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MACHAKOS COUNTY BILLS, 2020

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THE MACHAKOS COUNTY CLIMATE CHANGE BILL, 2020

A Bill for

AN ACT of the County Assembly of Machakos to put in place the framework and mechanisms for mobilization and facilitation of the County government, communities and other stakeholders to respond effectively to climate change through appropriate adaptation and mitigation measures and actions and for connected purposes

ENACTED by the County Assembly of Machakos as follows—

PART I—PRELIMINARY

Title and commencement

1 This Act may be cited as the Machakos County Climate Change Act, 2020

Interpretation

2 In this Act unless the context otherwise requires—

“adaptation” means adjustment in natural or human systems in response to actual or expected climatic stimuli or their effects in order to moderate harm or exploit beneficial opportunities,

“adaptive capacity” means the ability of a system to adapt to the impacts, cope with the consequences, minimize potential damages or take advantage of opportunities offered by climate change or climate variability

“Authority” means the National Environment Management Authority established by the Environmental Management and Coordination Act 1999 as amended by the Environmental Management and Coordination (Amendment) Act, 2015,

“Board” means the County Climate Change Board established under section 5

“climate change” means a change in the climate system which is caused by significant changes in the concentration of greenhouse gases as a consequence of human activities and which is in addition to natural climate change that has been observed during a considerable period of time

“climate change unit” means the County Climate Unit established to support coordination of climate change matters in the County as envisaged by section 19(3) of the Climate Change Act 2016,

“County” means Machakos County

“County Assembly” means the County Assembly of Machakos

“County Government” means the County Government of Machakos

“directorate” means the Climate Change Directorate established under section 9(1) of the Climate Change Act 2016,

“environment” has the meaning assigned to it in section 2 of the Environmental Management and Coordination Act,

“Executive Committee Member” means the County Executive Committee Member responsible for matters relating to climate change,

“Fund” means the County Climate Change Fund established under section 46,

“Fund Administrator” means the Administrator of the County Climate Change Fund established under section 46

“mitigation” means preventing, reducing or slowing down the increase of atmospheric greenhouse gas concentrations by limiting current or future emissions and enhancing potential sinks for greenhouse gases

“Planning Committee” means the County Climate Change Planning Committee established under section 15,

“private entity” means a body or person with functions of a private nature, and includes bodies registered under the Public Benefits Organizations Act 2013,

“public entity” means a body with functions of a public nature

“resilience” means the ability of a social economic or ecological system to absorb disturbances while retaining the same basic structure and ways of functioning the capacity for self-organization and the capacity to adapt to stress and change

“vulnerability” means the conditions determined by physical social economic and environmental factors or processes, which increase the susceptibility of a system to the impact of hazards, and

“Ward Planning Committee” means the Ward Climate Change Planning Committee established under section 23

Objects and purposes

3 (1) The objects and purpose of this Act is to put in place mechanisms for the enhancement of climate resilience through development, management implementation regulation and monitoring of adaptation and mitigation measures and actions

(2) Without prejudice to subsection (1), this Act shall be applied by the County government in all sectors of the economy to—

- (a) mainstream climate change responses into development planning, decision making and implementation,
- (b) Implement co-ordinated and integrated response to climate change and its impacts by all actors and stakeholders,
- (c) facilitate effective management of climate change impacts by enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change,
- (d) promote, support and facilitate community-based and community-initiated adaptation and mitigation activities,
- (e) enforce duties and provide incentives for the private sector to contribute to achievement of low carbon climate resilient development,
- (f) facilitate public participation in climate change response through capacity development awareness creation, consultation, representation and access to information,
- (g) establish frameworks and mechanisms for mobilization and transparent and accountable management of financial and other resources for climate change response
- (h) establish and implement mechanisms to promote and facilitate climate change research and development innovations technology development training and capacity building,
- (i) integrate climate change into the exercise of power and functions of all levels of the County government including in decentralized units and enhance co-operative climate change governance between the County, neighbouring counties and the national government and
- (j) contribute to national efforts to address the adverse impacts of climate change

Guiding values and principles

4 The application and interpretation of this Act and the making or implementation by the County government of any policy on climate change shall be guided by the following values and principles—

