

REPUBLIC OF KENYA

June 2024

THE PERFORMANCE OF CONCURRENT FUNCTIONS BILL, 2024

*A Legislative Proposal by
The Office of the Deputy President*

THE PERFORMANCE OF CONCURRENT FUNCTIONS BILL, 2024

ARRANGEMENT OF CLAUSES

Clause

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- 4—Guiding principles.
- 5—Scope of the Act.

PART II—COORDINATION OF CONCURRENT FUNCTIONS

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**UNBUNDLED CONCURRENT FUNCTIONS AS PROVIDED FOR UNDER
ARTICLE 186 AND 191 OF THE CONSTITUTION**

THE PERFORMANCE OF CONCURRENT FUNCTIONS BILL, 2024

A Bill for—

AN ACT of Parliament to provide for the performance of concurrent functions assigned to the national and county governments; to implement Article 186(2), (4) and 191 of the Constitution by providing the scope of concurrent functions; to establish a framework for coordination and oversight in the performance of concurrent functions; to provide mechanisms for dispute resolution in relation to performance of concurrent functions; and for connected purposes.

ENACTED by the Parliament of Kenya, as follows—

	PART I—PRELIMINARY PROVISIONS
Short title.	1. This Act may be cited as the Performance of Concurrent Functions Act, 2024.
Interpretation.	2. In this Act, unless the context otherwise requires— “Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to intergovernmental relations; “concurrent functions” means functions assigned to both the national and county governments in accordance with Article 186 of the Constitution; “coordination framework” means the structure established under this Act to manage and oversee the performance of concurrent functions; “County Executive Committee Member” means the County Executive Committee Member responsible for matters relating to intergovernmental relations in each respective county; and “Summit” means the National and County Government’s Coordination Summit established under section 7 of the Intergovernmental Relations Act.
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Objects of the Act.	3. The objects of this Act are to—

	<ul style="list-style-type: none"> (a) implement Article 186 (2), (4) and 191 of the Constitution; (b) provide a structured and coordinated approach to the performance of concurrent functions by the national and county governments; (c) enhance accountability, transparency and efficiency in the performance of concurrent functions; (d) foster mutual cooperation and consultation between the national and county governments in the performance of concurrent functions; and (e) ensure the efficient and equitable allocation and use of resources in the performance of concurrent functions.
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Guiding principles.	<p>4. The implementation of this Act shall be guided by the following principles—</p> <ul style="list-style-type: none"> (a) respect for the functional and institutional integrity of each level of government; (b) mutual cooperation and consultation; (c) efficient use of resources; (d) promotion of transparency and accountability; and (e) public participation and inclusivity.

Scope of the Act.	5. This Act applies to all concurrent functions as defined under Article 186 of the Constitution.

PART II—COORDINATION OF CONCURRENT FUNCTIONS

Concurrent functions.	6. (1) The concurrent functions to be coordinated under this Act shall be as provided for in Article 186 and Article

	191 of the Constitution and as un-bundled in accordance with the First Schedule.
	(2) The Cabinet Secretary, in consultation with the Summit, may by order published in the <i>Kenya Gazette</i> , amend the First Schedule.

	<p>(3) In determining concurrent functions contemplated under subsection (2), consideration shall be given to the following factors—</p> <ul style="list-style-type: none"> (a) the nature and scope of the function in relation to Article 186 and 191 of the Constitution; (b) the capacity of national and county governments to effectively perform the function; (c) the financial implications and resource requirements for the performance of the function; (d) ensuring equitable development and service delivery in the country.
	(4) An order made under subsection (2) shall be laid before Parliament for approval before it takes effect.
Establishment of Coordination Framework.	7. (1) There is hereby established a Coordination Framework for the performance of concurrent functions.
	<p>(2) The Coordination Framework shall consist of—</p> <ul style="list-style-type: none"> (a) a National Coordination Committee for each concurrent function; (b) County Coordination Committees for each concurrent function; and (c) Joint Technical Teams for each concurrent function.

