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THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (AMENDMENT) BILL, 2016

A Bill for

AN ACT of Parliament to amend the Independent Electoral and Boundaries Commission Act, 2011 and for connected purposes.

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Independent Electoral and Boundaries Commission (Amendment) Act, 2016.

2. Section 7 of the Principal Act is amended in subsection (2) by deleting the words “full-time” and substituting therefor the words “part-time”.

3. Section 33 of the Principal Act is amended by inserting the following new paragraphs immediately after paragraph (3)—

(4) The Commission shall on the basis of an objective criteria, vet all senior officers to determine their suitability to continue to serve.

(5) The services of any officer who fails to meet the vetting criteria established by the Commission under this section shall be terminated in accordance with the contract of employment.

4. First Schedule of the Principal Act is amended by deleting paragraph (1) and substituting therefor the following new paragraph—

"1. (1) The President shall, with the approval of the National Assembly, appoint a Selection Panel comprising of—

(a) two persons, being one man and woman, nominated by the majority party or coalition of parties in the in the National Assembly;"
(b) two persons, being one man and woman, nominated by the minority party or coalition of parties in the National Assembly;

(c) Subject to subsection (1A), three persons nominated by the President from a list submitted by the Public Service Commission.

(2) The Clerk of the National Assembly shall invite the leader of the majority party and the leader of the minority party to forward names of persons who qualify for nomination under subsection (1) (a) and (b) within seven days.

(1A) The Public Service Commission shall, within fourteen days —

(a) invite applications from persons who qualify for nomination and appointment by advertisement in at least two daily newspapers of national circulation;

(b) consider the applications received to determine their compliance with the provisions of the Constitution and this Act;

(c) shortlist the applicants;

(d) conduct interviews of the shortlisted persons in public;

(e) shortlist three qualified applicants for each vacancy; and

(f) forward the names of the qualified persons to the President.

(2) The President shall, within fourteen days of receipt of the names of successful applicants forwarded under paragraph (1) (f), select persons to fill the vacancy in the Selection Panel and forward the names of the persons to the National Assembly for approval.
(3) The National Assembly shall, within twenty-one days of the day it next sits after receipt of the names of—

(a) two persons nominated in accordance with sub paragraph (1) (a);

(b) two persons nominated in accordance with sub paragraph (1) (b); and

(c) three persons nominated by the President.

(4) Where the National Assembly Approves the applicants, the Speaker of the National Assembly shall forward the names of the approved applicants to the President for appointment.

(5) The President shall, within seven days of receipt of the names of the approved applicants from the National Assembly, by notice in the Gazette appoint the applicant to the Commission.

(6) Where the National Assembly rejects a nomination under paragraph (2), the Speaker shall within three days communicate its decision to the President and request the President to submit fresh nominations.

(7) Where a nominee is rejected by the National Assembly under paragraph (6) the President shall within seven days, submit to the National Assembly a fresh nomination from amongst the persons shortlisted and forwarded by the Public Service Commission under subsection (1) (f).

(8) If the National Assembly rejects any or all of the subsequent nominees submitted by the President for approval under subsection (1), the provisions of paragraphs (1) and (2) shall apply.

(9) In short listing, nominating or appointing persons to fill a vacancy in the Selection Panel, the Public Service Commission, the National Assembly and the President shall ensure that not more than two-thirds of the members are of the same gender.
(1B) A person shall be qualified for appointment as a member of the Selection Panel if that person—

(a) meets the requirements of Chapter Six of the Constitution;

(b) holds a degree from a University recognized in Kenya;

(c) has had a distinguished career in their respective field.

(3) A person shall not be qualified for appointment as a member if the person—

(a) holds any State office;

(b) has at any time held office as a member of the Independent Electoral and Boundaries Commission or any of its predecessor Commissions;

(c) is a member of a governing body of a political party;

(d) is an undischarged bankrupt;

(e) has been convicted of a felony; or

(f) has been removed from public office for contravening the provisions of the Constitution or any other law.

5. The First Schedule of the Principal Act is amended in paragraph (3) by deleting sub paragraph (6).

6. The First Schedule of the Principal Act is amended in paragraph (4) by—

(a) deleting the word “Parliamentary” and substituting therefor the word “Departmental”;

(b) deleting the words “fourteen” and substituting therefor the word “twenty-one”; and

(c) deleting the word “eight” and substituting therefor the word “four”.

Amendment of the First Schedule to Act No. 9 of 2011.
MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to amend the Independent Electoral and Boundaries Commission Act (No. 9 of 2011), in order to reorganize the procedure for appointment of chairperson and members of the Commission. The Bill establishes a Selection Panel that shall be drawn from parliamentary parties on account of their relative strength in the National Assembly. This will ensure that the process of recruitment of the Chairperson and Members of the Commission is representative and that it satisfies all actors in the political arena and instils faith of all in the Commission.

The structure of the Bill is as follows—

Clause 1 is the short title.

Clause 2 seeks to amend section 5 by reducing the membership of the Commission from eight members to four members.

Clause 3 proposes to appoint the members of the Commission on part-time basis as opposed to the appointment as full-time commissioners.

Clause 4 proposes to establish vetting criteria for all officers who have served in the Commission for more than two years to ensure that they are fit and proper to continue holding office.

Clause 5 proposes to establish a Selection Panel appointed by the President, comprising of two persons nominated by the largest party or coalition of parties in the National Assembly, two persons nominated by the second largest party or coalition of parties in the National Assembly and three persons nominated by the Public Service Commission.

