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EMBU COUNTY BILLS, 2019

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**THE EMBU COUNTY PERSONS LIVING WITH DISABILITIES
BILL, 2019**

A Bill for

AN ACT of the County Assembly of Embu to give effect to article 27 and 54 of the Constitution to provide for the rights and rehabilitation of persons with disabilities, to achieve equalization of opportunities for persons with disabilities, and for connected purposes

ENACTED by the County Assembly of Embu as follows—

PART I—PRELIMINARY

Short title

1 This Act may be cited as the Embu County Persons living with Disabilities Act, 2019

Interpretation

2 In this Act unless the context otherwise requires—

“assistive devices and services” means implements, tools and specialized services (including the services of qualified interpreters for the deaf and qualified teachers for the blind) provided to persons with disabilities to assist them in education, employment or other activities,

“County Executive Committee Member” means County Executive Committee Member for the time being responsible for Social Services,

“County Government” means Embu County Government,

“Department” means the County Department responsible for Social Services

“disability” includes any physical, sensory, mental, psychological or other impairment, condition or illness that has, or is perceived by significant sectors of the community to have, a substantial or long-term effect on an individual’s ability to carry out ordinary day to day activities,

“discriminate” means to accord different treatment to different persons solely or mainly as a result of their disabilities and includes using words, gestures or caricatures that demean, scandalize or embarrass a person with a disability,

“doctor” means a person registered or licensed as a medical practitioner under the Medical Practitioners and Dentists Act,

“usual day-to-day activities” means the activities of daily living which an ordinary person would reasonably be expected to carry out,

Objects and purpose of the Act

3 The object and purpose of this Act is to ensure the realization of the rights of persons with disabilities in the county through—

- (a) the establishment of a County Department for persons with disabilities,
- (b) setting out of the rights and privileges of persons with disabilities,
- (c) supplement the National legislation on persons with disability within the County, and
- (d) generally protect persons with disabilities from any form of discrimination and promote their welfare

PART II—ADMINISTRATION

Establishment of the Department

4 There is established a Department to be known as the Embu County Persons with Disabilities Department which shall be a department within the Directorate responsible for Social Services in the County

Composition of the Department

5 (1) The Department shall be headed by a Director competitively appointed by the County Public Service Board

(2) A person shall be qualified for appointment as the head of Department if such a person—

- (a) holds a minimum of a degree in social sciences from a university recognised in Kenya,
- (b) has knowledge and relevant experience of at least five years in public or private institution in a recognised organisation dealing in matters concerning persons living with disabilities, and
- (c) meets the qualifications of Chapter Six of the Constitution

(3) The Executive Member through the County Public Service Board shall ensure that the Department has adequate human resource to enable it carry out the functions assigned to it under this Act

Functions of the Department

6 (1) The functions of the Department shall be—

- (a) to issue adjustment orders under the provisions of this Act,
- (b) to formulate and develop measures and policies designed to—

- (i) achieve equal opportunities for persons with disabilities by ensuring to the maximum extent possible that they obtain education and employment, and participate fully in sporting, recreational and cultural activities and are afforded full access to community and social services,
 - (ii) co-operate with the National Government during the national census to ensure that accurate figures of persons with disabilities are obtained in the county, for purposes of planning,
 - (iii) advise the County Executive Committee Member on the provisions of any National Legislation or agreement relating to the welfare or rehabilitation of persons with disabilities,
 - (iv) recommend measures to prevent discrimination against persons with disabilities,
 - (v) put into operation schemes and projects for self-employment or regular or sheltered employment for the generation of income by persons with disabilities,
 - (vi) encourage and secure the rehabilitation of persons with disabilities within their own communities and social environment,
 - (vii) encourage and secure the establishment of vocational rehabilitation centres and other institutions and other services for the welfare, rehabilitation and employment of persons with disabilities,
 - (viii) co-ordinate services provided in County for the welfare and rehabilitation of persons with disabilities and to implement programmes for vocational guidance and counselling, and
 - (ix) to establish a workshop for the manufacture and repair of kits and devices designed for persons with disabilities and to provide training for the manufacture and repair of such implements
- (c) to register—
- (i) persons with disabilities and maintain an up to date database of such persons within the County,
 - (ii) institutions, associations and organizations, including those controlled and managed by the County Government that provide services for the rehabilitation and welfare of persons with disabilities,

