

SPECIAL ISSUE

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ELGEYO MARAKWET COUNTY GAZETTE SUPPLEMENT

BILLS, 2015

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**THE ELGEYO MARAKWET COUNTY EXECUTIVE CAR AND
MORTGAGE LOAN REVOLVING FUND BILL, 2015**

A Bill for

AN ACT of the County Assembly of Elgeyo Marakwet to establish a car and mortgage Loan Revolving Fund for the County Executive of Elgeyo Marakwet, to provide for low-interest loans to members of the County Executive of Elgeyo Marakwet and for connected purposes

ENACTED by the County Assembly of Elgeyo Marakwet, as follows—

PART I— PRELIMINARY

1. Short title and Commencement

This Act may be cited as the County Executive Car and Mortgage loan Revolving Fund Act, 2015 and shall come into operation on the date of publication in the Gazette.

2. Interpretation

In this Act, unless the context otherwise requires—

“Administrator” means the Chief Officer in charge of Finance and Economic Planning;

“Committee” means the County Executive Car and mortgage loans Management Committee established under section 6;

“financial year” means the period of twelve months ending on the 30th June in each year;

“Fund” means the Elgeyo Marakwet County Executive car and mortgage Revolving Fund established under section 3;

‘Loanee’ means an loanee whose loan request has been approved and granted under this Act;

“Member” means a member of the County Executive;

“Prescribed” means prescribed by the Car and mortgage loans Management Committee ;

“property” means a car or residential house purchased through a loan from the Fund and includes the land purchased under loan from the Fund on which such house is to be developed; and

“valuer” means a person registered as a valuer under the Valuers Act .

PART II—ESTABLISHMENT AND ADMINISTRATION OF THE FUND

3. Establishment of the Fund No. 18 of 2012

(1) There is hereby established a Fund to be known as the County Executive Car and Mortgage Loan Revolving Fund established under Article 207(4) (b) of the Constitution of Kenya 2010 and section 116 of the Public Financial Management Act, 2012

(2) The Fund shall be managed and maintained in a separate account opened and operated in accordance with the Public Finance Management Act, 2012.

4. Object and purposes of the Fund

The object and purpose of the Fund shall be to provide a loan scheme for the purchase of vehicles, purchase of house or land for development, renovation or repair of residential property by members of the Scheme.

5. Capital of the fund

(1) The initial capital of the Fund shall consist of the monies standing to the credit of the account of the Fund on the date of the coming into operation of this Act.

(2) County Executive may appropriate additional monies to the Fund with the approval of the County Assembly

(3) The Fund shall be administered as a special account in the Elgeyo Marakwet County Executive Car and Mortgage Loan Revolving Fund and shall be operated by the administrator.

(4) The interest accruing to the Fund shall, where such interest constitutes a surplus after meeting the administrative expenses shall be credited to the capital of the Fund.

(5) There shall be credited to the Fund—

- (a) monies appropriated to the Fund by the County Executive from time for that purpose;
- (b) monies received as repayment of the capital and interest of any loan granted to a member;

(6) There shall be paid out of the Fund—

- (a) sums of money for loans approved by the Committee under this Act;

- (b) any expenditure approved by the Car and mortgage loans Management Committee and incurred in connection with the administration of the Fund.

6. Establishment of a Car and Mortgage Loans Management Committee

(1) There is established a committee to be known as the Car and Mortgage Loans Management Committee, which shall consist of—

- (a) CECM-Health Services-Chairperson;
- (b) CECM-Education and Technology-Vice Chairperson;
- (c) CECM-Finance and Economic Planning-Member;
- (d) CECM-Public Service Management and ICT;
- (e) CECM-Trade, Tourism, Cooperatives and Energy-Member;
- (f) Chief Officer Finance and Finance and Economic planning who shall be an ex-officio member and the secretary to the Committee.

