

SPECIAL ISSUE

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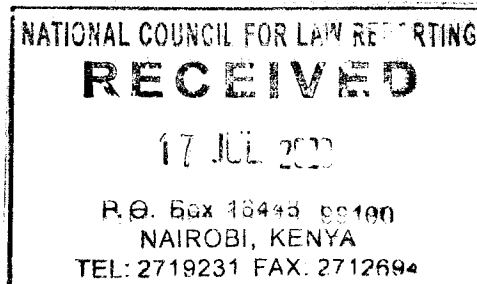
KENYA GAZETTE SUPPLEMENT

ACTS, 2020

NAIROBI, 13th July, 2020

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**THE COUNTY GOVERNMENTS (AMENDMENT)
ACT, 2020**

No. 11 of 2020

Date of Assent: 9th July, 2020

Date of Commencement: 27th July, 2020

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, 2020.

Short title.

2. Section 4 of the County Governments Act, in this Act referred to as “the principal Act” is amended by deleting subsection (2) and substituting therefor the following new subsection —

Amendment of section 4 of No. 17 of 2012.

(2) The county executive committee member shall—

- (a) develop the symbols of the county through a consultative process;
- (b) submit the symbol to the county assembly for approval; and
- (c) apply to the College of Arms for a grant of arms in accordance with section 4 of the College of Arms Act.

Cap. 98.

3. The principal Act is amended by inserting the following new section immediately after section 7A —

Insertion of a new section 7B to No. 17 of 2012.

Location of sitting of a county assembly.

7B. (1) Whenever a new county assembly is elected, the governor, by notice in the *Gazette* shall appoint —

- (a) the place of sitting within the county as set out in the Third Schedule; and
- (b) the date of the first sitting of the new county assembly, which shall not be more than thirty days from the date on which the county assembly shall be fully constituted as provided for under section 7A.

(2) except for a sitting of a new county assembly under subsection (1), a sitting of a county assembly may be held at any place within the county and may commence at any time as the county assembly may appoint.

4. Section 7 of the principal Act is amended by deleting the expression “27(3)(a)” appearing immediately after the words “under section” in subsection (3) and substituting therefor the expression “26(3)(a)”.

Amendment of section 7 of No. 17 of 2012.

5. Section 9 of the principal Act is amended —

Amendment of section 9 of No. 17 of 2012.

- (a) in subsection (3) by deleting the words “within fourteen days after the announcement of the final results of an election” appearing immediately after the words “the county assembly clerk” and substituting therefor the words “on the first sitting of the county assembly”;
- (b) deleting subsection (4); and
- (c) deleting subsection (5).

6. The principal Act is amended by inserting the following new sections immediately after section 9 —

Insertion of a new section 9A to No. 17 of 2012.

Speaker and deputy speaker.

9A. (1) The speaker of a county assembly shall be elected, in accordance with standing orders of the respective county assemblies, from among persons who are eligible to be elected as members of a county assembly but are not such members.

(2) There shall be a deputy speaker for each county assembly who shall be elected by the county assembly, in accordance with standing orders of the respective county assemblies, from among the members of that county assembly.

(3) In the absence of the speaker, the deputy speaker shall preside at the sitting of the county assembly.

(4) In the absence of the speaker and deputy speaker, members of the county assembly shall elect, from among themselves,

a person to preside at the sitting of the county assembly.

7. The principal Act is amended by deleting section 11 and substituting therefor the following new sections —

Amendment to section 11 of No. 17 of 2012.

Vacation of office of speaker.

11. (1) The office of speaker shall become vacant—

- (a) when a new county assembly first meets after an election;
- (b) if the office holder is disqualified from being elected as a member of a county assembly on grounds specified under Article 193(2) of the Constitution;
- (c) if the county assembly so resolves by a resolution supported by at least two-thirds of all the members of the county assembly;
- (d) if the office holder resigns from office in a letter addressed to the county assembly; or
- (e) if the office holder dies.

