

**5<sup>th</sup> July, 2012**

**ELECTION CAMPAIGN FINANCING BILL, 2012**

**PART I—PRELIMINARY**

- 1—Short title.
- 2—Interpretation.

**PART II—FUNCTIONS OF THE COMMISSION**

- 3— Functions of the Commission.
- 4— Powers of the Commission.

**PART III—ESTABLISHMENT OF EXPENDITURE COMMITTEES**

- 5— Expenditure Committees.
- 6— Party Campaign Expenditure Committee.
- 7— Party Candidate Expenditure Committee.
- 8—Party Expenditure Committee.
- 9— Independent Candidate Expenditure Committee.
- 10— Submission of expenditure reports.

**PART IV—CAMPAIGN EXPENSES**

- 11—Disclosure of funds by candidate and political party.
- 12—Failure to disclose.
- 13— Spending limits.

**PART V—CONTRIBUTIONS AND DONATIONS**

- 14 – Sources of campaign finances.
- 15—Harambees.
- 16—Anonymous contributions from an illegal source.
- 17—Prohibition on contributions.

- 18—Contributions by an organization.
- 19— Surplus campaign funds.
- 20— Offences.
- 21— Offences by a candidate, a political party or a referendum committee.

**PART VI— GENERAL PROVISIONS**

- 22— Registration and dissolution of expenditure Committees.
- 23 —Records.
- 24—Audit of accounts.
- 25—Claims and objections.
- 26—General penalty.
- 27— Regulations.

**ELECTION CAMPAIGN FINANCING BILL, 2012**

**A Bill for**

**An Act of Parliament to provide for the regulation, management, expenditure and accountability of election campaign funds during election and referendum campaigns; and for connected purposes**

**ENACTED** by the Parliament of Kenya as follows—

Act No. 24 of 2011. “election period” has the meaning assigned to it under the Elections Act;

**PART II—FUNCTIONS OF THE COMMISSION**

Powers of the Commission.

**1.** (1) The Commission shall have the power to investigate all matters relating to the performance of its functions under this Act.

(2) For purposes of an investigation or examination under this Act, the Commission or a representative of the Commission authorised in writing may, at any reasonable time enter into any premises in which books and documents of a candidate, a political party or a referendum committee or where material relevant to the subject matter of the investigation or examination is kept.

(3) The Commission may request any person for information relating to party nomination expenses and election campaign expenses of a candidate, a political party or a referendum committee that is reasonably required in respect of the functions of the Commission under this Act.

(4) Where a request for information is made pursuant to subsection (3), such information shall be furnished to the Commission by any person or organisation within such reasonable time as the Commission may determine.

(5) The Commission may take such other action as is necessary for purposes of carrying out its functions under this Act.

Expenditure  
committees

2. (1) For purposes of regulating campaign financing during nominations, elections or a referendum there shall be established —

- (a) party candidate expenditure committees;
- (b) party expenditure committees;
- (c) independent candidate expenditure committees;  
or
- (d) referendum campaign expenditure committee.

(2) The committees referred to in subsection (1) (a),(b) and (c) shall be registered by the Commission –

- (a) in the case of a general election, at least three months before the general election; or
- (b) in the case of a by-election, within seven days after the notice of a vacancy issued by the relevant Speaker.

(3) A referendum campaign expenditure committee shall be registered within fourteen days after the publication of the referendum question by the Commission in accordance with section 49 of the Elections Act.

(4) Each committee referred to in subsection (1) shall open an expenditure account and submit details of the account to the Commission at the time of the registration of the expenditure committee.

(5) There shall be deposited into the expenditure account of a party candidate—

- (a) contributions by the candidate;
- (b) contributions by the political party; and
- (c) contributions received from any person, organisation, or any other lawful source.

(6) There shall be deposited into the expenditure account of an independent candidate—

- (a) contributions by the candidate; and
- (b) contributions received from any person, organisation, or any other lawful source.

(7) There shall be deposited into the expenditure account of a referendum committee contributions received by a person, organization or any other lawful source.

Party  
Campaign  
Expenditure  
Committee.

3. A political party shall, at least three months before the nomination of its candidates submit its Party Campaign Expenditure Rules to the Commission.

Party  
Candidate  
Expenditure  
Committee.

4. (1) A candidate intending to contest in a party nomination or who, after the party nomination, is duly nominated to contest in an election as the candidate for the party, shall, in accordance with the constitution and rules of the political party, establish a Party Candidate Expenditure Committee.

(2) The Party Candidate Expenditure Committee referred to in subsection (1) shall consist of three members nominated by the party candidate.

(3) The Party Candidate Expenditure Committee established by a party candidate for the purpose of party nominations shall continue to carry out the functions specified under subsection (5) for

purposes of an election.

(4) Whenever there is a change in membership within the Party Candidate Expenditure Committee, the party candidate shall, as soon as reasonably practicable, notify the Party Expenditure Committee of the change.

(5) The Party Candidate Expenditure Committee shall—

(a) open a party candidate expenditure account into which all the money received in respect of the election campaign of that candidate shall be deposited;

(b) be signatories to the party candidate expenditure committee account;

(c) advise the party candidate on all financial matters related to party nomination or campaign expenditure;

(d) manage the expenditure committee account of the party candidate and keep the books of accounts updated and available for inspection; and

(e) prepare and submit a preliminary nomination expenditure report and a final campaign expenditure report to the Party Expenditure Committee of the party with respect to the nomination or the campaign of the party candidate.

(6) A preliminary expenditure report prepared and submitted under subsection 5(e) shall cover campaign expenditure incurred during the nomination period.

