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MACHAKOS COUNTY BILLS, 2019

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MACHAKOS COUNTY VILLAGE POLYTECHNICS BILL, 2019

A Bill for

AN ACT of the County Assembly of Machakos to give effect to section 9 of Part II of the Fourth Schedule of the Constitution; to provide for matters relating to vocational training, the establishment and regulation of village polytechnics and for connected purposes

ENACTED by the County Assembly of Machakos as follows—

PART I—PRELIMINARY

Short title

1. This Act may be cited as the Machakos County Village Polytechnics Act, 2019.

Interpretation

2. In this Act—

“Board of Management” means the body of persons appointed by the Executive Committee Member to oversee the affairs of a county government village polytechnic;

“Committee” means the Machakos County Vocational Training Advisory Committee established under section 4;

“Community” in relation to a village polytechnic means the village within which a village polytechnic is situated;

“Curriculum” means all the approved subjects taught or programmes offered in a village polytechnic;

“Directorate” means the directorate responsible for matters relating to village polytechnics;

“Executive Committee Member” means the executive committee member responsible for matters relating to education in the county;

“Manager” means the person in-charge of a village polytechnic;

“register” means an inventory of village polytechnics in the County;

“syllabus” means concise statement of the contents of a course of instructions in a given subject;

“trainee” means a person enrolled as a learner in a village polytechnic in the County;

“Village polytechnic” means an institution of learning created under this Act.

Object of the Act

3. The object of this Act is to make provision for the legislative and institutional framework for—

- (a) the establishment of village polytechnics;
- (b) the licensing and registration of village polytechnics;
- (c) cooperation and consultation between national and county governments on matters relating to village polytechnics;
- (d) the acquisition of occupational trade skills by persons through vocational training;
- (e) innovation and creativity to enhance entrepreneurship in the county; and
- (f) research to inform policies relating to vocational training.

**PART II—MACHAKOS COUNTY VOCATIONAL TRAINING
ADVISORY COMMITTEE**

Vocational Training Advisory Committee

4. (1) There is established a Committee to be known as the Machakos County Vocational Training Advisory Committee.

- (2) The Committee shall consist of—
 - (a) the Executive Committee Member responsible matters relating to education who shall be the chairperson;
 - (b) the Chief Officer responsible matters relating to education or a designate not below the level of a Director, who shall be an *ex officio* member and the secretary to the Committee;
 - (c) the Chief Officer responsible matters relating to Finance or a designate not below the level of a Director;
 - (d) one representative of the managers of county government village polytechnics nominated by a forum of all managers of county government village polytechnics and appointed by the County Executive Committee Member;
 - (e) one representative of the managers of private village polytechnics nominated by a forum of all managers of private village polytechnics and appointed by the County Executive Committee member;
 - (f) three persons who ordinarily reside in the County and who have extensive experience in any of the following fields—
 - (i) education;

- (ii) social sciences; or
- (iii) public administration.
- (g) two persons who ordinarily reside in the County representing marginalized persons appointed by the County Executive Committee member.
- (3) In the absence of the Executive Committee member, the Committee shall appoint a Chairperson from among its members.
- (4) The members of the Committee referred to in section 4(2) (d), (e), (f) and (g) shall hold office for a term not exceeding three years and are eligible for reappointment for one further term.

Functions of the Committee

5. (1) The functions of the Committee are to—
- (a) advise the executive committee member on policies relating to vocational training;
 - (b) promote, advance and set standards relevant in the quality of education relating to vocational training;
 - (c) monitor and evaluate vocational training programs;
 - (d) undertake regular inspection of village polytechnics to ensure compliance with this Act.
 - (e) in consultation with village polytechnic Boards of Management; oversee the operation and management of Village polytechnics programmes in the county;
 - (f) plan, develop and coordinate training and research in village polytechnics in the county;
 - (g) develop linkages and collaboration with institutions of learning, professional organizations, private sector and other institutions with similar objectives;
 - (h) issue guidelines on fees payable on courses offered by village polytechnics;
 - (i) doing or performing all other acts necessary for the proper performance of its duties under this Act or any other written law.

