

**THE ASSUMPTION OF THE OFFICE OF
GOVERNOR BILL, 2016
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SCHEDULE

**THE ASSUMPTION OF THE OFFICE OF
GOVERNOR BILL, 2016**

A Bill for

AN ACT of Parliament to provide for the procedure and ceremony for the assumption of the Office of Governor by the Governor-elect; and for connected purposes.

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Assumption of the Office of Governor Act, 2016. Short title.

2. In this Act,— Interpretation.

“commission” means the Independent Electoral and Boundaries Commission established under Article 88 of the Constitution;

“committee” means the Assumption of the Office of Governor Committee established under section 5;

“Governor-elect” means the person elected as Governor under Article 180 (1) of the Constitution and who has not assumed office; and

“public officer” has the meaning assigned to it under Article 260 of the Constitution.

3. The provisions of this Act shall apply — Application.

(a) to the assumption of the Office of Governor by a Governor-elect; and

(b) with necessary modifications, to the assumption of the Office of the Governor by a Deputy Governor or a speaker of a county assembly under Article 182(2) and (4), respectively.

4. In the performance of the functions and exercise of powers under this Act, the committee shall be guided by the values and principles set out in Article 10 of the Constitution. Guiding principles.

**PART II – ESTABLISHMENT OF ASSUMPTION OF
THE OFFICE OF GOVERNOR COMMITTEE**

5. (1) There is established a committee to be known as the Assumption of the Office of Governor Committee. Establishment of the Assumption of the Office of Governor

(2) The committee shall be an ad hoc committee and shall consist of— Committee.

- (a) the County Secretary who shall be the chairperson;
- (b) the County Attorney;
- (c) the Chief Officer in the department responsible for matters relating to the county public service;
- (d) the Chief Officer in the department responsible for matters relating to information and communication;
- (e) the Chief Officer in the department responsible for matters relating to finance;
- (f) the Chief Officer in the department responsible for matters relating to public works, roads and transport;
- (g) the County Commissioner;
- (h) the head of the National Police Service in the county.
- (i) the head of the National Intelligence Service in the county;
- (j) the Clerk of the county assembly;
- (k) two persons nominated by the Governor-elect;

(3) The Chief Officer in the department responsible for matters relating to the county public service shall be the secretary to the committee.

(4) The chairperson of the committee shall convene the first meeting of the committee thirty days before the date of the general elections.

(5) A vacancy in the membership of the committee shall not affect the decisions of the committee.

(6) The quorum for the conduct of business of a meeting of the committee shall be one-third of all the members of the committee.

(7) The term of office of a committee established under this section shall lapse upon the submission of the report of the committee to the county assembly in accordance with section 16.

- 6.** (1) The functions of the committee shall be to—
- (a) facilitate the handing over process by the outgoing Governor to the Governor-elect;
 - (b) organise for the security of the Governor-elect;
 - (c) organise for the necessary facilities and personnel for the Governor-elect;
 - (d) co-ordinate the briefings of the Governor-elect by relevant county public officers;
 - (e) facilitate communication between the outgoing Governor and the Governor-elect;
 - (f) prepare the programme and organise for the swearing-in ceremony; and
 - (g) carry out any other activity necessary for the performance of its functions under this Act and perform any other function assigned to it under any other written law.

Functions and powers of the committee.

(2) The committee shall have all powers necessary for the execution of its functions under this Act and any other written law.

7. (1) The committee may establish such sub-committees for the better carrying out of its functions under this Act as it may consider necessary.

Sub-committees of the committee.

(2) The committee may co-opt into a sub-committee established under subsection (1), persons whose knowledge and skills are necessary for the effective functioning of the committee.

8. Except as otherwise provided in this Act, the committee shall determine its own procedure.

Procedure of the committee.

PART III – ARRANGEMENTS FOR ASSUMPTION OF OFFICE BY THE GOVERNOR-ELECT

9. Upon the declaration of the final results of the election for the office of Governor by the Commission under Article 180 of the Constitution and section 39 of the Elections Act, the committee shall ensure that the Governor-elect and Deputy Governor-elect are accorded adequate security.

Security detail.

No. 24 of 2011

10. (1) The Governor-elect shall, in consultation with the committee, carry out such preparations as may be necessary for the purpose of assuming office.

County public officers to provide required information.

(2) The Governor-elect may, in carrying out preparations under subsection (1), request, in writing, for such information from a county public officer as the Governor-elect may consider necessary.

(3) A county public officer from whom information is requested under subsection (2) shall provide the information within a reasonable time.

(4) A county public officer who fails to comply with the provisions of this section commits an offence and is liable, on conviction, to a fine not exceeding three hundred thousand shillings or to imprisonment for a term not exceeding one year, or to both.

PART IV – SWEARING-IN CEREMONY

11. (1) The swearing-in of the Governor-elect shall be conducted in a public ceremony before the resident High Court Judge, or, in the absence of the resident High Court Judge, the resident Chief Magistrate.

Swearing-in ceremony.

