

SPECIAL ISSUE

Kenya Gazette Supplement No. 7 (Machakos County Acts No. 2)



REPUBLIC OF KENYA

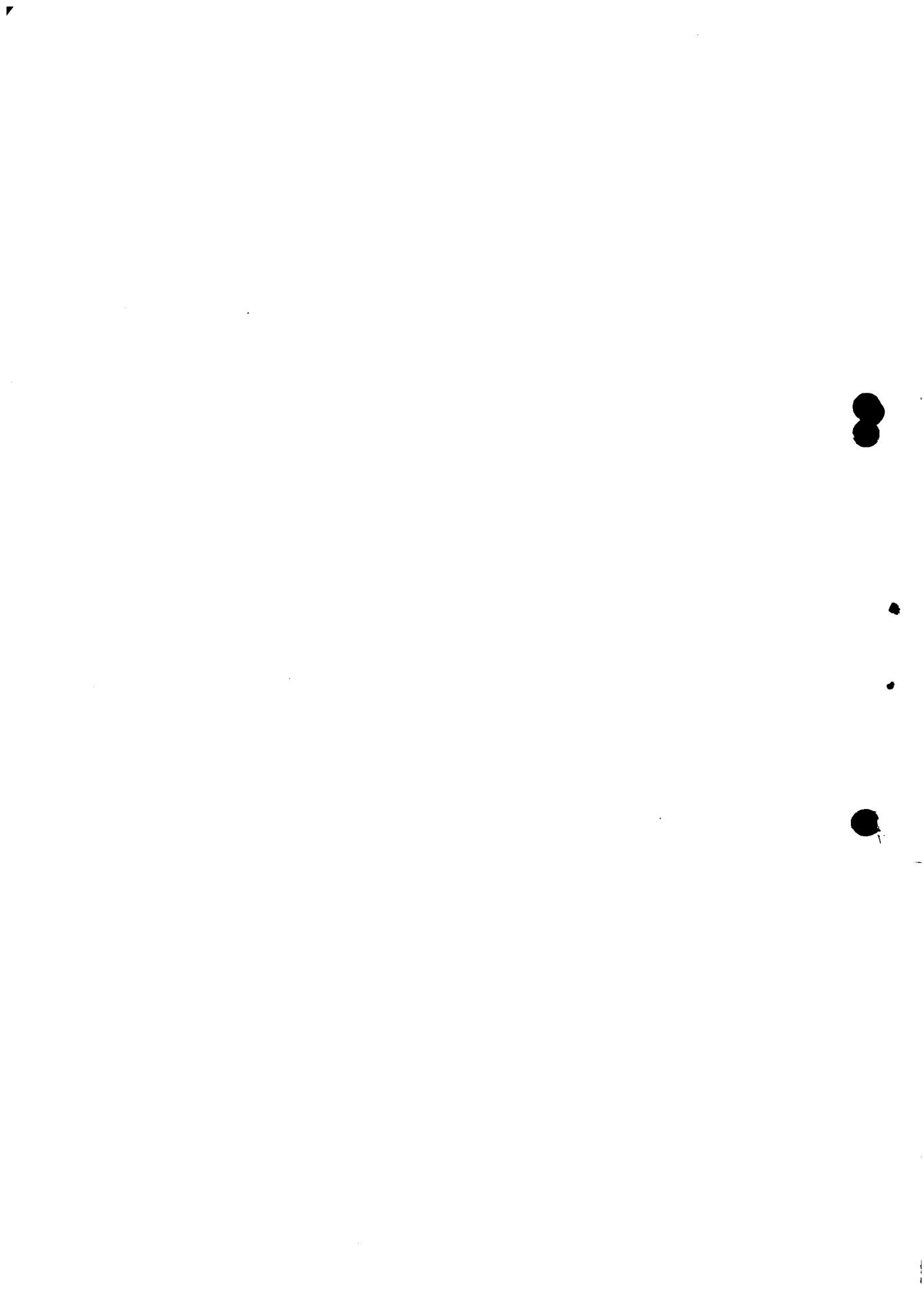
KENYA GAZETTE SUPPLEMENT

MACHAKOS COUNTY ACTS, 2022

NAIROBI, 7th April, 2022

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**THE MACHAKOS COUNTY CLIMATE CHANGE
(AMENDMENT) ACT, 2022**

No. 2 of 2022

Date of Assent: 17th March, 2022

Date of Commencement: 23rd March, 2022

**AN ACT of the County Assembly of Machakos to amend the
Machakos County Climate Change Act, 2022, and for connected
purposes.**

ENACTED by the County Assembly of Machakos, as follows—

Short Title

1. This Act may be cited as the Machakos County Climate Change (Amendment) Act, 2022.

Interpretation

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

“Principal Act” means the Machakos County Climate Change Act, 2021.