Vacancy of office

6. The office of a member of the Committee referred to in section 4(2)(d), (e) (f) and (g) shall become vacant if the member—

- (a) resigns by notice in writing addressed to the Executive Committee Member;
- (b) is unable to perform the functions of the office by reason of prolonged physical or mental incapacity;
- (c) is adjudged bankrupt by a court of competent jurisdiction;
- (d) is guilty of gross misconduct; or
- (e) is convicted of an offence and sentenced to imprisonment for a period of six months or more.

Remuneration

7. The members of the Committee shall be paid such allowances and disbursements for expenses as may be approved by the Executive Committee Member in consultation with the Salaries and Remuneration Commission.

PART III—ESTABLISHMENT AND REGISTRATION OF VILLAGE POLYTECHNICS

Establishment of a Polytechnic

8. (1) The Executive Committee Member may, by order in the Gazette and in consultation with the Committee establish a Village Polytechnic.

(2) Despite sub section (1), a person who meets the requirements set out in this Act and any other applicable law may establish a private village polytechnic.

Requirement for Registration

9. (1) A person shall not operate a polytechnic unless it is registered under this Act.

(2) A person who operates a polytechnic, which is not registered under this Act, commits an offence.

Application for registration of a polytechnic

10. (1) An application for registration of a polytechnic shall be in a form prescribed by the Executive Committee Member in the regulations.

(2) An application for registration of a polytechnic shall be submitted to the Director.

(3) The Director shall forward a copy of the application to the Committee.

(4) The Committee shall, within fifteen working days after receiving the application—

- (a) inspect the polytechnic; and
- (b) interview the applicant to assess the suitability of—
 - (i) the equipment of the polytechnic; and
 - (ii) the persons proposed to be employed in the polytechnic.

(5) The Committee shall within thirty days after the inspection and interview, forward its recommendation to the Executive Committee Member.

Applicant to pay prescribed fee

11. A person making an application for the registration of a polytechnic shall pay the prescribed fees to the Directorate.

Provisional licence to operate prior to registration

12. (1) The Directorate may issue to the applicant for registration of a polytechnic a provisional licence to operate pending the fulfilment of the conditions required by the Directorate for the determination of the application.

(2) A provisional licence issued under subsection (1) shall cease to operate upon—

- (a) the issuance of a certificate of registration to the applicant; or
- (b) the expiry of twenty-four hours after receipt of the notice of refusal of registration or such longer period as the Directorate may specify in the notice.

(3) As a condition of the grant of a provisional license under this section, the Directorate may prescribe a period within which the applicant must fulfill the conditions required by it for the improvements of the operation of the polytechnic.

(4) A provisional licence shall be in the form prescribed by the Executive Committee Member in regulations.

(5) The holder of a provisional licence shall allow an inspector to enter the premises of the polytechnic during official working hours, for the purpose of carrying out any inspection to ascertain whether the polytechnic is in compliance with the conditions of the temporary licence.

Registration Certificate

13. (1) The Directorate shall, on registration of a polytechnic, issue a registration certificate and a license for the year which the registration has been effected to the applicant.

(2) A registration certificate issued under this Act shall be subject to such conditions as the Director may determine and as are specified in the licence.

(3) The Director may at any time during the validity of a registration certificate —

- (a) vary the conditions of the licence; or
- (b) impose conditions or further conditions on the licence.

Revocation of Registration and Closure of a Polytechnic

14. (1) The registration of a polytechnic remains valid but may be revoked in the following instances—

- (a) where an offence under this Act, or in respect of the licensed activity under any other written law, has been committed by the licence holder or any employee of the licence holder;
- (b) a condition of the registration licence has been contravened or not complied with.
- (c) where the polytechnic is being managed in a manner which is, in the opinion of the Executive Committee Member, harmful to the physical, mental or moral welfare of the students;

(2) Once registration of a polytechnic is revoked, it is deemed to have been closed.

