

SPECIAL ISSUE

COUNTY ASSEMBLIES FORUM (CAF)
P. O. Box 73552 - 00200,
NAIROBI, KENYA

Kisii County Gazette Supplement No. 4 (Bills No. 4)



REPUBLIC OF KENYA

***KISII COUNTY GAZETTE
SUPPLEMENT***

BILLS, 2015

NAIROBI, 12th March, 2015

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**THE KISII COUNTY MECHANICAL AND TRANSPORT FUND
BILL, 2015**



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THE KISII COUNTY MECHANICAL AND TRANSPORT FUND BILL, 2015

A Bill for

AN ACT of County Assembly of Kisii to provide for the establishment and administration of a Fund to provide funds for the administration, planning, development, management, regulation, operation and maintenance of effective, economical and efficient mechanical and transport services in Kisii County and for other matters incidental thereto and connected therewith

ENACTED by County Assembly of Kisii as follows—

PART I—PRELIMINARY

Short title

1. This Act may be cited as the Kisii County Mechanical and Transport Fund Act, 2014.

Interpretation

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

“Committee” means the Fund Management Committee established under section 5;

“County” means Kisii County;

“County Executive Committee Member” means the County Executive Committee Member responsible for the Public works and Transport sector;

“Department” means the Mechanical and Transport Department; “financial year” means the period of twelve months ending on the 30th June, in each year;

“Fund” means the Mechanical and Transport Fund established under Section 3;

“machine or equipment” means all appliances, machines, motor vehicles, tractors earth-movers, equipment and every other item or tool belonging to or in the control of the Mechanical and Transport Department;

“the officer administering the Fund” means the accounting officer of the Department for the time being responsible for the Mechanical, Transport and Public Works Department, or a person appointed by him in writing for that purpose.

“Secretary” means secretary to the Committee appointed under section 5;

PART II— ESTABLISHMENT AND ADMINISTRATION OF THE FUND

Establishment of the Fund

3. There is established a fund to be known as the Kisii County Mechanical and Transport Fund.

Object and purpose of the Fund

4. The object and purpose of the Fund is to provide additional funds and create a revolving fund for the administration, planning, development, management, regulation, operation and maintenance of effective, economical and efficient mechanical and transport services in the County.

PART III—ESTABLISHMENT AND FUNCTIONS OF THE COMMITTEE

The Fund Management Committee

5. (1) There is established a Fund management Committee.

(2) The Fund Management Committee shall consist of—

- (a) the Chairperson appointed by the County Executive Committee Member;
- (b) the Chief Officer in the Department for the time being responsible for matters relating to Mechanical, Transport and Public Works who shall be the Secretary to the Committee;
- (c) the Chief Officer to the Treasury or a representative officer designated in writing by that Chief Officer ;
- (d) the County Mechanical Engineer; and
- (e) one member of the public appointed by the County Executive Committee Member.

(3) The Department of Mechanical, Transport and Public Works shall provide Secretarial Services to the Committee.

(4) The Chairperson and the member of the Committee appointed under sub-section (2) (e) shall hold office for a period of three years and shall be eligible for re-appointment for a further period of three years.

(5) The office of the Chairperson and a member of the Committee appointed under sub-section (2) (e), shall fall vacant —

- (a) upon resignation of the member in writing addressed to the County Executive Committee Member through the Secretary;

- (a) if by reason of physical or mental infirmity the member is unable to execute the functions of the office;
- (b) if the member is adjudged bankrupt by a competent court of law;
- (c) upon conviction of a criminal offence and the member is sentenced to a term of imprisonment of not less than six months or where the offence adversely downgrade his or her status as a member of the committee;
- (d) upon contravention of Chapter Six of the Constitution by the member;
- (e) if the member is absent from three consecutive meetings of the Committee without a reasonable cause; or
- (f) upon death.
- (g) (6) Where the office of a member becomes vacant under subsection (5) the Secretary shall forthwith notify the vacancy to the appointing authority for appropriate action.

(7) All decisions of the Committee shall be communicated to third parties through its Secretary.

Functions of the Committee

6. The functions of the Committee shall be—

- (a) to receive, consider and approve periodic reports, statements of account and other reports of the Fund from the officer administering the Fund;
- (b) to approve expenditure of any funds of the Fund;
- (c) to formulate policies and rules for effective management, operation and maintenance of the machine and equipments;
- (d) to guide and advise the officer administering the Fund on all matters of the Fund including the use and hiring of machines and equipments of the Fund.
- (e) To consider and approve or review any application for use or hiring any machine or equipment which has been declined by the secretary.
- (f) to oversee and steer the provision of effective, economical and efficient mechanical and transport services in the County; and
- (g) to perform and exercise all other functions and powers conferred on the Committee by this Act or the County Executive committee member.

Meetings of the Committee

7. (1) The Chairperson shall preside at all the meetings of the Committee unless he or she is absent from a particular meeting in which case the members present shall elect one of them to preside at that particular meeting or part thereof.

