

MAY, 2017

Electoral Act (Amendment) Bills for Public Hearing by the House of Representatives Committee on Electoral & Political Parties Matters

This Factsheet contains summaries of provisions of twelve Electoral Act (Amendment) Bills referred to the House Committee on Electoral and Political Parties Matters and scheduled for discussion at a Public Hearing by the Committee on 22nd May 2017.

S/No.	Bill No./ Title / Sponsor	Objectives	Highlights	Comments
1.	<p>HB 165: A Bill to Amend the Electoral Act 2010 to Empower National Tribunals and Courts to Declare Candidates who Scored the Second Highest Votes Winner of Elections When the Tribunal or Court finds/ Holds that the Winner of Election is Unqualified Ab Initio</p> <p><i>Hon. Karimi S. Sunday (PDP: Kogi)</i></p>	<p>The Bill seeks to amend section 140(2) of the Act to empower the Courts or Election Tribunal to declare the person with the second highest number of votes as the winner of an election where it finds or holds that the person who obtained the highest votes at the election was not qualified to contest the election.</p>	<p>This Bill contains a single clause amendment proposing that a Court or Tribunal should make such declaration as stated in the objectives if it finds that the election was marred by irregularities or non-compliance with the provisions of the Act or the candidate in question was not qualified to contest.</p> <p>The explanatory memorandum of the Bill states that the amendment is being proposed to bring the Act in tandem with electoral jurisprudence in Nigeria by ensuring that the Act complies with the doctrine of separation of powers.</p>	<p>The existing provision in the Act provides that where the situation indicated occurs, the Election Tribunal or Court shall not declare the person with the second highest votes or any other person as elected, but shall order a fresh election.</p> <p>The language of the proposed amendment makes the power of the Court to make such order discretionary, and as well, gives the Court the option of making any other order it deems fit.</p> <p>The reference to separation of powers appears to be a response to arguments and a 2011 Federal High Court decision that the current provision usurps the power of the Court to declare a winner and that it contravenes sections 239 and 285 of the 1999 Constitution, which gives the Court and election tribunals, power to determine whether a person has been validly elected.</p>

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2.	<p>HB 174: A Bill for an Act to Amend the Electoral Act 2010 to Ensure that all Political Parties are Gender Sensitive and to Eliminate all Forms of Discrimination in all Political Parties</p> <p><i>Hon. Pwajok Edward Gyang (APC:Plateau)</i></p>	<p>To increase the representation of women and youths in political parties by amending sections 85,106 and 164.</p>	<p>This Bill mandates all political parties to ensure that women leaders are women or persons of the feminine gender and that all youth leaders shall be persons between the ages of 18 - 45 (eighteen to forty five) at the date of elections into such offices.</p> <p>The Bill also clarifies that the qualification into any office by age or education shall be considered with reference to the date of the primaries of the political party seeking to contest the election.</p>	<p>This Bill is a response to the clamour for improved representation of women and youths in Political Parties. The purpose of the age limit for youth leaders appears to seek to address the commonly seen phenomenon in Nigerian political parties where persons who do not fall within the youth age bracket are made youth leaders. It also seeks to ensure proper representation of women as women leaders. However, beyond this, the Bill makes no further provisions for the representation of women and youths.</p>
3.	<p>HB 220: A Bill for an Act to Amend the Electoral Act No. 6, 2010 to Include the Use of Card Reader as Part of the Act and Clearly Specify the Tenure of Office of the Secretary; and for Related Matters</p> <p><i>Hon. Uzoma Nkem-Abonta (PDP: Abia)</i></p>	<p>Specifies the tenure of the Secretary of the Independent National Electoral Commission for 4 years, which may be renewed once.</p> <p>Provides a framework for the use of the Smart Card Reader.</p>	<p>Bill attempts to outline a procedure for the use of the Smart Card Reader in the Fourth Schedule of the Act.</p> <p>Seeks to delete section 27(1) which indicates the persons responsible for announcement of election results</p>	<p>The 2015 amendment to the Electoral Act already provides a four-year tenure for the secretary of INEC, which on expiration may be renewed for another four years. In addition, the proposed amendment to section 138 has been captured in the 2015 alteration as well.</p> <p>The Bill seems to touch on different issues at the same time as it deals with the provision of the Secretary to the Commission's tenure, Smart Card Reader, and even the time that a Petitioner can amend his Petition and the Respondent reply. (Clause 8)</p>

