

# THE TAITA TAVETA COUNTY TOURSIM BILL, 2021

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## THE TAITA TAVETA COUNTY TOURSIM BILL, 2021

A Bill for introduction of AN ACT of the County Assembly of Taita Taveta to make provision for the development, management, marketing and regulation of sustainable local tourism and tourism related activities and services, and for connected purposes

ENACTED by the County Assembly of Taita Taveta as follows—

### PART I –PRELIMINARY

Short title	1. This Bill may be cited as the Taita Taveta County Tourism Bill, 2021 and shall come into operation on such date the Executive Committee Member may, by the notice in the Gazette, appoint and different dates may be appointed for different provisions.
Interpretation	2. In this Bill- “authorized officer” means a person appointed under section 48 of this Bill; “Board” means the County Tourism Board established under section 13 of this Bill; “County” means the county Government of Taita Taveta; “County Assembly “means the County Assembly of Taita Taveta; “Ecotourism” has the meaning assigned to it under section 2 of the Tourism Act, 2011; “Environmental impact assessment” as the meaning assigned to it under section 2 of the Tourism Act, 2011; “Executive Committee Member” means the Executive Committee Member for the time being responsible for matters relating to tourism; “Licence” has the meaning assigned to it under section 2 of the Tourism Act, 2011; “Restaurant” has the meaning assigned to it under section 2 of the Tourism ACT, 2011; “Sustainable tourism” has the meaning assigned to it under section 2 of the Tourism ACT, 2011; “Tourism activities and services” means any of the activities and services specified in the second schedule of this Bill;

“Tourism product” has the meaning assigned to it under section 2 of the tourism act, 2011;

“Tribunal” means the county tourism tribunal established by section; and

“Visitor” has the meaning assigned to it under section 2 of the Tourism ACT, 2011.

## **PART II—FORMULATION OF COUNTY TOURISM STRATEGY**

### Functions and Powers

3. (1) the executive committee member shall, subject to subsection (6), formulate a county tourism strategy at least once every two years, in accordance with which the local tourism sector shall be developed, managed, marketed and regulated.

(2) The county tourism strategy shall prescribe the principles, objectives, standards, indicators, procedures and incentives for the development, management and marketing of sustainable tourism and shall, in particular prescribe—

- a) for the packaging of niche tourism products and services; standards for tourism local area development plans; measures to facilitate and enhance local tourism taking cognizance of the national government’s strategies; priority areas for tourism development, capacity building and training; equity must be exploited widely across the county. innovative schemes, incentives and ethics to be applied in the development and marketing of sustainable local tourism, including public private partnerships; clear targets indicating projection in tourism growth over the next five years;
- b) county tourism research and monitoring priorities and information systems, including— collection and management of tourism data and information; intelligence gathering; procedures for gathering tourism data and the analysis and dissemination of tourism information; and tourism management information systems; measures necessary to ensure equitable sharing of benefits in the tourism sector;
- c) adaptation and mitigation measures to avert adverse impacts of climate change on tourism and tourism products and services;
- d) reflect regional co-operation, inter county and common approaches in tourism development, marketing and regulation;
- e) any other relevant matter that the executive committee member in charge of tourism affairs considers necessary to enhance sustainable tourism in the country; and

- f) periodically review the county tourism strategy and may, by notice in the gazette, publish a revised county tourism strategy.
  - g) the executive committee member and all relevant public bodies shall, when exercising or performing any statutory function, take into account and give effect to the county tourism strategy.
- (3) The executive committee member shall, when formulating a county tourism strategy under subsection (1), consult the public in accordance with the law relating to public participation and as set out under the first schedule.