	<p>(3) The general purpose of the Coordination Framework is to—</p> <ul style="list-style-type: none"> (a) ensure effectiveness, efficiency and accountability in the performance of concurrent functions; (b) facilitate cooperation and consultation between the national and county governments; (c) enhance resource mobilization and utilization for the performance of concurrent functions; (d) ensure harmonization and standardization of policies, laws and regulations governing the performance of concurrent functions.
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National Coordination Committee.	<p>8. (1) The National Coordination Committee shall consist of—</p> <ul style="list-style-type: none"> (a) the relevant Cabinet Secretary, who shall be the chairperson; (b) the Principal Secretary responsible for intergovernmental relations; (c) two governors representing the Council of Governors; (d) the Principal Secretary responsible for finance; (e) the Principal Secretary responsible for planning; (f) two representatives of relevant national government ministries, departments, or agencies; and (g) two representatives of relevant county government departments.
	<p>(2) The functions of the National Coordination Committee shall be to—</p> <ul style="list-style-type: none"> (a) provide overall policy direction and oversight for the performance of concurrent functions; (b) facilitate cooperation and consultation between the national and county governments;

	<ul style="list-style-type: none"> (c) review and approve the work plans and budgets for the performance of concurrent functions; (d) monitor and evaluate the performance of concurrent functions; and (e) address any challenges or disputes arising from the performance of concurrent functions.
County Coordination Committees.	9. (1) Each county shall establish a County Coordination Committee for the performance of concurrent functions.
	<ul style="list-style-type: none"> (2) The County Coordination Committee shall consist of— <ul style="list-style-type: none"> (a) the relevant County Executive Committee Member, who shall be the chairperson; (b) the County Secretary;

	<ul style="list-style-type: none"> (c) two representatives of the county government department responsible for the concurrent function; (d) two representatives of relevant national government ministries, departments, or agencies; (e) two representatives of private sector or civil society organizations, appointed by the County Governor.
	<p>(3) The functions of the County Coordination Committee shall be to—</p> <ul style="list-style-type: none"> (a) coordinate the performance of concurrent functions at the county level; (b) facilitate cooperation and consultation between the county government and the national government; (c) develop and implement work plans and budgets for the performance of concurrent functions; (d) monitor and evaluate the performance of concurrent functions at the county level; and (e) address any challenges or disputes arising from the performance of concurrent functions.

Joint Technical Teams.	10. (1) The National Coordination Committee and County Coordination Committees shall establish Joint Technical Teams for each concurrent function.
	(2) The Joint Technical Teams shall consist of technical officers from the national and county governments responsible for the specific concurrent functions.
	(3) The functions of the Joint Technical Teams shall be to— (a) provide technical support for the performance of concurrent functions; (b) develop and harmonize policies, laws and regulations governing the performance of concurrent functions; (c) prepare work plans and budgets for the performance of concurrent functions;

	(d) monitor and evaluate the technical aspects of the performance of concurrent functions; and (e) address any technical challenges or disputes arising from the performance of concurrent functions.
Meetings.	11. (1) The National Coordination Committee shall meet at least quarterly.
	(2) The County Coordination Committees shall meet at least quarterly.
	(3) The Joint Technical Teams shall meet as often as necessary to discharge their functions.
Reports.	12. (1) The National Coordination Committee and County Coordination Committees shall generate and publicize quarterly and annual reports on the performance of concurrent functions.
	(2) The reports shall include information on the—

	<ul style="list-style-type: none"> (a) progress and achievements in the performance of concurrent functions; (b) challenges and constraints faced in the performance of concurrent functions; (c) recommendations for improving the performance of concurrent functions.
Oversight.	13. (1) Parliament and county assemblies shall provide oversight on the implementation of this Act and the performance of concurrent functions.
	<p>(2) The oversight shall include—</p> <ul style="list-style-type: none"> (a) reviewing the reports submitted under section 13; (b) conducting inquiries and investigations into the performance of concurrent functions; and (c) making recommendations for improving the performance of concurrent functions.
Role of Summit.	14. (1) The Summit shall provide policy direction and resolve disputes arising from the performance of concurrent functions.
	<p>(2) The Summit shall—</p> <ul style="list-style-type: none"> (a) review and approve the policies, laws, and regulations governing the performance of concurrent functions; (b) resolve any disputes referred to it by the National Coordination Committee or County Coordination Committees; and (c) provide guidance on any other matters relating to the performance of concurrent functions.
Dispute Resolution.	15. The mechanisms for resolving conflicts that may arise

