

SPECIAL ISSUE

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SENATE BILLS, 2021

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THE ELECTIONS (AMENDMENT) BILL, 2021

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 Elections (Amendment) Act, 2021. Short title.

2. Section 22 of the Elections Act is amended in subsection (1) by deleting paragraph (b) and substituting therefor the following new paragraph— Amendment of section 22 of No. 24 of 2011.

(b) is able to read and write in the English or Kiswahili language or, in the case of a person who is deaf or hard of hearing, is literate in the Kenya sign language;

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons

The purpose of this Bill is to amend the Elections Act, No. 24 of 2011, to enable a person who is able to read and write to be nominated as a candidate for elections as a Member of Parliament or county assembly. Article 38(3) of the Constitution provides that —

(3) Every adult citizen has the right, without unreasonable restrictions,—

- (a) to be registered as a voter;*
- (b) to vote by secret ballot in any election or referendum; and*
- (c) to be a candidate for public office or office within a political party of which the citizen is a member and elected, to hold office.*

Currently, the law only allows the nomination of a candidate for election if such person holds a degree from a university recognised in Kenya. This will allow for persons who may not have a degree but who may have other attributes of a leader to vie for election. The provision as contained in the Elections Act is not only restrictive but discriminates against persons who may not have a degree as it implies that only persons who have a degree have the capacity to serve in public office.

This Bill is therefore seeks to provide for inclusivity in the election process by enabling persons who can read and write to vie for election.

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

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

Statement on how the Bill concerns county governments

Under Article 110 of the Constitution, a Bill concerning county governments includes a Bill relating to the election of members of a county assembly or a county executive. This Bill seeks to amend the Elections Act to remove the requirement for a person vying for nomination as a candidate to hold a degree and only require them to have the capacity to read and write in English and Kiswahili.

The Bill is therefore one that concerns county governments in terms of Article 110(1)(a) of the Constitution and is a Special Bill in terms of Article 110(2)(a)(i) 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 16th June, 2021.

KIPCHUMBA MURKOMEN,
Senator.

Section 22 of No. 24 of 2011 which it is proposed to amend—

22. Qualifications for nomination of candidates

(1) A person may be nominated as a candidate for an election under this Act only if that person —

- (a) is qualified to be elected to that office under the Constitution and this Act; and
- (b) holds —
 - (i) in the case of a Member of Parliament, a degree from a university recognised in Kenya;
 - (ii) in the case of member of a county assembly, a degree from a university recognised in Kenya.

(1A) Notwithstanding subsection (1), this section shall come into force and shall apply to qualifications for candidates in the general elections to be held after the 2017 general elections.

(1B) The provisions of this section apply to qualifications to nomination for a party list member under section 34.

(2) Notwithstanding subsection (1)(b), a person may be nominated as a candidate for election as President, Deputy President, county Governor or deputy county Governor only if the person is a holder of a degree from a university recognised in Kenya.

(2A) For the purposes of the first elections under the Constitution, section 22(1)(b) and section 24(1)(b), save for the position of the President, the Deputy President, the Governor and the Deputy Governor, shall not apply for the elections of the offices of Parliament and county assembly representatives.