- (a) community driven and bottom-up planning of response to climate change,

- (b) commitment to informed participation of communities in planning and implementation of climate change response interventions,
- (c) recognition respect and integration of knowledge, perspectives and experiences of communities in climate change response
- (d) planning and implementation of climate change response to be anchored in and be supportive of devolution
- (e) flexible learning approach to addressing challenges of climate change,
- (f) investments focused on achieving equitable benefits
- (g) inclusion of all major actors in planning and implementation of climate change response,
- (h) protection of the climate system for the benefit of present and future generations
- (i) ensuring a just transition for all towards an environmentally sustainable economy and society in the light of County circumstances and developmental goals,
- (j) national values and principles of governance spelt out in Article 10 of the Constitution
- (k) values and principles of public service spelt out in Article 232 of the Constitution,
- (l) promotion and protection of the right to a clean and healthy environment in accordance with Article 42 of the Constitution and
- (m) commitment to fulfilment of the state obligations in respect of the environment as stipulated under Article 69 of the Constitution

PART II—CO-ORDINATION AND OVERSIGHT

Establishment of County Climate Change Board

5 There is established the County Climate Change Board

Functions of the Board

6 The Board shall co-ordinate and oversee climate change response in the County, and in this connection shall—

- (a) ensure mainstreaming of climate change into County planning and development processes,

- (b) co-ordinate formulation and monitor the implementation of the County Climate Change Action Plan, County Climate Finance Framework and any other County climate change policies, plans and strategies
- (c) mobilize funds into and administer the County Climate Change Fund established under this Act,
- (d) review, approve and monitor the implementation of Regulations for administration and management of the Fund,
- (e) review and make recommendations on the biennial report on implementation of the County Climate Change Action Plan and any other reports on climate change response interventions in the County,
- (f) advise the County government on legislative, policy and other measures necessary for climate change response and attainment of low carbon climate resilient development,
- (g) approve and oversee the implementation in the County of a comprehensive programme of climate change education awareness creation and capacity building
- (h) provide policy direction on research, training and dissemination of information relating to climate change to the public and other stakeholders the County
- (i) ensure positive linkages interactions and synergy between the County, neighbouring counties and the national government in climate change response programming and action
- (j) ensure a co-ordinated approach to climate change response, programming and action within the County government between the County government and national government, and among the different stakeholders in the County
- (k) co-ordinate the formulation of a climate change reporting framework, and the preparation and dissemination of an annual report on climate change response activities in the County and
- (l) perform such other functions as may be necessary for the achievement of the objectives of this Act

Composition of the Board

7 (1) The Board shall comprise of the following members who shall be appointed by the Governor—

- (a) the Deputy Governor who shall be the Chairperson

- (b) the Executive Committee Member who shall be the Secretary,
 - (c) the Executive Committee Member responsible for the County Treasury
 - (d) the Executive Committee Member responsible for matters relating to agriculture, livestock and fisheries,
 - (e) the Executive Committee Member responsible for matters relating to health,
 - (f) the Executive Committee Member responsible for matters relating to water and irrigation,
 - (g) the national government officer responsible for the coordination of drought response in the County,
 - (h) the County representative of the National Environment Management Authority,
 - (i) two representatives of a duly registered public benefit organization being one woman and one man, working on matters relating to the environment in the County nominated by the umbrella organization representing the largest number of public benefit organizations in the County
 - (j) one representative of the private sector in the County nominated by the largest umbrella organization representing the private sector in the County
 - (k) one representative of women in the County nominated by the umbrella organization representing the largest women's organizations in the County
 - (l) one representative of the youth in the County nominated by the umbrella organization representing the largest youth organization in the County,
 - (m) one representative of persons with disabilities in the County nominated by the umbrella organization representing the largest organization for persons with disabilities in the County
 - (n) a Fund Administrator, who shall be an ex-officio member with no voting rights
- (2) A person shall only qualify to be nominated for appointment under subsection (1)(i), (j), (k), (l) and (m) if that person has demonstrable experience, expertise and interest in issues of climate change natural resource management and/or environmental conservation and has actively and publicly engaged with these issues in the County

(3) Without prejudice to subsection (2), a person shall not qualify for nomination for appointment under subsections (1)(i), (j), (k), (l) and (m) unless that person is—

- (a) a citizen of Kenya,
- (b) meets the requirements of Chapter 6 of the Constitution, and
- (c) has at least five years' experience in the relevant field

(4) In making appointments under this section the Governor shall ensure compliance with the two thirds gender principle

(5) The Governor shall publish in the Gazette, the names of the persons appointed under this section

(6) All Gazetted non state members of County environment committee shall be automatic members of County Climate Change Management Board

Term office of Board members

8 The Members of the Board appointed under section (7)(1)(i), (j) (k), (l) and (m) shall serve for a term of three years and shall be eligible for re-appointment once

Removal of a Board member

9 (1) A member of the Board may resign by issuing a one month's notice in writing to the Governor

(2) A member of the Board may be removed from office by the Governor on any of the following grounds—