(2) The Governor-elect shall be sworn-in on the first Tuesday following the twenty-first day after the declaration of the result of the election of county governor.

12. (1) The Governor-elect shall, during the swearing-in ceremony, take and subscribe to the oath or affirmation of office as prescribed in the Schedule.

Taking of oath and signing of certificate of inauguration.

(2) The oath or affirmation under subsection (1) shall be administered not earlier than 10.00 am and not later than 2.00 pm.

(3) Upon taking or subscribing to the oath or affirmation under subsection (1), the Governor shall sign a certificate of inauguration in the presence of the resident High Court Judge or in the absence of the resident High Court Judge, the resident Chief Magistrate.

13. The Deputy Governor-elect shall take and subscribe to the oath or affirmation of office as prescribed in the Schedule.

Swearing-in of the Deputy Governor-elect.

14. The Governor shall, upon the swearing-in of the Deputy Governor-elect, give an inauguration speech to the county.

Inauguration speech.

PART IV – MISCELLANEOUS PROVISIONS

15. The head of the National Police Service in the county shall ensure the provision of adequate security during the conduct of the swearing-in ceremony.

Security.

16. (1) The committee shall, within a period of one month from the date of the swearing-in of the Governor-elect, cause to be prepared a report on the affairs of the committee.

Reports of the committee.

(2) The committee shall submit to the County Assembly the report prepared under subsection (1).

(3) The report shall contain, in respect of the assumption of office by the Governor-elect under this Act—

- (a) the financial statements of the committee;
- (b) a description of the activities of the committee;
- (c) such other statistical information as the committee considers appropriate relating to its mandate; and
- (d) any other information relating to its functions that the committee considers necessary.

(4) The committee shall cause the report to be published in the *Gazette* and in such other manner as the committee may determine.

17. (1) The committee shall publish and publicize all important information within its mandate affecting the county.

Management of information and records.

(2) A request for information in the public interest by a citizen—

- (a) shall be addressed to the chairperson of the committee or such other person as the committee may for that purpose designate;
- (b) may be subject to the payment of a reasonable fee in instances where the committee incurs an expense in providing the information; and
- (c) may be subject to confidentiality requirements of the committee.

(3) Subject to Article 35 of the Constitution, the committee may decline to give information to an applicant where—

- (a) the disclosure of such information is undesirable in the public interest;
- (b) the information requested is at a deliberative stage by the committee;

(c) payment of the prescribed fee has not been made;
or

(d) the applicant has failed to satisfy confidentiality requirements to the committee.

(4) The right of access to information under Article 35 of the Constitution shall be limited in the manner and to the extent specified under this section.

(5) Every member and staff assigned to the committee shall sign a confidentiality agreement.

18. The following provisions of the County Governments Act are repealed—

Repeals.
No. 17 of 2012

(a) section 30(1);

(b) section 32(1); and

(c) the oath of office for the governor/ deputy governor as contained in the First Schedule.

19. The county executive committee member responsible for the county public service may make regulations for the better carrying into effect of the provisions of this Act.

Regulations.

SCHEDULE (s. 12(1), s. 13)

OATHS AND AFFIRMATIONS

OATH OR AFFIRMATION FOR GOVERNOR

I, do swear/solemnly affirm that I shall always truly and diligently serve the people and the Republic of Kenya in the office of the Governor of ----- county; that I shall diligently discharge my duties and perform my functions in the said office; and I will do justice to all in accordance with the Constitution and the Laws of Kenya without fear, favour, affection or ill-will. (In the case of an oath: So help me God).

OATH OR AFFIRMATION FOR DEPUTY GOVERNOR

I, do swear/solemnly affirm that I shall always truly and diligently serve the people and the Republic of Kenya in the office of the Deputy Governor of ----- county; that I shall diligently discharge my duties and perform my functions in the said office; and I

will do justice to all in accordance with the Constitution and the Laws of Kenya without fear, favour, affection or ill-will. (In the case of an oath: So help me God).

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The principal object of this Bill is to provide for the procedure and ceremony for the assumption of the office of Governor by a Governor-elect.

There is presently no legal framework governing the assumption of the office of the Governor. The framework is important as it would ensure a successful and smooth transition into the office of Governor by a Governor-elect.

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

Clause 19 of the Bill delegates legislative power to the county executive committee members for the purpose of giving effect to the provisions of the Act. Further the Bill at clause 17(4) limits the right to access to information as set out in Article 35 of the Constitution in the manner and to the extent set out in clause 17.

Statement on how the Bill concerns county governments

The Bill provides for the procedure and ceremony for the assumption of the office of Governor by a Governor-elect. The Bill therefore concerns counties in terms of Article 110(1)(a) of the Constitution as it has a direct bearing on the functions and powers of a Governor.

Statement that the Bill is not a money Bill, within the meaning of Article 114 of the Constitution

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 20th May, 2016.

PAUL KIMANI WAMATANGI,
Senator.