7. Functions of the Committee

The functions of the Committee shall be to administer the Fund on behalf of the Car and Mortgage Loans Management Committee and as such shall—

- (a) approve applications for loans in accordance with the prescribed terms and conditions of borrowing;
- (b) liaise with a financial institution, if any, to set up a revolving fund for the disbursement of the loans;
- (c) oversee the day-to-day running of the Fund;
- (d) oversee the implementation and carrying out policies formulated by the Car and Mortgage Loans Management Committee for the management and administration of the Fund;
- (e) set the criteria for granting of loans;
- (f) prepare quarterly and annual reports on the operations and performance of the Fund for submission to the County Executive;
- (g) perform and exercise all other functions and powers conferred on the Committee under this Act or any other law.

8. Meetings of the Committee.

(1) The Committee shall meet at least four times in a year but the Chairperson—

- (a) may convene a special meeting of the Committee if there is need to do so; and
- (b) shall convene a special meeting upon the request, in writing, by at least four members of the Committee.

(2) The Chairperson shall preside at all the meetings of the Committee and in his or her absence the Vice-chairperson shall preside and in the absence of both, the members present shall elect one of their member to preside at that meeting.

(3) The quorum for a meeting of the Committee shall be the Chairperson and any three other members of the Committee.

(4) All questions at a meeting of the Committee shall be determined by a simple majority of the votes of the members present and voting.

(5) The Chairperson shall, in case of equality of votes, have a casting vote in addition to the original vote.

(6) The Secretary shall cause the proceedings of the meetings of the Committee to be kept and entered into the Minute-Book kept for that purpose.

(7) Subject to the provisions of this Act, the Committee shall regulate its own proceedings.

9. Appointment of a financial institution

(1) Notwithstanding section 7, the Car and Mortgage Loans Management Committee may, if it considers it appropriate to do so, appoint a Financial Institution to administer the Fund on its behalf.

(2) A financial institution appointed under this section, if any, shall

- (a) operate individual accounts for each borrower in order to provide details of recoveries of the loan;
- (b) charge security on properties acquired through loans from the Fund to protect the interests of the Fund and act as custodian of those charges;
- (c) disburse cheques for newly approved loans to the various members of the Scheme, after the necessary documentation is completed by the Committee;

- (d) pay all outgoings and issue demand notices to members of the Scheme where necessary, through the administrator; and
- (e) upon repayment of the loan, interest and other expenses which may be outstanding, discharge the charge and release the security documents to the borrower.

10. Consultation with Salaries and Remuneration Commission

The Car and Mortgage Loans Management Committee shall make all its decisions under this Act after consultation with the Salaries and Remuneration Commission to ensure that decisions conform to the guidelines or directives issued by the Commission.

11. Administrator

(1) The Chief Officer Finance and economic planning shall be the administrator and as such shall —

- (a) supervise and control the administration of the Fund and other incidental investments thereto;
- (b) keep records and all legal documents relating to the Fund;
- (c) cause to be kept books of accounts and other books and records in relation to the Fund and for all loans financed from the Fund;
- (d) prepare, sign and transmit to the Auditor-General in respect of each financial year, within three months after the end that year, a statement of accounts relating to the Fund, specifying the income of the Fund and showing the expenditure incurred from the Fund, in such details as the Car and Mortgage Loans Management Committee may from time to time direct in accordance with the Public Finance Management Act;
- (e) furnish additional information that may be required for the purpose of examination and audit by the Auditor-General; and
- (f) designate and appoint staff as may be necessary to assist in the administration of the Fund;
- (g) carry out such inspections as may be necessary to verify any information submitted by a loanee under this Act
- (h) prepare and submit reports to the Committee.

(2) Every statement of account prepared under this section shall include details of the balances between the assets and liabilities of the Fund and shall indicate the financial status of the Fund as at the end of the financial year concerned.