(2) The speaker may be removed pursuant to subsection (1) (c) on any of the following grounds —

- (a) gross violation of the Constitution or any other law;
- (b) incompetence;
- (c) gross misconduct;
- (d) if convicted of an offence punishable by imprisonment for at least six months; or
- (e) inability to perform the functions of the office of speaker arising from mental or physical incapacity.

(3) A notice of the intention to move a motion for a resolution to remove the speaker under subsection (1)(c) shall —

- (a) be given in writing to the clerk of the county assembly;
 - (b) be signed by at least one third of all the members of the county assembly; and
 - (c) state the grounds for removal as specified in subsection (2).
- (4) A motion for the removal of the speaker shall specify —
- (a) the grounds for removal as specified in subsection (2) in which the speaker is in breach; and
 - (b) the facts constituting those grounds.
- (5) Upon notice of the motion being given under subsection (2)—
- (a) the clerk of the county assembly shall within five days—
 - (b) notify the speaker; and
 - (c) invite the speaker to respond, within seven days, in writing setting out the grounds of opposition;
- (6) The speaker shall not perform any of the functions of the office of the speaker pending the resolution of the county assembly.
- (7) The speaker shall have the right to appear and be represented before the county assembly during its investigations.
- (8) The county assembly shall consider the motion within fourteen days and resolve whether to approve the motion.

Vacation of office
of deputy speaker.

11A. (1) The office of a deputy speaker shall become vacant if —

- (a) the office holder vacates office pursuant to Article 194 of the Constitution; or
- (b) the county assembly so resolves by a resolution supported by at least two-thirds of all the members of the county assembly.

(2) Section 11(2) to (8) shall, with necessary modifications, apply to the removal of a deputy speaker under subsection (1)(b).

8. The principal Act is amended in section 25 by deleting subsection (2) and substituting therefor the following new subsection –

Amendment to section 25 of No. 17 of 2012.

(2) Subject to subsection (3), the county assembly legislation shall come into force on the fourteenth day after its publication in the Kenya *Gazette* unless the legislation stipulates a different date on, or time at which, it shall come into force.

9. Section 27 of the principal Act is amended by—

Amendment to section 27 of No. 17 of 2012.

(a) deleting subsection (2) and substituting therefor the following new subsection—

(2) A member of a county assembly may be recalled on any of the following grounds—

- (a) gross violation of the Constitution or any other law;
- (b) incompetence;
- (c) gross misconduct; or
- (d) if convicted of an offence punishable by imprisonment for at least six months.

(b) deleting subsection (3); and

(c) deleting subsection (6)

10. Section 28 of the principal Act is amended—

Amendment to section 28 of No. 17 of 2012.

(a) in subsection (1) by—

(i) deleting paragraph (b) and substituting therefor the following new paragraph —

(b) signed by a petitioner who is a voter in the ward in respect of which the recall is sought.

(ii) deleting paragraph (c); and

(b) in subsection (3) by deleting the words “voter card number” appearing immediately after the words “the names, address”.

11. Section 31 of the principal Act is amended—

(a) by deleting paragraph (a) and substituting therefor the following new paragraph—

(a) may dismiss a county executive committee member.

(b) inserting the following new paragraph immediately after paragraph (b)—

(ba) may re-assign a county executive committee member.

Amendment to section 31 of No. 17 of 2012.

12. The principal Act is amended by inserting the following new sections immediately after section 32—

Insertion of new sections 32A, 32B, 32C and 32D to No. 17 of 2012.

Inability of governor or deputy governor to assume office.

32A. (1) If a governor-elect dies after being declared elected as governor, but before assuming office, or is unable to assume office for whatever reason—

(a) the deputy governor-elect shall be sworn in as acting governor on the date on which the governor elect would otherwise have been sworn-in; and

(b) a fresh election to the office of governor shall be held within sixty days after the death of the governor-elect.

