

SPECIAL ISSUE

Kenya Gazette Supplement No. 137 (Senate Bills No. 33)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

SENATE BILLS, 2018

NAIROBI, 1st November, 2018

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THE ELECTION LAWS (AMENDMENT) 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) Act, 2018.

Short title.

2. Section 2 of the Elections Act is amended by inserting the following new definition immediately after the definition of the term “county election”—

Amendment of section 2 of No. 24 of 2011.

“declaration form” means a form containing the tallied results of an election.

3. Section 39 of the Elections Act is amended by inserting the following new paragraph immediately after paragraph (1F) —

Amendment of section 39 of No. 24 of 2011.

(1FA) The presiding officer, the candidates or agents shall sign the declaration in respect of the elections.

(1FB) The Commission shall, by regulations, set out the prescribed declaration form for the—

- (a) Presidential election; and
- (b) National Assembly, County women representatives, Senator, Governor and county assembly elections

(1FB) The presiding officer shall—

- (a) immediately announce the results of the voting at the polling station before communicating the results to the returning officer;
- (b) request each of the candidates present to append his or her signature;
- (c) provide each political party, candidate, or their agent with a copy of the declaration of the results; and

- (d) affix a copy of the declaration of the results at the public entrance to the polling station or at any place convenient and accessible to the public at the polling station.

(1FC) Where any candidate or agent has an objection to the tally of results as represented in the declaration form, the presiding officer shall note down the objections.

(1FD) Where a candidate or an agent refuses or fails to sign the declaration form, the presiding officer and the candidate shall record the fact of their refusal or failure to sign the declaration form.

(1FE) The refusal or failure of a candidate or an agent to sign a declaration form or the absence of the candidate or agent at the polling station shall not invalidate the results as announced.

(1FG) Where an election petition has been filed, a candidate who refused or failed to sign the declaration forms shall be barred from relying on that fact in evidence and the Court shall take judicial notice of such refusal or failure to sign.

4. Section 6 of the Elections Offences Act is amended by inserting the following new paragraph immediately after paragraph q—

(r) being a candidate refuses or fails to sign an election return form as required by law,

Amendment of
section 6 of
No. 37 of 2016

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The Bill seeks to amend the Elections Act, No. 29 of 2012, to ensure that a document containing election returns is signed by the candidates or the representatives of the candidates. The Bill therefore proscribes failure to fill out election return forms as a means to ensure that candidates in an election or their representatives are unable to deny being given the opportunity to oversight the tallying of results.

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 fundamental rights and freedoms.

Statement of how the Bill concerns County Governments

Article 38 of the Constitution provides that every person has the right to participate in the political affairs of the country. This right is guaranteed for instance through the requirement of free, fair and credible elections. Democracy enhances the development agenda of the country and attendant the counties as well. This ensures that counties are able to discharge their mandate under the Fourth Schedule to the Constitution.

The Bill is therefore one that concerns county governments in terms of Article 110 (1) (a) of the Constitution as its provisions affect the functions and powers of county governments as set out in the Fourth Schedule to the Constitution.

Statement that the Bill is not 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 20th June, 2018.

LEDAMA OLEKINA,
Senator.