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BILLS, 2014

NAIROBI, 6th May 2014

CONTENT

Page

Bill for introduction into the Bomet County Assembly— The Public Appointments (Bomet County Assembly Approval) Bill, 2014.....	3
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26 MAR 2018

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**PUBLIC APPOINTMENTS (BOMET COUNTY ASSEMBLY
APPROVAL) BILL 2014**

ARRANGEMENT OF CLAUSES

Clauses

1. — Short title.
2. — Interpretation.
3. — Exercise of Powers of Appointment.
4. — Notification of Vetting Requirements.
5. — Notification of Nomination.
6. — Approval Hearing.
7. — Issues for Consideration.
8. — Period for Consideration and Report.
9. — Failure of the Assembly to Act on Nomination.
10. — Rejection of Nomination.
11. — Notification of Decision.
12. — Powers of the Committee.

**SCHEDULE – CRITERIA FOR VETTING/APPROVAL OF NOMINEES FOR
APPOINTMENT TO PUBLIC OFFICE BY THE COUNTY ASSEMBLY**

A Bill for

AN ACT of the County Assembly to provide for procedures for Assembly approval of constitutional and statutory appointments and for connected purposes.

ENACTED by the County Assembly of Bomet County as follows—

1. This Act may be cited as the Public Short title.
Appointments (Bomet County Assembly
Approval) Act, 2014.

2. In this Act, unless the context otherwise Interpretation.
requires—

“appointing authority” means any person who, under the Constitution or any other law, is required to make an appointment for which the approval of the County Assembly is required;

“appointment” includes any re-appointment to the same body, whether or not in the same capacity;

“Assembly” means the Bomet County Assembly;

“candidate” means a person who has been proposed or nominated for appointment to a public office;

“Clerk” means the Clerk of Bomet County Assembly;
and

“Committee” means the relevant committee of the County Assembly or such other Committee as the Speaker may, for good reasons, direct.

3. An appointment under the Constitution or any other law for which the approval of the Assembly is required shall not be made unless the appointment is approved or deemed to have been approved by the Assembly in accordance with this Act.

Exercise of powers of appointment.

4. Any advertisement inviting applications for nomination for appointment to an office to which this Act applies shall indicate that candidates so nominated shall be required to appear before a committee of the Assembly for vetting.

Notification of vetting requirements.

5. (1) An appointing authority shall, upon nominating a person for an appointment to which this Act applies, notify the Assembly accordingly.

Notification of nomination.

(2) A notification under subsection (1) shall be—

(a) in writing;

(b) be lodged with the Clerk of the Assembly.

(3) A notification of appointment shall be accompanied by information concerning the nominee, having regard to the issues mentioned in section 7.

(4) For purposes of this Act, a notification of nomination shall be deemed to be duly given on the day on which it complies fully with subsections (2) and (3).

6. (1) Upon receipt of a notification of appointment, the Clerk shall submit the notification to a Committee. Approval hearing.
- (2) The Committee shall table the notification before the Assembly within seven days and the Speaker shall direct that the Committee commence the approval hearing.
- (3) The Committee shall determine the time and place for the holding of the approval hearing and shall inform the Clerk.
- (4) The Clerk shall notify a candidate of the time and place for the holding of an approval hearing.
- (5) The Committee shall notify the public of the time and place for holding an approval hearing at least seven days prior to the hearing.
- (6) Subject to this Act, all Committee proceedings on public appointments shall be open and transparent.
- (7) Despite subsection (5), a Committee may, on its own motion or on the application of a candidate or any other concerned person, determine that the whole or part of its sittings shall be held in camera.
- (8) An approval hearing shall focus on a candidate's academic credentials, professional training and experience, personal integrity and background.
- (9) The criteria specified in the Schedule shall be used by a Committee during an approval hearing for the purposes of vetting a candidate.

(10) Any person may, prior to the approval hearing, and by written statement on oath, provide the Clerk with evidence contesting the suitability of a candidate to hold the office to which the candidate has been nominated.

(11) A candidate may, at any time, by notice in writing addressed to the Clerk, withdraw from the approval process and the candidate's nomination shall thereupon lapse.

7. The issues for consideration by the Assembly in relation to any nomination shall be—

Issues for consideration.

