

**THE PUBLIC APPOINTMENTS
(PARLIAMENTARY APPROVAL) (AMENDMENT)
BILL, 2016**

A Bill for

AN ACT of Parliament to amend the Public Appointments (Parliamentary Approval) Act to provide for the procedure for parliamentary approval of constitutional and statutory appointments where the approval of both Houses of Parliament is required; and for connected purposes.

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Public Appointments (Parliamentary Approval) (Amendment) Act, 2016.

Short title.

2. The Public Appointments (Parliamentary Approval) Act, hereinafter referred to as the “principal Act”, is amended in section 2 by inserting the following new definition immediately after the definition of the word “committee”—

Amendment of section cap. 136.

“**session**” means the sittings of the Senate or the National Assembly, as the case may be, commencing when the House first meets after a general election or on a day provided for by the Standing Orders of that House and terminating when the House adjourns at the end of a calendar year or at the expiry of the term of Parliament.

3. Section 4 of the principal Act is amended by inserting the words “of the relevant House” immediately after the words “before a committee”.

Amendment of section 4 of cap. 136.

4. Section 5 of the principal Act is amended by inserting the following new subsection immediately after subsection (1) —

Amendment of section 5 of cap. 136.

(1A) Where the nomination of a candidate requires the approval of both Houses of Parliament, the appointing authority shall notify the Speakers of both Houses of Parliament.

5. Section 8 of the principal Act is amended by deleting subsection (1) and substituting therefor the following new subsections—

Amendment of section 8 of cap. 136.

(1) Unless otherwise provided in any other law, a Committee shall consider a nomination and table its report in the relevant House within fourteen days from the date on which—

- (a) in the case of the National Assembly, notification of nomination was given under section 5(1) or 5(1A); or
- (b) in the case of the Senate, notification of nomination was given in accordance with section 5(1) or a resolution of the National Assembly was received in accordance with section 8A (c).

(1A) The relevant House shall debate on the report under subsection (1) and make its resolution within seven days of the tabling of the report.

6. The principal Act is amended by inserting the following new section immediately after section 8—

Insertion of
section 8A in cap.
136.

Approval of a
nominee by both
Houses.

8A.Where the nomination of a candidate requires the approval of both Houses of Parliament—

- (a) sections 6, 7, and 8 shall apply to the approval process in each House;
- (b) the approval process shall commence in the National Assembly;
- (c) if the nomination is approved by the National Assembly, the Speaker of the National Assembly shall, within three days of the resolution of the National Assembly, forward the resolution of the National Assembly on the nomination to the Senate for concurrence;
- (d) if the nomination is rejected by-
 - (i) the National Assembly, the Speaker of the National Assembly shall, within three days, forward the resolution of the National Assembly on the nomination to the Senate for noting; and

- (ii) the Senate, the Speaker of the Senate shall, within three days of the rejection, forward the resolution of the Senate on the nomination to the National Assembly for noting;
- (e) a candidate is approved by Parliament if the nomination is approved by both Houses of Parliament;
- (f) if both Houses of Parliament approve a candidate for appointment, the Speaker of the National Assembly shall, within seven days of the resolution, notify the appointing authority of the approval of the candidate;
- (g) where a candidate nominated for appointment is rejected by either House of Parliament-
 - (i) the Speaker of the National Assembly shall, within seven days of the resolution, notify the appointing authority of the rejection of the candidate; and
 - (ii) the appointing authority may nominate another candidate and notify the Speakers of both Houses of Parliament of the nomination and the procedure set out in this Act shall apply to the approval process; and
- (h) a nominating authority shall not resubmit the name of the candidate whose nomination has been rejected by Parliament unless the circumstances relied on for rejection of the appointment of the candidate did not exist at the time of rejection the candidate.

7. The principal Act is amended by deleting section 9 and substituting therefor the following new section-

Amendment of section 9 of Cap. 136.

9. If, after the expiry of the period for consideration specified section 8-

- (a) Parliament has neither approved nor rejected the nomination of a candidate, the candidate shall be deemed to have been approved; or
- (b) either House of Parliament has neither approved nor rejected the nomination of a candidate, that House shall be deemed to have approved the nomination of the candidate and the other House shall proceed accordingly.

8. Section 13 of the principal Act is amended by -

(a) deleting subsection (1) and substituting therefor the following new subsection-

(1) Despite the provisions of this Act or any other written law, where a time is prescribed for doing an act or taking a proceeding by either of the Houses of Parliament relating to a public appointment, the relevant House may, by resolution, extend that time by a period not exceeding fourteen days.

(b) deleting subsection (3) and substituting therefor the following new subsection-

(3) The power of a House of Parliament contemplated under subsection (1) may be exercised-

- (a) only once in a session of the relevant House in respect of a particular matter; and
- (b) only in exceptional circumstances to be certified by the Speaker of the relevant House.

9. Section 12 of the National Police Service Act, is amended -

Amendment of section 11A of 2011.

(a) in subsection (7) by deleting the words “within fourteen days after it first meets after receiving the

name of the nominee” appearing immediately after the words “Parliament shall”; and

(b) by deleting paragraph (10) and substituting therefor the following new paragraph

Cap. 136.

10. Subject to this Act, the Public Appointments (Parliamentary Approvals) Act shall apply to the process of approval of a person nominated under this section.