12. Application for a loan

- (1) A member who wishes to apply for a loan from the Fund shall make the application to the administrator in the prescribed form.
- (2) The grant of a loan by the Committee shall be preceded with due compliance of the conditions of the loan by the loanee.
- (3) A borrower applying for a loan who—
 - (a) in filling a loan application form, knowingly makes any false statement, whether orally or in writing relating to any matter affecting the request for a loan;
 - (b) negligently furnish any information or particulars or produce any document or paper without reasonable cause; and is granted a loan based on false information commits an offence and is liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term of not less than three years and not more than five years.
- (4). A loan granted based on false information shall be recalled and cancelled at the time of discovery

13. Conditions for granting a loan

- (1) The Committee may—
 - (a) accept or reject any application for a loan under this Act and give reasons for the rejection to the borrower;
 - (b) impose conditions, demand security and require repayment in instalments at intervals and within such periods as the Committee may determine.
- (2) A loan granted to a borrower shall not exceed the aggregate of the salary and other emoluments due and receivable by the member for the balance of the term to be served in the office of County Executive
- (3) The total loan together with interests and other charges accrued on the loan shall be fully paid and recovered at the end of the term of service
- (4) The Committee may upon the request by a borrower to whom a loan has been granted, at any time vary—
 - (a) the condition subject to which the loan was made; any security given in relation to the loan;
 - (b) any of the terms of repayment of the loan.

(5) In the interest of the Fund, the Committee may, if it considers prudent, request a borrower granted a loan to present a person to guarantee the loan and where it does so, the person who guaranteed the loan, shall automatically and fully be liable to pay the loan in case of any default by a borrower, together with any interest accrued and outstanding on the loan and the Committee shall notify the guarantor to the effect.

PART III—LOAN FOR DEVELOPMENT OF RESIDENTIAL PROPERTY

14. Utilization of residential property loan

(1) A loan obtained under this Act shall be utilized for the purchase, development, renovation or repair of residential property for the occupation of the loanee and his or her immediate family.

(2) A loan for the development of residential property may be granted at the discretion of the Committee to a borrower who is in possession of a title deed to the land on which development is intended to be carried out.

15. Disbursement of loans for development

A loan for the development of a residential property under this Act shall be released to the loanee based on the value of the land on which the residential property is to be situated and the estimated cost of construction as per the bills of quantities.

16. Documents accompanying the application

(1) An application for a loan under this Act shall be accompanied by the following documents where appropriate—

- (a) copies of the designs of the proposed residential property;
- (b) Bills of quantities in respect of the proposed development, renovation or repair;
- (c) an official search of the title to the property intended to be purchased;
- (d) a certified copy of the sale agreement relating to the property.

(2) The loanee shall bear the cost of stamp duty and other legal fees.

(3) Where a borrower fails to comply with the requirements of sub section (2) within the stipulated time, the administrator shall, upon giving the borrower fourteen days' notice, deduct the amount due from

the salary of that borrower in such instalments as may be appropriate and remit the deductions to meet the costs as may be due.

(4) All legal transactions in respect of the property being purchased shall be conducted by an advocate appointed by the Committee.

17. Leasehold property

Where the property intended to be purchased through a loan from the Fund is leasehold property, the loan shall be granted where the expiry date of the lease is at least thirty years beyond the final loan repayment date.

18. Maximum loan disbursement

The maximum loan to be granted under this Part to a borrower shall be in accordance to such ceilings as the Salaries and Remuneration Commission may determine from time to time

19. Lien on property

(1) The Car and mortgage loans Management Committee shall have a charge registered on the property financed through a loan granted under this Part and shall be entitled to have its name entered in all documents of title for that property.

(2) The borrower shall—

- (a) not mortgage, charge, surrender the lease or sell or agree to sell or part with possession of the charged property or any part thereof without the prior written consent of the Car and Mortgage Loans Management Committee;
- (b) meet and pay all rates, rents, insurances and any other outgoings in respect of the property and send the proof of such payments to the Car and mortgage loans Management Committee; and
- (c) Provide a transfer deed duly signed by the borrower and a letter authorizing the Car and Mortgage Loans Management Committee to sell the property in case of default in payment.

(3) All residential properties purchased through the Fund shall be constructed of such material as may be acceptable to the Car and Mortgage Loans Management Committee.

(4) During the loan repayment period, every borrower shall—

- (a) maintain the property in a satisfactory state of repair; and

- (b) not alter or make any structural alteration to the property, carry out any valuation, assessment or investigation relating to the property or title thereto, as the case may be, without the approval of the Car and mortgage loans Management Committee.

