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PARLIAMENT OF KENYA



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Hon. Kaironge, MP
Chairperson
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THE NATIONAL ASSEMBLY

12TH PARLIAMENT - SECOND SESSION - 2018

DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND NATIONAL
SECURITY

REPORT ON THE ASSUMPTIONS OF THE OFFICE OF THE COUNTY
GOVERNOR BILL (SENATE BILL No.1 of 2018

DIRECTORATE OF COMMITTEE SERVICES

CLERK'S CHAMBERS,
PARLIAMENT BUILDINGS,
NAIROBI

NOVEMBER 2018

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CHAIRPERSON'S FOREWORD

Hon. Speaker,

The Bill was read for the first time on Thursday 5th July 2018 and subsequently committed to the Committee pursuant to the provisions of Standing Order 127(1); it is on this basis therefore that the Committee makes this Report. The Committee received submissions from stakeholders before the adoption of this report.

The Bill seeks to provide for the procedure and ceremony for the assumption of the Office of Governor by the governor – elect; and for connected purposes.

Standing Order 127(3) provides that “the Departmental Committee to which a bill is committed shall facilitate public participation and shall take into account the views and recommendations of the public when the Committee makes a report to the House”

The Clerk of the National Assembly published an advertisement on print media inviting the public to present submissions and memoranda on the Assumption of office of the County Governor Bill (Senate Bill No. 1 of 2018) The submissions/memoranda were to be received on or before Friday 20th July 2018 at 5:00 pm.

The Committee received submissions from the Ministry of Devolution and the Office of the Attorney General.

May I take this opportunity to thank all Members of the Committee for their input and valuable contributions during the deliberations of the Bill.

I also take this opportunity on behalf of the Committee to thank the Offices of the Speaker and the Clerk of the National Assembly for the support accorded to the Committee during the deliberations of the Bill. Further, the Committee wishes to thank all the stakeholders for their input of the Bill.

On behalf of the Committee and pursuant to the provisions of Standing Order 199(6) it is my pleasant duty to table the Report of the Departmental Committee on Administration and National Security on the Assumption of the Office of the County Governor Bill (Senate Bill No. 1 of 2018).

SIGNED.....

(HON. PAUL KOINANGE, MP)

(CHAIRPERSON)

**DEPARTMENTAL COMMITTEE ON ADMINISTRATION & NATIONAL
SECURITY**

DATE.....*13th November 2018.*

EXECUTIVE SUMMARY

This report contains the Committee's proceedings during the consideration of the Assumption of the Office of the County Governor Bill (Senate Bill No. 1 of 2018). The Bill was read the first time on Thursday 5th July 2018.

The Clerk published an advertisement on print media inviting the public to present submissions and memoranda on the Assumption of the Office of the County Governor Bill (Senate Bill No.11 of 2017)

The Committee considered the Assumption of the Office of the County Governor Bill (Senate Bill No. 1 of 2018) on Tuesday 7th August 2018, Friday 26th October 2018 and adopted the report on Tuesday 13th November 2018.

The Committee having considered the Assumption of the Office of the Governor Bill (Senate Bill No. 11 of 2017 will be proposing amendments in—

1. That the Bill be amended in **Clause 1** by inserting the defining of the word “county public officer” in its proper sequence—

““county public officer “has the meaning assigned to it under the County Governments Act.

Rational: there is need to define who a county officer is for clarity purposes

2. Clause 5 be amended in sub clause 2 by inserting the following new paragraph immediately after paragraph (f)

“(fa) a representative of the Ministry responsible for matters related to devolution;

There is need to include the Ministry of Devolution in the Committee since that is the Ministry responsible for matter related to devolution and offers technical assistance to the Ministries.

3. Clause 6 of the Bill be amended in sub clause (1) by deleting the words **“to be at the service of the Governor elect”** appearing in paragraph (c) and substituting therefor the words **“for the Governor-elect”**

The staff serve the office and not at the service of an individual.

4. That the Bill be amended in **clause 16** by-

(a) renumbering the proposed clause as sub-clause (1);

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

“(c) to swearing of a speaker of a county assembly who assumes office under Article 182(5) of the Constitution”

(c) inserting the following new sub clause after the proposed clause—

“(2) Upon nullification of an election of a county governor and a receipt of the notification by a relevant speaker, the speaker of a county assembly shall assume office as a governor within seven days and an election shall be held pursuant to Article 182(5) of the Constitution.”

There is need to provide for an instance where a speaker assumes office as a speaker as per the provisions of the Constitution.

