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CONTENT

Bill for Introduction into the Kakamega County Assembly—

PAGE

The Kakamega County Ward Project Development Bill, 2016 1

**THE KAKAMEGA COUNTY WARD PROJECT
DEVELOPMENT BILL, 2016**

ARRANGEMENT OF CLAUSES

PART I—PRELIMINARY

Clause

- 1—Short title.
- 2—Interpretation.
- 3—Object and purpose.
- 4—Principles of Ward Development projects.

PART II—FUNDING

- 5—Funding.
- 6—Ward committee to identify projects.
- 7—Funding of projects.
- 8—Number of projects.

PART III—CO-ORDINATION COMMITTEES

- 9—Establishment of County Committee.
- 10—Qualifications of chairperson.
- 11—Functions of the County Committee.
- 12—Powers of the County Committee.
- 13—Removal of a member of the County Committee.
- 14—Ward Committee.
- 15—Qualification of chairperson.
- 16—Conflict of interest.
- 17—Removal of a Member.
- 18—Removal of the Committee.
- 19—Functions of a Ward Committee.

PART IV—PROJECTS

- 20—Approval of county project plans.
- 21—Projects in respect of functions of County Government.
- 22—Equitable award of projects.
- 23—Identification and submission of projects.

- 24—Discretion.
- 25—Criteria for Projects.
- 26—Emergency reserve.
- 27—Procurement of Services and Works.
- 28—Record of Receipts and Disbursements.
- 29—Duplication of Projects to be avoided.
- 30—Cost Estimates to be Realistic.
- 31—Record of Receipts and Disbursements.
- 32—Supplementary Allocation.
- 33—Community Projects.
- 34—Allowances.
- 35—Staff of the Ward Committee.

PART IV—MISCELLANEOUS PROVISIONS

- 36—Provisions in the Act are Complementary.
- 37—Offences and Penalties.
- 38—Dispute and Resolution.

PART V—RULES AND REGULATIONS

- 39—Rules of Procedure.
- 40—Regulations.
- 41—Transitional Provisions.

**KAKAMEGA COUNTY WARD PROJECT DEVELOPMENT
BILL, 2016**

A Bill for

AN ACT of the County Assembly of Kakamega to provide for the funding, administration, management and use of funds allocated for ward development projects and for connected purposes,

ENACTED by the County Assembly of Kakamega County, as follows—

PART I —PRELIMINARY

Short title

1. This Act may be cited as the Kakamega County Ward Project Development Act and shall come into force on publication.

Interpretation

2. In this Act, unless the context otherwise requires—

“Committees” means the Kakamega County Projects Committee and the Ward Project Management Committee established under this Act.

“facility” means a hospital, a health service centre or any development projects established under this Act or determined by the County Government.

“projects” means all such development undertakings undertaken on behalf of the County Government by committees established under this Act.

“Executive Committee Member” means the Executive Committee Member for the time being in charge of treasury.

Object and purpose

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

- (a) the establishment and administration of the ward based projects;
- (b) recognise the Ward as a useful platform for identification performance and implementation of County Government functions as envisaged by Article 176 (2) of the Constitution;
- (c) ensure efficient and effective service delivery across the county;
- (d) provide a platform to harmonize and ensure equity in the implementation of county development projects and services;
- (e) provide for management of county projects in a manner that ensures reduction of bureaucracy in procurement and availability of funds;

- (f) provide a framework that allows direct funding of county development projects on need basis;
- (g) to further devolve the functions and resources of the County Government and to ensure participation and involvement of the county citizenry in management of its affairs;
- (h) provide for mechanisms of supplementing infrastructure development at the Ward level in matters falling within the function of the County Government at that level;
- (i) provide mechanisms for the County Assembly to facilitate the involvement of the people in the identification and implementation of projects for funding by the County government at the ward level.