### **PART III—ESTABLISHMENT OF TOURISM REGULATORY, DEVELOPMENT AND MARKETING UNITS**

#### **A. THE TOURISM REGULATORY AND LICENSING UNIT**

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|--------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Establishment      | <p>4. (1) There is established a unit to be known as the tourism regulatory and licensing unit.</p> <p>(2) the unit shall be an entity in the department of tourism in the county and shall discharge its functions under this Bill.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Object and purpose | <p>5. The unit shall regulate the local tourism sector in the county.</p> <p>(1) the functions of the unit shall be to—</p> <ul style="list-style-type: none"> <li>a) formulate guidelines and prescribe measures for sustainable tourism throughout the county;</li> <li>b) regulate tourism activities and services countywide, in accordance with the county tourism strategy;</li> <li>c) register, licence and grade all sustainable tourism and tourist related activities and services including cottages and private residences engaged in guest house services;</li> <li>d) develop and implement, in consultation with relevant stakeholders, criteria for standardization and classification of tourism facilities and services;</li> <li>e) develop and regulate, in consultation with the ministry for the time being responsible for matters relating to education, tourism and hospitality curriculum, examination and certification;</li> <li>f) develop and implement a code of practice for the tourism sector;</li> <li>g) ensure the development and implementation of high quality tourism sector; vet and recommend expatriates seeking employment in the tourism and hospitality sector;</li> </ul> |

- h) monitor and assess tourist activities and services to enhance continuous improvement and adherence to sound principles and practices of sustainable tourism;
- i) undertake, annually, an assessment and audit of tourism activities and services, measures and initiatives at the county level, and prepare and publish an annual county tourism sector status report, in consultation with the executive committee member and the relevant lead agencies; and
- j) perform any other functions that are ancillary to the object and purpose for which the unit is established.

Publication of a

Status report

6. The executive committee member shall, in each financial year, lay a county tourism sector status report published under subsection (1) (j) before the county assembly, as soon as reasonably practicable after its publication, where the county assembly is in session, or where not in session, within twenty-one days of the day the county assembly next sits after the publication.

Functions of the tourism

regulatory and licensing unit

7. The executive committee member shall provide such public officers as may be necessary for the proper and efficient discharge of the functions of the tourism regulatory and licensing unit under this Bill.

Expenses

8. The expenses of the tourism regulatory and licensing unit shall be met out of funds allocated to the relevant ministry by county assembly for that purpose.

## B. THE MARKETING AND PROMOTION UNIT.

Establishment

9. (1) There is established a unit to be known as the marketing and promotion unit.

(2) The object and purpose of the marketing and promotion unit shall be to market the county as a tourist destination and promote business of meetings, conferences and exhibitions in accordance to the provisions of this Bill. the marketing and promotion unit shall—

- a) develop, implement and co-ordinate a county tourism marketing strategy;
- b) market the county at local, national, regional and international levels as a premier tourist destination;
- c) identify tourism market needs and trends and advise tourism stakeholders accordingly;

- d) market, organize and host meetings and provide incentives for conferences and exhibitions in the county;
- e) develop and implement the county meetings, incentives for conferences and exhibitions strategy upon consultation with the relevant stakeholders;
- f) finance the marketing of the county as a tourist destination through the unit; and
- g) perform any other functions that are ancillary to the object and purpose for which the marketing and promotion unit is established.

Functions 10. The executive committee member shall provide such public officers as may be necessary for the proper and efficient discharge of the functions of the marketing and promotion unit under this Bill.

Expenses 11. The expenses of the marketing and promotion unit shall be met out of funds allocated to the relevant ministry by county assembly for that purpose.

### C. THE PRODUCT DEVELOPMENT AND FINANCING UNIT.

Establishment 12. There is established a unit to be known as the product development and financing unit.

Object and purpose 13. The product development unit shall undertake and co-ordinate initiatives to develop and finance tourism products and investments in accordance with the provisions of this Bill.