5. The Bill be amended in clause 21 on funding for assumption office by deleting the words “assumption of office of a governor” and substitute with the “assumption of office of the governor committee”

This is to clarify on who funds the assumption of office committee

6. That the Bill be amended in Clause 23 by inserting the following new subsection immediately after the proposed subsection (1B)—

“(1C) Where a vacancy arises as contemplated under section (1A), the speaker of a county assembly shall act as a governor and an election shall be held pursuant to Article 182(5) of the Constitution.”

1.0 PREFACE

1.1 Establishment and mandate of the Committee

The Departmental Committee on Administration and National Security is established under ***Standing Order 216*** with the mandate to:

- a) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
- b) study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation;
- c) **study and review all the legislation referred to it;**
- d) study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
- e) investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary and as may be referred to them by the House;
- f) vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No.204 (Committee on appointments);
- g) examine treaties, agreements and conventions;
- h) make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;

- i) consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
- j) examine any questions raised by Members on a matter within its mandate.

In executing its mandate, the Committee oversees the following Ministries and Departments:

- i) The Ministry of Interior & Coordination of National Government-
 - a) State Department of Interior;
 - b) State Department of Border Control, Immigration and Registration of Persons; and
 - c) State Department of Correctional Services.
- ii) The National Police Service Commission;
- iii) The Independent Policing Oversight Authority; and
- iv) The Public Service Commission.

In Accordance with the Schedule II of the Standing Orders, the Committee is mandated to oversight the—

- i) National Security;
- ii) Police Services;
- iii) Home Affairs;
- iv) Public Administration;
- v) Public Service;
- vi) Prisons; and
- vii) Immigration.

1.1 Committee Membership

The Committee comprises of the following members;

1. Hon. Paul Koinange, MP - **(Chairperson)**
2. Hon. John Waluke, MP - **(Vice-Chairperson)**
3. Hon. Athanas Wamunyinyi, MP
4. Hon. Peter Kaluma, MP
5. Hon. Makali Mulu, MP
6. Hon. AdumaOwuor, MP
7. Hon. Didmus Wekesa Barasa Mutua, MP
8. Hon. Geoffrey Kingagi Muturi, MP
9. Hon. Marselino Malimo Arbelle, MP
10. Hon. Tecla Chebet Tum, MP
11. Hon. Josphat Kabinga Wachira, MP
12. Hon. Nimrod MbithukaMbai, MP
13. Hon. George Theuri, MP
14. Hon. Martin Deric Ngunjiri Wambugu, MP
15. Hon. Abdi Omar Shurie, MP
16. Hon. Halima Mucheke, MP
17. Hon. Peter Francis Masara, MP
18. Hon. Ahmed Kolosh Mohammed, MP
19. Hon. Edward Oku Kaunya, MP

1.2 Committee Secretariat

1. Mr. Abdullahi Aden - Senior Clerk Assistant
2. Mr. Joshua Ondari - Clerk Assistant
3. Ms. Clarah Kimeli - Senior Legal Counsel
4. Mr. Edison Odhiambo - Fiscal Analyst III

2.0 BACKGROUND

The Bill seeks to provide for the procedure and ceremony for the assumption of the Office of Governor by the governor-elect; and for connected purposes.

- Section 30(1) of the County Government Act provides that the governor shall take and prescribe oath and affirmation as set out in the schedule;
- The current law does not provide for the actual procedure of the assumption of office by a governor;
- The proposed legislation is a mirror of the Assumption of Office by the President

Article 109 of the Constitution provides that Parliament shall exercise its legislative power through Bills passed by the House and assented to by the

2.1 Public access and participation.

Article 118 (1) of the Constitution provides that; Parliament shall—

- (a) Conduct its business in an open manner, and its sittings and those of its committees shall be open to the public; and
- (b) Facilitate public participation and involvement in the legislative and other business of Parliament and its committees.

- (c) (2) Parliament may not exclude the public, or any media, from any sitting unless in exceptional circumstances the relevant Speaker has determined that there are justifiable reasons for the exclusion.

Pursuant to Article 118 of the Constitution and Standing Order 127(3) the committee invited memoranda from the public vide a notice in the local dailies.

One of the most important features of the Country constitutional framework is the requirement of public participation in governance and other administrative activities. Specifically, the provisions of the following Articles are pertinent.