(5) All legal documentation and disbursement of funds shall be supervised by the administrator.

20. Mortgage Insurance

(1) A borrower receiving a loan under this Part shall take out and maintain a mortgage protection policy and a fire policy with an insurance firm approved by the Car and Mortgage Loans Management Committee

(2) The originals of all documents relating to the property financed by a loan from the Fund shall be kept in safe custody by the administrator.

PART IV—PROVISIONS RELATING TO CAR LOAN

21. Security for a Car Loan

(1) A loan approved under this Part shall be released from the Fund in such manner, taking into account the security of the funds, as may be prescribed by the Committee.

(2) The Log-book of a vehicle subject to a loan from the Fund shall be issued jointly between the county executive the borrower and shall be kept in the custody of the administrator until the loan is repaid in full by the borrower.

22. Temporary release of log-book

(1) A Log-book kept in custody by the administrator may be temporarily released to a borrower upon application in writing to the administrator for purposes of renewal of the necessary licenses by that member.

(2) A Log-book released under subsection (1) shall be returned to the administrator within seven working days from the date of the release.

(3) The administrator shall acknowledge receipt of the Log-book in writing.

23. Loan amounts

(1) The loan amount that a borrower may receive shall be the value of the vehicle that the borrower proposes to purchase, subject to the such

ceiling as the Salaries and Remuneration Commission may determine from time to time.

(2) For the purpose of this Act, the value of a new vehicle shall be as quoted on the invoice from the supplier whereas the value of a used vehicle shall be as determined by a report from a registered valuer.

(3) No borrower shall receive a loan the repayment of which shall result in monthly deductions exceeding two thirds of the monthly salary and other emoluments of the borrower.

24. Vehicle and loan insurance.

(1) A borrower shall comprehensively insure any vehicle purchased through the Scheme.

(2) Every loan granted under this Act shall be insured for the benefit of the borrower and the premium in respect thereof shall be debited to the account of the borrower.

25. Loan discharge

(1) Upon full repayment of the loan, a signed loan discharge Certificate in such form as may be prescribed by the Committee shall be issued to the borrower and a copy shall be forwarded to the Registrar of Motor Vehicles.

(2) The loan discharge Certificates shall release the borrower from any further financial obligation in respect of the loan and shall act as sufficient authority to remove the caveat on the vehicle pursuant to this Act.

PART V—REPAYMENT OF A LOAN

26. Loan deductions

In making any deduction for a loan recovery, the officer administering the Fund shall ensure that no more than two-thirds of the member's monthly salary and other emoluments are deducted from the member.

27. Interest on loans

(1) The interest chargeable on a loan under this Act shall be three per centum per annum on a monthly reducing balance.

(2) A Financial institution appointed under section 9 may charge interest not exceeding three per centum per annum to cover management costs and that interest shall be met by the Fund.

(3) The interest charged under sub section (1) shall be utilized to defray the administrative expenses of the Fund, other charges and for re-investment.

28. Authority to charge Gratuity or Pension of a borrower

28. (1) A borrower shall be required to give prior authority to the committee in writing for gratuity dues to be utilized to clear any outstanding debt in case the member loses the County Executive seat before fully repaying the loan.

(2) In the event that the loanee does not authorize the committee in writing as provided for under sub-section (1) above, then the committee shall be authorized to charge gratuity or pension of the loanee so as to recover the loan

29. Sell of charged car or property

Upon default to repay the loan the Car and mortgage Loans Management Committee shall sell the charged car or property by public auction or private treaty, in which event the Fund shall meet any shortfall between the loan outstanding and the proceeds of sale.

(2). The Car and mortgage Loans Management Committee shall take out and maintain a car and property insurance policy with an insurance firm determined by it to cover any situation under sub section (1).