- (iii) places at which services for the rehabilitation of persons with disabilities are provided, and
- (iv) persons with disabilities whose condition requires constant medical attention for the purposes of availing subsidized medical services
- (d) to ensure that all persons living with disabilities have access to disability assessment exercises and related medical procedures at all sub-county health centres
- (e) to provide, to the maximum extent possible—
 - (i) assistive devices, appliances and other equipment to persons with disabilities, and
 - (ii) access to available information and technical assistance to all institutions, associations and organizations concerned with the welfare and rehabilitation of persons with disabilities, including those controlled and managed by the County Government,
- (f) to consult with the County Government in the formulation of suitable curricula for county educational facilities, vocational rehabilitation centres and other training facilities for persons with disabilities,
- (g) to make provision for assistance to students with disabilities in the form of bursaries, scholarships, loan programmes, fee subsidies and other similar forms of assistance in public institutions,
- (h) to assess and report to the County Executive Committee Member on the welfare and rehabilitation of persons with disabilities and to advise on the relative priorities to be given to the implementation of those measures,
- (i) to consult with the County Government in the provision of suitable and affordable housing for persons with disabilities,
- (j) to manage the Fund,
- (k) generally to carry out measures for public information on the rights of persons with disabilities and the provisions of this Act,
- (l) to perform such other functions in relation to the welfare and rehabilitation of persons with disabilities as the Department may deem necessary, and
- (m) to perform such other functions as may be assigned to the Department under this or any other Act

(2) Without prejudice to the provisions of subsection (1), the Department shall have power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions and in particular—

- (a) to conduct inquiries into any matter relating to the welfare and rehabilitation of persons with disabilities,
- (b) to constitute committees consisting of its members, and where necessary to co-opt experts to serve on such committees with the approval of the County Executive Committee Member,
- (c) to vest in or delegate to any committee constituted under paragraph (b) such functions of the Department as the Department may with the approval of the County Executive Committee Member determine, and
- (d) with the approval of the County Executive Committee Member, to engage or make other arrangements with any other person to carry out research on, or supply information on, any matter relating to the welfare and rehabilitation of persons with disabilities

PART III—RIGHTS AND PRIVILEGES OF PERSONS WITH DISABILITIES

Realization of rights of persons with disabilities

7 The County Government shall take steps to the maximum of its available resources with a view to achieving the full realization of the rights of persons with disabilities

Right not to be discriminated in employment

8 (1) No person shall deny a person with a disability access to opportunities for suitable employment

(2) A qualified employee with a disability shall be subject to the same terms and conditions of employment and the same compensation, privileges, benefits, fringe benefits, incentives or allowances as qualified able-bodied employees

(3) Subject to the provisions of the Employment Act, persons with disabilities shall be eligible for engagement as apprentices or learners where their disability is not such as to impede their performance in particular occupations for periods for which they are hired

Discrimination by employers prohibited

9 (1) Subject to subsection (2), no employer shall discriminate against a person with a disability in relation to—

- (a) the advertisement of employment,
- (b) the recruitment for employment,
- (c) the creation, classification or abolition of posts,
- (d) the determination or allocation of wages, salaries, pensions, accommodation, leave or other such benefits,
- (e) the choice of persons for posts, training, advancement, apprenticeships, transfer, promotion or retrenchment,
- (f) the provision of facilities related to or connected with employment, or
- (g) any other matter related to employment

(2) Notwithstanding subsection (1), an employer shall be deemed not to have discriminated against a person with a disability if—

- (a) the act or omission alleged to constitute the discrimination was not wholly or mainly attributable to the disability of the said person,
- (b) the disability in question was a relevant consideration in relation to the particular requirements of the type of employment concerned, or
- (c) special facilities or modifications, whether physical, administrative or otherwise, are required at the work place to accommodate the person with a disability, which the employer cannot reasonably be expected to provide

(3) A complaint by a person with a disability that his employer has discriminated against him in a way which is contrary to this Act may be presented to the Industrial Court

(4) An employer shall provide such facilities and effect such modifications, whether physical, administrative or otherwise, in the workplace as may reasonably be required to accommodate persons with disabilities

Right not to be discriminated in an educational institution

10 (1) No person or learning institution shall deny admission to a person with a disability to any course of study by reason only of such

disability, if the person has the ability to acquire substantial learning in that course

(2) Learning institutions shall take into account the special needs of persons with disabilities with respect to the entry requirements, pass marks, curriculum, examinations, auxiliary services, use of school facilities, class schedules, physical education requirements and other similar considerations

(3) Special schools and institutions, especially for the deaf, the blind the physically challenged and the mentally challenged, shall be established to cater for formal education, skills development and self-reliance

Special and non- formal education

11 The Department shall work in consultation with the relevant agencies of County Government and the National Government to make provisions for an integrated system of special and non-formal education for persons with all forms of disabilities and the establishment where possible of Braille and recorded libraries for persons with visual disabilities

