

ELECTORAL ACT (AMENDMENT) BILL, 2015

ARRANGEMENT OF SECTIONS

1. Amendment of Section 140(2) of the Electoral Act 2010
2. Citation

A BILL

FOR

AN ACT 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 COURTS FINDS/HOLDS THAT THE WINNER OF THE ELECTION IS UNQUALIFIED FOR THE ELECTION *AB INITIO*

Sponsored by Hon. Kavimi Sunday Steve

[] Commencement

BE IT ENACTED by the National Assembly of the Federal Republic of Nigeria as follows:

1 1. Section 140(2) of the Electoral Act 2010, which is referred to in
2 this Bill as the Principal Act, is hereby amended by repealing subsection (2)
3 thereof and substituting it with the following subsection:

4 “(2) Where an election tribunal or court nullifies an election on the
5 ground that the person who obtained the highest votes at the election was not
6 qualified to contest the election, or that the election was marred by
7 substantial irregularities or non-compliance with the provisions of this Act,
8 the Election Tribunal or Court may declare the person with the second
9 highest votes as winner or may make such order as it deems fit depending on
10 the circumstance of the case and the provisions of the Constitution of the
11 Federal Republic of Nigeria.”

2. This Bill may be cited as the Electoral (Amendment) Bill, 2015. Citation

EXPLANATORY MEMORANDUM

This Bill seeks to amend the Electoral Act 2010 in order to bring it in tandem with the Electoral Jurisprudence of the Federal Republic of Nigeria by ensuring that the Act complies with the doctrine of separation of powers and that the Act does not in any way usurp the Constitutional Powers of the Court in Election Petition Proceedings in Nigeria.

A BILL

FOR

AN ACT TO ESTABLISH THE PROMOTION OF DEMOCRACY COMMISSION, 2015 AND FOR MATTERS CONNECTED THEREWITH. TO ENSURE THE GUARANTEE OF DEMOCRACY IN THE LOCAL GOVERNMENTS AND OTHER TIERS OF GOVERNMENT AND TO ENSURE GREATER PROBITY AND TRANSPARENCY IN HANDLING OF REVENUES BELONGING TO THE LOCAL GOVERNMENT COUNCILS AND OTHER TIERS OF GOVERNMENT

Sponsored by Hon. Edward Gyang Pwajok.

[] Commencement

BE IT ENACTED by the National Assembly of the Federal Republic of Nigeria as follows:

PART I

1 1.-(1) There shall be established, a body to be known as the Establishment.
2 Promotion of Democracy Commission (in this Act referred to as "the Functions.
3 commission"). Membership etc

4 (2) The Commission shall be a body corporate with perpetual
5 succession and a common seal and may sue and be sued in its corporate
6 name.

7 2.-(1) For the purpose of performing its functions under this Act,
8 the Commission shall have power to:

9 (a) Cause an investigation into whether any person or authority has
10 violated any of the provisions of this Act;

11 (b) Compel any person or government institution to disclose
12 information relating to the operation of Government Accounts, particularly
13 payment of revenue into States and Local Government accounts.

14 (c) Obtain information from any government institution regarding
15 date of elections held or not yet conducted.

16 (2) If the Commission is satisfied that any person or authority has

1 committed any offence under this Act or violated any provisions of this Act, the
2 Commission shall prosecute such person or forward a report to the Attorney
3 General of the Federation for possible prosecution.

Functions

4 3.-(1) The Commission shall:

5 (a) Monitor and enforce the provision of this Act and by so doing
6 promote the objectives contained in Sections 7, 13 of the Constitution;

7 (b) Report to the Accountant General of the Federation and the
8 Attorney General of the Federation and other relevant authorities breaches of
9 Sections 7, 14 (1) and 162 of the Constitution;

10 (c) Publish reports on authorities that violate Section 7, 145 (1) and
11 162 of the Constitution;

12 (d) Perform any other function consistent with the promotion of the
13 objectives of this Act;

14 (e) The Commission shall be independent in the performance of its
15 functions.

Fund

16 4.-(1) The Commission shall establish and maintain a fund from
17 which shall be defrayed all expenditure incurred by the Commission.

18 (2) There shall be credited to the fund established pursuant to sub
19 section (1) of this Section, the budgetary allocation from the Federal
20 Government and grants from any other source.

Composition

21 5.-(1) The Commission shall consist of:

22 (a) A Chairman, who shall be the Chief Executive and accounting
23 Officer of the Commission;

24 (b) One member representing:

25 (i) Civil society engaged in causes relating to probity, transparency
26 and good governance;

27 (ii) Nigeria Bar Association;

28 (iii) National Union of Local Government Employees.

29 (c) A representative of the Association of Local Government
30 Chairmen;

1 (d) One member to represent each of the six geopolitical zones of
2 the country, that is: North-West, North-Central, North-East, South-East,
3 South-South and South-West.