- (a) failure to attend two consecutive meetings of the Board without reasonable cause duly communicated to the Chairperson of the Board,
- (b) gross violation of the Constitution or any other written law
Gross misconduct,
- (c) physical or mental incapacity,
- (d) bankruptcy

(3) A person who is a member of the Board by virtue of office under section 7(2) (a), (b), (c), (d), (e), (f) (g) or (h) shall cease to be a member of the Board upon being transferred from such office or ceasing to hold that office

(4) A member of the Board under section 17(2) (i), (j), (k) (l) or (m) shall cease to be a member of the Board upon ceasing to be a member

of the organization or upon being recalled by the organization for good cause and through a written communication from an authorized official of the organization to the Chairperson of the Board

(5) Whenever a member of the Board is removed or otherwise ceases to be a member of the Committee, the Executive Committee Member for the time being in charge of the Treasury shall advise propose a replacement to the Governor within 30 days of the vacancy

Secretary and Secretariat of the Board

10 The Climate Change Unit shall serve as the Secretariat of the Board

Meetings of the Board

11 (1) Members of the Board shall at their first meeting elect a Vice-chairperson from amongst the members appointed under section 7(1)(i), (j) (k), (l) and (m)

(2) The Board shall meet at least once every quarter

(3) The quorum for meetings of the Board shall be two thirds of the membership

(4) A resolution of the Board shall require an affirmative vote of at least one half of the members present at a meeting excluding the Chairperson's vote which shall be a casting vote

(5) In the absence of the Chairperson, the Vice-chairperson shall chair meetings and in the absence of both the Chairperson and the Vice-chairperson, the members shall elect one of them to chair the meeting

(6) The Board may invite to its meetings any person who it considers will contribute to its deliberations, and the attendance and participation of such person shall be recorded in the minutes of the Board

Allowances for members of the Board

12 Members of the Board shall be paid such allowances as may be determined by the County Public Service Board upon advice by the Salaries and Remuneration Commission

Delegation of powers by the Board

13 Subject to this Act, the Board may, either generally or in a particular case, delegate the exercise of any of its functions under this Act to any subcommittee or to any member of the Board or officer or an agent thereof

PART III – INSTITUTIONAL FRAMEWORK FOR PLANNING AND IMPLEMENTATION

A COUNTY CLIMATE CHANGE PLANNING COMMITTEE

Establishment of Planning Committee

14 (1) There is established the County Climate Change Planning Committee

(2) The County Climate Change Planning Committee shall comprise of 14 members appointed by the Executive Committee Member

Functions of Planning Committee

15 The functions of the Planning Committee are to—

- (a) co-ordinate the planning and implementation of projects and activities for climate change response in the County
- (b) co-ordinate the implementation of the County Climate Change Action Plan and the County Climate Finance Framework,
- (c) establish guidelines to be used by Ward Planning Committees in formulating climate response projects for funding by the County Climate Change Fund,
- (d) support Ward Planning Committees in development and implementation of climate response projects,
- (e) co-ordinate development and implementation of the County Climate Change Fund Regulations
- (f) advise the Board on strategies priority programmes projects and activities for climate change response in the County
- (g) formulate and implement strategic actions to foster climate change education awareness creation and capacity development in the County
- (h) to co-ordinate research and knowledge management on climate change its impacts and strategies for responding thereto,
- (i) prepare and disseminate an annual report on climate change response activities in the County
- (j) formulate and implement a County monitoring evaluation and reporting framework for climate change response, and
- (k) perform any other functions as may be necessary for the attainment of the objectives of this Act

Composition of Planning Committee

- 16** (1) The Planning Committee shall consist of—
- (a) the Chief Officer responsible for matters relating to climate change who shall be the Chairperson,
 - (b) the Director in charge of the Climate Change Unit, who shall be the Secretary
 - (c) a Director responsible for matters relating to finance nominated by the County Executive Committee Member responsible for the County Treasury,
 - (d) a Director responsible for matters relating to agriculture nominated by the County Executive Committee Member responsible for matters relating to agriculture
 - (e) a Director responsible for matters relating to health nominated by the County Executive Committee Member responsible for matters relating to health,
 - (f) a Director responsible for matters relating to water nominated by the County Executive Committee Member responsible for matters relating to water
 - (g) the County representative of the National Environment Management Authority or a designate,
 - (h) the County Drought Coordinator or a designate
 - (i) the County Director of Meteorology or a designate,
 - (j) two representatives of duly registered public benefit organizations working in the County nominated by the umbrella organization representing the largest number of public benefit organization
 - (k) one representative of the private sector in the County nominated by the umbrella organization representing the largest number of private sector organizations in the County
 - (l) one representative of women in the County nominated by the umbrella organization representing the largest number of women's organizations in the County
 - (m) one representative of youth in the County nominated by the umbrella organization representing the largest number of youth organizations in the County,