CAP 265F	<p>in the performance of concurrent functions, include—</p> <p>(a) Alternative Dispute Resolution (ADR) mechanisms as provided for under the Constitution, the Intergovernmental Relations Act or any other law; or</p> <p>(b) judicial proceedings, where ADR mechanisms fail to resolve the dispute.</p>
PART III—GENERAL PROVISIONS	
Regulations.	<p>16. (1) The Cabinet Secretary may, in consultation with the Summit, make regulations for the better carrying out of the provisions of this Act, and prescribe anything required to be prescribed.</p>
	<p>(2) Without prejudice to the generality of subsection (1), the Cabinet Secretary may make Regulations for—</p> <p>(a) the performance of concurrent functions; and</p> <p>(b) public and stakeholder consultation under this Act.</p>
	<p>(3) The Cabinet Secretary shall cause a draft of the regulations under subsection (1) to be laid before the Senate for approval before publication in the <i>Kenya Gazette</i>.</p>
Capacity Building.	<p>17. (1) The national and county governments shall develop and implement training and capacity-building programs for national and county government personnel involved in the performance of concurrent functions.</p>
	<p>(2) The training and capacity-building programs shall focus on enhancing the skills and competencies necessary for the effective performance of concurrent functions.</p>
	<p>(3) The National Coordination Committee shall oversee the implementation of the capacity-building programs and ensure their alignment with the objectives of this Act.</p>
Funding of concurrent functions.	<p>18. (1) The national and county governments shall ensure</p>

	adequate funding for the performance of concurrent functions as listed in the First Schedule.
	(2) The allocation of funds for concurrent functions shall be provided for in the annual budget estimates of the national and county governments.
	(3) The Cabinet Secretary and the Cabinet Secretary responsible for Finance shall, in consultation with the County Executive Committee Members responsible for finance, develop Regulations to provide for the joint management and oversight of funds allocated for concurrent functions.
	(4) The national and county governments shall ensure transparent and accountable utilization of funds for the performance of concurrent functions.
Transition.	19. (1) Any existing frameworks for the performance of concurrent functions shall transition to the structures established under this Act within twelve months of its commencement.
	(2) The Cabinet Secretary shall by Regulations provide for the transition within three months of the commencement of this Act.
	(3) The transition process shall ensure continuity of service delivery and minimal disruption to the performance of concurrent functions.
	(4) The national government body responsible for law reform shall provide technical support and advice in the implementation of the provisions of this Act.

SCHEDULE

UNBUNDLED CONCURRENT FUNCTIONS AS PROVIDED FOR

UNDER ARTICLE 186 AND 191 OF THE CONSTITUTION

s. 6(1)

No.	National function (Part I) Section:	County function (Part II) Section:	Concurrency
1.	11 National statistics and data on population, the economy and society generally	8 County planning and development, including- a) Statistics	(a) Custody of the official statistics in the county and National government (b) Collect, compile, analyze, abstract and disseminate statistical information (c) Coordinate, monitor and supervise the statistical system.
2.	24 Disaster management	12 Firefighting services and disaster management	(a) Monitor and evaluate the status of the implementation of the disaster management policy (b) Conduct research on disaster risk management. (c) Collect, collate, analyze and disseminate data on county/ National disaster risk management to the relevant stakeholders. (d) Mobilize resources for the performance of the disaster management function. (e) Conduct county disaster risk analysis and assessments. (f) Establish county disaster early warning sector-based systems in

No.	National function (Part I) Section:	County function (Part II) Section:	Concurrency
			conformity with the national system. (g) Communicate early warning disaster information to communities and other

			<p>stakeholders.</p> <p>(h) Implement sector specific disaster risk pre-emptive measures based on alert levels at the county level.</p> <p>(i) Coordinate disaster risk management activities in counties</p> <p>(j) Develop and Implement resilience and climate change adaptation strategies and programs in conformity with the national strategies.</p> <p>(k) Conduct civic education and create awareness in disaster risk preparedness.</p> <p>(l) Monitor and evaluate the implementation of county disaster preparedness strategies and programmes.</p> <p>(m) Conduct national drills and simulation exercises to enhance disaster preparedness.</p> <p>(n) Establish an emergency and disaster operation center in the county.</p> <p>(o) Establish a national database for storage and enable access of data.</p> <p>(p) Conduct rapid assessments to determine county vulnerability levels and needs.</p> <p>(q) Declare county emergencies.</p>
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No.	National function (Part I) Section:	County function (Part II) Section:	Concurrency
			(r) Activate county

			<p>emergency response plans.</p> <p>(s) Establish an information sharing mechanism between the national, county governments and other stakeholders.</p> <p>(t) Coordinate county disaster response through multi-sectoral and crosscounty approach.</p> <p>(u) Coordinate and provide humanitarian assistance at the county level.</p> <p>(v) Develop, implement, monitor and disseminate county guidelines for post disaster needs assessment in the county.</p>
3.	34 National betting, casinos and other forms of gambling	4(a) Betting, casinos and other forms of gambling	<p>(a) Develop statutory legislation on betting and other forms of gambling.</p> <p>(b) Issuance of licenses on betting, casinos and other forms of gambling</p> <p>(c) License prize competitions</p> <p>(d) Handle complaints on Betting, casinos and other forms of gambling.</p>
4.	31 Energy policy including electricity and gas reticulation and energy regulation	8(e) Electricity and gas reticulation and energy regulation	(a) Electricity, Gas and Energy reticulation and regulation
5.	17 Promotion of sports and sports education	4(h) sports and cultural activities and facilities	<p>(a) Develop sports talents.</p> <p>(b) Promote sports, sports education and talents at national.</p> <p>(c)</p>
6.	35 Tourism development	7(d) Trade development and regulation: Local tourism	(a) Develop the tourism policy, norms and standards.