Health of persons with disabilities

12 The Department shall ensure that the implementation of the County health programme puts measures in place for—

- (a) prevention of disability,
- (b) advocating early identification of disability,
- (c) early rehabilitation of persons with disabilities,
- (d) enabling persons with disabilities to receive subsidized rehabilitation and medical services in public and privately owned health institutions,
- (e) availing essential health services to persons with disabilities at an affordable cost,
- (f) availing field medical personnel to local health institutions for the benefit of persons with disabilities,
- (g) prompt attendance by medical personnel to persons with disabilities, and
- (h) advocating for optimal uptake of vaccination services in all sub-counties so as to prevent children from developing disabilities such as blindness, lameness and paralysis from preventable diseases such as measles and polio respectively

Right to accessibility and mobility

13 (1) Persons with disabilities are entitled to a barrier-free and disability-friendly environment to enable them to have access to buildings, roads and other social amenities, and assistive devices and other equipment to promote their mobility

(2) Subject to subsection (1), all planning and development projects within the county shall have provisions that facilitate access for persons living with disabilities

Adjustment orders

14 (1) This section shall apply to—

- (a) any premises to which members of the public are ordinarily admitted whether on payment of a fee or otherwise, and
- (b) any services or amenities ordinarily provided to members of the public

(2) Without prejudice to the provisions of section 15, if the Department considers that any premises, services or amenities are inaccessible to persons with disabilities by reason of any structural, physical, administrative or other impediment to such access, the Department may, subject to this section, serve upon the owner of the premises or the provider of the services or amenities concerned an adjustment order setting out—

- (i) a full description of the premises, services or amenities concerned,
- (ii) the grounds upon which the Department considers that the premises, services or amenities are inaccessible to persons with disabilities,
- (iii) requiring the owner or provider concerned to undertake at his own expense such action as may be specified in order to secure reasonable access by persons with disabilities to the premises, services or amenities concerned, and
- (iv) stipulating the period within which the action referred to in paragraph (b) shall be commenced and completed

(3) Before serving an order under subsection (2) the Department shall serve notice upon the person concerned—

- (a) specifying the ground upon which the adjustment order is to be issued and the nature of the action which the Department considers necessary to rectify the situation which has given rise to the proposed order,

- (b) stipulating the maximum period that the Department considers reasonable for the implementation of the action it proposes to order, and
 - (c) calling upon the person concerned, if he wishes to do so, to make representations to the Department within thirty days from the date of the service of the notice
- (4) After considering any representations described in subsection (3)
- (c) the Department may issue, or refrain from or defer the issuing of, an adjustment order
- (5) Within thirty days after an adjustment order is confirmed or issued under subsection(4), the person concerned may appeal against the confirmation or issue to the High Court in the prescribed manner on any grounds including on the grounds that—
- (a) he cannot reasonably be expected to bear the whole or any part of the expense required in implementing the adjustment order,
 - (b) the period stipulated for implementing the adjustment order is unreasonable,
 - (c) the nature of the action required to be taken in terms of the adjustment order is, in the circumstances of the case, unreasonable, or
 - (d) adequate access to the premises, services or amenities concerned may be secured without recourse to the action required by the adjustment order
- (6) Upon hearing an appeal under subsection (5) the Court may confirm, vary or set aside the adjustment order appealed against, and make such order as to the costs of the appeal as it thinks fit

Prohibition of Adjustment orders against government institute

15 (1) The Department shall not serve an adjustment order upon—

- (a) any hospital, nursing home or clinic controlled or managed by the County Government or registered under the Public Health Act except with the consent of the County Executive Committee Member responsible for health, or
- (b) any school or educational or training institution controlled or managed by the County Government or registered under the Education Act except with the consent of the County Executive Committee Member responsible for the administration of the institution or Act concerned

(2) Within sixty days after being requested to consent under subsection (1) the County Executive Committee Member shall either give or refuse to give his consent and shall explain his refusal in writing

Right to sports and recreation

16 (1) All persons with disabilities shall be entitled, free of charge, to the use of recreational or sports facilities owned or operated by the County Government during social, sporting or recreational activities

(2) Persons with disabilities shall be entitled to participate in all county sports events

(3) For the purpose of subsection (2) the County Executive Committee Member responsible for sports shall, in consultation with the Department, provide the necessary suitable environment including—

- (a) architectural infrastructure,
- (b) apparatus and equipment,
- (c) training and medical personnel, and
- (d) transportation facilities for the participants

(4) Section (1) shall not apply in cases where there is exclusive private hire of such facilities