30. Recall of a loan Cap. 42

(1) If in the opinion of the Committee, there has been or there is likely to be a breach of or failure to comply with any condition or term of repayment respecting a loan, the Committee shall forthwith recall the loan with the approval of the Car and mortgage Loans Management Committee and take action to—

- (a) recover from the relevant member or the personal representative (s), as a civil debt under the Debts (Summary Recovery) Act, the amount of the loan or the remaining unpaid amount on the loan together with interest thereon;
- (b) enforce or realize any security relating thereto.

(2) The Committee may, in exercise of the powers conferred by subsection (1), engage the services of private legal practitioners.

PART VI—MISCELLANEOUS PROVISIONS

31. Staff of the Fund

The Car and mortgage Loans Management Committee shall utilize the services of the existing staff from the relevant department in the

administration of the Fund by the Committee or may employ a fund accountant to assist the Committee in the management and administration of the loans granted under this Act.

32. Waive or writing off a loan

(1) A loan granted by the Committee under this Act shall not be waived or written off unless, in case of the death of the person granted a loan, it has become impossible or unduly difficult to recover the loan on the basis that expenses to be incurred in its recovery would be far in excess of the amount sought to be recovered.

(2) Where the Committee recognizes that the status of a loan is as provided under sub section (1), the liability of the loan shall be extinguished or deemed to be abandoned under the provisions of this Act, other than this section, shall no longer apply to any such loan

33. Annual returns

At the beginning of each calendar year and in any case, not later than the 31st day of January, the administrator shall send to each borrower having a loan, an annual return form on the status of that member's loan and any member having a loan may, at any time, request for, and obtain information from the administrator regarding the status of the loan.

34. Regulations

(1) The Car and mortgage Loans Management Committee may, after consultation with the Salaries and Remuneration Commission, make regulations generally for the better carrying out the provisions of this Act.

(2) Without prejudice to the generality of subsection (1) the Car and mortgage loans Management Committee may make regulations—

- (a) prescribing the form of application for a loan under this Act;
- (b) providing the form of receipt, processing and approval of applications for loans;
- (c) setting the preparation and maintenance of personal records of loans granted;
- (d) setting the method of withdrawal, recovery and cancellation of loans;
- (e) setting the procedures for waiving or exempting a member granted a loan from repayment of the loan;
- (f) setting the procedures for dealing with loan defaulters;
- (g) prescribing anything to be prescribed under this Act.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to establish a Car and Mortgage Revolving Fund to provide for low-interest loans to the county Executive members of Elgeyo Marakwet.

Clauses 1 and 2 provide for preliminary matters.

Clause 3 provides for the establishment of the Fund which is to be managed and administered by the Loans Management Committee

Clause 5 gives provisions for Revenue and expenditure of the Fund. Clause 4 (1) provides that the Fund comprises of:

- (a) Sums of money which may from time to time be voted by the County Assembly for that purpose;
- (b) Sums which represent the repayment of the capital and interest of any loan granted by the Committee;
- (c) Any sums of money borrowed by the committee with the consent of the Member of the County Executive Committee;

Clause 6 provides for the administration of the Fund. Clause 5(1) requires that an loanee makes an application to the Committee in a prescribed form while clause 5 (3) (g) spells out the penalty for an loanee who makes a false statement in filling a loan form.

Clause 6 Contains conditions for grant of loan. Clause (1) reposes the power to reject or accept any application in the Committee.

Clause 7 gives deadlines for the Annual Returns.

Clause 8 provides conditions for loan deductions.

Clause 9 contains the general provisions for the loan repayment.

Clause 10 contains provisions prescribing the procedure that the Committee shall follow in waiving loans

Clause 11 contains provision for the employment of a Fund Accountant who shall be tasked with assisting the committee in the management and administration of the loans granted under this Act.

Clause 12 provides power to the committee to make regulations generally for the better carrying out the provisions of this Act.

Clause 13 provides for the mandatory consultation of the committee with the Salaries and Remuneration Commission so as to ensure that all its decisions under the Act are in conformity to the guidelines or directives issued by the Commission.



The enactment of the Bill shall occasion additional expenditure of public funds which shall be provided for in the County Government of Elgeyo/Marakwet estimates.

STEPHEN BIWOTT,
Chairperson, County Executive Loans Management Committee.