

SPECIAL ISSUE

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Bill for Introduction into the County Assembly of Kiambu—

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**THE KIAMBU COUNTY YOUTH WOMEN AND PERSONS WITH
DISABILITIES ENTERPRISE DEVELOPMENT FUND
(AMENDMENT) BILL, 2015**

A Bill for

**AN ACT of the County Assembly of Kiambu to amend the Kiambu
County Youth, Women and Persons with Disabilities Enterprise
Fund Act, 2014**

ENACTED by the County Assembly of Kiambu, as follows—

Short Title

1 This Act shall be cited as the Kiambu County Youth, Women and Persons with Disabilities Enterprise Development Fund (Amendment) Act, 2015

Amendment of Section 2

2 Section 2 of the Kiambu County Youth, Women and Persons with Disabilities Enterprise Fund, 2014 in this Act referred to as the “principal Act” is amended—

- (a) in the definition of the word “fund” by inserting the words “Women and Persons With Disabilities” between the words “youth” and “enterprise”

Amendment of section 4

3 The principal Act is amended in section 4-

- (a) Under sub-section 4 by substituting the entire paragraph with the following new paragraph

“(4) In determining the utilization of the fund, the fund manager shall ensure that

- (a) Not more than five per cent of the fund is utilized for administration of the fund,
- (b) Not more than twenty five per cent of the fund is utilized for purposes set out in subsection (3) (a) and
- (c) The bulk of the fund is utilized for purposes set out in subsection (3) (b), (c) , (d), (e) and (f)

Amendment of section 5

4 The principal Act is amended in section 5—

- (a) Under sub-section 2 (a) by inserting the words “manage” before the word “supervise” in the first line and by deleting the words

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“in consultation with the Board” in the last line

- (b) Under sub-section 2 (b) by replacing the words “in consultation with the Board to be approved” in lines two and three with the words “for the approval”
- (c) Insert the following new paragraphs
- (h) “approve and process applications for funding recommend by the Sub-County Committee ”
- (i) “supervise, co-ordinate, and liaise with the financial institutions appointed under this Act ” and
- (j) “advise the Executive Committee Member on appropriate guidelines and procedures for implementation of the Act and for better management of the fund”
- (k) “prepare and submit to the Executive Committee Member the annual report on the implementation of the Act ”
- (l) “carrying out any other functions as may be assigned by the Executive Committee Member ”

Amendment to section 6

2 **5** The principal Act is amended in section 6 by deleting sub-section

Amendment to section 10

6 The principal Act is amended in section 10 –

- (a) Under sub-section (1 (a) by replacing the words “ managing the fund” with the words “receive and determine grievances from persons aggrieved by the decision of the Sub-County Committee or the Fund Administrator”
- (b) By deleting sub sections (b), (d), (e), (f) and (g)
- (c) Under sub-section 1 (c) by renaming the sub-section (1) (b) and rephrasing the paragraph as follows

“advising the Executive Committee Member on matters relating to entrepreneurship, economic development and opportunities for the Youth, Women and Persons with Disabilities”

Amendment of Section 11

7 The principal Act is amended in Section 11—

- (a) under sub-section 2 by deleting paragraph (b)

- (b) under sub-section 3 by substituting letters (c) and (d) between the words “Section (2)” and “if” in line two with the letters “(f)”, “(g)” and “(h)”
- (c) under sub-section 4 by deleting the words “which shall expire upon the constitution of a new committee in accordance with subsection (5)”
- (d) by deleting sub-section 5

Amendment of section 12

8 The principal Act is amended in section 12 by replacing the word “Board” with the words “fund administrator” in sub-sections 1 (b), (e), and (f)

Amendment of section 13

9 The principal Act is amended by deleting section 13 entirely

Amendment of Section 14

10 Section 14 of the principal Act is amended by inserting the word “Member” between the words “Committee” and “may”

Amendment of section 15

11 Section 15 of the principal Act is amended by deleting sub-section 2

Amendment of Section 16

12 Section 16 of the principal Act is amended—

- (a) by substituting number “14” with “15” under sub-section 1,
- (b) under sub-section 1 by replacing the word “Board” with the words “sub county Committee”
- (c) under sub-section 3 by inserting the word “Committee” between the words “Executive” and “Member” and by replacing the word “Board” with the words “Fund administrator”
- (d) Under sub section 4 by replacing the word “Board” with the words “sub-county committee” and the words “Executive Member” with the words “Fund administrator”
- (e) under sub-section 6 by replacing the word “Executive Member” with the words “Fund Administrator” and the word “Board” with the words “sub county committee”
- (f) by deleting sub-section 7

Amendment of Section 17

13 Section 17 of the principal Act is amended—

- (a) By replacing the word “Board” with the words “Fund administrator” in sub-sections 1, 3 and 4
- (b) Under sub-section 1 by inserting the word “Committee” between the words “Executive” and “Member”

Amendment of section 18

14 Section 18 of the principal Act is amended—

- (a) by replacing the word “Board” in sub section 1 with the word “Executive Committee Member”
- (b) by replacing the word “Board” in sub section 2 with the words “Fund administrator”
- (c) by deleting sub-section 3

Amendment of section 19

15 Section 19 of the principal Act is amended by deleting the words “five year” in sub section 1

Amendment of section 20

16 Section 20 of the principal Act is amended –

- (a) Under sub section 1 by replacing the word ‘Board’ with the word “Executive Committee Member”
- (b) By deleting sub section 2

Amendment of section 21

17 The principal Act is amended by deleting section 21

Amendment of section 22

18 The principal Act is amended by deleting section 22

Amendment of Section 23

The principal Act is amended under Section 23 sub-section 1 by replacing the word “Board” with the words “Fund Administrator” and by inserting the word “Committee” between the words “Executive” and “Member”

