

SPECIAL ISSUE

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REPUBLIC OF KENYA

**MOMBASA COUNTY GAZETTE
SUPPLEMENT**

BILLS, 2014

NAIROBI, 11th December, 2014

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**MOMBASA COUNTY PORT AUTHORITY BILL,
2014**

A Bill for

An Act of the County Assembly of Mombasa to make provision for the establishment of the Mombasa County Port Authority and for connected purposes.

ENACTED by the County Assembly of Mombasa as follows—

PART I – PRELIMINARY

1. The Act may be cited as the Mombasa County Port Authority Act, 2014 and shall come into operation on such a date as the Executive committee member may by notice in the gazette appoint.

Short title and commencement.

2. In this Act—

Interpretation.

“ASHI” means the advanced Shipment Information system

“Authority” means the Mombasa County Port Authority;

“Board” means the board established under section 5;

“Chairperson” means the chairperson of the Board appointed under section 5(1)(a);

“Chief Executive officer” means the chief executive officer appointed under section 10(1);

“Executive committee member” means the county executive committee member for the time being in charge of transport;

“Marshalling yard” means a place or depot where trucks are kept temporarily when not in transit.

**PART II – ESTABLISHMENT OF THE MOMBASA
COUNTY PORT AUTHORITY**

3. (1) There is established an authority to be known as the Mombasa County Port Authority.

Establishment of the Authority.

(2) The Authority shall be a body corporate with perpetual succession and a common seal and shall be capable of suing and being sued in its corporate name and,

subject to this Act, may borrow money, acquire and dispose of property and do all such other things as a body corporate may lawfully do.

(3) The seal of the Authority shall be authenticated by the signatures of the Chief Executive Officer and the Secretary to the Authority.

(4) Every document purporting to be an instrument issued by the Authority shall be sealed with the common seal of the Authority.

4. (1) The functions and powers of the Authority are:

Functions of the Authority.

- (a) To organize and ensure the parking of heavy vehicles, lorries and trucks by establishing a marshalling yard in consultation and/or liaison with the Kenya Ports Authority.
- (b) To determine the parking fees and other fees that the Authority may deem just and practicable to impose and to collect and account for all revenue remitted to the Authority from the collection of fees and rents from the marshalling yard.
- (c) To assess, collect and account for all revenue remitted to the Authority from the parking of heavy vehicles, trucks and lorries;
- (d) To implement an electronic 'Advanced Shipment Information' system (ASHI) for all shipments to/from the port of Mombasa in order to secure relevant information on imported and exported cargo and to define its technical application, uses and application.
- (e) To assess, establish, collect and account for all revenue remitted to the Authority from the payment of the 'ASHI' fees.
- (f) To advise the Governor on revenue implications, tax administration and aspects of policy changes relating to all taxes thereto imposed by the Authority.
- (g) To perform such other functions in relation to revenue as the Governor may direct.
- (h) To establish and draft policy and regulations that will govern the Authority from time to time.

- (1) The Governor may, by statutory instrument, amend the Regulations of the Authority.

5. There is established a board of directors as the governing body of the authority, which shall consist of the following members:

Board of directors.

- (a) a chairperson, who shall be appointed by the Governor;
- (b) a chief executive officer
- (c) one representative from the department responsible for finance;
- (d) one representative from the department responsible for trade and industry;
- (e) one representative from the Mombasa Traders and Transporters Association; and
- (f) a Secretary to the Authority.

(2) The Governor may appoint two other persons – who are not public officers – as ex-officio members of the board by virtue of their knowledge and experience in transport and shipping matters, provided that the persons being appointed have no conflict of interest with the Authority.

(3) The board shall be responsible for monitoring the revenue performance of the Authority and shall determine policies relating to staffing and procurement of the Authority.

(4) The Governor may give directions to the board regarding the performance of its functions, and the board shall comply with such directives.

6. The members of the board, other than the ex officio members, shall be appointed from among persons who qualify for appointment by virtue of their professional knowledge and experience in taxation, commerce, economics, law, transport or in such other matters of revenue as the Governor may determine.

Qualifications for appointment.

7. A member of the board other than an ex officio member shall hold office:

Tenure of office.

- (a) in the first instance, for a period not exceeding three years; and
- (b) shall be eligible for reappointment only for a subsequent period not exceeding three years.

8. The Executive Committee Member in consultation with the Governor may terminate or suspend the appointment of a member:

Executive Committee Member's power to suspend or terminate appointment.

- (a) if the member is unable to perform the functions of his or her office;
- (b) for abuse of office or gross misconduct;
- (c) for gross violation of the constitution;
- (d) for physical or mental incapacity;
- (e) if the member is declared or becomes bankrupt;
- (f) if the member is convicted of a criminal offence;
- (g) if the member is absent for three consecutive meetings of the board in any financial year without any justifiable cause;

9. (1) The board shall meet at least three times a year.

Meetings of the board.

(2) The board may co-opt any person to participate in its deliberations, but a person so co-opted shall have no right to vote.

10. (1) The Governor shall appoint a Chief Executive Officer to head the Authority with the approval of the County Assembly.

Chief Executive Officer.

(2) The Chief Executive Officer shall be the chief executive of the Authority and shall be responsible for the day-to-day operations of the Authority, the management of funds, property and business of the Authority and for the administration, organization and control of the other officers and staff of the Authority.

(3) The Chief Executive Officer shall devote his or her full time to the duties of his or her office and shall not engage in any business, profession, occupation or paid employment elsewhere.