- i) Article 10 recognizes public participation as one of the national values;
- ii) Article 27 provides for equal treatment of all persons, while affirmative action in governance is provided for in Articles 54 and 56 of the Constitution;
- iii) Article 35 provides for the right of access to information held by the State or another person which is necessary for the exercise of any right or fundamental freedom;
- iv) Article 118 requires Parliament to conduct its business in an open manner and to facilitate public participation and involvement in the legislative and other business of Parliament and its committees. It

also prohibits Parliament from denying the public and media access into its sittings unless there are any justifiable reasons.

The Constitution obligates the State and all State organs to ensure adequate public consultation on all public policies, legislation or any decision that is likely to impact on the people of Kenya. Failure to factor in the mandatory requirement of public participation exposes the legislative instrument or policy framework to constitutional challenges of legitimacy, hence making it actionable for unconstitutionality in a court of law.

Effective public consultation is based on principles of openness, transparency, integrity and mutual respect. The open process facilitates acceptability amongst the key stakeholders, subsequently facilitating efficient and effective implementation of the legislative instrument.

2.2 Communication and committal to committee

Pursuant to Standing order 127 (1) of the National Assembly the Bill was read for the first time on Thursday 5th July 2018 and subsequently committed to the Departmental Committee on Administration and National Security and report to the House.

2.3 Memoranda

The Clerk published an advertisement on print media inviting the public to present submissions and memoranda on the Assumption of the Office of the County Governor (Amendment) Bill (Senate Bill No. 1 of 2018)

The committee received submissions from the Ministry of Devolution and ASAL, the Counsel of Governors and the Office of the Attorney General.

2.4 Committee proceedings

The Committee Considered the Assumption of the Office of the County Governor Bill (Senate Bill No. 1 of 2018) on Tuesday 7th August 2018, Friday 26th October 2018 and adopted the report on Tuesday 13th November 2018.

3.0 SUMMARY OF THE ASSUMPTION OF OFFICE OF THE COUNTY GOVERNOR BILL (SENATE BILL NO. 1 of 2018)

The Bill was read for the first time on Thursday 5th July 2018 and subsequently committed to the Committee pursuant to the provisions of Standing Order 127(1), it is on this basis that the Committee makes this Report. The Committee received submissions from stakeholders before the adoption of this report.

The Bill seeks to provide for the procedure and ceremony for the assumption of the Office of Governor by the Governor-elect; and for connected purposes.

- Section 30(1) of the County Government Act provides that the governor shall take and prescribe oath and affirmation as set out in the schedule;
- The current law does not provide for the actual procedure of the assumption of office by a governor;
- The proposed legislation mirrors the Assumption of Office by the President of the Republic of Kenya;
- Clauses 2-21 provide for the procedure of assumption;
- Clause 22 repeals section 30 of the (1) Act; and
- Clause 23 amends section 86 of the Elections Act to provide for where the election of a county governor is nullified by the Court.

The Clerk published an advertisement on print media inviting the public to present submissions and memoranda on the Assumption of Office of the County Governor Bill (Senate Bill No. 1 of 2018)

The Committee received submissions from the Ministry of Devolution and ASAL, and the Office of the Attorney General.

3.1 SUBMISSIONS FROM THE OFFICE THE MINISTRY OF DEVOLUTION AND ASAL

The Ministry recommends the following;

1. With regard to Clause 12 the Ministry recommends a standard certificate of inauguration to be prescribed in the schedule for purpose of uniformity
2. With regard to Clause 24 the Ministry is of the view that, making of regulations for the better carrying into effect of the provision of the Act is a policy issue and the mandate should be given to the cabinet Secretary, Ministry of Devolution and ASAL to make standard regulations that will apply to Counties.

In light of the above it is the view of the Committee that the oath of office is the most important aspect of assumption. Each county therefore can come up with their own unique certificate. With regard to regulations to be made under this Act, the Committee is of the view that the Act if enacted is purely implemented by the counties and any regulation that may be made may arise in the cause of implementation thus each county can develop regulations to that effect.

3.2 SUBMISSIONS FROM THE OFFICE OF THE ATTORNEY GENERAL OBSERVATIONS ON THE BILL

| CLAUSE | A.G OBSERVATION | COMMITTEE OBSERVATION |
|---------------|------------------------|------------------------------|
| | | |

| | | ON THE SAME |
|------------|--|--|
| Long title | There is need to include the Deputy Governor in the long title” | The office to be assumed is that of the governor irrespective of who assumes it; it may be a deputy governor or a speaker of a county assembly under the provisions of Article 182(5). |
| Clause 1 | There is need to define the word “county public officer” | Though already defined in the county government Act, it does no harm in defining it. |
| Clause 5 | There is need to amend clause 5 (h) and (i) to allow the heads of intelligence and national police to appoint representatives. | Use of the word “representative” is sufficient; it connotes an office holder appointing a representative. |

4.0 COMMITTEE OBSERVATIONS

1. The Bill seeks to cure a *lacuna* in the law as the existing provisions do not provide for the procedure of assumption of office by a governor.
2. In Clause 5 there is need to include the Ministry of Devolution which gives technical assistance to counties and the intergovernmental relations technical Committee that forms a frameworks of consultations between counties.
3. The Committee notes that Article 182(5) of the Constitution provides for an instance where a vacancy occurs in the office of a county

governor and the deputy county governor, the speaker of a respective county is required to assume office.

