

THE PUBLIC SERVICE COMMISSION BILL, 2011

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THE PUBLIC SERVICE COMMISSION BILL, 2011

A Bill for

An Act of Parliament to make further provisions as to the functions and powers, and the administration of the Public Service Commission established under Article 233 of the Constitution; the qualifications and procedures for the appointment of the chairperson, members and secretary of the Commission, and for connected purposes

ENACTED by the Parliament of Kenya, as follows-

PART I-PRELIMINARY

Short title.

1. This Act may be cited as the Public Service Commission Act, 2011.

Interpretation.

2. (1) In this Act, unless the context otherwise requires-

“Cabinet Secretary” means a Cabinet Secretary responsible for matters relating to the Public Service;

“chairperson” means the chairperson of the Commission appointed in accordance with Article 233 (2) of the Constitution;

“Commission” means the Public Service Commission established under Article 233 of the Constitution;

“member” means a member of the Commission appointed in accordance with Article 233 (2) and includes the chairperson and vice-chairperson;

“Secretary” means the Secretary of the Commission

appointed in accordance Article 250 (12) of the Constitution;
and

“vice-chairperson” means the vice-chairperson of the Commission appointed under Article 233 (2) of the Constitution.

(2) Until after the first elections under the Constitution, references in this Act to the expression “Cabinet Secretary” shall be construed to mean “Minister”.

Objects and purpose of the Act.

3. The object and purpose of this Act is to—

- (a) constitute the Commission in accordance with the Constitution and provide for its structure, operations, functions and powers; and
- (b) provide a legal framework for the identification and appointment of the chairperson, members and secretary of the Commission pursuant to Article 250 (2) and (12) of the Constitution.

Guiding principles.

4. The Commission shall, in fulfilling its mandate—

- (a) be guided by the national values and principles of governance in Article 10 and the values and principles of public service in Article 232 of the Constitution; and
- (b) observe the principle of public participation and the requirement for consultation with stakeholders.

PART II—COMPOSITION AND ADMINISTRATION

Powers of the Commission as a body corporate.

5. (1) In addition to the powers of the Commission under Article 253 of the Constitution, the Commission shall have the power to—

(a) acquire, hold, charge and dispose of movable and immovable property; and

(b) doing or performing all such other things or acts for the proper discharge of its functions under the Constitution and this, as may lawfully be done or performed by a body corporate.

Cap. 40.

(2) Any legal proceedings for execution of judgments against the Commission shall be subject to the Government Proceedings Act.

(3) The headquarters of the Commission shall be in Nairobi, but the Commission may establish offices at any place in Kenya.

Composition and appointment of the Commission.

6. (1) As provided for under Article 233 (2) of the Constitution, the Commission shall consist of a chairperson, vice-chairperson and seven other members appointed in accordance with Article 250 of the Constitution and the provisions of this Act.

(2) The procedure set out in the First schedule shall apply to the appointment of the first Commission and with necessary modifications whenever there is a vacancy in the Commission.

(3) The members of the Commission shall serve on a full-time basis.

(4) The Commission shall be properly constituted notwithstanding a vacancy in its membership.

Qualifications for appointment as chairperson or member.

7. (1) A person shall be qualified for appointment as the chairperson of the Commission if such person—

- (a) is a citizen of Kenya;
- (b) holds a degree from a recognized university;
- (c) has at least fifteen years relevant professional experience;
- (d) has at least six years experience in top level management in either the public or private sector; and
- (e) meets the requirements of Chapter Six of the Constitution.

(2) A person shall be qualified for appointment as a member if such person—

- (a) is a citizen of Kenya;
- (b) holds a degree from a recognized university;
- (c) has at least ten years relevant professional experience; and
- (d) meets the requirements of Chapter Six of the Constitution.

Oath or affirmation of office.

8. The chairperson and members shall, before assuming office, take and subscribe to the oath or affirmation of office prescribed in the Second Schedule.

Vacancy.