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3. (cont.)			<p>Proposes that in the event of the death of a candidate before the commencement of polls, the political party that nominated the candidate shall forward the person who was second at the run off at the party primary election to replace the candidate.</p> <p>It also seeks to amend section 138 to provide that submission of false information is a ground for questioning an election.</p>	<p>The Bill states in its long title that it aims to include the use of the card reader as part of the Act, and states in clause 7 that the procedure for using the Card Reader in elections shall be specified in the 4th schedule, but the Bill's provisions does not specify any amendments to the 4th schedule.</p> <p>Furthermore, there is no explanation for the deletion of section 27(1) neither does it propose a substitute provision. Failure to do this could create a vacuum and leave the interpretation of the entire section vague.</p>
4.	<p>HB 468: A Bill for an Act to Amend the Electoral Act 2010 to Increase the Amounts Permitted as Maximum Election Expenses to be Incurred by Candidates Standing for Elections and for Related Matters</p> <p><i>Hon. Olatoye Temitope Sugar (APC: Oyo)</i></p>	<p>The Bill increases the maximum amount that can be expended by candidates standing for Presidential, Governorship, Senatorial, House of Representatives, State Assembly and Area Council elections.</p> <p>It also increases the amount individuals can donate to a candidate.</p>	<p>The Bill increases maximum election expenses to be incurred by a Presidential candidate from One Billion Naira (N1,000,000,000) to Five Billion Naira (N5,000,000,000).</p> <p>It Increases the maximum expenses that can be expended by a Governorship candidate from Two Hundred Million Naira (N200,000,000) to One Billion Naira (N1,000,000,000).</p>	<p>The explanatory memorandum in the Bill does not provide an explanation or purpose of the proposed increase on the maximum expenses that can be incurred by a candidate in elections. An explanation or justification would be necessary especially in light of controversies over unregulated election campaign spending and non-enforcement of already existing limits.</p>

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4. (cont.)			<p>It increases the maximum amount that can be incurred for a Senatorial seat from Forty Million Naira (N40,000,000) to One Hundred Million Naira (N100,000,000) and a House of Representatives seat from Twenty Million Naira (N20,000,000) to Seventy Million Naira (N70,000,000).</p> <p>It increases the maximum amount to be incurred in a State Assembly election from Ten Million Naira (N10,000,000) to Thirty Million Naira (N30,000,000).</p> <p>It increases the maximum amount of election expenses to be incurred for Area Council Chairmanship elections from Ten Million Naira (N10,000,000) to Thirty Million Naira (N30,000,000) and the maximum amount to be incurred for an Area Councillorship election from One Million Naira (N1,000,000) to Five Million Naira (N5,000,000).</p> <p>The Bill also seeks to increase the amount an entity or individual can donate to a candidate from One Million Naira (N1,000,000) to Ten Million Naira (N10,000,000).</p>	

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5.	<p>HB 492: A Bill for an Act to Further Amend the Electoral Act 2010 (As Amended) on Nullification of Elections By Tribunal or Court and for Related Matters</p> <p><i>Hon. Raphael Nnanna Igbokwe</i></p>	<p>Bill seeks to better define the powers of the Electoral Tribunal in election matters.</p>	<p>The Bill seeks to amend section 34 of the Act to enable candidates who observe that their names are missing from the Commission's list of nominated candidates to notify the Commission in writing supported by an affidavit not later than 21 days to an election.</p> <p>However, where the candidate fails to notify the Commission, he will be deemed to have waived his right and the outcome of the election cannot be impeached in any Court or Tribunal.</p> <p>The Bill also seeks to amend section 49 to allow an eligible voter or candidate in an election to notify the presiding officer where he discovers the omission of his party logo.</p> <p>It also seeks to amend section 140 (2) to empower the election tribunal to declare the person with the second highest number of votes to be declared winner of an election where the person who obtained the highest number of votes is found not to be qualified to contest the election .</p>	<p>It would be more effective for parties to be given a time frame to examine their logo on the ballot paper before scheduled elections rather than to mandate a bye election between the winner of the election and a candidate whose logo was omitted.</p>