4. There is need to include the swearing in of a speaker of a county assembly as an acting governor in circumstances contemplated under Article 182(5) of the Constitution.
5. In relation to Clause 23, the Committee observes that —
Section 86 of the Elections Act provides that

An election court shall, at the conclusion of the hearing of an election petition, determine the validity of any question raised in the petition, and shall certify its determination to the Commission which shall then notify the relevant Speaker.

The timelines proposed in the amendment to the Elections Act contradicts Article 182(5) of the Constitution since time runs after the speaker is sworn in.

Article 182 of the Constitution;

(1) The office of the county governor shall become vacant if the holder of the office--

(a) dies;

(b) resigns, in writing, addressed to the speaker of the county assembly;

(c) ceases to be eligible to be elected county governor under Article 180(2);

(d) is convicted of an offence punishable by imprisonment for at least twelve months; or

(e) is removed from office under this Constitution.

(2) If a vacancy occurs in the office of county governor, the deputy county governor shall assume office as county governor for the remainder of the term of the county governor.

(3) If a person assumes office as county governor under clause (2), the person shall be deemed for the purposes of Article 180 (7)-

(a) to have served a full term as county governor if, at the date on which the person assumed office, more than two and a half years remain before the date of the next regularly scheduled election under Article 180 (1); or

(b) not to have served a term of office as county governor, in any other case.

(4) If a vacancy occurs in the office of county governor and that of deputy county governor, or if the deputy county governor is unable to act, the speaker of the county assembly shall act as county governor.

(5) If a vacancy occurs in the circumstances contemplated by clause (4), an election to the office of county governor shall be held within sixty days after the speaker assumes the office of county governor.

(6) A person who assumes the office of county governor under this Article shall, unless otherwise removed from office under this Constitution, hold office until the newly elected county governor assumes office following the next election held under Article 180 (1).

6. There is need to provide for the duties which a Speaker can perform in the course of acting as a governor.

5.0 COMMITTEE RECOMMENDATIONS

1. From the above observations, the Committee shall propose amendment as follows—

That the Bill be amended in **Clause 1** by inserting the defining of the word “county public officer” in its proper sequence—

““county public officer “has the meaning assigned to it under the County Governments Act.

Rational: there is need to define for clarity purposes

2. Clause 5 be amended in sub clause 2 by inserting the following new paragraph immediately after paragraph (f)

“(fa) a representative of the Ministry responsible for matters related to devolution;

There is need to include the Ministry of Devolution in the Committee since that is the Ministry responsible for matter related to devolution and offers technical assistance to the Ministries.

3. Clause 6 of the Bill be amended in sub clause (1) by deleting the words “**to be at the service of the Governor elect**” appearing in paragraph (c) and substituting therefor the words “**for the Governor-elect**”

The staff serve the office and not at the service of an individual.

4. That the Bill be amended in **clause 16** by-

(d) renumbering the proposed clause as sub-clause (1);

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

“(c) to swearing of a speaker of a county assembly who assumes office under Article 182(5) of the Constitution”

(f) inserting the following new sub clause after the proposed clause—

“(2) Upon nullification of an election of a county governor and a receipt of the notification by a relevant speaker, the speaker of a county assembly shall assume office as a governor within seven days and an election shall be held pursuant to Article 182(5) of the Constitution.”

There is need to provide for an instance where a speaker assumes office as a speaker as per the provisions of the Constitution.

5. The Bill be amended in clause 21 on funding for assumption office by deleting the words “assumption of office of a governor” and substitute with the “assumption of office of the governor committee”

This is to clarify on who funds the assumption of office Committee

6. That the Bill be amended in Clause 23 by inserting the following new subsection immediately after the proposed subsection (1B)—

“(1C) Where a vacancy arises as contemplated under section (1A), the speaker of a county assembly shall act as a governor and an election shall be held pursuant to Article 182(5) of the Constitution.”