

SPECIAL ISSUE

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SENATE BILLS, 2018

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**THE ELECTION LAWS (AMENDMENT) (No. 2)
BILL, 2018**

A Bill for

**AN ACT of Parliament to amend the Elections Act, and
for connected purposes**

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Election Laws (Amendment) (No. 2) Act, 2018.

Short title.

2. The Elections Act, 2011 is amended by inserting the following new section immediately after section 37—

Insertion of new section 37A in No. 24 of 2011.

Re-allocation of nominated members of Parliament or county assembly.

37A. (1) Where a vacancy occurs in the National Assembly, the Senate or a county assembly and —

- (a) a by-election held results in the election of a person who is a member of a different political party from the member who previously held the seat;
- (b) the filling of the vacancy under paragraph (a) results in the change in the relative representation of membership by the majority and minority parties in the respective House or assembly; and
- (c) the change in the party representation results in a change in the persons the parties are entitled to nominate under Article 90 of the Constitution;

the special seat shall be re-allocated in accordance with subsection (2).

(2) Where the re-allocation of a special seat is required to be undertaken under subsection (1), the Commission shall, based on the party list submitted to the Commission by the political parties and by notice in the *gazette*,—

- (a) revoke the nomination of the person whose name appears last on the party list submitted by the majority party amongst the persons nominated and serving in the respective House or assembly; and
- (b) nominate the person appearing next on the party list submitted by the party entitled to nominate a new member pursuant to the by-election.

(3) The Commission shall publish the name of the person whose nomination is revoked and the name of the person who is nominated under subsection (2) in the *gazette* within seven days from the date of the revocation or nomination as the case may be.

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons

The principal object of this Bill is to amend the Elections Act, 2011, to provide for the procedure for the revocation of the membership of a nominated member of Parliament or county assembly where it is necessitated by the variation in the membership of the various political parties represented in the respective legislature.

Whereas the Elections Act provides for the nomination of members into a legislature based on the party lists submitted by political parties, it does not provide for the manner in which the nomination of a member would be revoked where the membership in the legislature changes upon the vacancy of a seat and where a by-election leads to a change in the membership of a political party in that legislature. This would have the result of varying the entitlements by the various political parties represented in the legislature to nominate persons to serve in the legislature.

The Bill therefore seeks to address this gap by providing for the circumstances under which a nomination may be revoked and the slot re-allocated to another party following an outcome of a by-election.

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

The Bill does not delegate legislative powers and does not limit any fundamental rights or freedoms.

Statement that the Bill concerns county governments

The Bill concerns county governments as it contains provisions relating to the revocation and replacement of a nominated member of a legislature at the national and county level, where the numbers and hence party strengths in the respective legislature changes.

Statement that the Bill is a money Bill within the meaning of Article 114 of the Constitution

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

Dated the 6th November, 2018.

AGNES ZANI,
Senator.