Amendment of section 2

3. Section 2 of the Principal Act is amended by—

(a) including the following definitions in their proper place in the alphabetical order—

“Board” means the County Public Service Board established under section 57 of the County Governments Act, 2012;

“Director” means the Director in charge of the Climate Change Directorate appointed under section 10A;

“Directorate” means to the Climate Change Directorate created under section 10;

“Governor” means the Governor of Machakos County;

(b) deleting the—

(i) definition of the word “Authority”;

(ii) definition of the word “directorate”

(iii) definition of the word “climate change unit”

(iv) phrase “Steering Committee” appearing immediately after the definition of the word “Authority”;

(v) definition of the phrase “Steering Committee” and substituting therefor the following definition—

“Steering Committee” means the Machakos County Climate Change Steering Committee established under section 5;

(i) figure “46” appearing at the end of the definition of the word “Fund” and substituting therefor the figure “45”;

(ii) the definition of the phrase “Fund Administrator” and substituting therefor the following definition—

“Fund Administrator” means the Administrator of the County Climate Change Fund designated as such under section 46A;

Amendment of section 6

4. Section 6 of the Principal Act is amended—

(a) at the beginning of paragraph (b); by inserting the word “the” immediately after the word “coordinate”;

(b) in paragraph (c) by deleting the words “and administer” appearing immediately after the words “funds into”.

(c) in paragraph (h) by inserting the word “in” immediately after the word “stakeholders”;

Amendment of section 7

5. The Principal Act is amended by deleting section 7 and substituting therefor the following new section—

Composition of the Steering Committee

7. (1) The Steering Committee shall consist of—

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

(b) the County Executive Committee Member who shall be the Secretary;

(c) the County Executive Committee Member responsible for the County Treasury;

(d) the County Executive Committee Member responsible for matters relating to Agriculture, Livestock, and Fisheries;

(e) the County Executive Committee Member responsible for matters relating to Water;

(f) a representative of a duly registered public benefit organization working on matters relating to the environment in the County nominated by the umbrella organization representing the largest

public benefit organization in the County;

- (g) a representative of the private sector operating in the County nominated by the largest umbrella body of the private sector in the County;
- (h) a representative of the youth from the County nominated by the National Youth Council the County;
- (i) a representative of Persons With Disabilities duly registered with the National Council for Persons With Disabilities nominated by its Machakos Chapter.

(2) A person shall qualify for appointment under subsection (1)(f), (g), (h), and (i) only if that person—

- (a) is a holder of a first degree in a relevant field;
- (b) has demonstrable experience, expertise, and interest in issues of climate change, natural resource management, or environmental conservation;
- (c) has actively and publicly engaged in matters stated in paragraph (b) within the County for five years preceding the nomination;
- (d) is a resident of the County;
- (e) is a citizen of Kenya;
- (f) meets the requirements of Chapter six of the Constitution.

(3) The persons referred to in paragraphs (1) (f), (g), (h), and (i) shall be appointed by the Governor with the approval of the County Assembly.

(4) In appointing the members of the Committee 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 Members of the Steering Committee appointed under this section.

Amendment of section 8

6. The Principal Act is amended by deleting section 8 and substituting therefor the following new section—

Term of office of Steering Committee members

8. The Members of the Steering Committee appointed under sections (7)(1)(f), (g), (h), and (i) shall serve for a term of three years and shall be eligible for re-appointment once.

Amendment of section 9

7. The Principal Act is amended by deleting section 9 and substituting therefor the following new section—

Removal of a Steering Committee Member

9. (1) A member of the Steering Committee may resign by issuing a one-month notice in writing to the Governor.

