

**THE SALARIES AND REMUNERATION COMMISSION
(AMENDMENT) BILL, 2018**

A Bill for

AN ACT of Parliament to amend the Salaries and Remuneration Commission Act; and for connected purposes.

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Salaries and Remuneration Commission (Amendment) Act, 2018. Short title.

2. Section 7 of the Salaries and Remuneration Commission Act is amended in subsection (2) by inserting the words “within twenty-one days of publication of an advertisement under subsection (1),” immediately after the words “The relevant body shall”. Amendment of section 7 of No. 10 of 2011.

3. Section 9 of the Salaries and Remuneration Commission Act is amended in subsection (1) by inserting the following new paragraph immediately after paragraph (b)— Amendment of section 9 of No. 10 of 2011.

(ba) ceases to hold office by virtue of expiry of the term of the office holder under Article 250 (6) (a) of the Constitution; or

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons

The principal object of this Bill is to amend sections 7 and 9 of the Salaries and Remuneration Act, No. 10 of 2011, to provide for notification of the expiry of term for Commissioners in the *Gazette* and to provide for timelines for the filling of vacancies in the Commission upon the expiry of term for Commissioners.

This is in view of the fact that the Salaries and Remuneration Act does not provide for timelines for the process of selection of the Commissioners by the various nominating bodies set out under Article 230(2)(b) and (c) of the Constitution. There is therefore need for the law to be amended to clearly specify the timelines for the nomination process to ensure that the vacancies are filled as soon as possible, upon the expiry of term for the existing Commissioners.

Further, under section 9 of the Salaries and Remuneration Commission Act, the “*expiry of term for commissioners*” is not listed as one of the grounds for vacancy in the office of commissioner or chairperson. As such, there is no express requirement for notification of a vacancy, resulting from expiry of term, in the *Gazette* within fourteen days, as is provided for vacancies arising from the circumstances contemplated under section 9(1). A notification of vacancy in the *Gazette* is necessary to prompt the simultaneous nomination processes by all bodies required to nominate Commissioners to the Salaries and Remuneration Commission.

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

The Bill does not limit fundamental rights and freedoms neither does it delegate any legislative power.

Statement on how the Bill concerns county governments

Under Article 230 (2) (b) (vii) of the Constitution, the Senate nominates a Commissioner to the Salaries and Remuneration Commission, on behalf of county governments. The Commission is mandated to-

- (a) set and regularly review the remuneration and benefits of all state officers; and
- (b) advise the national and county governments on the remuneration and benefits of all public officers.

The Bill principally seeks to ensure timely appointment of Commissioners following the expiry of term of the preceding Commission so as to ensure that matters relating to salaries and remuneration of State

and public officers at the county level are not unduly delayed due to the absence of commissioners.

Any matter touching on the constitution of the Commission and the exercise of its mandate therefore directly affects the functions of county governments. 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 17th April, 2018.

MOHAMED M. MAHAMUD,
Chairperson, Senate Standing Committee on Finance and Budget.

Section 7 of No. 10 of 2011 which it is proposed to amend—

Procedure for nominations

7. (1) Within fourteen days of the commencement of this Act, or of the occurrence of a vacancy in the Commission relating to the members under Article 230(2)(b) and (c) of the Constitution, the relevant nominating body shall, by advertisement in at least two local daily newspapers of national circulation, invite applications from persons who qualify for nomination under the Constitution and this Act for nomination as a member of the Commission.

(2) The relevant nominating body shall consider the applications received under subsection (1) to determine their compliance with the provisions of the Constitution and this Act, interview the applicants and forward the names of two persons so qualified, who shall be of opposite gender, to the Cabinet Secretary for onward transmission to the President.

(3) Within fourteen days of the commencement of this Act, or of the occurrence of a vacancy in the office of the chairperson, the President shall convene a selection panel (hereinafter referred to as “the panel”) for the purpose of selecting suitable candidates for appointment as the chairperson.

(4) Until the first general election after the commencement of this Act, the President shall consult with the Prime Minister on the nomination of the selection panel under subsection (3).

(5) The panel shall comprise a chairperson and four other members drawn from the executive and professional organisations.

(6) The panel shall, subject to this section, determine its own procedure and the Ministry responsible for Public Service shall provide it with such facilities and other support as it may require for the discharge of its functions.

(7) The panel shall, within seven days of its convening, invite applications from qualified persons and publish the names and qualifications of all applicants in the *Gazette* and two daily newspapers of national circulation.

(8) The selection panel shall consider the applications, and shortlist and interview the applicants.

(9) After carrying out the interviews, the panel shall select three persons qualified to be appointed as chairperson of the Commission and forward the names to the President.

(10) Until after the first general election after the commencement of this Act, the President, in consultation with the Prime Minister shall, within

seven days of receipt of the names forwarded under subsections (2) and (9), nominate a chairperson and other members of the Commission and forward the names of the nominees to the National Assembly.

(11) The National Assembly shall, within twenty-one days of the day it next sits after receipt of the names of the nominees under subsection (9), consider all nominations and may approve or reject any nomination.

(12) Where the National Assembly approves the nominees, the Speaker shall forward the names of the approved nominees to the President for appointment.

(13) The President shall, within seven days of the receipt of the approved nominees from the National Assembly, by notice in the *Gazette*, appoint the chairperson and members approved by the National Assembly.

(14) Where the National Assembly rejects any nomination, the Speaker shall communicate the decision to the President to submit fresh nominations.

(15) In appointing members under this section, the President shall observe the principle of gender equity, regional and ethnic balance and equal opportunities for persons with disabilities and shall ensure that at least one-third of the members are of either gender.

Section 9 of No. 10 of 2011 which it is proposed to amend—

Vacancy in the office of chairperson and member

9. (1) The office of the chairperson or a member of the Commission shall become vacant if the holder—

- (a) dies;
- (b) by notice in writing addressed to the President resigns from office;
- (c) is removed from office under any of the circumstances specified in Article 251 and Chapter Six of the Constitution.

(2) The President shall notify every resignation, vacancy or termination in the *Gazette* within fourteen days.