Amendment of Section 24

20 Section 24 of the principal Act is amended—

- (a) under sub-section 1 by replacing the word “Board” with the words “fund administrator” and by adding the word “Member” after the word “Committee”
- (b) Under sub section 3 by replacing the word “Board” with the words “Executive Committee Member”

Amendment of section 26

21 Section 26 of the principal Act is amended by replacing the word “Board” with the words “fund administrator” in sub sections 1 and 2

Amendment of section 27

22 Section 27 of the principal Act is amended—

- (a) By replacing the word “Board” with the words “fund administrator” in sub-sections 1 and 3
- (b) Under sub-section 4 by replacing the word “Board” with the words “Department responsible for the fund”

Amendment of section 28

23 Section 28 of the principal Act is amended –

- (a) By replacing the word “Board” with the words “fund administrator” in the first line and by deleting the words “and the Board referred to under section 22 during such year” in lines 4 and 4
- (b) Under sub-section 2 by replacing the word “Board” with the words “financial administrator”

Amendment of section 29

24 Section 29 of the principal Act is amended by replacing the words “misleading the Board” with the words “misrepresenting the facts” in lines 8 and 9

Amendment of section 30

25 Section 30 of the principal Act is amended by replacing the word “Board” with the words “financial administrator” in sub section 1 line 3

MEMORANDUM OF OBJECTS AND REASONS

The purpose of the Bill is to amend sections of the Kiambu County Youth, Women and Persons with Disabilities Enterprise Development Fund Act, 2014 in order to streamline it with other sections of the Act and other legislations more specifically, the County Governments Act, 2012

Amendment to Section 2 is seeking to amend a typographic error. It is seeking to add some words that appear in the title of the Act and Section 4 that establishes the fund which were omitted in defining the word “fund” in section 2. This amendment will clarify that the “fund” referred to in the definitions is the same fund that is established in Section 4.

Amendment to Section 4(4) is seeking to clarify the procedure of allocating funds against the items set out in section 4(3). The amendment clarifies that only a sum not exceeding 5% can be utilized for administrative purposes. In the same light, only a sum not exceeding to 25% may be allocated to capital financing. This leaves adequate funds to be allocated to the other items envisaged in section 4(3).

Amendment to section 5, 6, 10, 16, 19, 20, 23, 24, 26, 27, 28, 29 and 30 all seek to eliminate the conflicts between the role of the Board and of the fund administrator by adopting the best practices. According to the current Act, the Board has assumed responsibilities that ordinarily are undertaken by the officers of the County Government, especially as they touch on the issue of accountability of the funds. Further, the current Act gives the Board mandate to prepare annual reports and budgets, which is a function that can only be undertaken by the fund accounting officer. Likewise, the role given to the Board by the current Act requiring the Board to receive and process applications is conflicting with the role of the sub county committees as set out in section 12, which is similar in wording and implication.

It is therefore proposed that the sub county committee are better placed to receive and process the loan and recommend the application to the fund administrator, who in turn shall submit the applications to the financial institution for further processing and disbursement of funds. The Board is however given the appellate mandate so that there will be a body to which persons who are aggrieved by the decision of the sub county committee or the fund administrator may seek redress.

Amendment to Section 11(2) is to remove inconsistencies between the Section 9 of the County Government Act on the role of the Member of County Assembly and the operations of the Act. According to the current section 11(2), the Members of the County Assembly are members of the sub county committee. These committees, according to section 12 of the

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Act, are responsible for, inter alia, “receiving and reviewing applications for funding, and carrying out functions as may be assigned by the Executive Committee Member These roles as out in this Act are executive and administrative, the kind of functions that the Executive Arm of government is responsible for By including the members of the County Assembly in these committees, they will be directly undertaking executive functions, to the extent of being assigned duties by the Executive Committee Member This is an outright contradiction with the provisions of section 9(2) of the County Government Act, which provides that “A” member of the county assembly shall not be directly or indirectly involved in the –

- (a) Executive functions of the county government and its administration, or
- (b) Deliver services as if the member were an officer or employee of the county government ”

The **Amendment to section 11(3)** is to correct a typographical error The current provision cites paragraphs 11(2) (c) and (d) which both refer to county government officers The appointment of these officers is under the County Public Service Board and their qualifications are already defined It appears that the sections that required definition of qualification were the section dealing with persons to be nominated from the public The substitution makes this clear

Amendment to section 11(5) is to allow for continuity of the Board members terms, which is government by section 11(4) This will ensure that there will be no vacuum in operationalization of this fund Section 11(4) is amended because with the amendment made by deleting section 11(5), then there will be no subsection (5) to refer to in the Act

Amendment to section 13 seeks to eliminate the current conflict between the functions of the fund administrator and the fund manager The current Act by default re-distributes the functions of the fund administrator to the fund manager to the extent that it almost seems that the fund administrator and the fund manager are one and the same person In addition, only the fund administrator should by law be held liable for the mismanagement of the funds as they are the accounting officers

Amendment to section 15(2) seeks to re-focus the fund to its original and intended purpose, that is to say, matters relating to the youth, women and persons with disability The current sub-section 2 re-opens the fund to any application, thus eroding the very principles that the Act sought to address in the first instance

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Amendment to section 16 (7) is proposed on the basis that it is not easy too define what prescribed education is This should best be addressed under administrative

Amendment to section 19 removes the limit of five years so that at any time, the fund has the flexibility to align its strategic plan with the County government strategic and development plans which may be designed to cover different periods of time

MUTUGA JOSEPH KABURA,
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