MEMORANDUM OF OBJECTS AND REASONS

Statement of Objects and reasons

The principal object of this Bill is to amend the Parliamentary Approval (Public Appointments) Act, 2011, Cap. 136, so as to provide for the procedure for parliamentary approval of constitutional and statutory appointees where the approval of both Houses of Parliament is required.

This is in view of the fact the Parliamentary Approval (Public Appointments) Act does not provide for the procedure for the approval of candidates by both Houses of Parliament. A case in point is the appointment of the Inspector General of the National Police Service where the Constitution, in Article 245(2)(a) as read together with section 12 of the National Police Service Act, Cap. 84, requires that a nominee for the office of Inspector General of the National Police Service be approved by Parliament before appointment.

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

The Bill does not delegate legislative power and does not limit fundamental rights and freedoms.

Statement on how the Bill concerns county governments

The State and public offices that are subject to this Bill are offices that would, in the execution of the mandate of the respective offices, affect the function and powers of the county governments. These are offices that are established in the Constitution or in various statutes.

The Bill is therefore one that concerns county governments in terms of Article 110(1)(a) of the Constitution.

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 9th June, 2016.

FATUMA DULLO,
Member, Committee on Legal Affairs and Human Rights.

Section 2 of cap. 136 that the Bill proposes to amend—

2. Interpretation

In this Act, unless the context otherwise requires—

“**appointing authority**” means any person who, under the Constitution or any other law, is required to make an appointment for which the approval of Parliament is required;

“**appointment**” includes any re-appointment to the same body, whether or not in the same capacity;

“**candidate**” means a person who has been proposed or nominated for appointment to a public office;

“**Clerk**” means the Clerk of the relevant House of Parliament; and

“**Committee**” means the relevant committee of Parliament or such other Committee as the Speaker may, for good reasons, direct.

Section 4 of cap. 136 that the Bill proposes to amend—

4. Notification of vetting requirements

Any advertisement inviting applications for nomination for appointment to an office to which this Act applies shall indicate that candidates so nominated shall be required to appear before a committee of Parliament for vetting.

Section 5 of cap. 136 that the Bill proposes to amend—

5. Notification of nomination

(1) An appointing authority shall, upon nominating a person for an appointment to which this Act applies, notify the relevant House of Parliament accordingly.

(2) A notification under subsection (1) shall be—

(a) in writing;

(b) be lodged with the Clerk of the relevant House of Parliament.

(3) A notification of appointment shall be accompanied by information concerning the nominee, having regard to the issues mentioned in section 7.

(4) For purposes of this Act, a notification of nomination shall be deemed to be duly given on the day on which it complies fully with subsections (2) and (3).

Section 8 of cap. 136 that the Bill proposes to amend—

8. Period for consideration and report

(1) Unless otherwise provided in any law, a Committee shall consider a nomination and table its report in the relevant House for debate and

decision within fourteen days from the date on which the notification of nomination was given in accordance with section 5.

(2) At the conclusion of an approval hearing, the Committee shall prepare its report on the suitability of the candidate to be appointed to the office to which the candidate has been nominated, and shall include in the report, such recommendations as the Committee may consider necessary.

Section 9 of cap. 136 that the Bill proposes to amend—

9. Failure of Parliament to act on nomination

If, after expiry of the period for consideration specified in section 8, Parliament has neither approved nor rejected a nomination of a candidate, the candidate shall be deemed to have been approved.

Section 13 of cap. 136 that the Bill proposes to amend—

13 (1) Despite the provisions of this Act or any other written law, where a time is prescribed for doing an act or taking a proceeding by the National Assembly relating to a public appointment, the National Assembly may, by resolution, extend that time by a period not exceeding fourteen days.

(2) Where an extension of time is granted under subsection (1), the doing of all other acts consequential thereto shall be deemed to have been extended accordingly.

(3) The power of the National Assembly contemplated under subsection (I) may be exercised –

- (a) only once in a session of the National Assembly in respect of a particular matter; and
- (b) only in exceptional circumstances to be certified by the Speaker.

Section 12 of cap. 84 that the Bill proposes to amend—

12. Procedure for appointment of the Inspector-General

(1) Pursuant to Article 245 (2)(a) of the Constitution, the Inspector-General of the Service shall be appointed by the President with the approval of Parliament.

(2) The President shall, within fourteen days after a vacancy occurs in the office of the Inspector-General, nominate a person for appointment as an Inspector-General and submit the name of the nominee to Parliament.

- (3) *Deleted by Act No. 19 of 2014, s. 86 (b).*
- (4) *Deleted by Act No. 19 of 2014, s. 86 (b).*
- (5) *Deleted by Act No. 19 of 2014, s. 86 (b).*

(6) *Deleted by Act No. 19 of 2014, s. 86 (b).*

(7) Parliament shall, within fourteen days after it first meets after receiving the names of the nominee—

- (a) consider the suitability of the nominee;
- (b) either approve or reject the nominee for appointment; and
- (c) the Speaker of the National Assembly shall notify the President of the decision of the Parliament.

(8) If Parliament approves the nominee, the President shall, within seven days after receiving the notification to that effect, appoint the nominee as the Inspector-General.

(9) If Parliament rejects a nominee submitted by the President, Parliament shall request the President to submit a new nominee and the provisions of this section shall apply with necessary modifications with respect to the new nominee.

(10) If, after the expiry of a period of thirty days from the date of the nomination of a person for appointment as a Inspector-General under subsection (2), Parliament has neither approved nor rejected the nomination of the person, the nominee shall be deemed to have been approved by the Parliament.