(2) If the deputy governor-elect dies before assuming office or is unable to assume office for whatever reason, the office of the deputy governor shall be declared vacant on the assumption of office by the person declared elected as the governor.

Assumption to office of governor by the deputy governor.

32B. Whenever the office of governor becomes vacant under Article 182(1) of the Constitution, a person who assumes the office of governor under Article 182(2) of the Constitution shall—

- (a) within a period of fourteen days, from the date the office of governor became vacant, take and subscribe to the oath or affirmation as set out in the First Schedule to this Act before assuming office; and
- (b) take and subscribe to the oath or affirmation, in public, before a High Court Judge.

Vacancy in the office of deputy governor.

32C. (1) The office of deputy governor shall become vacant if the holder of the office—

- (a) dies;
- (b) resigns by a notice, in writing, addressed to the governor;
- (c) ceases to be eligible for nomination as deputy governor under Article 180(5) of the Constitution;
- (d) assumes the office of governor under Article 182(2) of the Constitution;
- (e) is convicted of an offence punishable by imprisonment for at least six months; or
- (f) is removed from office under this Act.

Filling of a vacancy in the office of deputy governor.

32D. (1) Where a vacancy arises in the office of a deputy governor as provided for under section 32C, the governor shall—

- (a) within fourteen days, nominate the deputy governor; and
- (b) with the approval of the county assembly, appoint a deputy governor.

(2) A person nominated for appointment as deputy governor under

subsection (1) shall be a person eligible for election as governor.

(3) The county assembly shall—

- (a) consider a motion for approval for the appointment of the deputy governor, within fourteen days, and resolve whether to approve the motion; and
- (b) be deemed to have approved the motion for the appointment of the deputy governor upon the lapse of fourteen days and having failed to make a resolution.

(4) A motion for the approval for appointment of a deputy governor shall be supported by a majority of the members of a county assembly.

(6) A person appointed as deputy governor under subsection (1) shall, for purposes of Article 180(7) of the Constitution, be deemed—

- (a) to have served a full term as county deputy governor if, at the date on which the person is appointed, more than two and a half years remain before the date of the next regularly scheduled election under Article 180(1) of the Constitution; or
- (b) not to have served a term of office as county deputy governor, in any other case.

13. Section 33 of the principal Act is amended—

- (a) in subsection (7) by deleting the word “members” appearing immediately after the words “of all the” and substituting therefor the words “county delegations”.

Amendment to section 33 of No. 17 of 2012.

(b) by inserting the following new subsection immediately after subsection (9)—

(9A) Subsections (1) to (9) shall, with necessary modifications, apply to the removal from office of a deputy governor.

14. Section 40 of the principal Act is amended by—

Amendment to section 40 of No. 17 of 2012.

(a) deleting subsection (1);

(b) deleting subsection (2) and substituting therefor the following new subsection—

(2) A member of the county assembly, supported by at least one-third of all the members of the county assembly, may propose a motion requiring the governor to dismiss a county executive committee member on any of the following grounds —

- (a) gross violation of the Constitution or any other law;
- (b) incompetence;
- (c) abuse of office;
- (d) gross misconduct; or
- (e) if convicted of an offence punishable by imprisonment for at least six months.

15. Section 44 the principal Act is amended by—

Amendment to section 44 of No. 17 of 2012.

(a) deleting subsection (2) and substituting therefor—

(2) A person shall be qualified for appointment as a county secretary under subsection (1), if that person—

- (a) is a citizen of Kenya;
- (b) holds a degree from a university recognized in Kenya;
- (c) has at least ten years relevant professional experience;
- (d) has at least five years' experience in a leadership position at senior management level in a public service or private sector organization; and

(e) meets the requirements of leadership and integrity as prescribed in Chapter Six of the Constitution.

(b) inserting the following new subsections immediately after subsection (2)—

(2A) The Governor shall, for the purpose of competitive recruitment of a county secretary under subsection (2), constitute a selection panel.