Exemptions and relief

17 (1) All persons with disabilities in the County who are liable to pay such fees and duties levied by the County Government may apply to the County Executive Committee Member for a waiver to reduce the cost to the advantage of persons living with disabilities

(2) The County Executive Committee member responsible for finance in consultation with the Department may by notice in the *Gazette*, prescribe the procedure for application for waiver and grant of such waiver under this section

PART IV—FINANCIAL PROVISIONS

Fund

18 There is established a Fund to be known as the Embu County Persons with Disabilities Fund

Source of the Fund

19 The fund shall consist of—

- (a) monies appropriated by the County Assembly for that purpose,
- (b) sums received as contributions, donations, gifts or grants,

- (c) refunds and capitations from any institution duly paid into the Fund,
- (d) monies paid into the Fund as fees or charges,
- (e) monies earned or realised from any investment of the Fund, or
- (f) such other monies as may be payable or vested in the Fund

Application of the Fund

20 The Department may use the monies of the Fund to—

- (a) buy assistive devices to persons with disabilities,
- (b) issue grants to associations of persons with disabilities,
- (c) encourage persons with disabilities to engage in small-scale enterprises through the provision of affordable credit,
- (d) capacity building,
- (e) support education programmes including the grant of bursary to persons with disabilities,
- (f) basic administration expenses,
- (g) establishment of rehabilitation centres for persons with disability,
- (h) create awareness,
- (i) support research of disability, and
- (j) do any other things in furtherance of the objectives of this Act

PART V—MISCELLANEOUS

Failure to obey an adjustment order and discrimination

21 A person is guilty of an offence if the person

- (a) fails to comply with an adjustment order issued under this Act,
- (b) discriminates against a person with disability contrary to this Act, or on the ground of any ethnic, communal, cultural or religious custom or practice, discriminates against a person with a disability

(2) A person who is convicted of an offence under subsection (1) is liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding one year or to both such fine and imprisonment

(3) A person found guilty of an offence under this section may in addition to the penalty imposed by the court be ordered to pay the person

injured by the offence such sums of money in compensation as the court may deem appropriate

Giving false information to get registered

22 A person is guilty of an offence if the person knowingly gives false information to the Department for the purpose of being registered or for the purpose of acquiring any privilege or right due to persons so registered

General penalty

23 A person found guilty of an offence under this Act for which no penalty is expressly provided shall be liable to a fine not exceeding ten thousand shillings or imprisonment for a term not exceeding one year, or both such fine and imprisonment

Enforcement

24 (1) The Department may cause to be taken appropriate legal action if it believes that—

- (a) a person or group of persons is engaged in a practice which is discriminatory under this Act, and
- (b) the discrimination is a significant and substantial infringement of the rights of persons with disabilities and raises issues of public interest

No 14 of 2003

25 The provisions of this Act are in supplement to and not in derogation of the Persons with Disabilities Act

Regulations

26 The County Executive Committee Member may make regulations generally for the better carrying out of the provisions of this Act and, without limiting the generality of the foregoing, may make regulations—

- (a) prescribing the procedures, forms and fees applicable under this Act,
- (b) specifying and describing the nature of acts of discrimination against persons with disabilities, and prescribing the procedure and forms for persons entitled to subsidized medical care under this Act

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to provide for the rights and rehabilitation of persons with disabilities, to achieve equalization of opportunities for persons with disabilities and to establish the Embu County Department for Persons with Disabilities

The structure of the Bill is as follows

Part I provides for preliminary matters. It provides for short title and commencement date, interpretation and objects of the Act

Part II of the Bill establishes the Embu County Department for Persons with disabilities, and prescribes its functions and powers. Among the functions of the Department include the formulation of policies, registration of persons with disabilities, issuance of adjustment orders, provision of assistive devices and other appliances and equipment

Part III provides for the rights of persons with disabilities and requires the county government to take progressive measures to avail resources for the full realization of the rights. Among the rights set out in this Part include the right not to be discriminated in any employment opportunity, right to special health Treatment, right to accessibility and mobility, right to sports and recreation and the right to voting. This Part also makes provision for certain privileges to be enjoyed by persons with disabilities. These include incentives to employers who employ persons with disabilities, income tax exemptions for persons with disabilities and promotion of access to credit

Part IV contains financial provisions. These include sources of the Funds and how such monies should be expended

Part V contains miscellaneous provisions. These include offences, penalties, enforcement measures and the power by the County Executive Committee Member to make Regulations

The enactment of this Bill shall occasion additional expenditure of public funds which shall be provided for in the County Government of Embu estimates

Dated the 14th October, 2019

PETER MURIITHI NYAGA,

*Chairman Committee on Gender, Youth Empowerment,
Sports, Children Culture and Social services*