(3) The Director may serve a notice, in writing, not exceeding six months directing the Manager to remedy a situation to prevent revocation of the polytechnic's registration.

(4) Where a Manager has not complied with a condition imposed under subsection (3) within the stipulated period, the Executive Committee Member shall revoke the registration of the polytechnic and it shall be deemed to be closed.

(5) Before the polytechnic is closed under subsection (3), the Manager shall be given an opportunity to be heard either in person or by a legal representative.

(6) Despite the provisions of this section, a polytechnic shall be deemed to be closed if it is not in operation for a continuous period of five years.

Validity of a licence

15. (1) A licence shall be valid for a period of five years from the date of issue and may be renewed on application by the operator of the polytechnic in accordance with this Act.

(2) The licence issued together with the certificate of registration shall remain valid until the end of the year, which it is issued.

Requirement to publish the registration of a polytechnic

16. The Executive Committee Member shall, within sixty days after the registration of a polytechnic, publish the registration in the Gazette and in at least one newspaper with national circulation.

Registration of a Village Polytechnic

17. (1) The Directorate shall register a polytechnic if it is satisfied, based upon the written recommendation of the Committee, that the application is in order.

(2) The Directorate shall, within a reasonable period after registration of a polytechnic, forward the name and all relevant information on the polytechnic to the Committee.

(3) A person aggrieved by the decision of the Directorate under this section may, within thirty days of being notified of the decision, appeal against the decision to the authority responsible for higher education.

Registration Certificate to be Displayed

18. The Manager shall display the registration certificate of the polytechnic in a conspicuous place on the premises of the polytechnic.

Register of Polytechnics

19. (1) The Directorate shall keep a register of all polytechnics operating in the county and shall include in the register names of the polytechnics and such other particulars as the Executive Committee Member may prescribe.

(2) The Directorate shall forward all the particulars recorded in the register to the Committee.

PART IV—MANAGEMENT OF POLYTECHNICS

Board of Management

20. (1) There shall be a Board of Management for every county government village polytechnic.

(2) The Board of Management shall consist of—

(a) two persons who ordinarily reside in the Sub -county in which the Village Polytechnic is situate and who have extensive experience in any of the following fields—

- (i) education;
- (ii) social sciences; or

- (iii) public administration;
 - (b) one person representing instructors of the village polytechnic;
 - (c) two representative of the Community in which the village polytechnic is situate;
 - (d) two persons who ordinarily reside in the County representing marginalized persons;
 - (e) the manager of the village polytechnic who shall be the secretary to the Board.
- (3) The members of the Board of Management shall elect the Chairperson and Vice Chairperson from amongst themselves.
- (4) The conduct and affairs of the Board of Management shall be as set out in the Fourth Schedule.

Application procedure

21. (1) The Committee shall in writing request the nominating entities to forward names of qualified persons to be appointed as members of the Board of Management.

(2) The Committee shall vet the members of the Board of management.

(3) In nominating persons to the Board of Management the Committee shall ensure that—

- (a) the persons nominated to the Board of Management meet the requirements of chapter six of the Constitution;
- (b) not more than two thirds of the members of the Board of Management are of the same gender.

(4) The Committee shall forward the names to the Executive Committee Member for appointment.

Functions of Board of Management

22. The Board of Management shall—

- (a) ensure efficient management of the village polytechnic;
- (b) oversee prudent utilization of resources of the village polytechnic;
- (c) ensure that the institution observes high standards of corporate and business ethics;
- (d) consider and approve annual estimates of income and expenditure of the institution;

- (e) source for donations, contributions or grants or raise funds by lawful means;
- (f) make provisions for general welfare, recreational and social needs of its staff and students;
- (g) undertake such other functions as may be necessary for the discharge of the functions of the institution.

