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SENATE BILLS, 2024

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**THE CONSTITUTION OF KENYA (AMENDMENT)
BILL, 2024**

A Bill for

AN ACT of Parliament to amend the Constitution of Kenya.

ENACTED by the Parliament of Kenya, as follows

1. This Act may be cited as the Constitution of Kenya (Amendment) Act, 2024. Short title.

2. Article 54 of the Constitution is amended in clause (2) by deleting the words “ensure the progressive implementation of” appearing immediately after the words “the State shall” and substituting therefor the word “implement”.

3. Article 90 of the Constitution is amended in clause (1) by inserting the expression “and (ca)” immediately after the expression “97(1) (c)”. Amendment of Article 90 of the Constitution.

4. Article 97 of the Constitution is amended in clause (1) — Amendment of Article 97 of the Constitution.

(a) by deleting the words “persons with disabilities” appearing immediately after the word “youth,” in paragraph (c).

(b) by inserting the following new paragraph immediately after paragraph (c) —

(ca) eighteen members nominated by parliamentary political parties according to their proportion of members of the National Assembly in accordance with Article 90, to represent persons with disabilities.

5. Article 98 of the Constitution is amended in clause (1) by substituting paragraph (d) with the following new paragraph — Amendment of Article 98 of the Constitution.

(d) three members nominated by parliamentary political parties according to their proportion of members of the Senate in accordance with Article 90, to represent persons with disabilities.

6. Article 101 of the Constitution is amended in clause (2) by inserting the expression “and (ca)” immediately after the expression “97(1) (c)”. Amendment of Article 101 of the Constitution.

MEMORANDUM OF OBJECTS AND REASONS**Statement of the Objects and Reasons for the Bill**

This Bill seeks to amend the Constitution of Kenya, 2010 to provide for additional seats in the National Assembly and Senate in order to implement the principle of at least five percent of the members of the public in elective and appointive bodies should be persons with disability.

The Bill therefore amends Article 54 of the Constitution to remove the word “progress” in respect of the implementation of the principal that at least five percent of the members of the public in elective and appointive bodies are persons with disabilities.

Additionally, the Bill proposes to amend Articles 97 and 98 of the Constitution to ensure that five percent of members of the National Assembly and the Senate are representatives of persons with disability. This is intended to increase representation of persons with disability in the National Assembly and Senate so as to address the historical exclusion of persons with disability from decision-making processes, resulting in laws and policies that do not reflect their unique challenges and needs. By ensuring the adequate representation of persons with disability in government, the Bill aims to ensure that their voices are heard, and their interests and needs are taken into account in decision-making.

Further, the Bill amends Articles 90(1) and 101(1) of the Constitution which provides for allocation of party list seats and vacancies in such seats, respectively, as a consequence of the amendment in Article 97 of the Constitution.

Dated the 4th March, 2024.

CRYSTAL ASIGE,
Senator.

Article 54 of the Constitution that the Bill proposes to amend –

54. Persons with disabilities

- (1) A person with any disability is entitled—
 - (a) to be treated with dignity and respect and to be addressed and referred to in a manner that is not demeaning;
 - (b) to access educational institutions and facilities for persons with disabilities that are integrated into society to the extent compatible with the interests of the person;
 - (c) to reasonable access to all places, public transport and information;
 - (d) to use Sign language, Braille or other appropriate means of communication; and
 - (e) to access materials and devices to overcome constraints arising from the person’s disability.

(2) The State shall ensure the progressive implementation of the principle that at least five percent of the members of the public in elective and appointive bodies are persons with disabilities.

Article 90 of the Constitution that the Bill proposes to amend –

90. Allocation of party list seats

(1) Elections for the seats in Parliament provided for under Articles 97(1)(c) and 98(1)(b), (c) and (d), and for the members of county assemblies under article 177(1)(b) and (c), shall be on the basis of proportional representation by use of party lists.

(2) The Independent Electoral and Boundaries Commission shall be responsible for the conduct and supervision of elections for seats provided for under clause (1) and shall ensure that—

- (a) each political party participating in a general election nominates and submits a list of all the persons who would stand elected if the party were to be entitled to all the seats provided for under clause (1), within the time prescribed by national legislation;
- (b) except in the case of the seats provided for under Article 98(1)(b), each party list comprises the appropriate number of qualified candidates and alternates between male and female candidates in the priority in which they are listed; and
- (c) except in the case of county assembly seats, each party list reflects the regional and ethnic diversity of the people of Kenya.

(3) The seats referred to in clause (1) shall be allocated to political parties in proportion to the total number of seats won by candidates of the political party at the general election.

Article 97 of the Constitution that the Bill proposes to amend –

97. Membership of the National Assembly

(1) The National Assembly consists of—

- (a) two hundred and ninety members, each elected by the registered voters of single member constituencies;
- (b) forty-seven women, each elected by the registered voters of the counties, each county constituting a single member constituency;
- (c) twelve members nominated by parliamentary political parties according to their proportion of members of the National Assembly in accordance with Article 90, to represent special interests including the youth, persons with disabilities and workers; and
- (d) the Speaker, who is an ex officio member.

(2) Nothing in this Article shall be construed as excluding any person from contesting an election under clause (1) (a).

Article 98 of the Constitution that the Bill proposes to amend—

98. Membership of the Senate

(1) The Senate consists of—

- (a) forty-seven members each elected by the registered voters of the counties, each county constituting a single member constituency;
- (b) sixteen women members who shall be nominated by political parties according to their proportion of members of the Senate elected under clause (a) in accordance with Article 90;
- (c) two members, being one man and one woman, representing the youth;
- (d) two members, being one man and one woman, representing persons with disabilities; and
- (e) the Speaker, who shall be an ex officio member.

(2) The members referred to in clause (1) (c) and (d) shall be elected in accordance with Article 90.

(3) Nothing in this Article shall be construed as excluding any person from contesting an election under clause (1) (a).

Article 101 of the Constitution that the Bill proposes to amend —

101. Election of members of Parliament

(1) A general election of members of Parliament shall be held on the second Tuesday in August in every fifth year.

(2) Whenever a vacancy occurs in the office of a member of the National Assembly under Article 97(1)(c), or of the Senate under Article 98(1)(b), (c) or (d), the respective Speaker shall, within twenty-one days of the occurrence of the vacancy, give notice in writing of the vacancy to—

- (a) the Independent Electoral and Boundaries Commission; and
- (b) the political party on whose party list the member was elected or nominated.

(3) A vacancy referred to in clause (2) shall, subject to clause (5), be filled in the manner prescribed by an Act of Parliament within twenty-one days of the notification by the respective Speaker.

(4) Whenever a vacancy occurs in the office of a member of the National Assembly elected under Article 97(1)(a) or (b), or of the Senate elected under Article 98(1)(a)—

- (a) the respective Speaker shall, within twenty-one days after the occurrence of the vacancy, give notice in writing of the vacancy to the Independent Electoral and Boundaries Commission; and
- (b) a by-election shall be held within ninety days of the occurrence of the vacancy, subject to clause (5).

(5) A vacancy referred to in clause (4) shall not be filled within the three months immediately before a general election.