9. (1) The office of the chairperson or member of the Commission shall become vacant if the holder—

- (a) dies;
- (b) by a notice, in writing, addressed to the President resigns from office;

- (c) is convicted of an offence and sentenced to imprisonment for a term of more than six months without the option of a fine;
- (d) is absent from three consecutive meetings of the Commission without good cause; or
- (e) is removed in accordance with Article 251 of the Constitution.

(2) The President shall as soon as practicable notify every resignation, vacancy or termination in the Gazette.

Filling of vacancy

10. (1) Where a vacancy occurs in the membership of the Commission in accordance with this section, the appointment procedure provided for in the Constitution and this Act, shall apply.

(2) A member so appointed under subsection (3) shall serve for a period of six years.

Functions and powers of the Commission.

11. In addition to the functions set out in Article 234 of the Constitution, the Commission shall—

- (a) formulate policies necessary for the achievement of its mandate;
- (b) provide strategic direction, leadership and oversight to the secretariat; and
- (c) undertake such other activities as may be necessary for the discharge of its functions and the exercise of its powers.

Powers of the Commission.

12. The Commission shall have all powers necessary for the execution of its functions under the Constitution and this Act and in the performance of its functions and exercise of its

powers, the Commission—

- (a) may inform itself in such manner as it thinks fit;
- (b) may receive written or oral statements; and
- (c) is not bound by the strict rules of evidence.

Committees of the
Commission.

13. (1) The Commission may from time to time establish committees for the better carrying out of its functions and in the exercise of its powers.

(2) Without prejudice to the generality of subsection (1) such committees may deal with matters relating to the recruitment, promotion, terms and conditions of service, discipline of public officers and such other matters as the Commission may specify.

(3) The Commission may co-opt into the membership of committees established under subsection (1) persons whose knowledge and skills are necessary for the functions of the Commission.

(4) A person co-opted under subsection (3) shall have no right to vote.

Units of the
Commission.

14. (1) The Commission may create within itself such directorates, divisions or units and appoint thereto such staff as it may determine.

(2) Every directorate, division or unit created by the Commission shall act in accordance with the mandate approved by the Commission and directives given by the Secretary, in writing.

Conduct of business
and affairs of the
Commission.

15. The conduct and regulation of the business and affairs of the Commission shall be as provided for in the Third Schedule but subject thereto, the Commission may regulate its

own procedure.

Secretary to the
Commission.

16. (1) The Commission shall, through an open, transparent and competitive recruitment process, appoint a suitably qualified person to be the Secretary to the Commission.

(2) A person shall be qualified for appointment as the Secretary if the person—

- (a) is a citizen of Kenya;
- (b) possesses a degree from a recognized university;
- (c) has at least ten years relevant professional experience;
- (d) has at least five years top level management experience either in the public or private sector; and
- (e) meets the requirements of Chapter Six of the Constitution.

(3) The secretary shall, before assuming office, take and subscribe to the oath or affirmation of office prescribed in the Fourth Schedule.

(4) The secretary shall, in the performance of the functions and duties of office, be accountable to the Commission.

(5) The secretary shall be—

- (a) the chief executive officer of the Commission;
- (b) head of the secretariat;

(c) the accounting officer of the Commission;

(d) custodian of all commission's records;

(e) responsible for—

(i) the execution of the decisions of the Commission;

(ii) facilitating, co-ordinating and ensuring the execution of Commission's mandate;

(iii) the preparation and submission of the programmes necessary for the achievement of the Commission's mandate for approval by the Commission;

(iv) ensuring staff compliance with public ethics and values; and

(v) the performance of such other duties as may be assigned by the Commission or any other written law.

(6) The secretary may only be removed from office by the Commission on grounds of—

(a) inability to perform functions of the office arising out of physical or mental incapacity;

(b) gross misconduct;

(c) bankruptcy; or

(d) incompetence.

(7) Before removal under subsection (6), the secretary shall be—

(a) informed in writing of the reasons for the intended removal; and

(b) given an opportunity to put in a defence against any such allegations, either in person or through an advocate.

(8) Where the Commission does not intend to reappoint the secretary after the first term, the Commission shall notify the secretary and shall cause the vacancy to be advertised at least three months before the expiry of the incumbent's term.