- (1) product development unit shall—
- a) provide guidance and direction on the development of national tourism products in accordance with priorities as set out in the national tourism strategy;
  - b) undertake inventory, mapping, provision of investment opportunities and promotion development of tourism products and services;
  - c) provide financial and technical assistance to investors or entrepreneurs in the tourism sector including small and medium and community based enterprises for development, expansion and maintenance of tourism activities and services;
  - d) support training and capacity development activities in the local tourism and hospitality industry;
  - e) finance the local tourism research, tourism intelligence and the local tourism information management system;



- f) provide business advisory services to the local tourism sector;
- g) collect and analyze information, for the sector and other clients in the private and public sectors, relating to tourism products and services at the local level and processes or activities likely to impact on sustainable tourism;
- h) determine, in consultation with lead agencies, the carrying capacities of the various tourism destinations and conservation needs and priorities;
- i) assess information, that is the basis of integrated local tourism development area plans; give information on early warning, disaster management, impacts and mitigation and adaptive strategies to climate change;
- j) organize symposia, conferences, workshops and other meetings to promote the exchange of views on issues relating to local tourism product development, research and analysis;
- k) publish, annually, research findings and communicate recommendations to the relevant lead agencies, institutions and other stakeholders in the local tourism sector; and
- l) perform any other functions that are ancillary to the object and purpose for which the product development unit is established.

(2) The executive committee member shall provide such public officers as may be necessary for the proper and efficient discharge of the functions of the product development unit under this Bill.

(3) The expenses of the product development unit shall be met out of funds allocated to the relevant ministry by county assembly for that purpose.

#### **PART IV- ESTABLISHMENT OF THE COUNTY TOURISM BOARD 13.**

##### **Composition**

14. (1) There shall be a County Tourism Board which shall consist of—
- a) a chairperson appointed by the Governor.
  - b) the Chief Officer in the ministry for the time being responsible for matters relating to tourism and or culture; or his/her representative;
  - c) the Chief Officer in the ministry for the time being responsible for matters relating to finance, planning and national development or his/her representative;
  - d) the Chief Officer in the ministry for the time being responsible for matters relating to environment or his/her representative;
  - e) the County Legal Officer or his/her representative;
  - f) the secretary of the Board appointed under subsection (4);

- g) three other members, not being public officers, nominated or selected through a competitive process taking into account regional balance and gender parity and appointed by the Executive one shall be nominated by the registered tourism sector associations; and two shall be persons who have expertise in tourism or tourism-related disciplines;
- (2) The members of the Board shall be appointed at different times so that the respective expiry dates of their terms of office shall fall at different times;
  - (3) The County Public Service Board, through a competitive process, shall appoint a person, who shall be a public officer, to be the secretary of the Board;
  - (4) The secretary shall hold office on the terms and conditions specified in the letter of appointment;
  - (5) The secretary shall be responsible for the day to day affairs of the Board and shall be answerable to the Board in performance of his functions;
  - (6) The secretary shall take minutes during the meetings of the Board and keep proper records of the Board;
  - (7) Subject to the provisions of this Bill, the Board may determine its own procedure and the procedure for any sub-committee established by the Board and for attendance of any other person's subject to the provisions of the second schedule.
  - (8) The remuneration of the Members of the Board shall be decided by the County Executive Committee;

Functions of the board

15. (1) The Board shall –
  - a) ensure the proper and effective performance of the functions of the units established under this Bill;
  - b) approve and ratify the policies of the units established under this Bill; co-operate with other organizations undertaking functions similar to its own, whether within or outside the County as it may consider appropriate and in furtherance of the object and purpose of the units established under this Bill;
- (2) perform any other function as may be assigned by the Executive Committee Member.
- (3) Members of the Board shall be paid allowances determined by the County Executive Committee

Term of office

16. (1) A member of the Board appointed under section 14(1) (a) and (g) shall hold office for a term not exceeding three years but

shall be eligible for re-appointment for a further term not exceeding three years.

(2) A member of the Board other than an ex officio member may, at any time, resign from the office, in writing, addressed to the appointing authority.

(3) A member of the Board other than an ex officio member, who is absent from three consecutive meetings of the Board without sufficient cause shall cease to be a member of the Board.

(4) Where a member of the Board is, for sufficient cause, unable to act as a member, the Executive Committee Member shall determine whether the inability would result in the declaration of a vacancy.

(5) Where a vacancy arises in accordance with the provisions of this Bill, the Executive Committee Member shall appoint another person in accordance with the provisions of section 13(1) to fill the vacancy.

