies tasked with oversight and governance, should be the domain of both Houses.

25. Proposed amendment to Article 251 of the Constitution

The Bill proposes to amend Article 251 of the Constitution to replace references to “the National Assembly” with “Parliament” in the process of initiating and determining petitions for the removal of members of constitutional commissions and holders of independent offices. Allowing petitions for removal to be handled by both Houses of Parliament ensures a more inclusive, nationally representative process. It enhances checks and balances within the legislature, reduces the risk of unilateral action by one chamber and increases the legitimacy of decisions involving removals of members of constitutional commissions and holders of independent offices.

D. Consequences of the Bill

This Bill significantly restructures the legislative process and the balance of power between the two Houses of Parliament. By allowing most Bills, except those on raising national revenue, to originate in either House, the Bill enhances bicameralism and ensures more equitable participation in law making and oversight. It also expands the Senate’s legislative and oversight

roles, including on matters like allocations, appropriations, and approval of state officers, thereby elevating its constitutional role and promoting a more accountable system of governance.

The Bill also harmonizes procedures on financial legislation across both Houses, eliminating the dominance of the National Assembly in financial matters. The repeal of Articles 110 and 114 and redefining the procedures for budget estimates, appropriations, and presidential reservations, the Bill ensures that Parliament as a whole plays a joint role in public finance management. This gives the Senate a substantive voice in how national and county funds are allocated and spent, promoting better checks and balances within the legislature.

Additionally, the Bill reinforces the bicameral approach in appointments to and oversight of key national institutions, such as the Director of Public Prosecution, the Public Service Commission, the Auditor General, the Controller of Budget, and the Commission on Revenue Allocation. By requiring joint parliamentary approval and oversight in these positions, the Bill enhances accountability, institutional integrity, independence of these institutions and stronger checks and balances.

In the spirit of enhancing devolution, the Bill establishes a County Assembly Fund in each county assembly to enhance the operational independence and effectiveness of county assemblies. The Fund will be used to cover administrative expenses and other functions necessary for the discharge of county assembly functions. This ensures financial autonomy at the county assembly and reinforces the principles of devolution by enabling county assemblies to function without undue interference from the executive arm of county governments.

Finally, the Bill enhances procedural clarity and promotes institutional collaboration. It addresses frequent disputes between the two Houses by clearly delineating the role of each House in the legislative process, mediation and presidential assent. These changes collectively strengthen the principle of cooperative governance and create a more balanced and responsive parliamentary system.