(2) The Committee shall meet at least, six times in every year but the chairperson shall, upon requisition in writing by at least three members, convene a special meeting of the Committee at any time.

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

(4) The Chairman shall, in case of equality of votes, have a casting vote.

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

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

PART IV—APPLICATION FOR USE OR HIRE

Applications for use or hire of equipments

8. (1) Any person desiring to use or hire any machine or equipment belonging to the department shall make an application to the Secretary in a prescribed form.

(2) The criteria for granting any application for use or hire shall be in accordance with the regulations made under this Act.

(3) The Secretary shall consider on behalf of the Committee all applications in accordance with the criteria set under subsection (2) and may accordingly accept or reject any application for use or hire of any machine or equipment.

(4) Where the Secretary accepts any application, he or she shall recommend the terms and condition under which the Applicant shall be allowed to use or hire any such machine or equipment.

(5) Where the Secretary rejects any application, he or she shall forthwith notify the Committee of the rejection stating the reasons for rejection and shall convene a full Committee meeting within seven days for the Committee to consider the application.

(6) The Committee may confirm, reverse or modify the decision of the Secretary and shall give such directions to the Secretary as may be necessary to give effect to its decision.

(7) If the Committee rejects any application, the Secretary shall, as soon as is practicable, notify the applicant of the rejection in writing giving reasons why the application was rejected.

Appeals

9. Any applicant aggrieved by the decision of the Secretary or Committee may appeal to the County Executive Committee Member within seven days of receipt of the Committee's decision and the County Executive Committee Member may, after giving the applicant a hearing, confirm or reverse the decision of the Committee.

PART V—FINANCIAL PROVISIONS OF THE FUND

Capitalization of the Fund

10. The Fund shall consist of—

- (a) moneys allocated and appropriated to the Fund from the County Revenue Fund, from time to time, by the County Assembly;
- (b) any grants, gifts, donations, loans or other endowments given to the Fund;
- (c) moneys that may accrue to the Fund in the course of the exercise or performance of its functions under this Act;
- (d) interest earned and income from investment of the funds of the Fund; and
- (e) money from any other lawful source accruing to the Fund.

Fund Expenditure

11. (1) There shall be paid from the Fund –

- (a) expense for maintenance, repair and replacement of machines and equipment;
- (b) operational expenses incurred in the administration of the Fund including debts and other liabilities incurred by the Fund; and
- (c) money as are necessary for the functioning and operation of the Fund under this Act.

(2) No monies shall be expended for any purpose other than the purpose for which the Fund is established except in the provision of

finance in respect of a specified and defined activity approved in writing by the officer administering the Fund.

Bank account of the Fund

12. (1) The Committee shall open a bank account of the Fund and such other accounts in commercial banks decided by the Committee with the approval of the Executive Committee Member.

(2) The signatories to the bank accounts maintained under subsection (1) shall be the Committee Secretary and three other persons appointed by the County Executive Committee Member in charge of matters of finance.

(3) The signing instructions shall be such that the signature of the Secretary and any two of the other three signatories shall be mandatory.

Estimates of income and expenditure

13. (1) At least three months before the commencement of each financial year, the Committee shall cause to be prepared estimates of the revenue and expenditure of the Fund for that year.

(2) The annual estimates shall make provisions for all the estimates of expenditure of the Fund for the relevant financial year and shall provide for—

- (a) all monies as are necessary for the functioning and operation of the Fund under this Act;
- (b) the cost of the administration and operations of the Committee, including payment of allowances, pensions, gratuities and other charges payable to the staff and members of the Fund who are not employed by the county Public service; and
- (3) The financial estimates referred to under sub-section (1) and (2) shall—
 - (c) differentiate between recurrent and capital expenditure; and
 - (d) itemize every activity that the committee intends to undertake in respect of the Fund in the coming financial year under a separate vote head.

(4) The annual estimates shall be approved by the Committee before the commencement of the financial year to which they relate and shall be submitted to the Executive Committee Member for approval by the County executive Committee before tabling in the County Assembly for its approval.

(6) Upon the approval of the estimates by the County Assembly, all monies appropriated for purposes of the Fund shall be paid into the relevant accounts established under section 12.

Treatment of surplus

14. Any surplus realized in any financial year from the operations of the Fund shall be retained in a reserve account of the Fund and any deficiency realized in any financial year shall, subject to prior concurrence of the county treasury, be offset against the realized surplus held in the reserve account of the Fund.

Retention of receipts

15. The receipts, earnings, accruals and the balance of the Fund at the close of each financial year shall not be paid into the Consolidated Fund but shall be retained for the purpose for which the Fund is established.

Administration of the Fund

16. (1) The officer administering the Fund shall be the accounting officer of the Department for the time being responsible for the Mechanical, Transport and Public works Department, or a person appointed in writing for that purpose by the County Executive Committee Member for Finance.