(4) The Governor may, after consultation with the board, terminate the appointment of the Chief Executive

Officer for:

- (a) gross misconduct;
- (b) incompetence;
- (c) abuse of office;
- (d) gross violation of the constitution or any other law;
- (e) physical or mental incapacity rendering him or her incapable of performing the duties of the office.

11. (1) The board shall appoint a secretary to the board through a competitive and transparent process.

Secretary to the board.

(2) The secretary shall be responsible for arranging the business of the board's meetings, keeping a record of the proceedings of the board and for such other duties as the board may direct.

12. (1) The board shall appoint officers at the level of principal revenue officers or higher, on such terms and conditions as the board may determine.

Other officers and staff.

(2) The board shall approve the terms and conditions of all officers and staff as may be required for the performance of the functions of the authority.

(3) The board shall be responsible for the discipline and control of the officers and staff.

PART III – IMPLEMENTATION OF THE ADVANCED SHIPMENT INFORMATION (ASHI)

13. The Authority will define an electronic 'ASHI' format and its corresponding 'ASHI' fees enabling shippers to disclose all relevant shipment details for cargoes to be shipped to/from this county.

14. The 'ASHI' fee is not applicable to any exemptions in accordance with the relevant legislation and directives.

15. The Board shall review periodically the required shipment particulars and the specified fees.

16. (1) The Authority will appoint an external service provider experienced in the electronic 'ASHI' application

as its general, worldwide agent in the discharge of the duties of the Authority.

(2) The Authority shall publish the name and contact details of the service provider and his sub-agents in the respective ports of loading in at least two daily newspapers of national circulation for the benefit of shippers and shipping lines.

17. Any shipper or his forwarder shall provide all shipment particulars for cargo into the electronic 'ASHI' application.

18. A validated 'ASHI' form shall be a requirement for cargo clearance through customs.

19. A shipper who ships cargo without providing the 'ASHI' information to the Authority is liable to the payment of penalty equivalent of fifty (50) percent of the gross freight cost of the cargo.

20. All shipping lines shall confirm the unique 'ASHI' number on the corresponding bill of lading and cargo manifests issued in respect of cargo shipped to or from the port of Mombasa.

PART IV – MISCELLANEOUS

21. The executive committee member may make regulations, not inconsistent with this Act respecting any matter that is necessary or convenient to be prescribed under this Act or for the carrying out or giving effect to this Act.

Regulations.

22. (1) The Authority shall create a forum for relevant parties for the resolution of complaints received from shippers, forwarders, shipping lines, charters, shipping agents and any other parties involved in the maritime transport.

Dispute Resolution.

(2) In the event of a stalemate, the matter shall be referred to a panel of experts constituted by the minister under the regulations to mediate.

MEMORANDUM ON THE PROPOSED MOMBASA COUNTY PORT AUTHORITY BILL, 2014

1. PURPOSE

The purpose of this Memorandum is to request the County Assembly's consideration and approval of the Mombasa County Port Authority Bill, 2014 and its direction that the Bill be published for introduction in the County Assembly.

2. BACKGROUND

This Bill is necessitated by the need to have a body that will oversee collection of revenue in matters related to transport and shipping which will in turn improve the County government's revenue.

Once established, the Authority will inter alia:

- (i) organize and ensure the parking of heavy vehicles, lorries and trucks by establishing a marshalling yard in consultation and/or liaison with the Kenya Ports Authority.
- (j) determine the parking fees and other fees that the Authority may deem just and practicable to impose and to collect and account for all revenue remitted to the Authority from the collection of fees and rents from the marshalling yard.
- (k) assess, collect and account for all revenue remitted to the Authority from the Parking of Heavy Vehicles, Trucks and Lorries;
- (l) advise the Governor on revenue implications, tax administration and aspects of policy changes relating to all taxes thereto imposed by the Authority.

3. OUTLINE OF THE BILL

Part I

This Part basically cites the name of the proposed Act. This part being the preliminary part further defines words and expressions used in the Bill that might need interpretation.

Part II

This Part establishes the Mombasa Port Authority.

It establishes the Authority as a body corporate with perpetual succession and a common seal capable of doing all such things as a body corporate may lawfully do and that the Authority shall be an agency of the County Government under the general supervision of the Executive Member in Charge of Transport.

This part also sets out the functions and responsibilities of the Authority, the members of the Board of directors of the Authority and their qualifications, meetings of the board, tenure of office and staff of the Authority.

Part III

This Part introduces the Advanced Shipment Information System (called 'ASHI') to be used by the Authority in carrying out its functions. It explains how to implement the electronic 'Advanced Shipment Information' system for all shipments to/from the port of Mombasa in order to secure relevant information on imported and exported cargoes and to define its technical application, uses and application.

Part IV

This part is miscellaneous. It contains provisions for the county executive committee member in charge of transport power to make regulations necessary or convenient for the carrying out or giving effect of the Act.

This Part also deals with dispute resolution mechanisms. It stipulates that the Authority shall create a forum for the resolution for complaints received from shippers, shipping lines, shipping agents among others.

4. RECOMMENDATIONS

The Assembly is requested to:

- (a) note the contents of this Memorandum;
- (b) That in line with the legislative and constitutional platforms, the relevant house committee embark on an in-depth analysis on the consequences of enactment of this Bill and further consult with the relevant state agencies if need be to explore opportunities for synergies and collaborations between the county government and the national government and if possible to conclude a memorandum of understanding that would then inform legislation on mutual cooperation and collaboration between the two governments.
- (c) approve the Mombasa County Port Authority Bill, 2014 annexed to this Memorandum;
- (d) authorize the Speaker to publish the Bill and present it to the County Assembly for debate and enactment.

HON. MURFAD AMUR,
Chairperson, Committee on Public Works and Transport.

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