(a) the procedure used to arrive at the nominee;

(b) any constitutional or statutory requirements relating to the office in question; and the suitability of the nominee for the appointment proposed having regard to whether the nominee's abilities, experience and qualities meet the needs of the body to which nomination is being made.

8. (1) Unless otherwise provided in any law, a Committee shall consider a nomination and table its report in the Assembly for debate and decision within thirty days from the date on which the notification of nomination was tabled in the Assembly.

Period for consideration and report.

(2) At the conclusion of an approval hearing, the Committee shall prepare its report on the suitability of the candidate to be appointed to the office to which the candidate has been nominated, and shall include in the report, such recommendations as the Committee may consider necessary.

9. (1) If, after expiry of the period for consideration specified in section 8, the Assembly has neither approved nor rejected a nomination of a candidate, the candidate shall be deemed to have been approved.

Failure of the
Assembly to act on
nomination.

- (2) Subsection(1), shall not apply if—

- (a) the Assembly is not sitting during the time contemplated in section 8; or
- (b) the Assembly is sitting but adjourns before a Committee tables its report in the Assembly for debate and decision.

- (3) If an approval for nomination is sought during the circumstances contemplated in subsection(2), a decision on approval shall be made within fourteen days after the Assembly next sits.

10. (1) Where the nomination of a candidate is rejected by the Assembly, the appointing authority may submit to the Assembly the name of another candidate, and the procedure for approval specified in this Act shall apply accordingly.

Rejection of
nomination.

- (2) An appointing authority shall not resubmit the name of a candidate whose nomination has been rejected by the Assembly for a similar appointment within the term of the Assembly.

- (3) Despite subsection (2), a candidate rejected for appointment can be reconsidered for the same position on grounds of a mistake or an error apparent on the face of the report of a Committee.

11. The Clerk shall notify the appointing authority of the decision of the Assembly within seven days of the decision. Notification of decision.
12. (1) The committee shall have power to summon any person to appear before it for the purpose of giving evidence or providing information during approval hearing. Powers of the committee.
- (2) For purposes of subsection (1), the committee shall have the same powers as the High Court to—
- (a) enforce the attendance of witnesses and examine them on oath, affirmation or otherwise;
 - (b) compel the production of documents; and
 - (c) issue a commission or request to examine witnesses abroad.
- (3) Any person who—
- (a) disobeys any order made by a committee for attendance or for production of papers, books, documents or records; or
 - (b) refuses to be examined before, or to answer any lawful and relevant any question put by, a committee, commits an offence and shall be liable, on conviction, to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding one year, or to both.

first SCHEDULE

[Section 6(8).]

CRITERIA FOR VETTING/APPROVAL OF NOMINEES FOR
APPOINTMENT TO PUBLIC OFFICE BY THE ASSEMBLY
QUESTIONNAIRE

Notes:

- (a) This questionnaire applies to appointments to public office arising by or under the Constitution or any other law where the Assembly approval is required.
- (b) The questionnaire shall be used by the relevant Assembly committee to vet a nominee appearing before the committee in the process of the Assembly approval.
- (c) The questionnaire shall be filled and submitted by the nominee to the relevant Assembly committee through the Clerk of the Assembly on or before a date set by the committee.
- (d) The submission of false information in the questionnaire is an offence and may result in prosecution.
- (e) Any form of canvassing by a nominee shall lead to disqualification.
- (f) The nominee must answer all the questions.

1. **Name:** (State full name).
2. **Position:** (County office to which you have been nominated).
3. **Sex:**
4. **Date of Birth :**(State year and place of birth). **Age:**

SCHEDULE—continued

- 5. Marital Status:**
- 6. Daytime phone number:**
- 7. Mobile phone number:**
- 8. Email Address:**
- 9. ID Number:**
- 10. PIN Number:**
- 11. Nationality:**
- 12. Postal Address:**
- 13. Town/City:**
- 14. Place of permanent residence:**
Place of current residence:
- 15. Knowledge of Languages: (Specify Languages).**
- 16. Education:** (List, in reverse chronological order, each university, college, or any other institution of higher education attended and indicate, in respect of each, the dates of attendance, academic award obtained, whether a degree was awarded, and the dates on which each such degree was awarded).

Employment Record: (List in reverse chronological order all government agencies, business or professional corporations, companies, firms or other enterprises with which you have been affiliated as an officer, director, partner, proprietor, employee or consultant).