- (n) one representative of persons with disabilities in the County nominated by the umbrella organization representing the largest organization for persons with disabilities in the County,
- (o) the Administrator of the Fund who shall be an ex-officio member with no voting rights

(2) Members of the Planning Committee shall at their first meeting elect a Vice-chairperson from among the members appointed under subsection (1)(j), (k), (l), (m) and (n)

Appointment and Term of Planning Committee

17 (1) Members of the Planning Committee shall be appointed by the Executive Committee Member

(2) Members of the Planning Committee appointed under section 16(1) (j) (k), (l), (m) and (n) shall serve for a term of three years and shall be eligible for re-appointment once

Removal of member of Planning Committee

18 (1) A member of the Planning Committee may at any time resign from the Committee by giving one month's notice to the County Executive Committee Member

(2) A member of the Planning Committee may be removed from the Committee by the County Executive Committee Member on any of the following grounds—

- (a) failure to attend two consecutive meetings of the Planning Committee without reasonable cause duly communicated to the Chairperson of the Committee
- (b) gross violation of the Constitution or any other written law,
- (c) gross misconduct,
- (d) physical or mental incapacity, or
- (e) bankruptcy

(3) A member of the Planning Committee by virtue of office under section 16) (1) (a), (b), (c) (d) (e), (f), (g) or (h) shall cease to be a member of the Committee upon being transferred from the County or ceasing to hold such office

(4) A member of the Planning Committee under section 16(1) (j), (k) (l), (m) and (n) shall cease to be a member of the Committee upon ceasing to be a member of the organization or upon being recalled by the organization for good cause and through a written communication from an

authorized official of the organization to the Executive Committee Member

(5) Whenever a member of the Planning Committee is removed or otherwise ceases to be a member of the Committee, the Executive Committee Member shall ensure the appointment of a replacement within 30 days of the vacancy

Secretariat of Planning Committee

19 The County Climate Change Unit shall serve as the Secretariat for the Planning Committee

Meetings of Planning Committee

20 (1) The Planning Committee shall meet at least once every quarter

(2) The Planning Committee may choose to rotate the location of its regular meetings to different Wards in the County for purposes of engaging directly with communities and familiarizing itself with their climate change related challenges

(3) The quorum for meetings of the Planning Committee shall be two thirds of the members

(4) A resolution of the Planning Committee shall require an affirmative vote of more than one half of the membership present at a meeting, excluding the Chairperson's vote which shall be a casting vote

(5) In the absence of the Chairperson, the Vice Chairperson shall preside over a meeting, and in the absence of both the Chairperson and the Vice- Chairperson, the members in attendance shall elect one of them to chair the meeting, provided that no two consecutive meetings shall be held without either the Chairperson or the Vice-chairperson being present

(6) The Planning Committee may invite to its meetings any person who it considers will contribute to its deliberations, and the attendance and participation of such person shall be recorded in the minutes of the Planning Committee

Allowances for members of Planning Committee

21 Members of the Planning Committee shall be paid such allowances as may be determined by the County Public Service Board upon advice by the Salaries and Remuneration Commission

B WARD CLIMATE CHANGE PLANNING COMMITTEE

Establishment of Ward Planning Committees

22 There is established for every Ward the Ward Climate Change Planning Committee in each Ward

Functions of Ward Planning Committee

23 The functions of the Ward Planning Committee are to—

- (a) co-ordinate and mobilize communities and other stakeholders in the Ward to design and implement climate change response activities
- (b) to facilitate research and knowledge management at the Ward level on climate change, its impacts and strategies for responding thereto,
- (c) facilitate public education, awareness creation, and capacity building at the Ward level on climate change, its impacts and strategies for responding thereto
- (d) co-ordinate facilitate and manage community consultations on priority climate change response activities,
- (e) participate in County planning and budgeting processes with a view to ensuring the mainstreaming of climate change and prioritization of climate change response in County development plans,
- (f) facilitate public participation on climate change governance, implementation of agreed climate change response activities, and monitoring of those activities,
- (g) co-ordinate and facilitate provision of technical support to communities in the Ward in developing proposals on climate change response projects for funding by the County Climate Change Fund,
- (h) oversee the implementation of climate change response projects funded by the County Climate Change Fund and report thereon to the Planning Committee
- (i) perform any other functions as may be necessary for the attainment of the objectives of this Act