(2) A member of the Steering Committee appointed under subsection (1)(f), (g), (h), and (i) may be removed from office by the Governor, with the approval of the County Assembly on any of the following grounds—

- (a) failure to attend three consecutive meetings of the Steering Committee without reasonable cause duly communicated to the Chairperson of the Steering 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 Steering Committee by virtue of section 7(1) (a), (b), (c), (d), or (e) shall cease to be a member of the Steering Committee upon being transferred from such office or ceasing to hold that office.

(4) A member of the Steering Committee under section 7(1) (f), (g), (h), or (i) shall cease to be a member of the Steering Committee upon ceasing to be a member of the organization or upon being recalled by the organization for good cause and through written communication from an authorized official of the organization to the Chairperson of the Steering Committee.

(5) Whenever a member of the Steering Committee is removed or otherwise ceases to be a member of the Committee, the Deputy Governor shall inform the Governor who shall appoint a replacement within 60 days of the vacancy.

Amendment of section 10

8. The Principal Act is amended by deleting section 10 and substituting therefor the following new section—

Climate Change Directorate

10. (1) There is established the Machakos County Directorate of Climate Change.

(2) The Directorate shall, in addition to any other functions assigned to it by this Act, the Climate Change Act, 2016 or any other law—

- (a) implement national laws and policies on climate change;
- (b) implement the County Climate Change Action Plan, County Climate Change Finance Framework and other climate change related policies, plans programmes and projects;
- (c) advise the County Government on matters relating to climate change;
- (d) undertake research and create public awareness on climate change in the County;
- (e) be the repository of climate change related information;
- (f) formulate policies, programmes and plans related to climate change;
- (g) monitor, evaluate and report on climate change related issues;
- (h) liaise with the national government and other stakeholders concerning climate change; and
- (i) perform such other functions as may be necessary for the implementation of this Act or any other law.

(3) The Board shall appoint such personnel of the Directorate as may be necessary for the realization of the objectives of this Act.

(4) The personnel of the Directorate shall serve on such terms of service as the Board, on the recommendation of the Salaries and Remuneration Commission, may determine.

Amendment of section 10

9. The Principal Act is amended by inserting the following new section immediately after section 10—

Climate Change Director

10A. (1) There shall be a Director in charge of the Directorate of Climate Change who shall be competitively recruited by the Board and approved by the County Assembly.

(2) A person qualifies for appointment as the Director if that person—

- (a) is a citizen of Kenya;
- (b) has a first degree in any of the following fields—
 - (i) environmental studies;
 - (ii) environmental engineering;
 - (iii) meteorology;
 - (iv) climatology;
 - (v) environmental law;
 - (vi) community development;
 - (vii) public administration; or
 - (viii) economics.
- (c) has knowledge, experience and a distinguished career of not less than ten years in a relevant field;
- (d) has held a leadership position in a public service or private sector organization for at least five years; and
- (e) meets the requirements of Chapter Six of the Constitution.

(2) The functions of the Director are to be—

- (a) the head of the Directorate and Accounting Officer;
- (b) responsible for the implementation of the County Climate Change Action Plan, County Climate Change Finance Framework and other climate change related policies, plans, programmes and projects;
- (c) responsible for the operational coordination of climate change response measures and actions in the County;
- (d) responsible for the provision of technical support to County government departments on the integration and mainstreaming of climate change response measures and actions into all County Government development policies, plans, programmes and projects;
- (e) responsible for the provision of technical support to communities and other stakeholders in the County in formulating and implementing low carbon development strategies and actions to build resilience and enhance adaptive capacity to climate change;

- (f) responsible for the coordination of climate change related research activities, knowledge dissemination and public awareness in the County;
- (g) responsible for the coordination of public participation and facilitation access to information pertaining to climate change with regard to all development plans, programmes and projects in the County;
- (h) responsible for the coordination of the measurement, reporting and verification of all climate change policies, plans, programmes and projects in the County;
- (i) a signatory to the Fund;
- (j) the secretary to the County Planning Committee;
- (k) responsible for the—
 - (i) execution of the decisions of the County Planning Committee;
 - (ii) preparation and submission to the County Planning Committee for approval, of programs necessary for the achievement of the Directorate's mandate;
 - (iii) preparation of quarterly report on the implementation of this Act; and
 - (iv) performance of such other duties as may be assigned by the County Planning Committee or any other law.