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5. (cont.)			<p>The current provision in 140 (2) says that fresh elections should be ordered.</p> <p>It further proposes a new subsection (4) to section 140 which provides that where the party logo of any candidate or his party is omitted on the ballot paper for an election, the Tribunal shall call for a by election between the winner of the first election and the candidate whose logo was omitted.</p>	
6.	<p>HB 546: A Bill for an Act to Establish the Nigerian Electoral Offences Commission and For Related Matters</p> <p><i>Hon. John Dyegh (APC: Benue)</i></p>	<p>To establish a Nigerian Electoral Offences Commission charged with the responsibility of prohibiting and prosecuting electoral offences and other matters therewith</p>	<p>The Bill seeks to establish a Commission, which shall examine all electoral offences connected with, or incidental to the commission of an electoral offence.</p> <p>The Commission shall also monitor and keep records of the activities of all the registered political parties.</p> <p>The Commission shall examine and investigate all reported cases of electoral offence with a view to locating, identifying and determining individuals, corporate bodies or groups involved.</p>	<p>The Bill seeks to respond to the agitations for a Commission to specifically prosecute electoral offences.</p> <p>There is the question of whether a Tribunal should be established or is needed to try Electoral offences or whether the regular courts should exercise their already existing jurisdiction over trial of offences.</p> <p>It should be noted that Constitution amendment would be required to give effect to the Bill's objectives.</p>

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6. (cont.)			<p>The Commission shall sensitise, enlighten and give orientation to the public on electoral offences and the liabilities there from through seminars, workshops, peer groups and talk shows.</p> <p>It will also have powers to issue summons to persons to appear in person or produce documents that would aid in the unravelling of an electoral offence.</p> <p>The electoral offences mentioned in this Bill appear to have been transferred from the provisions on Electoral Offences under the current Act. It further incorporates the provisions on limits of campaign expenses.</p> <p>It also creates an Electoral Offences Tribunal to try electoral offences.</p>	

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7.	<p>HB 504: A Bill for an Act to Establish the Electoral Offences Tribunal for the Purpose of Trying Electoral Offences and for Related Matters</p> <p><i>Hon Francis Charles Uduyok (PDP: Akwa Ibom)</i></p>	<p>The Bill seeks to Establish an Election Offences Tribunal that will try electoral offences</p>	<p>The Bill provides that the Electoral Offences Tribunal shall be situated in Abuja with operational offices in other parts of Nigeria. It shall be a superior court of record as it will have an equal status with the High Court.</p> <p>The Tribunal shall have absolute jurisdiction to the exclusion of any other court to try electoral offences and shall be opened throughout the year for the prosecution of offenders in elections conducted at national or state level.</p> <p>The Bill provides for the composition of the Tribunal, which shall consist of a President and seventeen judges who must not be above the age of 55 years at the time of appointment.</p> <p>It also has extensive provisions on electoral offences.</p> <p>The Bill also details the powers of the Tribunal including powers to impose punishment resulting from its ruling when a suspect is found guilty. The Tribunal shall also have the powers to summon any person in Nigeria to attend a court session.</p>	<p>The listing of electoral offences in the Bill similar to and in addition to those already contained in the Electoral Act, makes it superfluous.</p> <p>The grant of “absolute jurisdiction” to the Tribunal and exclusion of the State High Courts or High Court of the FCT from trying electoral offences touches on their Constitutional powers.</p> <p>In effect, this proposal would need Constitution amendment to give effect to its provisions.</p>