Principles of expenditure of ward development projects

4. The principles of expenditure of ward development projects shall be to—

- (a) integrate community, county and national values in all processes and concepts regarding ward based projects;
- (b) protect the right to self-fulfilment of the communities within the county and bear responsibility to future generations;
- (c) promote good corporate governance principles in all procurement and implementation of development projects;
- (d) ensure effective resource mobilization for sustainable development;
- (e) promote the pursuit of equity in resource allocation within the ward;
- (f) provide a platform for unifying budgeting, financing, programme project management, implementation and performance review at the ward level; and
- (g) serve as a basis for engagement between county government and the citizenry, other stakeholders and interest groups.

PART II—FUNDING

Funding

5. (1) The County shall ensure that ten per cent of its development budget is reserved for ward based projects through line ministries.

(2) Monies set aside in subsection (1) will be shared equally amongst all wards in the County.

Ward committee to identify projects

6. (1) The Ward Committee established under section 14 (1) shall identify projects and pass the costs to the relevant county departments through the County Committee established under section 9 (1) in time for budgeting.

(2) The money set aside in the budget for ward based development projects by the county departments shall be released to the Kakamega County Ward Projects Development Committee for disbursement to the ward project management and implementation committee provided the disbursements shall be based on exchequer releases from the National Treasury.

Funding for Projects

7. (1) The number and size of projects to be undertaken in the ward shall be determined by the available funds in each financial year.

(2) Wards with uncommitted funds at the end of the financial year shall submit new proposals to the county committee for approval.

(3) Wards may pool resources for joint projects provided the decision for such joint projects shall first be approved by the ward committees of each of the participating wards and shall be reflected on the projects listed for each of the participating wards.

(4) Where wards have joint projects the respective ward committees shall co-ordinate the projects.

Number of Projects

8. (1) Any funding under this Act shall be for a complete project or a defined phase of a project and may include the acquisition of land and buildings.

(2) All projects shall be projects as defined under this Act and may include costs related to studies, planning and design or other technical input for the project but shall not include recurrent costs of a facility.

(3) Funds provided for under this Act shall not be used for the purposes of supporting political bodies activities or religious bodies activities.

(4) ward project management and implementation committee Office Project shall be considered as a development Project for purposes of the Act and may include appropriate furniture and equipment for the office.

(5) Sports activities shall be considered as development projects for purposes of this Act but shall exclude cash awards.

(6) Environmental activities may be considered as development projects.

PART III—WARD PROJECTS DEVELOPMENT COMMITTEE

Establishment of the County Committee

9. (1) There is established a committee to be known as Kakamega County Ward Projects Development Committee.

(2) The Committee shall consist of—

- (a) chairperson appointed by the governor with approval of the County Assembly;
- (b) chief officer treasury;
- (c) chief officer public service and administration;
- (d) chief Officer in charge of public works; and
- (d) three members each representing the southern, central and northern regions of the County appointed by the executive committee member.

Qualifications of the Chairperson

10. (1) A person shall be qualified for appointment as a chairperson if the person holds at least a degree in finance, management, leadership or law from a university recognized in Kenya and at least ten years' experience in leadership and management of public or private institutions.

(2) In addition to the qualifications specified under subsection (1), the person shall be a person of high moral character and integrity in accordance with Chapter Six of the Constitution.

Functions of the County committee

11. The functions of the county committee shall be to—

- (a) approve the timely and efficient disbursement of funds to every ward;
- (b) issue guidelines on the efficient and prudent utilization of the funds at the ward;
- (c) receive the costs for ward based development projects from the ward project management and implementation committee and pass the same to the County departments;

- (d) ensure all ward based development projects are in line with county integrated development plans and the annual fiscal strategy paper; and
- (e) perform such other duties as the committee may deem necessary under this Act.

Power of the County Committee

12. The county committee shall have all the powers necessary for the proper performance of its functions under this Act and in particular, but without prejudice to the generality of the foregoing, the committee shall have power to—

- (a) receive gifts, donations, grants, or other monies and make legitimate disbursements there from;
- (b) receive and discuss annual reports and returns from the wards;
- (c) enter into collaboration with such other persons, bodies or organisations as the committee may consider appropriate in furtherance of the objects of this Act.

