

SPECIAL ISSUE

Kenya Gazette Supplement No. 1 (Senate Bills No. 1)

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REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

SENATE BILLS, 2018

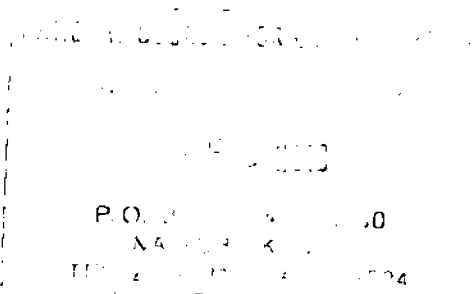
NAIROBI, 12th January, 2018

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SCHEDULE

THE ASSUMPTION OF THE OFFICE OF COUNTY GOVERNOR BILL, 2018

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 County Governor Act, 2018.

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 County Governor by a governor-elect; and

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

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 COUNTY GOVERNOR COMMITTEE

5. (1) There is established in each county, the Assumption of the Office of County 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 principal legal adviser in the respective county;
- (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 appointed to the County Policing Authority by the Inspector-General under section 41 (1)(c) of the National Police Service Act.
- (i) the Policing Authority Representative in the county;
- (j) the Clerk of the county assembly; and
- (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.

No. 11 of 2011

(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 are to—

Functions and powers of the committee.

- (a) facilitate the handing over process by the outgoing Governor to the Governor-elect;
- (b) ensure the provision of security services of the Governor-elect;
- (c) put in place the necessary facilities and deploy the necessary personnel to be at the service of the Governor-elect upon assumption of office;
- (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.

(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 as may be necessary for the better carrying out of its functions under this Act.

Sub-committees of the committee.

(2) The Committee may co-opt into a sub-committee established under subsection (1), a person 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 the 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.

Provision of security to Governor-elect.
No. 24 of 2011

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

County public officers to provide required information.

(2) The county governor-elect may for the purpose of subsection (1) request in writing, for such information from a county public officer as the county 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.

11. (1) If a county governor-elect dies after being declared elected as governor, but before assuming office, or is unable to assume office for whatever reason—

Inability of Governor or Deputy-Governor to assume office.

(a) the deputy county governor-elect shall be sworn in as acting governor on the date on which the governor elect would otherwise have been sworn-in; and

(b) a fresh election to the office of county governor shall be held within sixty days after the death of the county governor-elect.

(2) If the deputy county governor-elect dies before assuming office or is unable to assume office for whatever reason, the office of the deputy county governor shall be declared vacant on the assumption of office by the person declared elected as the county governor.

12. Whenever the office of governor becomes vacant under Article 182(1) of the Constitution, a person who assumes the office of county governor under Article 182(2) of the Constitution shall —

Assumption of Office of Governor by Deputy-Governor.

(a) within a period of three months, from the date the office of county governor became vacant, take and subscribe to the oath or affirmation as set out in the First Schedule to this Act before assuming office; and

- (b) take and subscribe to the oath or affirmation, in public, before the resident High Court Judge, or, in the absence of the resident High Court Judge, the resident Chief Magistrate.

13. (1) The office of county deputy-governor shall become vacant if the holder of the office –

Vacancy in the Office of Deputy-Governor.

- (a) dies;
- (b) resigns by a notice, in writing, addressed to the county governor;
- (c) ceases to be eligible for nomination as deputy county governor under Article 180(5) of the Constitution;
- (d) assumes the office of county governor under Article 182(2) of the Constitution;
- (e) is convicted of an offence punishable by imprisonment for at least six months; or
- (f) is removed from office under this Act.

14. (1) A person who assumes the office of county governor under Article 182(2) of the Constitution shall—

Appointment of deputy county governor where deputy-governor assumes Office of county governor.

- (a) within fourteen days, nominate the deputy governor; and
- (b) with the approval of the county assembly, appoint the nominee as deputy county governor.

(2) A person nominated for appointment as deputy county governor under subsection (1) shall be a person eligible for election as governor.

(3) The county assembly shall –

- (a) consider a motion for approval for the appointment of the deputy county governor, within fourteen days, and resolve whether to approve the motion; and
- (b) be deemed to have approved the motion for the appointment of the deputy county governor upon the lapse of fourteen days and having failed to make a resolution.

(4) A motion for the approval for appointment of a deputy county governor shall be supported by a majority of the members of a county assembly.

(5) A person appointed as deputy county governor under subsection (1) shall, for purposes of Article 180(7) of the Constitution, be deemed —

- (a) to have served a full term as deputy county governor if, at the date on which the person is appointed, more than two and a half years remain before the date of the scheduled election under Article 180(1) of the Constitution; or
- (b) not to have served a term of office as deputy county governor, in any other case.

PART IV—SWEARING-IN CEREMONY

15. (1) The swearing-in of the County 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 County 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.

16. (1) The County 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 County 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.

17. (1) Upon signing the certificate of inauguration, the outgoing County Governor shall handover to the County Governor elect the following county symbols as a sign of transfer of executive power and authority —

Handing over of instruments of power and authority.

- (a) the county flag;
- (b) the Constitution; and
- (c) the county public seal.

(2) The provisions of this Act shall not apply where-

(a) the outgoing governor is not present during the inauguration; or

(b) the incumbent is re-elected into office.

(3) the County Governor-elect shall, upon receiving the instruments of power be considered to have assumed the office of county governor.

(4) Failure by the outgoing county governor to handover the instruments of power to the county governor-elect shall not invalidate the assumption to the office of county governor by the county governor elect.

18. The deputy county 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.

19. The county governor shall, upon the swearing-in of the deputy county governor-elect, give an inauguration speech to the county.

Inauguration speech.

PART IV—MISCELLANEOUS PROVISIONS

20. 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.

21. (1) The Committee shall, within a period of one month from the date of the swearing-in of the county 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 respective county assembly the report prepared under subsection (1).

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

(a) the financial statements of the Committee;

(b) a description of the activities of the Committee; such other statistical information as the Committee considers appropriate relating to its mandate; and

(c) 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.

22. (1) The Committee shall publish and publicize all important information within its mandate affecting the respective 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.

23. (1) The Committee shall not comply with a request for information by an applicant where—

Limitation of rights and access to information.

- (a) disclosure of such information would be prejudicial to the security arrangements in place for the assumption of office of county governor;
- (b) the disclosure of such information is undesirable in the public interest; or
- (c) the information requested is at a deliberative stage by the Committee.

(2) The Committee may decline to submit information to applicant where—

- (a) the applicant has failed to satisfy confidentiality requirements to the committee; or
- (b) Payment of the prescribed fee has not been made.

(3) The right of access to information under Article 35 of the Constitution shall be limited with respect to information within the custody of the Committee in the manner and to the extent specified under subsection (2).

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

24. The County Governments Act is amended by—

Consequential amendments.

(a) deleting section 30(1);

No. 17 of 2012

(b) deleting section 32(1); and

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

25. 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 7th December, 2017.

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 of Parliament 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 the office 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).

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