(3) The Director shall hold office for a term of three years and shall be eligible for re-appointment once.

(4) The Board may recommend to the County Assembly for the removal from office of the Director on the following grounds—

- (a) violation of the Constitution or any other law;
- (b) inability to perform the functions of the office due to physical or mental infirmity;
- (c) incompetence;
- (d) gross misconduct; or
- (e) bankruptcy.

(5) Before removal from office under subsection (4), the Director shall be informed in writing, of the reasons for the intended removal, and shall be afforded an opportunity to defend themselves against such allegations, either in person or through a legal representative.

(6) The Director may resign from office in writing, addressed to the Board.

Amendment of section 14

10. The Principal Act is amended by deleting subsection (2) of section 14.

Amendment of section 16

11. The Principal Act is amended by deleting section 16 and substituting therefor the following new section—

Composition of Planning Committee

16. (1) The Planning Committee shall consist of—

- (a) the Chief Officer who shall be the Chairperson;
- (b) the Director in charge of the Climate Change Directorate, who shall be the Secretary;
- (c) the Chief Officer responsible for the County Treasury;
- (d) the Chief Officer responsible for matters relating to Agriculture;
- (e) the Chief Officer responsible for matters relating to Water;
- (f) a woman and a man representing duly registered public benefit organizations working on matters relating to the environment in the County nominated by the umbrella organization representing the largest public benefit organization in the County;
- (g) a representative of the private sector operating in the County nominated by the largest umbrella body of the private sector in the County;
- (h) a representative of Persons with Disabilities duly registered with the National Council for Persons with Disabilities nominated by its Machakos Chapter.
- (i) 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)(f), (g), or (h).

Amendment of section 17

12. The Principal Act is amended by deleting section 17 and substituting therefor the following new section—

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

the Executive Committee Member with the approval of the County Assembly.

(2) Members of the Planning Committee appointed under section 16(1) (f), (g), and (h) shall serve for a term of three years and shall be eligible for re-appointment once.

Amendment of section 18

13. The Principal Act is amended in section 18—

(a) by deleting subsection (2) and substituting therefor the following new subsection—

(2) A member of the Planning Committee appointed under section 16(1) (f), (g), and (h) may be removed from office by the County Executive Committee Member with the approval of the County Assembly on any of the following grounds—

(a) failure to attend three 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.

(b) by deleting subsections (3) and (4) of section 18 and substituting therefor the following new subsections—

(3) A member of the Planning Committee by virtue of section 16. (1) (a), (b), (c), (d), or (e) 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) (f), (g), and (h) 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 written communication from an authorized official of the organization to the Executive Committee Member.

Amendment of section 19

14. Section 19 of the Principal Act is amended by deleting the whole section and substituting therefor the following new section—

Secretariat of Planning Committee

19. The Directorate of Climate Change shall serve as the Secretariat for the Planning Committee.

Amendment of section 23

15. The Principal Act is amended in section 23 by inserting the following new paragraph immediately after paragraph (f)—

(ga) ascertain the satisfactory completion of climate change projects in the Ward funded under this Act before payment.

Amendment of section 24

16. The Principal Act is amended by deleting section 24 and substituting therefor the following new section—

Composition of Ward Planning Committee

24. (1) A Ward Planning Committee shall comprise—

- (a) one person who has knowledge and demonstrated experience in public affairs, who ordinarily reside in the Ward and who shall be the Chairperson;
- (b) the County Government officer responsible for matters relating to climate change who shall be the Secretary, and an *ex-officio* member with no voting rights;
- (c) a representative of the youth who ordinarily resides in the Ward;
- (d) a representative of persons with disabilities who ordinarily resides in the Ward;
- (e) a representative of women who ordinarily resides in the Ward;
- (f) a representative of the business community who ordinarily resides in the Ward;
- (g) a representative of Faith-Based Organizations who ordinarily resides in the Ward; and
- (h) a representative of Community-Based Organizations who ordinarily resides in the Ward.

