

LAW MAKING IN THE COUNTY ASSEMBLY

I. Introduction

One of the key functions of the County Assembly is to make laws in exercise of its legislative authority as provided for in Article 185 of the Constitution and Part II of Fourth Schedule to the Constitution. The County Assembly is mandated to make laws and exercises its legislative power through Bills passed by the Assembly and assented to by the Governor.

It is important to note that whereas a legislative proposal can be said to be an idea for a Bill, a Bill is a proposed law for an Act of the County Assembly that has been published/gazetted for introduction in the Assembly. A legislative proposal or a Bill generally seeks to introduce a new legislation, amend or repeal existing law(s).

II. Who originates Bills

A Bill may be originated in the following ways:

- (a) An Assembly Party; introduced in the name of the Leader of the Majority Party or Leader of the Minority Party or their respective deputies;
- (b) The Executive; introduced in the name the Leader of the Majority Party or Leader of the Minority Party or in the name of the Chairperson of the relevant Committee;
- (c) Individual Member(s) of the County Assembly; introduced in the name of the Member sponsoring the Bill;
- (d) A Committee of the Assembly; introduced in the name of the Chairperson or a member designated by the Committee;
- (e) A member of public may also petition the County Assembly pursuant to the provisions of Article 37 of the Constitution, section 15 of the County Governments Act (CGA), 2012 and the Standing Orders to legislate on a matter; introduced by way of a Petition conveyed by the Speaker and committed to the relevant Sectoral Committee for consideration and publication of the consequential Bill; and,
- (f) Alternatively, members of the public may forward legislative proposals to Members of the County Assembly.

III. Introductions of Bills

A legislative proposal must have a sponsor in order to be introduced in the Assembly. A Member or a County Assembly Committee wishing to introduce a Bill in the Assembly has to submit the legislative proposal to the Speaker for approval.

The legislative proposal is accompanied by a memorandum of objects and reasons. The memorandum contains a statement of:

- a) Objects and reasons of the Bill;
- b) Delegation of legislative powers and limitation of fundamental rights and freedoms, if any;
- c) Whether the Bill concerns county governments; and,
- d) Financial implications and if the expenditure of public moneys will be involved should the Bill be enacted, an estimate, where possible, of such expenditure.

The memorandum should generally indicate the objectives of the Bill. Upon receiving instructions from a Member or a Committee, the Speaker refers the legislative proposal to the Clerk who must consider the legislative proposal, draft it in proper form where necessary and submit it to the Speaker with comments on:

- (a) Whether the legislative proposal is a draft money Bill in terms of Section 21 of the County Governments Act; and,
- (b) Whether the legislative proposal conforms to the Constitution and the law and is in order as to format and style in accordance with the Standing Orders.

IV. Procedure for processing bills/legislative proposal

Upon receipt of the legislative proposal together with the comments of the Clerk, the process may follow the following course:

a) Ordinary/Non-money Bills

In the case of an ordinary/Non-Money Bill legislative proposal sponsored by a committee, the Speaker approves its publication into a Bill; or, in the case of a Non-Money Bill legislative proposal sponsored by an individual Member, the Speaker refers the proposal to the relevant sectoral Committee which undertakes prepublication scrutiny and must:

- (a) Examine the proposal and seek the views of the sponsor and the relevant Executive Committee Member on the likely impact, effect, outcome and consequence of the legislative proposal and any other aspect the Member or the Committee may deem necessary;
- (b) Where necessary and in consultation with the sponsor of the legislative proposal, suggest variations with a view to improving the legislative proposal although the sponsor is not bound to incorporate such variations; and,
- (c) Thereafter submit its comments to the Speaker by way of a brief on the legislative proposal within 21 days of receipt of the legislative proposal.

b) Money Bills

The Speaker refers the legislative proposal to the Finance, Budget and Appropriations Committee for consideration. Where a legislative proposal is referred to the Finance, Budget and Appropriations Committee for consideration, the Committee must:

- a) examine the proposal and may invite the sponsor and any other interested person;
- b) seek the views of the Member of County Executive Committee responsible for finance on the proposal on the manner in which the legislative proposal affects the current and future budgets and any other aspect the Member or the Committee may deem necessary; and,
- c) Submit to the Speaker its recommendations by way of a brief within 21 days on whether or not to proceed with the legislative proposal or to proceed subject to such variations as the Committee may propose.

The recommendations of the committee assist the Speaker to make an informed decision on whether to approve the proposal for publication into a Bill. Upon the Speaker's approval, the proposal is published into a Bill.

V. Stages of a Bill

Upon publication, a Bill follows the following stages:

1. First Reading

The Bill is introduced in the Assembly for the first time by way of reading the title of the Bill by the Clerk. No debate or vote arises at this stage. Upon being read a First time, the Bill stands committed to the relevant Sectoral Committee for consideration. The Committee facilitates public participation on the Bill through appropriate mechanisms which may include:

- i. Inviting submission of memoranda;
- ii. Holding public hearings;
- iii. Consulting relevant stakeholders; and,
- iv. Consulting experts on technical subjects.