Composition of Ward Planning Committee

24 (1) A Ward Planning Committee shall comprise—

- (a) a woman and a man who ordinarily reside in the Ward who have knowledge and experience in public affairs
- (b) a woman and a man who ordinarily reside in the Ward representing the youth,
- (c) a woman and a man who ordinarily reside in the Ward and who are persons with disabilities
- (d) a woman and a man representing commercial businesses established in the Ward
- (e) a woman and a man who ordinarily reside in the Ward representing Community-Based Organizations who are actively engaged in climate change response activities nominated by an umbrella organization representing the largest number of such organizations in the Ward
- (f) the County officer responsible for matters relating to the environment in the Ward,
- (g) the Ward Administrator who shall be the Secretary, and an ex-officio member with no voting rights

(2) The members of the Ward Planning Committee under subsection (1) (a), (b), (c) and (d) shall be nominated by representatives of the respective groups at a meeting convened by the Ward Administrator at the Ward headquarters for that purpose and presided over by the Sub-county Environment Officer or a representative

(3) The Ward Administrator shall ensure that all interest groups are equitably represented by location at the nominations meeting and the list of persons attending the meeting disaggregated by interest group and village shall constitute part of the record of the meeting

(4) The notice convening the meeting under subsection (2) shall be issued not less than 14 days prior the date thereof, and shall be widely publicized through public barazas community radio stations, and other forms of media available in the Ward

(5) Nomination under subsection (1) (e) shall be done through a meeting convened by the relevant network for that specific purpose, and communicated to the Ward Administrator in writing with a certified copy of the resolution

(6) Within 14 days of the conclusion of the nominations the Ward Administrator shall forward the list of nominees to the Board who shall formally appoint the members

(7) The Board shall publicize the list of the members of the Ward Planning Committee as widely as possible within the Ward

Officials of the Ward Planning Committee

25 (1) The Ward Planning Committee at its first sitting shall elect a Chairperson and a Vice-chairperson from among its members

(2) The Chairperson and the Vice-chairperson shall of opposite gender

Qualifications for appointment to Ward Planning Committees

26 (1) A person shall qualify for appointment to the Ward Planning Committee if that person—

- (a) is a resident of the Ward,
- (b) meets the requirements of Chapter Six of the Constitution
- (c) demonstrates basic knowledge of climate change and environmental issues,
- (d) has engaged in activities aimed at addressing climate change and environmental issues in the County,
- (e) indicates willingness to serve the community

(2) Without prejudice to subsection (1), the nominees under section 24(1)(a) (b), (c), (d) and (e) shall have a minimum of form four level of education

Term of Ward Planning Committees

27 The members of the Ward Planning Committee appointed under section 24(1)(a), (b), (c), (d) and (e) shall serve for a term of three years renewable once

Removal of Member of Ward Planning Committee

28 (1) A member of the Ward Planning Committee may at any time resign by giving one month's notice to the Board

(2) Any person may recommend to the Board for the removal of a member of the Ward Planning Committee on any of the following grounds—

- (a) Failure to attend two consecutive meetings of the Ward Planning Committee without reasonable cause duly communicated to the Chairperson of the Committee,
- (b) serious violation of the Constitution or any other written law
- (c) gross misconduct,
- (d) physical or mental incapacity, or
- (e) bankruptcy

(3) A member of the Ward Planning Committee by virtue of office under section 24(1)(f) and (g) shall cease to be a member of the Committee upon being transferred from the Ward or ceasing to hold that office

(4) A member of the Ward Planning Committee appointed under section 24(1)(e) shall cease to be a member of the Committee upon ceasing to be a member of the Community-Based Organization or upon being recalled by the umbrella organization for good cause and through a written communication from an authorized official of the umbrella organization the Board

(5) Whenever there is a vacancy in the Ward Planning Committee, the Board shall ensure that a replacement is appointed within 30 days of the vacancy

Meetings of Ward Planning Committee

29 (1) The Ward Planning Committee shall meet at least once in every quarter

(2) Save for the inaugural and emergency meetings, which shall be held at the Ward headquarters regular meetings of the Ward Planning Committee shall be convened and held in the different villages of the Ward on a rotational basis

(3) The quorum for meetings of the Ward Planning Committee shall be two thirds of the members

(4) A resolution of the Ward Planning Committee shall require an affirmative vote of more than one half of the membership present at a meeting, excluding the Chairperson's vote which shall be a casting vote

(5) In the absence of the Chairperson, the Vice-chairperson shall preside over a meeting and in the absence of both the Chairperson and the Vice- Chairperson the members in attendance shall elect one of them to chair the meeting