Committees

23. The Board of Management of a village polytechnic may form such committees as may be appropriate for the performance of such functions and the discharge of such responsibilities as it may determine, provided that the Board of Management shall not delegate their principal mandate to the committees.

Vacancy

24. A member of the Board of Management shall cease to hold office if the member—

- (a) is unable to perform the functions of the office by reason of mental or physical infirmity;
- (b) is declared bankrupt;
- (c) is convicted of a criminal offence and sentenced to a term of imprisonment of six month or more;
- (d) resigns in writing to the Executive Committee Member;
- (e) is found guilty of professional misconduct by the relevant professional body;
- (f) is disqualified from holding a public office under the Constitution;
- (g) engages in misconduct; or
- (h) dies.

Filling of vacancy

25. If the position of member of the Board of Management falls vacant, the Executive Committee Member shall appoint another person to fill the vacancy in accordance with section 8.

Manager of a Village Polytechnic

26. (1) There shall be a manager for each village polytechnic who shall be the chief executive officer of the institution.

(2) The Manager shall be competitively appointed by the County Public Service Board.

(3) The County Public Service Board shall exercise disciplinary control over the Managers of County Village Polytechnics:

Qualification for appointment

27. A person is qualified for appointment as a Manager if that person—

- (a) is a citizen of Kenya;
- (b) holds at least a degree in technical education from a university recognized in Kenya;
- (c) has at least three years' experience at management level;
- (d) has at least five years' experience in technical field; and
- (e) Meets the requirements of chapter six of the Constitution;

Functions of the Manager

28. The Manager—

- (a) shall be the accounting officer of the institution;
- (b) shall be responsible for the day to day management of the institution;
- (c) shall be the team leader for the implementation of the Committee's policies and programs in the institution;
- (d) implement the decisions of the Board of Management;
- (e) shall organize and manage the staff of the institution;
- (f) may initiate policy proposals for consideration by the Committee and the Executive Committee Member;
- (g) prepare and submit regular reports to the Committee upon approval by the Board of Management;
- (h) perform such other functions as may be assigned by Board of Management.

Functions of the Village Polytechnics

29. The institution shall provide—

- (a) provide full time or part technical courses;
- (b) provide such facilities for its students as it considers desirable;

- (c) demand and collect fees and other charges as may be appropriate;
- (d) provide technical and consultancy services to business and industries as it may deem appropriate;
- (e) provide a favorable environment which offers positive health and is conducive to learning and social development without compromising diversity or disability.
- (f) undertake any activity necessary for the fulfillment of the functions of the institution.

Appointment of Non-teaching Staff

30. (1) Every Board of Management shall, pursuant to the provisions of this Act employ, remunerate, promote or terminate services of any of its employees.

(2) Persons belonging to a professional cadre and employed by the Board of Management shall be employed on such terms and conditions of services similar to those recommended for equivalent post in the Civil Service.

Co-curricular Activities

31. The Committee shall promote both recreational and competitive sports and games for physical development, performing and creative arts, talent shows and congresses in institutions by ensuring that—

- (a) all students are accorded the opportunity to participate in the those activities;
- (b) every institution has or can access adequate facilities for co-curricular activities; and
- (c) every institution puts in place measures to promote co-curricular activities and ensure that all student shall have access to suitable affordable sports kits.

PART V—FINANCIAL PROVISIONS

Funds of the Village Polytechnics

- 32.** (1) The funds of the Village Polytechnic shall consist of —
- (a) monies allocated by the National or County Government for purposes of the Polytechnic;
 - (b) any grants, gifts, donations or other endowments given to the Polytechnic;

(c) such funds as may vest in or accrue to the Polytechnic in the performance of its functions under this Act or any other written law.

(d) any monies obtained by way of fees or other charges;

(2) Any funds donated or lent to, or gift made to the Polytechnic shall be made public before use.