Removal of a member of the County Committee

13. (1) The chairperson of the Committee may be removed from office on any one or more of the following grounds—

- (a) serious violation of the Constitution or any other law, including a contravention of Chapter Six;
- (b) gross misconduct, whether in performance of the member's functions;
- (c) physical or mental incapacity to perform the functions of office;
- (d) incompetence; or
- (e) bankruptcy.

(2) A person desiring the removal of the Chairperson under subsection (1) may present a petition to the County Assembly setting out the alleged facts constituting that ground.

(3) A member sought to, be removed under subsection (1) shall be given a fair hearing before a decision is made by the Executive Committee Member:

(4) Upon receipt of the petition under subsection (2), the Executive Committee Member may suspend the member pending the outcome of the complaint.

(5) The Executive Committee Member shall consider the petition and if it is satisfied that it discloses a ground under subsection (1), he or she shall make a determination that the member be removed from office and the member shall stand removed from office upon the making of that determination

(6) A vacancy arising as a result of the removal of a member under subsection (5) shall be filled in the manner set out in section 13 within thirty days of the occurrence of the vacancy.

Establishment of Ward Committee

14. (1). There is established a committee in each ward known as ward project management and implementation committee which shall consist of—

- (a) chairperson who shall be appointed by the Executive Committee Member;
- (b) ward administrator who shall be the secretary;
- (c) sub-county planning officer;
- (d) one persons nominated by the ward office established under Section 12 of County Assembly Service Act;
- (e) one representative from the women organisation in the ward appointed by the Executive Committee member; and
- (f) one representative from youths organisation appointed by the Executive Committee member;
- (g) one representative from religious organisations appointed by the Executive Committee member.

(2) The quorum of the committee shall be five members.

(3) Whenever ward development projects are discussed as an agenda at meetings of the ward committee, the secretary to the committee shall ensure that County Government official from the relevant ministry in which the project is being undertaken is invited to attend.

(4) The term of office of the members of the committee shall be three years renewable once but shall expire upon the end of an election cycle.

(5) The Ward Administrator shall be the custodian of all records and equipment of the Ward during the term of the Assembly and during transitions occasioned by a General election or a By-election.

(6) Whenever a vacancy occurs in the committee by reason of resignation, removal, incapacitation or demise of a member the vacancy shall be filled from the same category of person where the vacancy has occurred within a period of thirty days.

(7) The committee shall meet at least six times but not more than twenty four times in the same financial year.

(8) The committee shall at its discretion determine the quantum of instalments to various projects in the Ward taking into account the disbursement received and the requirements of different projects.

Qualifications of chairperson

15. (1) A person shall be qualified for appointment as a chairperson if the person holds at least a degree in finance, management, leadership or law from a university recognized in Kenya and at least five years' experience in leadership and management of public or private institutions;

(2) In addition to the qualifications specified under subsection (1), the person shall be a person of high moral character and integrity in accordance with Chapter Six of the Constitution.

Conflict of Interest

16. (1) A member of the committees who has an interest in any contract or other matter present at a meeting shall at the meeting and as soon as reasonably practicable after the commencement disclose the fact thereof and shall not take part in the consideration or discussion, or vote on any questions with respect to the project, contract or other matter or be counted in the quorum of the meeting during consideration.

(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 member of the Ward committee who contravenes subsection (1) commits an offense and shall be liable on conviction to a term of six (6) months imprisonment or to fine of Kenya Shillings Fifty Thousands or both.

Removal of a Member

17. (1) a member of the ward committee may be removed from office on any one or more of the following grounds:

- (a) serious violation of the Constitution or any other law;
- (b) gross misconduct;
- (c) embezzlement of funds;

- (d) bringing the committee into disrepute through unbecoming personal public conduct;
- (e) promoting unethical practices; and
- (f) physical or mental infirmity.

(2) A decision to remove a member under section 6 (1) shall be made through a resolution of at least four members of the committee and the member sought to be removed shall be given a fair hearing.