(2B) The selection panel shall consist of the following persons —

- (a) a chairperson, not being a public officer;
- (b) one person from the private sector;
- (c) an Advocate of the High Court of Kenya, who is a member of the Law Society of Kenya;
- (d) an accountant who is a member of the Institute of Certified Public Accountants of Kenya; and
- (e) one person from an association representing workers.

(2C) The provisions of section 58A shall, with such modification as shall be necessary apply to the recruitment of a county secretary.

(2D) Upon interviewing the applicants for the position of county secretary—

- (a) the selection panel shall submit to the governor the names of two applicants who qualify for appointment as county secretary; and
- (b) the governor shall submit the name of one applicant to the county assembly for approval for appointment as county secretary by the governor.

(2E) The county secretary shall hold office for a term of five years and shall be eligible for reappointment once.

(2F) The county secretary shall be an *ex officio* member of the County Executive Committee with no voting rights.

(c) inserting the following new subsection immediately after subsection (3)—

(3A) The county secretary may be removed from office on the following grounds—

- (a) inability to perform functions of the office arising out of physical or mental infirmity;
- (b) incompetence;
- (c) gross misconduct;
- (d) bankruptcy; or
- (e) violation of the Constitution.

(3B) Before removal under subsection (3A), the county secretary shall be informed, in writing, of the reasons for the intended removal.

(3C) Subject to section (3A), (3B) and conditions of appointment, a county secretary may be removed from office by the governor.

16. Section 45 of the principal Act is amended—

- (a) in subsection (1) by deleting the introductory clause and substituting therefor the following new clause—

Amendment to section 45 of No. 17 of 2012.

Whenever a vacancy arises in the office of a county chief officer, the respective governor shall within fourteen days –

- (b) by deleting subsection (6) and substituting therefor the following subsection—

(6) The office of the county chief officer shall become vacant if the officer—

- (a) dies;
- (b) resigns by notice in writing addressed to the governor; or
- (c) is removed from office in accordance with the terms of service or any other written law applicable to the officer.

17. Section 58 of the principal Act is amended—

Amendment to
section 58 of No. 17
of 2012.

(a) in subsection (1) by—

(i) deleting paragraph (a) and substituting therefor the following new paragraph—

(a) a chairperson appointed in accordance with section 58A;

(ii) deleting paragraph (b) and substituting therefor the following new paragraph—

(b) at least three but not more than five members appointed in accordance with section 58A;

(b) by deleting subsection (2); and

(c) in subsection (3) by inserting the following new paragraphs immediately after paragraph (b)—

(ba) has not, at any time within the preceding five years, held office, or stood for election as—

(i) a member of Parliament or of a county assembly; or

(ii) a member of the governing body of a political party;

(bb) is, or as at any time been, a candidate for election as a member of Parliament or of a county assembly;

(bc) is, or has at any time been, the holder of an office in any political organisation that sponsors or otherwise supports, or has at any time sponsored or otherwise supported, a candidate for election as a member of Parliament or of a county assembly.

18. The principal Act is amended by inserting the following new section immediately after section 58—

Insertion of a new
section 58A to No.
17 of 2012.

Procedure for
nomination and
appointment of
members of the
Board.

58A. (1) Whenever a vacancy arises in a county public service board, the governor shall nominate and, with the approval of the county assembly, appoint members to a selection panel for the purpose of selecting suitable candidates for appointment as members of the county public service board.

(2) The selection panel under subsection (1) shall consist of the following persons—

- (a) a chairperson, not being a public officer;
- (b) one person from the private sector;
- (c) an Advocate of the High Court of Kenya, who is a member of the Law Society of Kenya;
- (d) an accountant who is a member of the Institute of Certified Public Accountants of Kenya; and
- (e) one person from an association representing workers.

(3) The governor shall, in nominating members to the selection panel, ensure that not more than two-thirds of the nominees are of the same gender.

(4) The chairperson shall convene the first meeting of the selection panel within five days of his or her appointment.

