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SENATE BILLS, 2024

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CONTENT

Bill for Introduction into the Senate—	PAGE
The County Governments Election Laws (Amendment) Bill, 2024	15

**THE COUNTY GOVERNMENTS ELECTION LAWS
(AMENDMENT) BILL, 2024**

A Bill for

AN ACT of Parliament to amend the Elections Act and the County Governments Act to provide for nomination of members of a county assembly to represent marginalised groups and for connected purposes.

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the County Governments Election Laws (Amendment) Act, 2024.

Short title.

2. Section 36 of the Elections Act is amended —

Amendment of section 36 of No. 24 of 2011.

(a) in subsection (1) by deleting paragraph (f) and substituting therefor the following new paragraph —

(f) Article 177(1)(c) of the Constitution shall include—

(i) two candidates representing the youth;

(ii) two candidates representing a marginalised group; and

(iii) candidates with disability reflecting the number of wards in the respective county.

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

(3) The party list referred to under subsection (1)(f)(iii) shall take into account the various disabilities including physical, hearing and visual impairments.

(c) by deleting subsection (8) and substituting therefor the following new subsection —

(8) For purposes of subsection (1)(f)(iii), the Commission shall draw from the list, such number of special seat members in the order given by the party, necessary to ensure that at least five percent of the members of a county assembly are persons with disability.

3. Section 7 of the County Governments Act is amended—

Amendment of section 7 of No. 17 of 2012.

- (a) by deleting subsection (1) and substituting therefor the following new subsection —
 - (1) The members of a county assembly contemplated under Article 177(c) of the Constitution shall comprise —
 - (a) two nominated members, being one man and one woman, representing the youth;
 - (b) two nominated members, being one man and one woman, representing marginalized groups; and
 - (c) five percent of the total number of members contemplated in Article 177(a) and 177(b) of the Constitution and paragraphs (a) and (b) of this subsection, nominated to represent persons with disability.
- (b) in subsection (2) by inserting the following new paragraph immediately after paragraph (a) —
 - (aa) there is representation of the various categories of disabilities including physical, hearing and visual impairments.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The principal object of this Bill is to amend the County Governments Act, No. 17 of 2012 and the Elections Act, No. 24 of 2011 to ensure that at least five percent of the members of a county assembly are representatives of persons with disability as provided for under Article 54(2) of the Constitution, and that the available slots for marginalised groups are equitably shared amongst the youth, persons with disability and other marginalised groups.

Pursuant to Article 177(1) of the Constitution, a county assembly is composed of –

- (a) members elected by voters in each ward;
- (b) special seat members necessary to ensure that no more than two-thirds of the membership of the assembly are of the same gender; and
- (c) the number of members of marginalised groups, including persons with disabilities and the youth, prescribed by an Act of Parliament.

With a view to implement Article 177(1)(c) of the Constitution, Parliament has enacted two laws, the County Governments Act and the Elections Act, to prescribe the number of members to represent marginalised groups. Whereas section 7(1)(a) of the County Governments Act provides for six seats for marginalised groups, sections 36(1)(f) and 36(8) of the Elections Act provide for four seats. The Electoral and Boundaries Commission has been implementing the sections 36(1)(f) and 36(8) of the Elections Act.

Additionally, the above provisions only give a figure for the nomination slots and does not allocate the available seats amongst the various special interest groups. As a result, in the recently concluded general elections over twenty counties lack representation of persons with disabilities and there are others which do not have either representation of the youth or other marginalised groups.

The Bill therefore seeks to implement the principle that at least five percent of members of a county assembly are persons with disabilities.

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

The Bill does not delegate legislative powers nor does it limit the fundamental rights and freedoms.

Statement on how the Bill concerns county governments

The Bill proposes to specify how to achieve the requirement under Article 54(2) of the Constitution that at least five percent of the members of a county assembly are persons with disabilities. The Bill is therefore a Bill concerning county governments in terms of Article 110(1)(b) 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 29th November, 2023.

CRYSTAL ASIGE,
Senator.

Section 36 of No. 24 of 2011 that the Bill proposes to amend—

36. Allocation of special seats

(1) A party list submitted by a political party under—

(a) Article 97(1)(c) of the Constitution shall include twelve candidates;

(b) Article 98(1)(b) of the Constitution shall include sixteen candidates;

(c) Article 98(1)(c) of the Constitution shall include two candidates;

(d) Article 98(1)(d) of the Constitution shall include two candidates;

(e) Article 177(1)(b) of the Constitution shall include a list of the number of candidates reflecting the number of wards in the county;

(f) Article 177(1)(c) of the Constitution shall include eight candidates, at least two of whom shall be persons with disability, two of whom shall be the youth and two of whom shall be persons representing a marginalized group.

(2) A party list submitted under subsection (1)(a),(c),(d),(e) and (f) shall contain alternates between male and female candidates in the priority in which they are listed.

(3) The party list referred to under subsection (1)(f) shall prioritise a person with disability, the youth and any other candidate representing a marginalized group.

(4) Within thirty days after the declaration of the election results, the Commission shall designate, from each qualifying list, the party representatives on the basis of proportional representation.

(5) The allocation of seats by the Commission under Article 97(1)(c) of the Constitution will be proportional to the number of seats won by the party under Article 97 (1) (a) and (b) of the Constitution.

(6) The allocation of seats by the Commission under Article 98(1)(b),(c) and (d) of the Constitution shall be proportional to the number of seats won by the party under Article 98 (1) (a) of the Constitution.

(7) For purposes of Article 177(1)(b) of the Constitution, the Commission shall draw from the list under subsection (1)(e), such number of special seat members in the order given by the party, necessary to ensure that no more than two-thirds of the membership of the assembly are of the same gender.

(8) For purposes of Article 177(1)(c) of the Constitution, the Commission shall draw from the list under subsection (1)(f) four special seat members in the order given by the party.

(9) The allocation of seats by the Commission under Article 177 (1) (b) and (c) of the Constitution shall be proportional to the number of seats won by the party under Article 177(1)(a) of the Constitution.

Section 7 of No. 17 of 2012 that the Bill proposes to amend—

7. Membership of the county assembly

(1) In addition to the members who are elected under Article 177(a), or nominated under Article 177(b) of the Constitution, a county assembly shall comprise —

- (a) six nominated members as contemplated in Article 177(c) of the Constitution; and
- (b) the speaker, who is an ex officio member elected in accordance with Article 178 of the Constitution.

(2) The political party nominating persons under subsection (1) shall ensure that—

- (a) community and cultural diversity of the county is reflected in the county assembly; and
- (b) there is adequate representation to protect minorities within the county in accordance with Article 197 of the Constitution.

(3) The number of members nominated under subsection (1)(a) shall be reviewed to accord with the number of Wards determined by the Independent Electoral and Boundaries Commission under section 26(3)(a).