(2) The Ward Planning Committee Members under paragraphs (1) (a), (c), (d), (e), (f), (g) and (h) shall be nominated by members of the public at a public meeting convened for that purpose by the County Officer responsible for matters relating to Climate Change in the Ward.

(3) In consultation with area leaders, the County Officer responsible for matters relating to Climate Change in the Ward shall ensure that all stakeholders including interest groups eligible for nomination as members of the Ward Planning Committee are equitably represented in the nomination meeting.

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

(5) Within seven days of the nomination of members of the Ward Planning Committee, the County Officer responsible for matters relating to Climate Change in the Ward shall forward the names of the nominees to the Steering Committee.

(6) Within fourteen days of receipt of the nominees to the Ward Planning Committee, the Steering Committee shall compile a list of nominees from all the Wards and forward it to the County Assembly for approval.

(7) The Steering Committee shall publish in the Gazette, the names of the Members of the Ward Planning Committee appointed under this section.

Amendment of section 25

17. The Principal Act is amended in section 25 by deleting the words “a Chairperson and” appearing immediately after the words “shall elect”.

Amendment of section 26

18. The Principal Act is amended by deleting section 26 and substituting therefor the following new section—

Qualifications for appointment to Ward Planning Committees

26. A person shall qualify for appointment to the Ward Planning Committee if that person—

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

Amendment of section 27

19. Section 27 of the Principal Act is amended by deleting the words “24 (1) (a), (b), (c), (d) and (e), appearing immediately after the words “under section” and substituting therefor the words “Section (1) (a), (c), (d), (e), (f), (g) and (h)”;

Amendment of section 28

20. Section 28 of the Principal Act is amended—

- (a) in subsection (1) by inserting the words “appointed under section 24 (1) (a), (c), (d), (e), (f), (g) and (h)” immediately after the words “Ward Planning Committee”;
- (b) in subsection (2) by inserting the words “appointed under section 24 (1) (a), (c), (d), (e), (f), (g) and (h),” immediately after the words “Ward Planning Committee”;
- (c) in subsection (3) by deleting the words “24 (1) (f) and (g), appearing immediately after the words “under section” and substituting therefor the words “Section (1) (b)”;
- (d) by deleting subsection (4);
- (e) by deleting subsection (5) and substituting therefor the following new subsection—
 - (6) Whenever there is a vacancy in the Ward Planning Committee, the County Officer responsible for matters relating to Climate Change shall initiate and complete the nomination process of a replacement within Sixty days of the vacancy.

Amendment of section 30

21. The Principal Act is amended in Section 30 by inserting the word “Board” immediately after the phrase “County Public Service”.

Amendment of section 31

22. Section 31 of the Principal Act is amended—

- (a) by deleting subsection (1) and substituting therefor the following new subsection—
 - (1) The Steering Committee shall, in consultation with the relevant sectors and through a participatory process involving relevant stakeholders, formulate a County Climate Change Action Plan.
 - (b) in subsection (3) by deleting the words “Executive Committee Member” appearing immediately after the words “subsection

(1), the" and substituting therefor the words "Steering Committee".

Amendment of section 34

23. The Principal Act is amended by deleting section 34 and substituting therefor the following new section—

34. The Steering Committee shall undertake a biennial review of the implementation of the County Climate Change Action Plan.

Amendment of section 36

24. Section 36 of the Principal Act is amended in subsection (1) by deleting the words "on the recommendation of the Executive Committee Member and" appearing immediately after the words "The Steering Committee may".

Amendment of section 39

25. The Principal Act is amended in Section 39 by inserting the word "Assembly" at the end of the section.

Amendment of section 45

26. Section 45 of the Principal Act is amended by deleting subsections (3), (4), (5), and (6).

Amendment of section 46

27. Section 46 of the Principal Act is amended by inserting the following new subsections at the end of the section—

(1) In developing the annual County budget, the County Executive Committee Member for Finance shall ensure that at least 0.5 % of the budget is allocated to the Fund.

(2) The Fund shall be utilized as follows—

(a) 5% of the Fund shall be set aside for administration purposes and

(b) 95% of the Fund shall be utilized to fund the Ward-based projects as follows—

(i) 80% to be distributed equally among the Wards; and

(ii) 20% to be distributed equitably among the Wards according to population.