Removal of the Ward Committee

18. (1) Any person may present a petition to the Assembly for the dissolution of a Ward committee setting out the alleged facts for dissolution.

(2) Vacancies arising as a result of all the members of the ward committee under sub-section (9) shall be filled in the manner set out in sub section (1).

Functions of the Ward Committee

19. (1) A ward project management and implementation committee shall—

- (a) identify and prepare priority list of projects to be undertaken in the Ward through public participation;
- (b) undertake management of specified development projects;
- (c) undertake procurement of goods and services in liaison with the line ministry and the procurement department;
- (d) generate project development proposals for approval by the line ministry subject to approval by the County Committee;
- (e) receive and manage project implementation funds;
- (f) open and operate a bank account at a bank to be approved by the County Executive Committee Member for Finance;
- (g) prepare work plans based on estimates and cause to be kept books of accounts and records of income, expenditure and liabilities of the project;
- (h) supervise and control the administration of all funds allocated to the specific project subject to approval by the county treasury;
- (i) ensure linkages between County plans and the project implementation and management;

- (j) ensure meaningful engagement of citizens in the project management process; and
- (k) account for such funds quarterly to the County Treasury by preparing and submitting certified periodical financial and performance reports as prescribed; and
- (l) make appropriate consultations with the relevant ministry to ensure that cost estimates for the project are realistic.

PART IV—WARD PROJECTS

Approval of County Project plans

20. Every project implementation plan prepared by the Ward Committee shall be approved by the Chief Officer for the respective ministry prior to commencement or implementation.

Projects in respect of Functions of county Government

21. (1) A project under this Act shall—

- (a) only be in respect of works and services falling within the functions of the County Government under the Constitution unless there is a mutual agreement between the national government and the county government in respect of the inter governmental relations Act; and
- (b) be community based in order to ensure that the benefits are available to a wide spread cross-section of the inhabitants of the Ward.

(2) the Ward committee shall engage a person with relevant expertise in the project being undertaken to coordinate, monitor and evaluate the project and report back to the Ward committee.

(3) Such person shall be remunerated from funds allocated for administration of the project.

Equitable award of projects

22. In identifying projects to be undertaken and in preparing the priority list, the Ward Committee shall take into consideration regional balance within the wards.

Identification and submission of projects

23. (1) The chairperson of the ward committee shall within the first year of their term and at least once every two years convene an open forum public meetings in every ward to deliberate on development matters in the ward.

(2) the ward committee shall deliberate on the project proposed from the ward and any other project which the ward committee considers beneficial to the ward including joint projects with other wards, consider county development plans and identify a list of priority projects both immediate and long term out of which the list of projects to be submitted in accordance to the act shall be drawn from.

Discretion

24. The allocation of funds to various projects within the ward is the responsibility of the ward committee to be exercised at its own discretion within the provisions of this Act.

Criteria for Projects

25. (1) The types of projects submitted for funding under this Act shall comply with provision of this Act.

(2) It shall be the responsibility of the ward committee to ensure that the list of projects submitted for funding comply with the provision of the Act and their total cost does not exceed the allowable.

Emergency Reserve

26. (1) A portion of the allocation, equivalent to five per centum (hereinafter referred to as the “Emergency Expenses Reserve”) shall remain unallocated and shall be available for emergencies that may occur within the Ward.

(2) The County Committee shall determine the allocation of the emergency reserve in accordance with the Act.

(3) “Emergency” shall be construed to mean an urgent, unforeseen need for expenditure for which it is in the opinion of the committee that it cannot be delayed until the next financial year without harming the public interest of the citizenry.

(4) For each project, the ward committee shall set aside a sum not exceeding three per centum of the total allocation for the project to cater for the administration expenses of the project.

(5) The sum set aside under subsection (4) shall be properly accounted for and proper books of accounts kept and returns made to the County Committee for that Ward on how the sum has been used.

Procurement of Services and works

27. All works and services relating to projects under this Act shall be procured in accordance with the provisions of the Public Procurement and Asset Disposal Act No. 33 of 2015.