(5) The selection panel shall, within seven days of convening, invite applications from persons who qualify for nomination and appointment as chairperson or member of the county public service board by advertisement in at least two daily newspapers of national circulation.

(6) The selection panel shall within seven days of receipt of applications under subsection (5)—

- (a) consider the applications to determine their compliance with the provisions of the Constitution and this Act;
- (b) shortlist the applicants;
- (c) interview the shortlisted applicants; and
- (d) submit the names of three qualified applicants for the position of

chairperson, six qualified applicants for the position of a member and two qualified applicants for the position secretary to the Governor.

(7) The Governor shall, within seven days of receipt of the names forwarded under subsection (6), nominate one person, and at least three but not more than five others for appointment as chairperson and members of the county public service board, respectively, and forward the names to the county assembly for approval.

(8) The county assembly shall, within twenty one days of receipt of the names of the nominees from the Governor, consider each nomination received under subsection (7) and approve or reject any of them.

(9) Where the county assembly approves the nominees, the Speaker of the county assembly shall, within five days, forward the names of the approved applicants to the Governor for appointment.

(10) Where the county assembly rejects any nominee, the Speaker shall within five days communicate the decision of the county assembly to the Governor and request the Governor to submit fresh nominations from amongst the persons shortlisted and forwarded by the selection panel under subsection (6).

(11) If the county assembly rejects any or all of the subsequent nominees submitted by the Governor for approval under subsection (9), the provisions of subsections (6) and (7) shall apply.

(12) The selection panel shall stand dissolved upon the appointment of the chairperson and members under subsection (9).

(13) Where the provisions of subsection (10) apply, the selection panel shall continue

to exist but shall stand dissolved upon the requisite appointments being made.

(14) The department responsible for public service shall provide secretariat services to the selection panel.

(15) In nominating or appointing a person as a member of the Board, the selection panel and the Governor shall—

- (a) observe the principle of gender equity, ethnic and other diversities of the people of Kenya, and shall ensure equality of opportunity for persons with disabilities; and
- (b) take into account the national values and principles set out in Articles 10, 27 and 232 of the Constitution.

(16) Despite the foregoing provisions of this section, the Governor may extend the period specified in respect of any matter under this section by a period not exceeding fourteen days.

(17) Subject to this section, the selection panel may determine its own procedure.

19. The principal Act is amended by inserting the following new section immediately after section 59—

Insertion of new section 59A to No. 17 of 2012

Independence of the county public service board.

59A. In the performance of its functions under this Act, the county public service board shall—

- (a) be independent and shall not be subject to the direction or control of any other person or authority; and
- (b) adhere to the Constitution, this Act and any other relevant law.

20. Section 63 of the principal Act is amended by deleting paragraph (b) of subsection (2).

Amendment to section 63 of No. 17 of 2012.

21. Section 65 of the principal Act is amended in subsection (1) by inserting the following new paragraph immediately after paragraph (c)—

Amendment to section 65 of No. 17 of 2012.

(ca) the need to ensure that the candidates proposed for appointment have knowledge and experience in diverse fields including human resource management and development and finance.

22. The principal Act is amended by inserting the following new sections immediately after section 68—

Insertion of new sections 68A, 68B, 68C, 68D and 68E to No. 17 of 2012.

Promotion of equity by the county public service boards.

68A. (1) Each county public service board shall promote equal opportunity in the county public service and shall establish and implement strategies for the elimination of any form of discrimination on the basis of ethnicity, gender, religion, health, marital status or disability.

(2) It shall not be unfair discrimination to—

- (a) implement affirmative action measures consistent with the purpose of this Act; and
- (b) distinguish, exclude or prefer any person on the basis of an inherent requirement of a particular office in the county public service.