(2) The officer administering the Fund shall —

- (a) supervise and control the administration and financial management of the Fund;
- (b) consult with the Executive Committee Member for the time being responsible for matters relating to finance as may from time to time be necessary;
- (c) if he thinks fit, impose conditions on the use of the expenditure authorized by him or her or on his or her behalf and may impose any reasonable prohibition, restriction or other requirement concerning such use or expenditure;
- (d) institute prudent measures for the proper utilization for monies deposited in the Fund using suitable internal controls and appropriate mechanism for accountability including audit of accounts by internal auditors of the Department responsible for matters relating to finance;
- (e) cause to be kept proper books of accounts and records relating to the Fund and to all the activities and undertakings financed by the Fund;

- (f) prepare, sign and transmit to the Controller and Auditor-General in respect of each financial year and within four months after the end thereof, a statement of account relating to the Fund specifying all contributions to the Fund and the expenditure incurred from the Fund, with such additional information as may be sufficient for purposes of examination and audit and submit the same to the Committee and the County Executive committee.

Provided that the statement of account shall include details of the balance between the assets and liabilities of the Fund and reflect the true and fair financial status of the Fund as at the end of the financial year concerned.

- (g) The annual accounts referred to under this section shall be prepared, audited and reported upon in accordance with the provisions of Articles 226 and 299 of the Constitution and the Public Audit Act.

Winding up of the Fund

17. Upon the winding-up of the Fund, any balance and assets standing to the credit of the Fund shall be credited to the County Exchequer.

Annual Report and Publication

18. (1) The committee shall, within a period of three months after the end of each financial year or within such longer period as the Executive Committee Member may approve in writing, submit to the Executive Committee Member a report of the operations of the Fund during that year.

(2) The Executive committee member shall within seven days of the receipt of the report, table the same before the County Executive Committee for approval.

(3) The Executive committee Member shall, after the approval of the report by the County Executive Committee, cause the report to be published in the County Gazette and in at least one newspaper of wide circulation in the County.

(3) The Executive Committee Member shall lay the reports before the County Assembly, including the balance sheet and the statements of accounts, within a period of fourteen days of the receipt of the reports and statements, or, if the County Assembly is not sitting, within fourteen days of the commencement of its next sitting.

PART VI—MISCELLANEOUS PROVISIONS

Officers and Staff of the Fund

19. (1) The Committee may request the County Public Service Board to appoint such qualified officers and staff as are necessary for the proper functioning of the committee and management of the Fund upon terms and conditions that the county Public Service Board may determine with the approval of the Salaries and Remuneration Commission.

(2) The Committee may with the approval of the County Public Service Board and approval of the Governor if it becomes necessary establish an independent secretariat for the proper management of the Fund.

Remuneration and allowances

20. The ex-officio members of the Committee and such other officer of the Fund shall be paid allowances and benefits as the County Public Service Board and on the advice of the Salaries and Remuneration Commission, determine.

Protection from personal liability

21. No act, matter or thing done or omitted to be done by any member of the committee, any member of staff or other person in the service of the committee, or any person acting under the direction of the Committee, shall, if that act, matter or thing was done or omitted to be done in good faith in the execution of a duty or direction, render that member or person personally liable to any civil liability

Regulations

22. (1) The County Executive Committee Member may, after consultation with the Committee, make regulations for the proper functioning of the committee and smooth running of the Fund.

(2) The County Executive Member may, make regulations generally for the proper and efficient administration of this Act.

MEMORANDUM OF OBJECTS AND REASONS

The principal purpose and objects of this Bill is to provide for the establishment and administration of a Fund to provide funds for the administration, planning, development, management, regulation, operation and maintenance of effective, economical and efficient mechanical and transport services in Kisii County and for other matters incidental thereto and connected therewith.

Part I of the Bill provides for preliminary matters including the Short title, Interpretation, Objects of the Act and its Application.

Part II of the Bill provides for the establishment and administration of the Fund.

Part III of the Bill provides for the establishment and functions of Fund Management Committee and its Meetings.

Part IV of the Bill deals with the application for use or hire of equipment and appeals.

Part V of the Bill provides for Capitalization, Expenditure, Administration of the Fund and Winding up as well as the Annual Reports and Publication.

Part VI of the Bill contains miscellaneous provisions such as Officers and Staff of the Fund, Remuneration of members and staff, Protection from personal liability and the power to make regulations.

Financial implications

The enactment of this Bill will occasion some additional expenditure of public funds which shall be initially be provided for in the county budget and thereafter the Fund will be self revolving.

Statement on Delegated Powers to Legislate

The Executive Committee member responsible for culture is empowered make necessary regulations for the better functioning of various provisions of the Act.

Statement that the Bill is not a money Bill within the meaning of Article 114 of the Constitution

This Bill is not a money Bill within the meaning of Article 114 of the Constitution of Kenya 2010.

Dated the 27th day of November, 2014

SKITTER OCHARO
*Executive Committee Member,
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