No.	National function (Part I) Section:	County function (Part II) Section:	Concurrency
			(b) Implement bilateral, multilateral, regional and international agreements in tourism. (c) Market and promote tourism (d) Conduct tourism research
7.	22(c) Water protection securing sufficient residual water safety of dams	11(b) Water and sanitation services	(a) Regulate and protect water resources from adverse impacts (b) Management and Implementation conservation plans.
8.	28 Agricultural policy 30 Veterinary Policy 22 (b) Protection of wildlife and animals	1(a) Crop and Animal Husbandry (b) Livestock Sale yards (d) Plant and animal disease control (a) Fisheries 2 (e) Veterinarian services 6 6 Animal control and welfare including: (a) Licensing of dogs (b) Facilities for accommodation, care and burial and animals	(a) Disease quarantine (b) Coordination of value addition and agribusiness activities, policy on value addition and agribusiness (c) Support initiatives for sustainable land management in agro pastoral areas support commercialization of smallholder dairy production (a) Emerging issues, AMR, residue analysis, one health etc. (b) Disaster management (c) Data collection (d) In-service capacity building (e) Animal welfare (f) Market development for export.
9.	28 Health Policy	2. County health services, including, in particular— (a) county health	(a) Epidemics and disease control (b) Research and development (c) Health information system

		facilities and pharmacies; (b) ambulance services;	(d) Blood transfusion (e) Organ transplantation
No.	National function (Part I) Section:	County function (Part II) Section:	Concurrency
		(c) promotion of primary health care; (d) licensing and control of undertakings that sell food to the public; (f) cemeteries, funeral parlors and crematoria; and	
10.	22. Protection of the environment and natural resources with a view to establishing a durable and sustainable system of development, including, in particular— (a) fishing, hunting and gathering; (b) protection of animals and wildlife;	2(g) refuse removal, refuse dumps and solid waste disposal. 3. Control of air pollution, noise pollution, other public nuisances and outdoor advertising. 10. Implementation of specific national government policies on natural resources and environmental conservation, including— (b) forestry	(a) Protection of the environment and natural resources. (b) Air pollution

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to implement Article 186 (2), (4) and 191 of the Constitution by providing a structured and coordinated approach to the performance of concurrent functions by the national and county governments, to enhance efficiency, accountability and service delivery. The Bill provides for the establishment of a Coordination Framework, consisting of National and County Coordination Committees and Joint Technical Teams, to manage and oversee the performance of concurrent functions. The Bill also provides for mechanisms for dispute resolution and oversight by the national and county legislatures. The enactment of this Bill will ensure effective and efficient service delivery to the people of Kenya.

Overview of the clauses

PART I of the Bill provides for the preliminary issues including the short title, the interpretation, the objects of the Act, the guiding principles and the application of the Act.

PART II of the Bill provides for the scope of concurrent functions as provided for in Article 186, 191 and accordingly un-bundled as provided in the Schedule to the Act. The cabinet Secretary can through a Gazette Notice and upon consultation with the Council of Governors and Parliament, amend the Schedule to the Act. The part also provides for the coordination framework and establishes a national coordination framework and a county coordination framework for the performance of concurrent functions. The part lastly provides for administrative measures relating to reporting, oversight and funding of the coordination framework.

PART III of the Bill provides for the general provisions which include the Regulation making authority, transition of existing coordination framework into the framework provided in the Bill and capacity building with regards to performance of concurrent functions.

Constitutional Statements

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

The Bill delegates legislative powers to the Cabinet Secretary to make regulations to operationalize the provisions of the Bill upon enactment. The Bill does not contain any provisions limiting any fundamental rights or freedoms.

Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution

The Bill is a Money Bill in terms of Article 114 of the Constitution. The enactment of this Bill will occasion additional expenditure of public funds.

Statement as to whether the Bill concerns a County Government

The Bill concerns the County Governments within the meaning of Article 110 and of the Fourth Schedule of the Constitution.

Dated....., 2024.

*Legislative Proposal by: **The Cabinet Secretary,
Intergovernmental Relations.***