Amendment of section 46.

28. The Principal Act is amended by inserting the following new sections immediately after section 46—

Fund Administrator

46A. (1) The Fund shall be administered by a Fund Administrator who shall be competitively recruited by the Board and approved by the County Assembly.

(2) Upon recruitment under subsection (1), the Fund Administrator shall be designated as such by the County Executive Committee member for Finance in accordance with section 116 (2) of the Public Finance Management Act, 2012.

(3) A person qualifies for appointment as the Fund Administrator if that person—

- (f) has a first degree in finance, economics, or business administration;
- (g) has at least five years in finance management;
- (h) is a member of a recognized professional body;
- (i) demonstrates basic knowledge of environmental matters; and
- (j) meets the requirements of Chapter Six of the Constitution.

(4) The Fund Administrator shall be in-charge of the Fund and shall—

- (a) be responsible for the day-to-day management of the affairs of the Fund;
- (b) provide technical assistance to the Ward Planning Committees;
- (c) process and ensure timely disbursement of project funds as approved by the County Planning Committee;
- (d) prepare quarterly returns on the movement of funds as appropriate for submission to the County Assembly;
- (e) cause to be kept proper books of accounts and other books and records related to the Fund;
- (f) ensure that the accounts and financial statements for the Fund comply with international accounting standards or other standards as may from time to time be prescribed by the Accounting Standards Board.
- (g) not later than three months after the end of each financial year, prepare and submit to the County Assembly, financial statements relating to those accounts; and
- (h) perform such other duties as may be assigned by the County Planning Committee.

(5) The Fund Administrator shall hold office for a term of three years and shall be eligible for re-appointment once.

(6) The Board may recommend to the County Assembly for the removal from office of the Fund Administrator on the following grounds—

- (f) violation of the Constitution or any other law;
- (g) inability to perform the functions of the office due to physical or mental infirmity;
- (h) incompetence;
- (i) gross misconduct; or
- (j) bankruptcy.

(7) Before removal from office under subsection (5), the Fund Administrator shall be informed in writing, of the reasons for the intended removal, and shall be afforded an opportunity to defend themselves against such allegations, either in person or through a legal representative.

(8) The Fund Administrator may resign from office in writing, addressed to the Board.

Management of the Fund

46 B. (1) The Fund shall be used only to meet the objectives of this Act.

(2) Withdrawals from the Fund shall only be done as may be authorized by the County Planning Committee.

- (3) The signatories to the bank accounts of the Fund shall be the—
 - (a) Chief Officer;
 - (b) Director; and
 - (c) Fund Administrator.

(4) The Fund Administrator shall be a mandatory signatory to all bank accounts of the Fund.

(5) The Cheques for administrative expenses shall be signed by any two of the signatories, but cheques to service providers for projects shall be signed by all three signatories; provided that the Fund Administrator shall sign all cheques issued by the Fund.

(6) Save for the administrative costs, all disbursement from the Fund shall be for specific projects in accordance with the procedures outlined in this Act or as may be prescribed in Regulations.

(7) The funding of projects under this Act shall be as planned and minuted by the Ward Planning Committee and as approved by the County Planning Committee.

(8) The funding under this Act shall be for complete community-based projects.

(9) Once funds are allocated for a particular project, they shall remain so allocated for that project and may only be re-allocated by the Ward Planning Committee for any other purpose during the financial year with the approval of the County Planning Committee.

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

Amendment of section 47

29. The Principal Act is amended in Section 47 by deleting paragraph (b) of subsection (2).

Amendment of section 48

30. Section 48 of the Principal Act is amended—

(a) by deleting subsection (1);

(b) by deleting subsection (2) and substituting therefor the following new subsection—

(2) The administrative expenses of the Steering Committee, the Planning Committee and the Ward Planning Committees and their secretariats shall be defrayed out of the Fund.

Amendment of section 49

31. Section 49 of the Principal Act is amended by deleting the words “Executive Committee Member” and substituting therefor the words “Chief Officer”.

Amendment of section 54

32. Section 54 of the Principal Act is amended in paragraph (a) of subsection (1) by adding the words “required to be done under this Act” immediately after the word “procedure”.

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