The secretariat and staff of the Commission.

17. (1) There shall be a secretariat of the Commission which shall be headed by the secretary.

(2) The secretariat shall comprise of—

(a) such professional, technical and administrative officers and support staff, as may be appointed by the Commission in the discharge of its functions under this Act; and

(b) such public officers as may be seconded to the Commission upon its request.

(3) The staff of the Commission may be appointed, subject to its approved establishment.

(4) The Commission shall ensure that in the appointment of its staff, not more than two thirds shall be of the same gender and that the following are also taken into account—

(a) persons with disabilities; and

(b) regional and other diversity of the people of Kenya.

Seal of the Commission.

18. (1) The seal of the Commission shall be such device as

may be determined by the Commission and shall be kept by the secretary.

(2) The affixing of the seal shall be authenticated by the chairperson and the secretary or any other person authorized in that behalf by a resolution of the Commission.

(3) Any document purporting to be under the seal of the Commission or issued on behalf of the Commission shall be received in evidence and shall be deemed to be so executed or issued, as the case may be, without further proof, unless the contrary is proved.

Code of conduct.

19. The members and the employees of the Commission shall subscribe to such code of conduct as the Commission may, by regulations, prescribe.

PART III—FINANCIAL PROVISIONS

Funds of the Commission.

20. The funds of the Commission shall consist of—

- (a) monies allocated by Parliament for purposes of the Commission;
- (b) any grants, gifts, donations or other endowments given to the Commission;
- (c) such funds as may vest in or accrue to the Commission in the performance of its functions under this Act or under any other written law.

Expenses of the Commission to be a charge on the Consolidated Fund.

21. The administrative and other expenses of the Commission, including the salaries, allowances, gratuities and pensions of the members of the Commission shall be a charge on the Consolidated Fund.

Remuneration and allowances.

22. (1) The members of the Commission shall be paid such remuneration or allowances as the Salaries and Remuneration

Commission shall determine.

(2) The employees of the Commission shall be paid such remuneration and allowances as the Salaries and Remuneration Commission may advise.

Annual estimates. **23.** (1) Before the commencement of each financial year, the secretary with the approval of the Commission shall cause to be prepared estimates of the revenue and expenditure of the Commission for that year.

(2) The Cabinet Secretary responsible for finance shall present the estimates approved by the Commission for consideration and approval by the National Assembly.

Financial year. **24.** The financial year of the Commission shall be the period of twelve months ending on the thirtieth June in each year.

Accounts and audit. **25.** (1) The Commission shall cause to be kept all proper books and records of account of the income, expenditure and assets of the Commission.

(2) Within a period of three months after the end of each financial year, the Commission shall submit to the Auditor-General, the accounts of the Commission together with—

(a) a statement of the income and expenditure of the Commission during that year; and

(b) a statement of the assets and liabilities of the Commission on the last day of that year.

(3) All accounts kept under this Act shall be audited by the Auditor-General at least once in every financial year.

(4) The Commission shall be entitled, upon application to the Cabinet Secretary responsible for finance, to exemption from duty chargeable under the Stamp Duty Act in respect of

any instrument executed by or on behalf of, or in favour of the Commission which, but for this section, the Commission would be liable to pay.

(5) The Commission may establish, control, manage, maintain and contribute to pension and provident funds for the benefit of the members and employees of the Commission and may grant pensions and gratuities from any such fund to the said officers upon their resignation, retirement or separation from the service of the Commission or, as the case may be, to the dependants of any such officer upon such officer's death.

Annual report.

26. (1) Within three months after the end of each financial year, the Commission shall present its annual report to the President and submit the same to Parliament.

(2) The annual report shall in respect of the year to which it relates, contain—

- (a) the financial statements of the Commission;
- (b) the activities the Commission has undertaken;
- (c) an evaluation on the extent to which the values and principles referred to in Articles 10 and 232 of the Constitution are complied with in the public service; and
- (d) any other information, the Commission may consider relevant.