Clause 6 seeks to empower the Selection Panel to nominate and forward to the President nine persons qualified to be appointed as members of the Commission and eliminates the provision relating to the first Selection Panel of the first Commission.

Clause 7 proposes that the responsible Departmental Committee shall consider the nominees received and recommend to the National Assembly one person for approval for appointment as chairperson and four persons for approval for appointment as members of the Commission.

This Bill does not contain provisions limiting fundamental rights and freedoms.
This Bill does not affect the functions of County Governments as set out in the Fourth Schedule of the Constitution and is therefore not a Bill concerning counties.

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

SAMUEL CHEPKONG’A,
Chairperson,
Justice and Legal Affairs Committee.
Section 5 of the Independent Electoral and Boundaries Commission Act which is proposed to amend—

5. Composition and appointment of the Commission

(1) The Commission shall consist of a chairperson and eight other members appointed in accordance with Article 250 (4) of the Constitution and the provisions of this Act.

(2) Subject to section 35, the chairperson and members of the Commission shall be appointed in accordance with the procedure set out in the First Schedule.

(3) The procedure set out in the First Schedule shall apply, with the necessary modifications, whenever there is a vacancy in the Commission.

(4) The chairperson and members of the Commission shall perform their functions as provided in the Constitution, and the secretariat shall perform the day to day administrative functions of the Commission.

Section 7 of the Independent Electoral and Boundaries Commission Act which is proposed to amend—

7. Term of office

(1) The members of the Commission shall be appointed for a single term of six years and shall not be eligible for re-appointment.

(2) The members of the Commission shall serve on a full-time basis.

(3) The Commission shall be properly constituted notwithstanding a vacancy in its membership.

First schedule of the Independent Electoral and Boundaries Commission Act which is proposed to amend—

1. Selection Panel

(1) Within fourteen days of the commencement of this Act, the being one man and one woman, nominated by the President; President shall, in consultation with the Prime Minister and with the approval of the National Assembly, appoint a Selection Panel comprising of—

(a) Two persons; being one man and one woman, nominated by the President;

(b) two persons, being one man and one woman, nominated by the Prime Minister;

(c) one person nominated by the Judicial Service Commission;
(d) one person nominated by the Kenya Anti-Corruption Advisory Board; and

(e) one person nominated by the Association of Professional Societies of East Africa.

(2) The respective nominating bodies under subparagraph (1)(c), (d) and (e) shall, for purposes of making their nominations, each propose and submit two names of nominees, being one man and one woman, to the Clerk of the National Assembly.

(3) The National Assembly shall, upon receipt of the names of the nominees, consider them and— (a) approve one of the nominees; or (b) reject both of the nominees.

(4) The Clerk of the National Assembly shall notify the respective nominating bodies of the approval or rejection under subparagraph (3).

(5) If the National Assembly approves a nominee, the Clerk of the National Assembly shall forward the name of the nominee to the President and the President shall appoint the nominee as a member of the Selection Panel.

(6) If the National Assembly rejects the names of both nominees submitted by a nominating body, the Clerk of the National Assembly shall request the nominating body to submit the names of new nominees to the National Assembly for consideration and subparagraphs (2), (3), (4) and (5) shall apply, with necessary modifications, to the consideration of the new nominees.

(7) Subject to subparagraph (8), whenever a vacancy arises in the Commission, the President shall, within twenty-one days of the vacancy, with the approval of the National Assembly, appoint a Selection Panel consisting of the persons listed in subparagraph (1) using, with necessary modifications, the procedure detailed in subparagraphs (1), (2), (3), (4), (5) and (6).

(8) After the first elections under the Constitution, the persons to be nominated under subparagraph (1)(b) shall be nominated by the President.

(9) The Selection Panel shall elect a chairperson and vice-chairperson from amongst its number.

(10) Subject to the provisions of this Schedule, the Selection Panel shall determine its own procedure.

(11) The Public Service Commission shall provide facilities and any support required by the Selection Panel in the performance of its functions.
First schedule of the of the Independent Electoral and Boundaries Commission Act which is proposed to amend—

3. Selection of nominees

(1) The Selection Panel shall, within seven days of its convening under paragraph 1, invite applications from qualified persons and publish the names of all applicants and their qualifications in the Gazette, two newspapers of national circulation and on the Public Service Commission’s website.

(2) The Selection Panel shall consider the applications, shortlist and interview the applicants.

(3) The interviews to be conducted under subparagraph (2) shall be conducted in public.

(4) After carrying out the interviews, the Selection Panel shall select three persons qualified to be appointed as chairperson and thirteen persons qualified to be appointed as members of the Commission and shall forward these names to the President for nomination of one person for appointment as the chairperson and eight persons for appointment as members.

(5) The President shall forward the list of nominees to the National Assembly for vetting and approval.

(6) For the purposes of the appointment of the first selection panel and the first Commission, the President shall act in consultation with the Prime Minister in accordance with the Constitution.

First schedule of the of the Independent Electoral and Boundaries Commission Act which is proposed to amend—

4. Nomination by Parliamentary Committee

The Parliamentary Committee shall, within fourteen days of receipt of the names forwarded under paragraph 3(5), consider the names received and recommend to the National Assembly one person for approval for appointment as chairperson and eight persons for approval for appointment as members of the Commission.