S/No.	Bill No./ Title / Sponsor	Objectives	Highlights	Comments
8.	<p>HB 484: A Bill for an Act to Amend the Electoral Act 2010 to Among Other Things Make our Electoral Process Full Proof By Making the Card Reader the Credible means of Voters Accreditation and Voting and Provide for Strict Compliance to Election Guidelines and Manual So as to Enhance Transparency and Efficiency in the Conduct of Free, Fair and Credible Elections and for Related Matters</p> <p><i>Hon. Ahmed Babba Kaita (APC: Katsina)</i></p>	<p>Bill seeks to make the card reader the credible means of voter accreditation and enhance the transparency of elections in Nigeria.</p>	<p>The Bill seeks to include corrupt practices and non-compliance of the use of the card reader as additional grounds for an election petition and a reason to invalidate an election.</p> <p>It further seeks to penalise the interruption by any person of the announcement of election results by a Returning Officer at a collation centre by proposing a 5 year jail term or N500,000 fine or both.</p> <p>Another proposal seeks to amend section 150 to allow "any Police Officer" to prosecute Electoral Offences.</p>	<p>Solely restricting accreditation to the usage of the smart card reader without exception may inadvertently exclude legitimate voters from voting. It also does not take into consideration emergency situations that may call for its abandonment.</p> <p>"Corrupt practices" in this context appears to be a vague term and could have been properly defined.</p> <p>Finally, it should be noted that Police Officers who are not lawyers cannot appear before a Court. It should also be noted that the Administration of Criminal Justice Act (ACJA) of 2015 now requires that prosecution of all offences in any Court can only be undertaken by the Attorney General of the Federation, a Law Officer in his Ministry or a legal officer authorised to prosecute by law.</p>

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9.	<p>HB 806: A Bill for an Act to Amend Section 33 and 36 of the Electoral Act 2010 (As Amended) to provide for Death of Presidential or Gubernatorial Candidate during an Ongoing Election and for Related Matters</p> <p><i>Hon. Karimi S. Sunday (PDP: Kogi)</i></p>	<p>The Bill seeks to amend sections 33 and 36 of the Act to provide a framework that will enable a Vice-Presidential candidate or Deputy Gubernatorial candidate to conclude the poll where the nominated candidate for a political office of President or the Governor of a State dies.</p>	<p>Apart from enabling the running mate of a Presidential candidate or Gubernatorial candidate to continue and conclude a poll where one of the nominated candidate dies, the Bill also provides that a political party can conduct fresh elections for any of the Legislative Houses of the Federation if during the commencement of a poll but before the conclusion of an election, for any of the Legislative Houses of the Federation, a candidate nominated and sponsored by a political party dies.</p> <p>The Bill also seeks to prohibit the substitution of candidates once polls have commenced.</p>	<p>The Bill attempts to provide a framework to address the incident that occurred at the 2015 Kogi Gubernatorial Elections where a candidate died before declaration of results.</p> <p>The justification for this proposal is that a presidential or gubernatorial candidate and his running mate are on a joint ticket.</p> <p>For elections to legislative Houses where there is no running mate, it proposes fresh elections.</p> <p>It should be noted however that there have been arguments as to whether a running mate who did not participate in primaries or in all stages of the electoral process should be allowed to carry on as the main candidate in the elections.</p>
10.	<p>HB 809: A Bill for an Act to Amend the Electoral Act Cap. E6 LFN 2010, and For Related Matters 2016</p> <p><i>Hon. Eucharika Azodo (PDP:Anambra)</i></p>	<p>Bill seeks to incorporate diaspora voting in the Presidential Elections in the Electoral Act.</p>	<p>Bill seeks to include Nigerians in diaspora who are qualified to vote to the list of voters that the Commission shall include in its National Register of Voters for Presidential elections.</p>	<p>Diaspora voting i.e. inclusion of Nigerian citizens living outside the country who are eligible to vote in elections is laudable but many have argued that it would present some logistical challenges considering Nigeria's present technological state and absence of comprehensive data.</p>

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10. (cont.)			<p>It also seeks to enable diaspora voting in a Presidential election not later than 24 hours to the date the Presidential election will hold in Nigeria.</p> <p>The Commission will decide with the Nigerian Embassy/ Liaison Office outside Nigeria, the number of registration and voting centres where Nigerians in Diaspora can vote.</p>	
11.	<p>HB429: A Bill for an Act to Amend the Electoral Act 2010 to Make Provisions to Cover the Lacuna in the Event of Death of a Governorship Candidate Anytime Before the Conclusion of an Election and For Related Matters</p> <p><i>Hon. Femi Gbajabiamila (APC:Lagos)</i></p>	<p>Bill seeks to amend the Electoral Act, 2010 to make provisions for the lacuna in the event of death of a governorship candidate anytime before the conclusion of an election.</p>	<p>Bill seeks to amend section 33 of the Principal Act by inserting a proviso to enable a party choose the running mate of a nominated candidate who dies before the conclusion of a gubernatorial election to replace the deceased governorship candidate. However, the party may choose another candidate as replacement in the event the running mate withdraws from the election.</p> <p>Bill also seeks to delete 49(2) of the Principal Act and replace same with a new 49(2) and (3) to provide for accreditation solely by the electronic card reader. It however provides for cases where the card reader malfunctions.</p>	<p>This proposal also seeks to address the Kogi State incident and clearly restricts the amendment to address governorship elections.</p> <p>While it seeks to enshrine accreditation solely by a smart card reader, it commendably makes provision for cases where the card reader malfunctions.</p>