The Committee takes into consideration the views and recommendations of the public while considering the Bill and while preparing its report to the Assembly. The Committee proceeds to scrutinize the Bill by calling in the sponsor of the Bill, inviting various stakeholders and later compiles a report to the Assembly with any specific proposed amendments which are later considered in the Committee of the Whole Assembly.

2. Second Reading

This is the debate stage, wherein the Assembly debates the merits

and any demerits of the Bill. The debate follows the moving of the Bill by the sponsor and its seconding by any Member. Debate mostly focuses on all aspects of the Bill, including its principles, objects and how its enactment into law is likely to affect the general citizenry. The report of the sectoral Committee also assists Members to debate the Bill, particularly in grasping the views of the public and other relevant organs that may have made comments on the Bill through the Committee and the effects of the Bill on other laws. Depending on the character of a Bill, debate stage may take a short or long period. At the end of debate, the Speaker allows the proposer to respond to any issues raised by the Assembly and then puts the question, that is, causes the Assembly to vote, to determine whether the Bill moves to the next stage.

3. Committee Stage

Committee of the Whole Assembly refers to a phase where the entire membership of the Assembly is seated in form of a Committee to consider a Bill on clause by clause basis. At this stage, the House resolves itself into a Committee, which is comprised of the whole membership of the Assembly. The Committee is presided by the Deputy Speaker or any member of the Chairpersons Panel who, at this stage sits at the Clerks' Table "sandwiched" between the two clerks who call out the clauses of the Bill, sequentially for consideration. Any proposed amendments to the Bill are considered and a vote taken on each. Consideration normally commences with Clause 3 (or Clause 2 if it does not provide for definition of terms) and terminates with the consideration and vote on any schedules, and ultimately Clause 1 which provides for the Bill's Title and commencement. The Committee of the whole Assembly approves clauses and any schedules of the Bill with or without amendments.

At the conclusion, the Committee, through the Chairperson, immediately submits a report to the Assembly seeking the approval of the Assembly. The guiding principle is that the Committee should make such amendments in the Bill as may seem likely to render it more acceptable, practical or efficient without having to severely deviate from its primary principles and objectives.

4. Report Stage

Upon resumption of the Assembly to the plenary, the report is made to the Assembly which, following a procedural Motion, votes on it. At this stage, any Member may, with reasons, also move the Assembly to resolve itself into a Committee again to reconsider any specified clauses of the Bill. This is known as re-committal.

5. Third Reading

The final stage of the passage of a Bill through the Assembly is the Third Reading. No further substantive amendments are taken up at

this stage, though drafting amendments and re-numbering of clauses may be accepted. Generally, there is very little debate during the third reading, and a final vote is taken.

6. Governor's Assent

Once a Bill has been passed by the Assembly, the Speaker presents it to the Governor for assent in a form known as the Vellum. The Governor may, within fourteen days:

- (a) Assent to the Bill; or,
- (b) Refer the Bill back to the Assembly with a memorandum outlining his reasons for referral.

7. Referral of a Bill back to the County Assembly

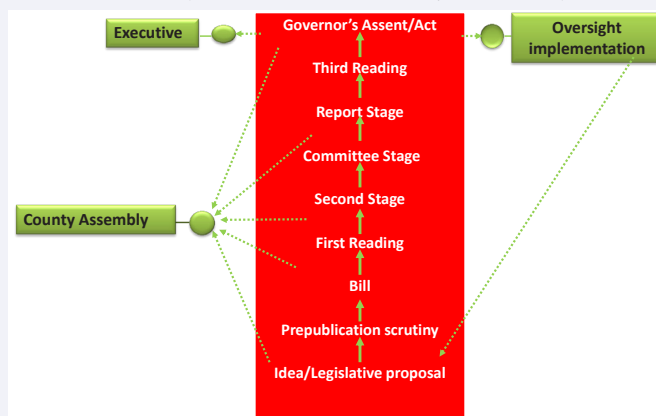
If the Governor refers a Bill back to the Assembly, the Assembly may, following the appropriate procedures under this section:

- (a) Amend the Bill taking into account the issues raised by the governor; or,
- (b) Pass the Bill without amendment.

If the Assembly amends the Bill taking into consideration the issues raised by the governor, the speaker must within fourteen days submit the Bill to the Governor for assent. If the Assembly passes the Bill a second time, without amendment, or with amendments which do not accommodate the Governor's concerns by a vote supported by two-thirds of members of the Assembly, the speaker must within seven days re-submit the Bill to the Governor. The Governor must within seven days assent to the Bill. The Governor does not assent to a Bill or refer it back within the period referred to above; the Bill must be taken to have been assented to on the expiry of the stated period.

LAW MAKING PROCESS

Summary: From an idea to an Act of the Assembly



COUNTY ASSEMBLY OF KIAMBU

FACT SHEET ON LAW MAKING PROCESS



A vibrant, value oriented, quality driven & people responsive County Assembly in Kenya

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