SCHEDULE — continued

- 17. Honours and Awards:** (List any scholarships, fellowships, honorary degrees, academic or professional honours, honorary society memberships, military awards and any other special recognition for outstanding service or achievement and in respect of each, state the date of award and the institution or organization that made the award).
- 18. Professional Association**(where applicable): (List all professional associations of which you are or have a member and give any positions held and the respective dates when each such position was held).
- 19. Memberships:** (List all professional, business, fraternal, scholarly, civic, charitable or other organizations, (other than those listed in response to Question 16) to which you belong or have belonged).
- 20. Published Writings:**
 - (a) List the titles, publishers and dates of books, articles, reports letters to the editor, editorial pieces or other published materials you have authored or edited.
 - (b) Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of any bar association, committee, conference or organization of which you were a member.
- 21. Public Office, Political Activities and Affiliations:**
 - (a) List chronologically any public offices you have held or are currently holding, including the terms of service and whether such positions were elected or appointed.
 - (b) List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title

and responsibilities. Also include any linkage you have to a political party at present.

(c) Have you ever been dismissed or otherwise removed from office for a contravention of the provisions of Article 75 of the Constitution?

(d) Have you ever been adversely associated with practices that depict bias, favouritism or nepotism in the discharge of public duties?

21. Deferred Income/Future Benefits: (List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, etc).

22. Outside commitment during service in office: (Do you have any plans, commitments or agreements to pursue outside employment with or without compensation during your service in office? If so explain).

23. Sources of Income: (List sources and amounts of all income received during the calendar year preceding your nomination and in the current calendar year).

24. Tax Status: (State whether you have fully complied with your tax obligations to the State up to the end of the financial year immediately preceding the nomination for appointment).

25. Statement of Net Worth: (State your financial net worth).

26. Potential Conflicts of Interest:

(a) Identity the family members or other persons, parties, categories of litigation or financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to rise.

- (b) Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.
27. **Pro-Bono/Charity Work/Donations to charity:** (Describe what you have done by way of pro bono or charity work, listing specific instances, the amount contributed and the amount of time devoted to each).
28. Have you ever been charged in a court or law in the last three years? If so, specify the nature of the charge, where the matter is ongoing, the present status of the matter, or where the matter is concluded, the judgment of the court, or otherwise, how the case was concluded.
29. Have you ever been adversely mentioned in an investigatory report of a County Assembly, Parliament or any other Commission of inquiry in the last three years?
30. Have you any objection to the making of enquiries with your present employer/referees in the course of consideration of your nomination?
31. References: (List three persons who are not your relatives who are familiar with your character, qualification and work).
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MEMORANDUM OF OBJECTS AND REASONS

The principle object of this Bill is to elaborate on the role of the County Assembly in the approval of persons nominated to constitutional and statutory offices within Bomet County and to provide for transparency and accountability in the approval process.

Clause 1 provides for the short title.

Clause 2 provides for the interpretation of terms used in the Act.

Clause 3 provides for the powers of approval of the Assembly.

Clause 4 provides for the notification of vetting requirements.

Clause 5 provides for the manner for notifying the County Assembly of the nomination of a person for appointment to a public office.

Clause 6 provides for the approval hearing, which includes the tabling of a notification of nomination before the County Assembly, the notification to the public of approval hearings, the areas of focus during the approval hearing and the procedure to be followed by a person wishing to contest the suitability of a candidate. Clause 6 also creates the criteria to be used by a Committee during the approval hearing for the purposes of vetting a candidate.

Clause 7 provides for the issues of consideration by the County Assembly in relation to any nomination.

Clause 8 sets out the period for consideration of the approval of a candidate.

Clause 9 deals with the circumstances where the County Assembly fails to act on a nomination.

Clause 10 deals with the rejection of the nomination of a candidate by the County Assembly.

Clause 11 deals with the notification of a decision of the Assembly on the appointment of a candidate.



Clause 12 provides for the powers of a committee of the Assembly during an approval hearing.

The Schedule to the Bill details the criteria for vetting/approval of nominees for appointment to public office as provided for in Clause 6(8).

The enactment of this bill will not occasion additional expenditure of public funds.

DATED 6th MAY, 2014

HON. JOYCE KORIR,
Vice-Chairperson Committee on Appointments