Disclosure

17. (1) A member of the Board who has an interest in a matter for consideration by the Board shall disclose, in writing, the nature of that interest and shall not participate in any deliberations of the Board relating to that matter.

#### **PART V—THE ESTABLISHMENT OF COUNTY TOURISM TRIBUNAL**

Establishment

18. (1) There is established a tribunal to be known as the County Tourism Tribunal which shall consist of—

- a) a chairperson appointed by the Governor as approved by the county assembly
- b) an advocate of the High Court of Kenya nominated by the Law Society of Kenya Taita Taveta Branch or its equivalent and appointed by the Executive Committee Member; and
- c) three other persons who have demonstrated competence and a high level of integrity in the tourism or hospitality sector appointed by the Executive Committee Member. Provided that the representative of the Law Society of Kenya appointed herein shall be from the Local Chapter and resident of the County.

(2) The members of the Tribunal shall be appointed at different times so that the respective expiry dates of their terms of office shall fall at different times.

(3) The nomination or appointment of members of the Tribunal under subsection (1) shall be through a competitive process taking into account regional balance and gender parity, and with the prior approval of the County Assembly.

Tenure

19. (1) A member of the Tribunal shall hold office for a term of three years but shall be eligible for re-appointment for one further term of three years.

(2) The office of a member of the Tribunal shall become vacant—

- a) at the expiry of three years from the date of appointment;
- b) if he accepts any office the holding of which, if he were not a member of the Tribunal, would make him not eligible for appointment to the office of a member of the Tribunal;
- c) if he is removed from membership of the Tribunal by the Executive Committee Member for reasons of physical or mental infirmity, unable to exercise the functions of his office;
- d) if he resigns his office by writing under his hand addressed to the Executive Committee Member;
- e) under section 25 (2); or
- f) upon his death.

(3) Members of the Tribunal shall be paid the allowances approved by the Executive Committee Member, in consultation with the Executive Committee Member for the time being responsible for matters relating to finance.

Functions of the secretary

20. (1) The Tribunal shall have a secretary who shall be a public officer appointed by the County Service Board through a competitive process.

(2) The secretary shall hold office on the terms and conditions specified in the letter of appointment and shall serve on a part time basis.

(3) The secretary shall be responsible for the day to day affairs of the Tribunal and shall be answerable to the Tribunal in performance of his functions.

(4) The secretary shall perform any other functions determined by the Tribunal.

(5) The Tribunal shall have the jurisdiction to hear and determine—

- a) appeals arising from any decision made under this Bill;

- b) any complaints arising from the exercise of the Executive Committee Member's powers under this Bill;
- c) any conflicts that may arise between tourism units established under this Bill;
- d) questions relating to refusal to grant a licence under this Bill or unreasonable delay in the making of that grant; and
- e) any complaints by any person aggrieved by any act done by any person under this Bill.

Complaints and appeals 21. (1) A person may make a complaint or appeal, in writing, within sixty days of the act or omission or decision complained of.

(2) On the hearing of a complaint or an appeal, the Tribunal shall have all the powers of a subordinate court to—

- a) summon witnesses, take evidence on oath or affirmation and order the production of documents; or
- b) summon expert evidence as may be necessary.

Receiving evidence 22. Where the Tribunal considers it desirable for the purposes of minimizing expenses, to avoid delay or for any special reason, it may receive-

- a) evidence by affidavit and Executive Committee Member interrogatories and require the person to whom the interrogatories have been made to respond.
- b) All summons, notices or other documents issued under the hand of the Chairperson of the Tribunal shall be deemed to have been issued by the Tribunal.

Representation 23. An aggrieved person may be represented before the Tribunal by an Advocate.

Regulations 24. (1) Subject to this Bill, the Tribunal may regulate its own procedure.

- a) confirm, vary or set aside the decision appealed against; or
- b) make an order for the maintenance of the status quo of any matter or activity which is the subject of a complaint or appeal before it until the complaint or appeal is determined.

(2) The Tribunal shall have power to award the costs of any proceedings before it and to direct that the costs shall be taxed in accordance within such scale as it may prescribe.