(6) Regular meetings of the Ward Planning Committee shall be scheduled in such a manner as to ensure that resolutions thereof are available in time for the next regular meeting of the Committee

(7) A Ward Planning Committee may invite to its meetings any person whose expertise and skills may be needed for purposes of a matter before the Committee

Allowances for members of Ward Planning Committees

30 Members of the Ward Planning Committee shall be paid such allowances as may be determined by the County Public Service Board upon the advice of the Salaries and Remuneration Commission

PART IV—MEASURES AND ACTIONS FOR RESPONDING TO CLIMATE CHANGE

County Climate Change Action Plan

31 (1) The Executive Committee Member shall, in consultation with the Board and relevant sectors and through a participatory process involving relevant stakeholders formulate a County Climate Change Action Plan

(2) The County Climate Change Action Plan shall be for a period of five years and shall run concurrently with the National Climate Change Action Plan and County Integrated Development Plan

(3) Without prejudice to subsection (1), the Executive Committee Member shall, within one year of the coming into force of this Act coordinate the development of an interim County Climate Change Action Plan for the remainder of the period of the current National Climate Change Action Plan

(4) The County Climate Change Action Plan shall be reviewed and updated every five years through the same participatory process followed in its formulation

Contents of County Climate Change Action Plan

32 The County Climate Change Action Plan shall—

- (a) be aligned to the current National Climate Change Action Plan
- (b) respond to the specific needs and circumstances of the County,

- (c) contain a climate change needs and response assessment for the County
- (d) include a climate change response implementation plan informed by the climate change needs and response assessment and specifying measures and mechanisms for the achievement of low carbon climate resilient sustainable development
- (e) mainstreaming climate change into County development plans, programmes, strategies and projects,
- (f) plans for the mitigation of climate change,
- (g) research capacity building and knowledge management on climate change and climate change response,
- (h) public awareness for effective participation in climate change response, and
- (i) evaluation and periodic review to integrate learning and best practice in the implementation of the County Climate Change Action Plan

Approval of County Climate Change Action Plan

33 The County Climate Change Action Plan shall be approved by the Board and laid before the County Assembly for adoption

Biennial review of County Climate Change Action Plan

34 The Planning Committee shall undertake a biennial review of the implementation of the County Climate Change Action Plan and report to the Board

PART V—DUTIES RELATING TO CLIMATE CHANGE

Climate change duties of public entities

35 (1) The Board may require any public entity operating within the County to undertake such measures within its capability in relation to climate change

(2) In taking the measures under subsection (1) a public entity shall act in a manner best suited for the successful implementation of this Act and the County Climate Change Action Plan

(3) Without prejudice to subsection (1), every public entity operating in the County shall have the duty to—

- (a) mainstream climate change into sectoral strategies, plans and other frameworks for implementing its statutory functions,

- (b) perform its statutory functions in a manner that contributes to the implementation of the County Climate Change Action Plan,
- (c) support the Board and the County Government in its planning, programming, implementation and monitoring of climate change response in the County, and
- (d) report annually to the Board on the status and progress of the performance and implementation of the assigned climate change duties and functions

(4) Any person who fails to perform the duties required to be performed under subsection (1) commits an offence

Climate change duties of private entities

36 (1) The Board may on the recommendation of the Executive Committee Member and in consultation with relevant Executive Committee Member, require a private entity operating within the County to certain measures within its ability in relation to climate change

(2) The Board shall recommend to the Executive Committee Member, regulations to govern the nature and procedure for reporting on performance of climate change duties by private entities, including monitoring and evaluation of compliance

(3) Any person who fails to perform the duties required to be performed under subsection (1) commits an offence

Monitoring and reporting on compliance

37 (1) The County Director of Environment shall with the assistance of the representative of the National Environment Management Authority and on behalf of the Board, monitor investigate and report on whether public and private entities are in compliance with the assigned climate change duties and in performing this function the County Director of Environment shall—

- (a) have the powers necessary to monitor and investigate the matter including the power to enter premises of any private entity and make an enquiry therein, and
- (b) at a reasonable hour for the purposes of monitoring and investigating a matter relating to climate change enter any private land or premises to inspect or undertake other task related to this function

(3) The County Director of Environment shall report to the Board on the performance of the functions under subsection (1) on an annual

basis, and such report shall form part of the report by the Board to the County Assembly

Board may require private entity to report on performance

38 Notwithstanding the provisions of section 36 the Board may—

- (a) by notice in the Gazette, require a private entity that is subject to climate change obligations to prepare reports on the status of its performance thereof and prescribe the period for reporting, and
- (b) require any private entity that fails to perform its climate change duties to prepare a report within a specified time, on the actions it has taken, is taking or intends to take to ensure future performance of those duties