(3) The Commission shall publish the annual report in the Gazette and in at least one newspaper of national circulation.

**PART IV— MISCELLANEOUS, SAVINGS AND
TRANSITIONAL PROVISIONS**

Management of information.

27. (1) The Commission shall publish and publicize all important information within its mandate affecting the nation.

(2) A request for information in the public interest by a citizen—

(a) shall be addressed to the secretary or such other person as the Commission may for that purpose designate and may be subject to the payment of a reasonable fee in instances where the Commission incurs an expense in providing the information; and

(b) may be subject to confidentiality requirements of the Commission.

(3) Subject to Article 35 of the Constitution, the Commission may decline to give information to an applicant where —

(a) the request is unreasonable in the circumstances;

(b) the information requested is at a deliberative stage by the Commission;

(c) failure of payment of the prescribed fee; or

(d) the applicant fails to satisfy any confidentiality requirements by the Commission.

(4) The right of access to information under Article 35 of the Constitution shall be limited to the nature and extent specified under this section.

(5) Every member and employee of the Commission shall sign a confidentiality agreement.

Publicity.

28. The Commission shall, in such manner as it considers

appropriate, publish a notice for public information specifying—

- (a) the location of all its offices; and
- (b) its address or addresses, telephone numbers and other means of communication or contact with the Commission.

Regulations.

29. (1) The Commission may make regulations for the better carrying out of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), such regulations may provide for—

- (a) the establishment and abolition of offices in the public service;
- (b) the appointment, including the power to confirm appointments of persons, promotions, and deployment to any office in respect of which the Commission is responsible under this Act;
- (c) the disciplinary control of persons holding or acting in any office in respect of which the Commission is responsible under this Act;
- (d) promotion of values and principles of governance in the public service;
- (e) the investigation, monitoring and evaluation of the organization, administration and personnel practices of the public service;
- (f) promotion of efficiency and effectiveness in the public service;
- (g) the review of conditions of service, code of

conduct and qualifications of officers in the public service;

- (h) the hearing and determination of appeals in respect of county governments' public service;
- (i) the termination of appointments and the removal of persons from any office, in respect of which the Commission is responsible under this Act;
- (j) the practice and procedure of the Commission in the exercise of its functions under this Act;
- (k) the delegation of the Commission's functions or powers; and
- (l) any other matter required under the Constitution, this Act or any other written law.

(3) The power to make regulations conferred to the Commission under this Act shall be—

- (a) for the objective and purpose of giving effect to the Constitution and this Act;
- (b) limited to the nature and scope specifically stipulated in the Constitution and this Act; and
- (c) based on the general principles and standards contained in the Constitution and this Act.

Transition.

30. (1) The members of the Public Service Commission existing immediately before the commencement of this Act shall continue in office for the unexpired period of the term of the member.

(2) A person who immediately before the commencement of this Act was an officer of the Public Service Commission existing immediately before the commencement of this Act, may, subject to the provisions of the Constitution, this Act and any other relevant law, be an officer of the Commission.

Transfer of assets
etc.

31. (1) All property, assets, rights, liabilities, obligations, agreements and other arrangements existing at the commencement of this Act and vested in, acquired, incurred or entered into by or on behalf of the Public Service Commission existing immediately before the commencement of this Act, shall upon the commencement of this Act, be deemed to have vested in or to have been acquired, incurred or entered into by or on behalf of the Commission to the same extent as they were enforceable by or against either of the former Commissions before the commencement of the Act.

(2) Where the transfer of any property transferred to or vested in the Commission under subsection (1) is required by any written law to be registered, the Commission shall, within three months from the commencement of this Act or within such other period as the written law may prescribe, apply to the appropriate registering authority for the registration of the transfer and thereupon the registering authority shall, at no cost to the Commission or any person by way of registration fees, stamp or other duties—

- (a) make such entries in the appropriate register as shall give effect to the transfer;
- (b) where appropriate, issue to the Commission a certificate of title or other statutory evidence of ownership of the property or make such amendments on such certificates or in the appropriate register as may be necessary; and
- (c) make any necessary endorsements on such deeds or other documents as may be presented to such

registering authority relating to the title, right or obligation concerned.