(3) The Tribunal may, on its own motion or upon application by an aggrieved party, review its decisions, awards or orders.

Execution and  
enforcement

25. Judgments of the Tribunal shall be executed and enforced in the same manner as judgments of a subordinate court. 23. A person who—

- a) fails to attend the Tribunal after being summoned by the Tribunal;
- b) refuses to take an oath or affirmation before the Tribunal, or being a public officer, refuses to produce any article or document when lawfully required to do so by the Tribunal;
- c) knowingly gives evidence or information before the Tribunal which he knows to be misleading; or • at any sitting of the Tribunal—
- d) willfully insults any member or officer of the Tribunal; or
- e) willfully interrupts the proceedings or commits any other act of contempt of the Tribunal;
- f) fails or neglects to comply with a decision, order, direction or notice confirmed by the Tribunal, commits an offence and shall be liable to such penalty as is applicable to contempt of court offences under the Civil Procedure Act, 2010 and Rules made thereunder; subject to the Tribunal’s discretion

Quorum

26. (1) The quorum for the hearing and determination of a cause or matter referred to the Tribunal shall be the Chairperson and two other members.

(2) Where, for any reason, the quorum under subsection (1) is not met for part of the hearing, the jurisdiction of the Tribunal may be exercised by the Chairperson, sitting with less the members.

(3) The Chairperson shall preside at the meetings of the Tribunal and in the absence of the Chairperson, a member elected by members present and voting.

Disclosure of personal

interests

27. (1) A member of the Tribunal who has an interest in the matter for consideration by the Tribunal shall disclose, in writing, the nature of that interest and shall not participate in the deliberations of the Tribunal in respect of that matter.

(2) A member who fails to disclose interest in matter in accordance with subsection (1) shall cease to be a member of the Tribunal. 26.

(1) A person aggrieved by a decision or order of the Tribunal may, within thirty days of that decision or order, appeal against the decision or the order to the High Court.

Functions of the

High Court

28. Upon the hearing of an appeal under this section, the High Court may –

- a) confirm, set aside or vary the decision;
- b) remit the proceedings to the Tribunal with instructions for further consideration, report, proceedings or evidence as the court may consider fit to give;
- c) exercise any of the powers which could have been exercised by the Tribunal in the proceedings in connection with which the appeal is brought; or
- d) exercise any of the powers which could have been exercised by the Tribunal in the proceedings in connection with which the appeal is brought; or
- e) A person aggrieved by the decision or order of the High Court may, within sixty days of that decision or order, appeal against that decision or order to the Court of Appeal solely on matters of law.

## **PART VI –TOURISM LICENSING PROVISIONS**

Issuance of licenses

29. (1) A person shall not undertake any of the tourism activities and services specified in the Third Schedule, unless that person has a licence issued by the Tourism Regulatory and Licensing unit.

(2) A person seeking a licence or any variation of a licence held by him shall apply to the Unit in such manner and form as may be prescribed under this Bill.

(3) An application for a licence or for the variation of licence under subsection (1) shall be accompanied by such fees as may be prescribed by the unit.

Investigations

30. (1) The Tourism Regulatory and Licencing Unit may, on receipt of an application under this section, investigate or require the submission of such further information as it may be necessary in order to enable it consider the application.

(2) The unit shall, in considering the licence application, have regard to the material considerations which include–

- a) the standard for the tourism area development plan as prescribed by the Executive Committee Member under section 3(2)(b);

- b) the protection of fragile environmental resources, ecosystems and habitats as provided for by the ministry for the time being responsible for matters relating to the environment;
- c) an environmental impact assessment licence issued under Part VI of the Environmental Management and Co-ordination Act, 1999;
- d) any representations received from members of the public; and
- e) a recommendation or approval from any other relevant authority as may be necessary.

(3). After considering an application made under this section, the unit may grant the applicant the licence or variation applied for or may refuse the grant, and may attach to the licence granted terms or conditions as the it may consider necessary.

(4). A licence issued under this Bill shall expire on the 31st December of the year in respect of which it is issued.