Annual County Climate Change Response Report

39 (1) The Board shall within three months after the end of every financial year, publish and submit a report on the implementation of the County Climate Change Action Plan and other climate change response actions and their impact to the County

(2) The County Assembly shall, within three months of receiving the report, make recommendations and propose climate change actions to the Board

PART VI—PUBLIC PARTICIPATION AND ACCESS TO INFORMATION

Values and principles to apply to planning and implementation

40 The planning and implementation of climate response in the County shall be informed by the values and principles specified in section 4 of this Act

County strategy for climate change education and public awareness

41 (1) Within one year of this Act coming into force the Planning Committee shall develop a comprehensive County strategy for public education and awareness creation on climate change

(2) The strategy in subsection (1) shall be developed through a participatory process involving all stakeholders in the County, and validated at public meetings organized by Ward Planning Committees in every Ward

(3) The strategy in subsection (1) shall be approved by the Board and its implementation mainstreamed into the County Climate Change Action Plan

Public sensitization to precede formulation of climate change response plans

42 (1) Notwithstanding section 38(3) the Planning Committee and Ward Planning Committees shall ensure that the development of any climate change response programme plan, project or activity in the County is preceded by comprehensive campaign of public sensitization and awareness creation to facilitate informed public participation

(2) The Planning Committee and the Ward Planning Committees shall report to the Board on public sensitization campaigns undertaken on every climate change response programme, plan, project or activity in the County and demonstrate how the sensitization has impacted on the threshold of decision making

(3) The report on public sensitization and awareness creation on climate change programmes, plans, projects and activities shall be included in the reports of the Board under sections 31 and 36 of this Act

Capacity building for effective public participation

43 (1) The Board shall ensure that the Planning Committee and Ward Planning Committees implement comprehensive programmes of capacity building to equip individual citizens and communities in the County for effective participation in climate change governance and response

(2) The Planning Committee and Ward Planning Committees shall support and facilitate communities to establish Community-Based Organizations and other frameworks for mobilization and engagement with climate governance and response issues in the County

Access to information

44 The Board the Planning Committee, the Ward Planning Committee shall publish publicize and ensure access to all important climate change information in their possession

PART VII—COUNTY CLIMATE CHANGE FUND

Establishment of County Climate Change Fund

45 (1) There is established a Fund to be known as the Machakos County Climate Change Fund

(2) The purpose of the Fund is to provide funding for priority climate change actions and interventions identified by communities and other stakeholders and approved by the Board

(3) The Fund shall be administered by a Fund Administrator upon designation by the Executive Committee in charge of the County Treasury

(4) Withdrawals from the Fund shall be done with the authority of the Board upon advice by the Executive Committee Member in charge of the County Treasury and the Executive Committee Member

(5) The Fund shall be used only to meet the objectives of this Act

(6) Any person who withdraws funds or uses funds from the Fund for purposes other than is authorized under this Act commits an offence

Sources of the Fund

46 The Fund shall consist of—

- (a) monies appropriated by the County Assembly for the purpose of the Fund
- (b) money received from the National Climate Change Fund,
- (c) international climate finance received by the County directly or through the national designated authority national implementing entity or other agency,
- (d) sums received as contributions endowments bequests grants and gifts from individuals public and private entities both local or foreign donations
- (e) charges fees, interest, levies or fines received by the County government in connection with activities that adversely impact on climate in the County,
- (f) monies earned or realized from any investment of the Fund
- (g) such other monies as may be payable vested or as may lawfully accrue to the Fund

County Climate Change Fund Regulations

47 (1) The Executive Committee Member responsible for matters relating to Finance shall, in consultation with the Executive Committee Member develop Regulations for the administration and management of the Fund

(2) The Regulations made under subsection (1) shall include provisions on the—

- (a) formulation of the County Climate Finance Framework
- (b) appointment and removal of the Fund Administrator,
- (c) eligibility criteria for accessing the Fund
- (d) development of project proposals, application for and disbursement of money from the Fund

- (e) procurement of services and goods,
- (f) complaints mechanism, and
- (g) monitoring, evaluation, reporting and learning

PART VIII—FINANCIAL PROVISIONS

Funding operations of Board and Planning Committees

48 (1) The Administrator of the Fund shall set aside three per centum of the annual allocation to cater for the administrative expenses for administering the Fund

(2) The functions of the Board, the Planning Committee and Ward Planning Committees and their secretariats shall be financed through a vote in the estimates of revenue and expenditure of the relevant Department