Repeal of Cap. 185. **32.** The Service Commissions Act is hereby repealed.

FIRST SCHEDULE (s.6(2))

**PROCEDURE FOR APPOINTMENT OF
CHAIRPERSON AND MEMBERS OF THE
COMMISSION**

Selection Panel.

1. (1) Subject to subsection 10(1), the President shall whenever a vacancy arises in the Commission, appoint a selection panel hereinafter referred to as the “panel” comprising seven eminent professionals drawn from the public and private sector.

(2) The panel shall elect a chairperson and vice-chairperson from amongst its number.

(3) Subject to the provisions of this Schedule, the panel shall determine its own procedure.

(4) The Ministry responsible for public service shall provide facilities and any support required by the Selection Panel in the performance of its functions.

Oath or affirmation of office.

2. The chairperson and members of the panel shall, before assuming office, take and subscribe the oath or affirmation of office prescribed in the Third Schedule.

Selection of nominees.

3. (1) The panel shall, fourteen days of its convening under paragraph 1, invite applications from qualified persons and publish the names of all applicants and their qualifications in the Gazette, two newspapers of national circulation and on the Commission’s website.

(2) The panel shall consider the applications, shortlist and interview the applicants.

(3) After carrying out the interviews, the panel shall select three persons qualified to be appointed as chairperson and at least three persons qualified to be appointed as members of the Commission for each vacancy and forward these names to the President for nomination as chairperson and member respectively.

(4) The President shall as soon as reasonably practicable forward the list of nominees to the National Assembly for vetting and approval.

(5) In nominating or appointing persons as members of the Commission, the panel and the President shall—

(a) have regard to ethnic and regional diversity of the people of Kenya;

(b) ensure that not more than two-thirds of the members of the Commission are of the same gender; and

(c) take into account the national values set out in Article 10 of the Constitution.

Approval by the
National Assembly.

4. (1) The National Assembly shall expeditiously consider all nominations and may approve or reject any or all nominees.

(2) Upon consideration and approval by the National Assembly, the Speaker shall forward the names of the approved persons to the President for appointment.

Rejection by
National Assembly.

5. (1) Where the National Assembly rejects any nomination pursuant to paragraph 4(1), the Speaker shall, as soon as practically possible, notify the President of the rejection.

(2) The President shall upon such notification by the Speaker, submit to the National Assembly a fresh nomination from amongst the list of nominees received from the panel under paragraph 3(3).

(3) If the National Assembly rejects all or any subsequent nominee submitted under sub-paragraph (2), the panel shall forward to the President fresh names from the persons shortlisted and interviewed under paragraph 3(2) and the provisions of paragraphs 3(4), 4 and 5 shall with necessary modifications, apply.

Appointment of chairperson and members.

6. (1) The President shall by notice in the Gazette, appoint the chairperson and the members approved and forwarded by the National Assembly.

(2) Until after the first general election under the Constitution, the President shall in appointing the panel and nominating persons for appointment as chairperson or member of the Commission, act in consultation with the Prime Minister.

Dissolution of panel.

7. (1) The panel shall stand dissolved upon the appointments under paragraph 6.

(2) Where the provisions of paragraph 5 apply, the panel shall continue to exist but shall stand dissolved upon the requisite appointments being made under paragraph 6.

SECOND SCHEDULE (s. 8)

OATH OF A MEMBER OF THE COMMISSION

I
having been appointed as (Chairperson/Vice-Chairperson/Member) of the Public Service Commission, do swear that I will without fear or favour, affection or ill-will, discharge the functions of the office of (Chairperson/Vice-

Chairperson/Member) of the Commission, and that I will not, directly or indirectly, reveal any matter relating to such functions to unauthorized persons or otherwise than in the course of duty.

So help me God.

Signed

.....

Sworn/Declared before me this day of
20.....

.....