Record of Receipts and Disbursements

28. The ward committee shall compile and maintain a record showing all receipts, disbursements and actual expenditures on a monthly basis in respect of every project under this Act.

Duplication of projects to be avoided

29. The county committee shall ensure that no duplication of projects occur particularly where it is prudent to combine efforts on projects designed to benefit a large section of a community which transverse two or more wards.

Cost estimates to be realistic

30. The ward committee may make appropriate consultations with the relevant county government departments to ensure that cost estimates for the projects are realistic.

Records of receipts and Disbursements

31. (1) The county committee shall on a quarterly basis submit a report to the County Assembly detailing—

- (a) a summary of project proposals received from the wards in the preceding months and indicating the approval status of such projects;
- (b) a summary of the status of disbursements of funds to the wards for the preceding months; and
- (c) any restriction imposed on a ward account in accordance with the Act.

(2) The County Committee may impose a restriction on a ward account for failure by the ward committee to comply with the provisions of this Act. Such restriction shall remain in force until the ward committee complies with the Act.

Supplementary allocation

32. The existence of another allocation by the County Government to a project in the ward or neighbouring ward shall not be used as reason to deny either approval or funding of any project consistent with this Act.

Community project

33. Projects initiated by a community shall be eligible for support under this Act provided that such projects shall be submitted with other projects in conformity with the requirements of this Act.

Allowances

34. (1) The committees may be paid such allowances as shall be determined by the executive committee member in consultation with the County Committee.

(2) The allowances referred to in sub-section (1) shall be paid from the administration expenses of the project provided for under section 26 (4).

Staff of the ward committee

35. (1) The ward committee may engage such persons as may be necessary for execution of its functions.

(2) The persons engaged under subsection (1) shall assist the ward committee in project monitoring, evaluation, co-ordination and proper keeping of records and such staff shall be remunerated from the funds allocated for administration expenses of the specific project under which they are engaged.

PART IV—MISCELLANEOUS PROVISIONS**Provisions in the Act are Complementary**

36. (1) The provisions of this Act shall be complementary to any other development efforts by the County Government or any other Agency and nothing in this Act shall be taken or interpreted to mean that an area may be excluded from any other development programmes.

(2) Normal County development allocations shall continue alongside the projects funded under this Act.

Offences and penalties

37. Any person who misappropriates any funds or assets or assists or causes any person to misappropriate or apply the funds otherwise than in the manner provided in this Act commits an offence and shall upon conviction be liable to imprisonment for a term of not more than two years or to a fine not exceeding Kenya Shilling Five Hundred Thousand or both.

Disputes and resolution

38. (1) All complains and disputes by persons arising due to the administration of this Act shall be forwarded to the County Committee in the first instance.

(2) Complains of a criminal nature shall be forwarded to the relevant government agencies with prosecutorial powers.

PART V—RULES AND PROCEDURE

Rules of Procedure

39. The committees shall regulate and make their own rules of procedure for effective carrying out of their duties under this Act.

Regulations

40. The executive committee member may make regulations for better carrying out into effect the provisions of this Act.

Transitional provisions

41. (1) On the commencement of this Act, all funds, assets and other property both movable and immovable, which were previously allocated to the wards for development shall by virtue of this section, vest in the ward committee.

(2) All rights, powers and liabilities, whether arising under any written law or otherwise which immediately before such day were vested in, imposed on or enforceable against any ward development agency shall be deemed to be vested, imposed or enforceable against the ward committee.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to provide for the funding, administration, management and use of funds allocated for ward development projects and for connected purposes.

The Bill provides for the criteria for funding ward based development projects, identification of projects to be funded and the manner in which the said funding will be carried out. The Bill further establishes the County and Ward Development Committees to vet projects and ensure timely and efficient disbursement and management of public funds.

The enactment of this Bill will ensure achievement of effective administration and management of ward based projects.

ROCKY OMWENDO,
Chairman, Ward Development Projects, Committee.