(3) In implementing the provisions of subsection (1), the county public service board shall—

- (a) take measures to ensure that diversity is maintained in the county public service;
- (b) implement strategies that result in the granting of a fair opportunity to all persons applying to serve in the county public service and the elimination of ethnicity within the county public service;
- (c) identify and eliminate employment barriers against

persons who do not belong to the dominant ethnic group within the county or marginalized persons that result from systems of employment, policies or practices which are not authorized by law; and

- (d) afford an equal opportunity to all persons, including marginalized groups in the county, in the appointment process to an office in the county public service.

(4) In meeting the requirements under subsection (1), the county public service board shall not—

- (a) take measures whose implementation would cause undue hardship on the county public service board;
- (b) appoint or promote persons who do not meet the qualifications or requirements of an office;
- (c) deviate from the provisions of Article 232 of the Constitution; or
- (d) create new offices or positions in the county public service.

Collection and analysis of information on county public service.

68B. (1) Each county public service board shall, for the purpose of implementing the provisions of section 68A—

- (a) collect information and conduct an analysis of the county public service in order to determine the degree of the underrepresentation of persons in marginalized groups in each occupational group in the respective county public service; and
- (b) conduct a review of the county public service systems, policies and practices, in order to identify employment barriers against

persons from minority or marginalized groups that result from those systems, policies and practices.

County public
service
employment
equity plan.

68C. (1) Each county public service shall, for the purpose of eliminating ethnic imbalance and implementing the provisions of section 65(1)(e), prepare and implement a public service employment equity plan.

(2) In preparing an employment equity plan, the county public service shall—

- (a) set out the positive policies and practices which shall be instituted in the short term for the hiring and retention of underrepresented persons or persons belonging to marginalized groups;
- (b) outline the strategies through which the county public service board shall ensure that at least thirty percent of the offices in the county public service consists of persons who are not from the dominant ethnic community within the county where this has not been achieved;
- (c) set out the affirmative action measures required to be implemented and the anticipated outcome of such measures;
- (d) set out the framework for monitoring and evaluating the implementation of the equity plan;
- (e) set out the long-term goal for increasing representation of underrepresented persons or marginalized groups in the county public service and the employment strategies for achieving such goals; and

- (f) set out such other information as the county public service board shall consider necessary.

(3) The county public service board shall consult with the Governor, the Public Service Commission and such other stakeholders as the board shall consider appropriate.

(4) The county public service board shall ensure that the public service employment equity plan would, shall ensure the realization of the provisions of section 65(1)(e) and that employment equity within the county public service is achieved.

Review of county public service employment equity plan.

68D. (1) Each county public service board shall, at least once during the period in respect of which the short term goals referred to in section 68C(2) are established, review its employment equity plan and revise it by—

- (a) updating the short term goals, taking into account the factors set out in section 68C; and
- (b) make any other changes that are necessary as a result of an assessment made pursuant to section 68B or as a result of changing circumstances.

(2) Every county public service board shall establish and maintain county public service employment equity records in respect of the county public service and the implementation of employment equity by the board.

Report of the county public service board.

68E. A county public service board shall include in a report a description of—

- (a) the measures taken by the board during the reporting period to implement employment equity and the results achieved; and
- (b) the consultations between the board, the Public Service

Commission and such other stakeholders as the board may consider necessary during the reporting period concerning the implementation of employment equity.

23. Section 121 of the principal Act is amended in subsection (2)(j) by deleting the words “with the approval of the secretary” appearing at the beginning of the subsection and substituting therefor the words “in consultation with the county executive committee”.

Amendment to section 121 of No. 17 of 2012.

24. Section 124 of the principal Act is amended in subsection (2) by inserting the words “the deputy speaker” immediately after the words “the speaker”.

Amendment to section 124 of No. 17 of 2012.

25. A person who, immediately before the commencement of this Act was serving as deputy speaker, a member of the county public service board or as a county secretary immediately before the coming into force of this Act shall—

Transition provisions.

- (a) not cease to hold office only on account of the coming into force of this Act; and
- (b) continue to serve in office for the remainder of the term and in the case of the county secretary, in accordance with the terms and conditions of appointment.