(3) The participation of representatives of State and County Departments in the Board the Planning Committee and Ward Planning Committees shall be financed by the Fund in accordance with Guidelines from the Salaries and Remuneration Commission

(4) the finances and accounts of the Board, the Planning Committee and Ward Planning Committees shall be administered and managed in accordance with the Public Finance Management Act, 2012 and the Public Finance Management (County Governments) Regulations

Annual estimates for Board and Planning Committees

49 At least three months prior to the commencement of each financial year the Executive Committee Member shall cause to be prepared the estimates of revenue and expenditure of the Board the Planning Committee and the Ward Planning Committees for the year

Financial year of Board and Planning Committees

50 The financial year of the Board, the Planning Committee and the Ward Planning Committees shall be the period of twelve months ending on the thirtieth June in each year

Accounts and audit of the Board and Planning Committees

51 The Board the Planning Committee and the Ward Planning Committees shall cause to be kept proper books and records of account and income expenditure and assets, and shall cause the accounts to be audited within a period of three months after the end of each financial year

PART IX—MISCELLANEOUS PROVISIONS

Protection from personal liability

52 (1) No action taken or thing done by a member, officer or agent of the Board, the Planning Committee or the Ward Planning Committee in good faith and in performance of functions or execution of powers vested in the said Board or committees by this Act shall render the member officer or agent or any person acting on their directions personally liable for any action, claim or demand whatsoever

(2) Subsection (1) shall not relieve the Board, the Planning Committee or Ward Planning Committees of liability to pay compensation or damages to for the injury of any person damage to property or any interests caused by negligence in the exercise of any power conferred by this Act or any other written law or by failure wholly or partially of any works

General Penalty

53 Any person who contravenes the provisions of this Act for which no other penalty is provided commits an offence and shall on conviction be liable to a fine not exceeding one hundred thousand shillings or to a term of imprisonment not exceeding one year or to both

Regulations

54 (1) The Executive Committee Member shall, in consultation with the Board make Regulations for the better carrying into effect the provisions of this Act

(2) Without prejudice to the generality of subsection (1), the Regulations under this Act may provide for—

- (a) procedures,
- (b) the conduct of the business of the Board and the Committees,
- (c) prescribed forms,
- (d) licenses required to be obtained,
- (e) any other matter necessary for the implementation of this Act

MEMORANDUM OF OBJECTS AND REASONS

The principal purpose and objective of this Bill is to put in place the framework and mechanisms for mobilization and facilitation of the County government communities and other stakeholders to respond effectively to climate change through appropriate adaptation and mitigation measures and actions

The structure of the Bill is as follows

Part I—(clauses 1–3) of the Bill contains preliminary provisions Clause 1 states the title of the Bill and clause 2 deals with interpretation of terms as used in the Bill Clause 3 sets out the objects and purpose of the Bill

Part II—(clauses 4-14) of the Bill deals with co-ordination and oversight, where the County Climate Change Board is created The functions of the Board its composition, approval of appointments, secretary and secretariat among other provisions are made

Part III—(clauses 15-31) of the Bill provides for matters relating to the institutional framework for planning and implementation This part makes provision for the establishment of the County Climate Change Planning Committee its functions, composition appointment term, removal from office, secretary and secretariat, meetings and allowances for its members It also makes provides for the establishment of the Ward Climate Change Planning Committees, their functions, composition officers, qualifications, term removal from office, meetings and allowances for the members

Part IV—(clauses 32-35) Here, the Bill provides for measures and actions for responding to climate change It provides for the development of the County Climate Change Action Plan, its approval and review

Part V—(clauses 36-40) In this part, the Bill provides for the duties relating to climate change It provides for duties of public and private entities relating to climate change, monitoring compliance and reporting on the same

Part VI—(clauses 41-45) The provisions concerning public participation are to be found in this part They include the values and principles to be applied to planning and implementation education and public awareness creation capacity building and access to information

Part VII—(clauses 46-48) These provisions are about the County Climate change Fund which is created in this part, the sources of the funds given and the making of regulations concerning the Fund

Part VIII—(clauses 49-52) The financial provisions are to be found in this part where the Bill provides for the funding of the operations of the Board and Planning Committees, the making of their annual estimates accounts and audits and the financial year

Part IX—(clauses 53-54) The final part contains miscellaneous provisions concerning protection from personal liability and the making of Regulations

The enactment of this Bill shall occasion additional expenditure of public funds to be provided through the estimates This Bill is a money Bill within the meaning of section 21 of the County Governments Act No 17 of 2012 considering that it creates a Fund This Bill does not limit any fundamental rights and freedoms

Dated the 15th October 2020

GEORGE KING'ORI
Member of County Assembly