Annual Estimates

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

(2) The annual estimates shall make provision for all the estimated expenditure of the Polytechnic for the financial year concerned and, in particular, shall provide for the—

- (a) payment of remuneration in respect of the members and staff of the Polytechnic;
- (b) payment of pensions, gratuities and other charges in respect of benefits which are payable out of the funds of the Polytechnic as provided by the relevant statutory provisions;
- (c) development and maintenance of the buildings and grounds of the Polytechnic;
- (d) funding of training, research and development of activities of the Polytechnic;
- (e) creation of such funds to meet future or contingent liabilities in respect of benefits, insurance or replacement of buildings or installations, equipment and in respect of such other matters as the Polytechnic may deem fit; and
- (f) any other expenditure necessary or purposes of this Act.

(3) The annual estimates shall be approved by the Board of Management before the commencement of the financial year to which they relate.

Accounts and Audit

34. (1) The Board of Management shall cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities of the Polytechnic. 9

(2) Within a period of three months after the end of each financial year, the Board of Management shall comply with the relevant audit

procedures and submit the accounts of the Polytechnic in respect of that year together with a—

- (a) statement of the income and expenditure of the Polytechnic during that year; and
- (b) statement of the assets and liabilities of the Polytechnic on the last day of that financial year.

Annual Reports

35. (1) The Board of Management shall, at the end of each financial year cause an annual report to be prepared.

(2) The Board of Management shall submit the annual report to the County Executive Committee Member three months after the end of the year to which it relates.

(3) The annual report shall contain in respect of the year to which it relates—

- (a) the financial statements of the Polytechnic;
- (b) a of the Polytechnic;
- (c) such other statistical information as the Polytechnic may consider appropriate relating to the Polytechnic's functions;
- (d) the impact of the exercise of any of its mandate or function;
- (e) any impediments to the achievements of the objects and functions under the Constitution, this Act or any written law; and
- (f) any other information relating to its functions that the Committee considers necessary.

(4) The annual report shall be published and publicized in such other manner as the Committee may determine.

PART VI—MISCELLANEOUS PROVISIONS

Regulations

36. (1) The Executive Committee member in consultation with the Committee, may make Regulations generally for the better carrying out into effect of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1) such Regulations may make provision with respect to—

- (a) the forms to be used in connection with this Act;
- (b) application for registration of a polytechnic;

- (c) issuance of provisional licenses;
- (d) procedure in the Committee or Boards of Management;
- (e) any other matter necessary for the implementation of this Act.

Offences**37. A person who—**

- (a) commits a breach of any condition imposed by any licence or permit issued under this Act;
- (b) aids or abets another person a person to commit a breach of any condition imposed by under any licence or permit issued under this Act;
- (c) forges or through fraud obtains any document with intent to have a licence or permit issued or renewed; or
- (d) obstructs an authorized officer in carrying his or her duties under this Act;

commits an offence and on conviction shall be liable to a fine of not more than shillings Five Hundred Thousand or to imprisonment for a period not exceeding two years or both such fine and imprisonment.

General Penalty

38. Any person who contravenes the provisions of this Act for which no other penalty has been 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.

MEMORANDUM OF OBJECTS AND REASONS

The principal purpose and objective of this Bill is to give effect to section 9 of Part II of the Fourth Schedule of the Constitution; to provide for matters relating to vocational training, the establishment and regulation of village polytechnics.

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 object of the Bill.

Part II (clauses 4-7) of the Bill deals with the creation of the County Vocational Training Advisory Committee.

Part III (clauses 8-19) of the Bill provides for the establishment and registration of Village polytechnics.

Part IV (clauses 20-31) of the Bill deals with the management of village polytechnics.

Part V (clauses 32-35) is the financial provisions.

Part VI (clauses 36-40) is the miscellaneous provisions.

This Bill is not a money Bill within the meaning of section 21 of the County Governments Act No. 17 of 2012.

Dated the 27th August, 2019.

DANIEL M. KIILU,
Member of County Assembly.

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