.....
Chief Justice

**THIRD SCHEDULE
(s.15)**

**PROVISIONS AS TO THE CONDUCT OF THE
BUSINESS AND AFFAIRS OF THE COMMISSION**

1. The Commission shall meet in plenary as often as may be necessary for the carrying out of its business but it shall meet at least once every calendar month.
2. A meeting of the Commission shall be held on such date and at such time as the chairperson shall decide.
3. The chairperson shall, on the written application of one-third of the members, convene a special meeting of the Commission.

4. Unless the majority of the total membership of the Commission otherwise agree, at least fourteen days' written notice of every meeting of the Commission shall be given to every member of the Commission.
5. The quorum for the conduct of business at a meeting of the Commission shall be at least five members of the Commission.
6. The chairperson shall preside at every meeting of the Commission and in the absence of the chairperson at a meeting, the vice-chairperson shall preside and in the absence of both the chairperson and the vice-chairperson, the members present shall elect one of their number to preside and who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson.
7. Unless a unanimous decision is reached, a decision on any matter before the Commission shall be by concurrence of a majority of all the members.
8. Subject to paragraph 5, no proceedings of the Commission shall be invalid by reason only of a vacancy among the members thereof.
9. The secretary shall be the secretary at all meetings of the Commission.
10. The Commission shall cause minutes of all proceedings of meetings of the Commission to be entered in books for that purpose.
11. Except as provided by this Schedule, the Commission may regulate its own procedure.

12. (1) If any person is present at a meeting of the Commission or any committee at which any matter is the subject of consideration and in which matter that person or that directly or indirectly interested in a private capacity, that person shall as soon as is practicable after the commencement of the meeting, declare such interest and shall not, unless the Commission or committee otherwise directs, take part in any consideration or discussion of, or vote on any question touching such matter.

(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.

(3) A person who contravenes subsection (1) commits an offence and upon conviction is liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding seven years or to both such fine and imprisonment.

(4) A member or employee of the Commission shall not transact any business or trade with the Commission.

FOURTH SCHEDULE (s. 16)

OATH OF AN SECRETARY/OFFICER OF THE COMMISSION

Ibeing called upon to exercise the functions of secretary (officer) of the Public Service Commission, do swear that I will not, directly or indirectly, reveal to any unauthorized person or otherwise than in the course of duty the contents or any part of the contents of any document, communication or information whatsoever which may come to my knowledge in

the course of my duties as an officer of the Commission.

So help me God.

Signed

.....

Sworn/Declared before me thisday of.....
20.....

.....

.....

*Chairperson or Vice Chairperson or Member
Public Service Commission*

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to re-orient the Public Service Commission to accord with the Constitution of Kenya, 2010. It achieves this by constituting and incorporating the Commission, modernizing and expanding its functions and clearly articulating the procedure for appointment and removal of the chairperson, members and secretary. The Bill also enhances the Commission's operational and financial autonomy.

PART I - provides for the preliminary provisions, the short title, interpretation of terms, object and purpose of the Act and the principles by which the Commission will be guided.

PART II – provides for composition, qualifications and appointment of members of the Commission. It clearly outlines the procedure for the appointment of the selection panel and appointment of chairperson and members of the Commission as specified in the Constitution as well as the secretary to the Commission. This part also deals with the

structure and operations of the Commission including provisions on the secretariat, power to employ staff, the role of the secretary and rules applying in the conduct of meetings of the Commission.

PART III – sets out the financial provisions relating to the Commission. It also provides that all expenses incurred by the Commission in the execution of its mandate shall be a charge on the Consolidated Fund. This Part also requires the preparation of audited accounts and annual financial estimates and reports.

PART IV – sets out a number of supplementary provisions. These range from management of information, publicity and the powers of the Commission to make regulations for the better carrying out of its functions and exercise of its powers. This part also covers issues of transition and repeals the Service Commissions Act, Cap. 185 of the Laws of Kenya.

The enactment of this Bill shall occasion additional expenditure of public funds which shall be provided for through the estimates.

Dated the 8th of August, 2011.

DALMAS OTIENO ANYANGO
Minister of State for Public Service