4 (2) All members of the Commission shall be persons of integrity.

5 (3)(a) The Chairman and members representing the geopolitical
6 zones shall be full time members;

7 (b) The Chairman and Members representing geopolitical zones
8 shall be appointed by the President in his discretion;

9 (c) Other members shall be appointed by the President on the
10 recommendation of their professional Association or union.

11 5. The Chairman and members shall hold office for a single tenure
12 of five years. Tenure

13 6. The Commission shall have power to: Power of the
Commission

14 (a) Formulate and provide general policy guidelines for the
15 discharge of the functions of the Commission;

16 (b) Superintend the implementation of the policies of the
17 Commission;

18 (c) With the approval of the President, appoint such members of
19 employees as may be expedient and necessary for the proper and efficient
20 performance of the functions of the Commission;

21 (d) Determine the terms and conditions of service in the
22 Commission, including disciplinary measures for the employees of the
23 Commission;

24 (e) Fix the remuneration, allowances and benefits of the employees
25 of the Commission as approved by the salaries and wages Commission;

26 (f) Regulate its proceedings and make its standing orders with
27 respect to the holding of its meetings, notices to be given, the keeping of
28 minutes of its proceedings and such other matters as the Commission may
29 from time to time determine.

Cessation of
Membership

- 1 7.-(1) Notwithstanding the provision of this Act, a member of the
2 Commission shall cease to hold office if he;
3 (a) becomes bankrupt or makes a compromise with his creditors;
4 (b) is convicted of a felony or any offence involving dishonesty,
5 corruption or fraud;
6 (c) incapable of carrying out the functions of his office by reason of
7 infirmity of mind or body;
8 (d) has been found guilty of the violation of the Code of Conduct or
9 serious misconduct in relation to his duties;
10 (e) resigns his appointment by a notice under his hand addressed to
11 the President; or
12 (f) ceases to hold office by whatever reason.

- 13 (2) Where a vacancy occurs in the membership of the Commission, it
14 shall be filled by the appointment of a successor to hold office for the remainder
15 of the term of office of his predecessor provided that the successor shall
16 represent the same interest as his predecessor.

Emoluments
etc. of Members

- 17 8.-(1) There shall be paid to the Chairman of the Commission such
18 salaries, allowances and benefits as the Revenue Mobilisation Allocation and
19 Fiscal Commission may from time to time, approve.
20 (2) There shall be paid to other members of the Commission such
21 sitting allowances and benefits as may be determined by the Revenue
22 Mobilisation Allocation and Fiscal Commission.

Returns

- 23 9. The Commission shall prepare and submit to the National
24 Assembly quarterly a report of its activities including cases of contraventions
25 investigated.

Offences

- 26 10. The following are offences punishable under this Act:
27 (1) Any person who violates the democratic guarantee provided in
28 Section 7 of the Constitution:
29 (a) Any authority or person which causes the setting up of any

1 structure to manage a Local Government other than through elections
2 commits an offence:

3 (i) In the case of a State Government which acts in line with "a"
4 above, the Attorney General, Commissioner for Local Government matters,
5 Secretary to the State Government, Chief of Staff and the Principal Officers
6 of the House of Assembly, where the House passes a law to that effect shall
7 be liable to a minimum of three years and maximum of five years
8 imprisonment without an option of fine;

9 (ii) Any person who takes up office when he knows or ought to
10 know that he was not elected to manage a Local Government Council in any
11 capacity is liable to imprisonment for a minimum of three years with no
12 option of fine.

13 (2) Any person who alone or with others:

14 (a) Willfully without lawful cause deducts any amount payable to
15 any tier of Government is liable to a fine of an amount equal to what was
16 deducted and imprisonment for not less than five years;

17 (b) Any person who receives any revenue meant for an elected
18 Government Authority when he knows that he is not elected is liable to a fine
19 of the amount collected and imprisonment for not less than five years (this
20 includes any unelected person who gives approval for expenditure).

21 11. (i) The Commission shall have power to enforce this Law **Enforcement**
22 through its Legal Practitioners, Private Legal Practitioners or through the
23 Federal Ministry of Justice;

24 (ii) Any person shall have the legal capacity to enforce the
25 provisions of this act without having to show any special or particular
26 interest in the Federal High Court.

27 12. This bill may be cited as the Promotion of Democracy **Citation**
28 Commission (Establishment) Bill, 2015.

EXPLANATORY MEMORANDUM

This Act, among other things establishes the Promotion of Democracy Commission charged with the responsibility of monitoring and enforcing the provisions of this Act to ensure the guarantee of Democracy in the Local Governments and other tiers of Government and to ensure greater Probity and transparency in handling of revenues belonging to the Local Government Councils and other tiers of Government.