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11. (cont.)			In such a case, accreditation shall be conducted manually and the person shall be allowed to vote after filling an incident form. In addition, the Presiding Officer must be satisfied that his/her name is on the Register of Voters.	
12	<p>HB 966: A Bill for an Act to Amend the Provisions of the Electoral Act No. 6, 2010 to provide a Time Frame for the Submission of List of Candidates, Disclosure of Source of Funds Contributed for Political Parties and to Empower the Commission to uphold Party Primaries where there is a Change in the Result and For Related Matters</p> <p><i>Hon. Aishatu Jibril Dukku (APC: Gombe)</i></p>	Bill seeks to provide a time line for the submission of list of candidates, provides the criteria for substitution of candidates, disclosure of funds contributed for political parties and empowers the Commission to uphold party primaries where there is a change in the results.	<p>Proposes in section 31(1) that parties submit their list of nominated candidates to INEC not later than 120 days to the election date - as against the current 60 days provision.</p> <p>Amends section 36 by inserting a new subsection (3) to provide the procedure where a nominated candidate dies before the commencement of polls. In such a case, the next person from the same political party with the highest votes in the primary election shall be submitted to the Commission to replace the deceased. The Commission is also bound to accept the replacement as if the deceased is alive.</p> <p>Amends section 38 by inserting a new subsection (2) that will prevent the extension for nomination or postponement of an election where there is a valid nomination by at least one political party.</p>	<p>Just like the proposals in some of the foregoing Bills, the proposals on sections 31, 36 and 38 of the Act seeks to address the challenges often encountered in party primaries and substitution of candidates.</p> <p>In a departure from the current provision of 60 days, the time for submission of a Party's nomination list to INEC is being changed from 60 days to the election date to 120 days to the election date.</p> <p>Proponents of this position contend that the idea is to ensure that Political Parties are settled early enough on who their candidates are and to provide enough time to address emerging nomination and pre-election issues well ahead of the elections.</p> <p>The proposal in section 90 seems aimed at encouraging transparency by empowering the Commission to demand information on source of contributed funds. However, the proposed substitution would limit the restriction</p>

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12. (cont.)			<p>Inserting a new subsection 87 (9A) to empower the Commission to overrule any primary election result that has been altered by a political party. However, the primary election in question must have been duly attended and certified by the Commission.</p> <p>Provides for a new section 31 (6) to empower the Court to disqualify a candidate from contesting an election on the determination that any of the information contained in an Affidavit submitted by the candidate for the election is false. However, where the person is already elected, the Court shall issue an order directing the person to vacate the Office. On the basis of this order, the next person with the highest number of votes cast and who met the requirement of the Constitution shall be declared as duly elected.</p> <p>Provides for a new section 31(7) that states that political parties who present the name of a candidate that does not possess the qualifications outlined in the Constitution commits an offence and upon conviction, shall not be allowed to</p>	<p>to contributions that are made by "individuals" only and not those made by a "groups of persons" as currently contained in the Act.</p> <p>The proposal in 31(7) should be properly worded to indicate unambiguously whether it is the party or the candidate that is liable to conviction and prohibition from contesting. Furthermore, this provision assumes that a conviction will be secured quickly enough before the elections to bar one from contesting. Going by the wordings, a defaulting party or candidate can go ahead and contest as long as there has been no conviction. If the intended effect of the prohibition is futuristic, it should be clearly stated.</p>

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12. (cont.)			<p>contest for the office in question.</p> <p>Seeks to amend section 33(2) to allow a political party substitute a candidate who dies or withdraws from an election, with the aspirant who scored the next highest number of votes.</p> <p>Finally, it proposes a new section 90 that empowers the Commission to place limitation on the amount of money/assets that an individual can contribute to a political party and demand information on the source of the funds.</p>	

Notes



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