REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

BILLs, 2012

NAIROBI, 28th September, 2012

CONTENT

Bill for Introduction into the National Assembly —

The Elections (Amendment) (No. 2) Bill, 2012 .................................. 3063

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THE ELECTIONS (AMENDMENT) (NO. 2) BILL, 2012

A Bill for

AN ACT of Parliament to amend the Elections Act, 2011.

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Elections (Amendment) (No. 2) Act, 2012 and shall be deemed to have come into operation on 3rd October, 2012.

2. Section 34 of the Elections Act is amended in subsection (8) by deleting the words “have been a member of the political party for at least three months preceding” and substituting therefor the words “be a person who is a member of the political party on”

MEMORANDUM OF OBJECTS AND REASONS

The main object of this Bill is to amend the Elections Act, 2011 to remove the requirement at section 34 (8) that a person who is nominated by a political party to contest for election as member of Parliament or of a county assembly) shall have been a member of the political party for at least three months preceding the date of submission of the party list by the political party.

As section 34(8) currently stands, despite section 28 of the Act requiring the party membership list to be submitted two months before the election, the provision would require that any person who intends to contest for elections in the forthcoming elections would have to be a member of the party under which he or she wishes to contest, not later than 4th October, 2012. This would mean that in the case of a member of Parliament or of a local authority, he or she would need to resign from Parliament or the local authority on or before 4th October, 2012. This would be so, despite the fact that the term of the current Parliament runs up to 14th January, 2013. Considering the large number of legislators and councillors that may be affected, this provision, left un amended is likely to distort if not
altogether paralyze the work of these key institutions of governance.

The proposed amendment will harmonize section 34(8) with section 28 of the Act which requires that political party that nominates a person for any election under the Act must submit to the Independent Electoral and Boundaries Commission a party membership list of the party at least two months before the date of the general elections. This would work to the reasonable date of 4th of January, 2012.

The enactment of this Bill will not occasion additional expenditure of public funds.

Dated the 25th September, 2012.

ISAAC RUTO,
Member of Parliament.

Section 38 of the Elections Act (No. 24 of 2011) which it is proposed to amend—

34. (1) The election of members for the National Assembly, Senate and county assemblies for party list seats specified under Articles 97 (1) (c) and 98 (1) (b) (c) and (d) and Article 177 (1) (b) and (c) of the Constitution shall be on the basis of proportional representation and in accordance with Article 90 of the Constitution.

(2) A political party which nominates a candidate for election under Article 97 (1) (a) and (b) shall submit to the Commission a party list in accordance with Article 97 (1) (c) of the Constitution.

(3) A political party which nominates a candidate for election under Article 98 (1) (a) shall submit to the Commission a party list in accordance with Article 98 (1) (b) and (c) of the Constitution.

(4) A political party which nominates a candidate for election under Article 177 (1) (a) shall submit to the Commission a party list in accordance with Article 177 (1) (b) and (c) of the Constitution.

(5) The party lists under subsection (2), (3) and (4) shall be submitted in order of priority.
(6) The party lists submitted to the Commission under this section shall be in accordance with the constitution or nomination rules of the political party concerned.

(7) The party lists submitted to the Commission shall be valid for the term of Parliament.

(8) A person who is nominated by a political party under subsection (2), (3) and (4) shall have been a member of the political party for at least three months preceding the date of submission of the party list by the political party.

(9) The party list may contain a name of any Presidential or Deputy Presidential candidate nominated for an election under this Act.

(10) A party list submitted for purposes of subsection (2), (3), (4) and (5) shall not be amended during the term of Parliament or the county assembly, as the case may be, for which the candidates are elected.