Provisions of the County Governments Act, No. 17 of 2012 that it is proposed to repeal—

Section 30 of No. 17 of 2012 which it is proposed to amend—

30. Functions and responsibilities of a county governor

- (1) The governor shall take and subscribe to the oath or affirmation as set out in the schedule to this Act before assuming office.
- (2) Subject to the constitution, the governor shall—
 - (a) diligently execute the functions and exercise the authority provided for in the Constitution and legislation;
 - (b) perform such State functions within the county as the President may from time to time assign on the basis of mutual consultations;
 - (c) represent the county in national and international fora and events;
 - (d) appoint, with the approval of the county assembly, the county executive committee in accordance with Article 179(2)(b) for the Constitution;
 - (e) constitute the county executive committee portfolio structure to respond to the functions and competencies assigned to and transferred to each county;
 - (f) submit the county plans and policies to the county assembly for approval;
 - (g) consider, approve and assent to bills passed by the county assembly;
 - (h) chair meetings of the county executive committee;
 - (i) by a decision notified in the county Gazette, assign to every member of the county executive committee, responsibility to ensure the discharge of any function within the county and the provision of related services to the people;
 - (j) submit to the county assembly an annual report on the implementation status of the county policies and plans;
 - (k) deliver annual state of the county address containing such matters as may be specified in county legislation; and
 - (l) sign and cause to be published in the county Gazette, notice of all important formal decisions made by the governor or by the county executive committee.
- (3) In performing the functions under subsection (2), the governor shall—
 - (a) provide leadership in the county's governance and development;

- (b) provide leadership to the county executive committee and administration based on the county policies and plans;
- (c) promote democracy, good governance, unity and cohesion within the county;
- (d) promote peace and order within the county;
- (e) promote the competitiveness of the county;
- (f) be accountable for the management and use of the county resources; and
- (g) promote and facilitate citizen participation in the development of policies and plans, and delivery of services in the county.

Section 32 of No. 17 of 2012 which it is proposed to amend—

32. Functions of the deputy governor

- (1) The deputy governor shall take and subscribe to the oath or affirmation as set out in the schedule to this Act before assuming office.
- (2) The deputy governor shall deputize for the governor in the execution of the governor's functions.
- (3) The governor may assign the deputy governor any other responsibility or portfolio as a member of the county executive committee.
- (4) When acting in office as contemplated in Article 179(5) of the Constitution, the deputy governor shall not exercise any powers of the governor, to nominate, appoint or dismiss, that are assigned to the governor under the Constitution or other written law.
- (5) The governor shall not delegate to the deputy governor any of the functions referred to in subsection (4).

First schedule of No. 17 of 2012 which it is proposed to amend —

FIRST SCHEDULE

[Sections 9(3), 12(2), 31(1), 33(1)) and 39.]

OATHS OF OFFICE

OATH OF OFFICE FOR GOVERNOR/DEPUTY GOVERNOR

I,, do swear/solemnly affirm that I shall always truly and diligently serve the people and the Republic of Kenya in the office of the governor/deputy governor of county; that I shall diligently discharge my duties and perform my functions in the said office, to the best of my judgement; (that (in the case of the deputy governor) I shall at all times, when so required, faithfully and truly give my counsel and advice to the Governor of the county); that I shall do justice to all. (So help me God).

Oath of office for speaker /acting speaker

I,....., having been elected as speaker /acting speaker of the county assembly of County do swear /solemnly affirm that I shall always truly and diligently serve the people and the Republic of Kenya in the office speaker /acting speaker of the county assembly incounty; that I shall respect, uphold, preserve, protect and defend this Constitution of the Republic Kenya; and that I shall do right to all manner of persons in accordance Constitution of Kenya and the laws and conventions ofParliament without fear or favour, affection or ill shall (So help me God).

Oath of office for county assembly clerk

I , do swear/solemnly affirm that I shall always truly and diligently serve the people and the Republic of Kenya in the office of the clerk of the county assembly in county; that I shall diligently discharge my duties and perform my functions in the said office, to the best of my judgment; that I shall at all times, when so required, faithfully and truly give my counsel and advice to the Speaker of the county assembly ofcounty; that I shall do justice to all. (So help me God).

Oath of office for county executive committee member

I , do swear/solemnly affirm that I shall always truly and diligently serve the people and the Republic of Kenya in theoffice the executive committee member of county; that I shall diligently discharge my duties and perform my functions in the said office, to the best of my judgment; that I shall at all times, when so required, faithfully and truly give my counsel and advice to the governor of the county; that I shall do justice to all. (So help me God).

Oath of office for county assembly members

I , do swear/solemnly affirm that I shall always truly and diligently serve the people and the Republic of Kenya in the office of county assembly committee member of county; that I shall diligently discharge my duties and perform my functions in the said office, to the best of my judgment; that I shall at all times, respect, uphold, preserve, protect and defend this Constitution of the Republic of Kenya; and that I shall do right to all manner of persons in accordance with the Constitution of Kenya and the laws and conventions of Parliament, that I shall do justice to all (So help me God).