(7) The members of a Party Candidate Expenditure Committee and a party candidate shall sign the report referred to in subsection (5)(e) and submit the report to the Party Expenditure Committee of the political party that the candidate is a member.

(8) Where a Party Candidate Expenditure Committee fails to

submit the preliminary nomination expenditure report referred to in subsection (5)(e), the party candidate shall be disqualified from contesting in that election.

(9) The provisions of subsections (4), (5) and (6) shall apply, with necessary modification, to an independent candidate.

Party  
expenditure  
committee.

5. (1) A political party intending to contest in an election shall, in accordance with the constitution and rules of that political party, constitute a Party Expenditure Committee which shall consist of nine members —

- (a) three of whom shall be persons nominated by the governing body of that political party;
- (b) not more than one of whom shall be from one region; and
- (c) not more than two-thirds of whom shall be of one gender.

(2) The appointment of members of the Party Expenditure Committee referred to in subsection (1) shall take into account regional and other diversity of the people of Kenya.

(3) The Party Expenditure Committee referred to in subsection (1) shall—

- (a) open a party expenditure committee account into which all the moneys in respect of the election campaign of that party shall be deposited;
- (b) be signatories to the party expenditure committee account;
- (c) advise the political party on all financial matters related to the party nomination or to the party campaign expenditure;

- (d) manage the party expenditure committee account of that political party and keep the books of account updated and available for inspection;
- (e) receive party nomination and campaign expenditure reports from each party candidate;
- (f) monitor the party candidate' campaign expenditure and ensure that the party candidate complies with the party nomination or campaign expenditure rules; and
- (g) compile and submit to the Commission the preliminary nomination expenditure report and the final campaign expenditure report of the political party with respect to the nomination of a party candidate or the campaign period, as the case may be.

(4) A political party shall, as soon as reasonable, notify the Commission of any changes in the membership of the Party Expenditure Committee.

Failure to disclose.

**12.(1)** A candidate who or a political party or a referendum committee which fails to disclose funds or donations as required under this Act shall be disqualified from contesting in the election.

(2) Where the Commission discovers a failure to disclose contributions received as required under this Act the Commission shall investigate the matter and if satisfied that the candidate, the political party or the referendum committee did not disclose the contributions received, the Commission shall disqualify that candidate, the political party or the referendum committee from contesting or participating in an election or referendum as the case may be.

(3) Where the failure to disclose referred to in



subsection (2) is discovered—

(a) before an election, the Commission shall disqualify that candidate or political party from contesting in that election; or

(b) after an election, the Commission shall disqualify that candidate from contesting in the next by-election or general election.

(4) Where a candidate disqualified under subsection (2) is a party candidate, the candidate shall not be replaced by another candidate from that political party.

(5) The Commission may, in addition to the disqualification referred to in subsection (3), impose a fine against the candidate, the political party or the referendum committee.

(2) A candidate who or a political party committee which does not submit the excess funds to the Commission as required under subsection (1), commits an offence and shall not be eligible to contest in that next election.

Registration  
and dissolution  
of expenditure  
Committees.

**22.**(1) The Commission shall prescribe the manner for registering expenditure committees referred to in section 5.

(2) The expenditure committees shall stand dissolved on submission of the final expenditure reports referred to under section 10.

Records.

**23.**(1) For purposes of financial accountability under this Act, a candidate who, or a political party, a referendum committee or an organization registered to campaign in support of a candidate, a political party or a referendum committee shall keep records of—

(a) funds received for campaign expenses indicating

- the amount and the nature of funds received;
- (b) names, postal, physical and electronic addresses of contributors;
- (c) funds spent for nomination expenditure and campaign expenditure, as the case may be; and
- (d) in case of an organization registered to campaign in support of a candidate, a political party or a referendum committee, the name of the candidate, the political party or the referendum committee that the organization supported.

(2) The Commission shall on request, make available for inspection information submitted by a candidate, a political party or a referendum committee under this Act.

(3) A request for information referred to under subsection (2) shall be subject to—

- (a) a prescribed fee; and
- (b) confidentiality requirements of the Commission.

Audit of accounts.

**24.** The Auditor-General may, on the request of the Commission, audit the accounts relating to the campaign expenses of a candidate, a political party or a referendum committee.

Claims and objections

**25.(1)** A person who objects to any matter related to campaign finance expenditures submitted by a candidate, political party or a referendum committee may file a claim to the Commission in the prescribed form and manner and within the prescribed time.

(2) The claim submitted under subsection (1), shall be determined within –

- (a) seven days, if filed before an election; and

(b) fourteen days, if filed after an election.

General  
penalty.

**26.** A person convicted of an offence under this Act for which no penalty is provided shall be liable to a fine not exceeding two million shillings or a term of imprisonment not exceeding five years or to both.

Regulations.

**27.**(1) The Commission may make regulations for the better performance of its functions under this Act.

(2) In particular and without prejudice to the generality of the power conferred by sub-section (1), the Commission may make regulations—

- (a) providing for spending limits for the different elections;
- (b) providing guidelines for expenditure rules for political parties and independent candidates;
- (c) prescribing procedures for registration and dissolution of the various expenditure committees under the Act;
- (d) prescribing the manner in which contributions may be made;
- (e) prescribing procedures for disclosure of the amount of contributions made to a candidate or to a party, the nature of these contributions and the intended expenditures by a candidate or a party;
- (f) prescribing mechanisms and procedures for reporting on and monitoring the spending limits;
- (g) prescribing the manner in which records shall be prepared and maintained; and
- (h) prescribe anything which is required to be prescribed or is necessary or desirable for the better giving effect to this Act.