(5). An application for the renewal of an existing licence shall be made at least two months before the expiry date of the existing licence.

(6). The Executive Committee Member may, on the advice of the Unit given after consultation with the relevant lead agencies and other stakeholders, by notice in the Gazette, amend the Second Schedule to this Bill.

Transfer of a license 31. (1) A licence issued under this Bill may be transferred by the holder to another person only in respect of the tourism activity or service in relation to which that licence was issued.

(2) Where a licence is transferred under this section, the person to whom it is transferred and the person transferring it shall jointly notify the unit in writing of the transfer within thirty days after the transfer.

(3) Where no joint notification of a transfer is given in accordance with subsection (2), the licence shall be deemed not to have been transferred.

(4) A transfer of a licence under this section shall take effect on the date the Authority is notified of that transfer.

(5) A person who contravenes the provisions of this section commits an offence.



(6) The Unit may, subject to section 32, suspend a licence issued under this Bill where—

- a) a licensee is being investigated in relation to an offence under this Bill;
- b) an allegation of misconduct has been made against a licensee;
- c) the licensee made a false declaration in the application for the licence; or
- d) a licensee has contravened a provision of this Bill.

Cancellation of a license 32. The unit shall, subject to section 32, cancel a licence where a licensee—

- a) is convicted of an offence under this Bill or the regulations made there under; or
- b) ceases to be qualified for the issue of a licence under this Bill.

Notice

33. (1) The Unit shall not suspend or cancel a licence unless the Unit has given the licensee at least thirty days' notice of its intention to suspend or cancel the licence and has provided the licensee with an opportunity to make a representation to the Unit.

(2) A licensee who is not satisfied with a decision made under subsection (1) may appeal to the Tribunal within twenty-eight days from the date of the decision.

(3) A person whose licence has been suspended or cancelled shall not engage in the tourism activity or service in respect of which the licence was granted during the duration of suspension or after cancellation.

Register

34. (1) The Unit shall keep and maintain registers of—

- a) all standards for the tourism area development plans formulated by the Executive Committee Member under the provisions of this Bill;
- b) all licences and permits issued under this Bill;
- c) tourism facilities, activities and services licensed under this Bill;
- d) all public and private sector institutions or associations involved in tourism or tourism related activities and services;
- e) all authorized expatriates, in consultation with the ministry for the time being responsible for matters relating to Immigration, working in the tourism and hospitality sector within the county; and
- f) all institutions offering tourism and hospitality training.

(2) all registers kept and maintained under this section shall be open for inspection by members of the public during official working hours, at the Unit's offices or an office designated by the Unit, on the payment of a prescribed fee.

## **PART VII -- RESEARCH PERMIT, DATA RECORDS AND MONITORING.**

Permit to carry

out a research

35. (1) A person shall not undertake research on the county tourism sector unless that person has a research permit granted by the Product Development and Financing Unit to carry out the research.

(2) A person granted a research permit under subsection (1) shall be required, upon completion of the research, to deposit a copy of the research report, thesis or assessment with the Unit in a manner prescribed by the Unit.

(3) Where a person carrying out the research is from outside Kenya, that person shall be required to have a sponsoring institution from the home country and a locally recognized collaborating institution which shall guarantee that the researcher shall comply with the requirements under this Bill.

(4) The Executive Committee Member may, by motion or on recommendation of the Unit, prescribe regulations to carry out the purposes of this section.

Establishment

36. (1) The Product Development Unit shall, in collaboration with relevant lead agencies and stakeholders, establish a comprehensive county tourism database for the tourism sector in the county.

(2) The database established under subsection (1) shall include relevant data produced by the National Bureau of Statistics, universities and research institutions or as a consequence of collaborative research by the Unit with foreign institutions and researchers.

(3) The Unit shall, in consultation with relevant lead agencies and stakeholders, ensure that data is collected in accordance with any harmonized standards that may be prescribed under this Bill or regulations made hereunder.

(4) The Unit shall, in respect of the data and information that it holds, progressively make the data and information available and accessible, through any means, to all the stakeholders and the general public.

(5) The Executive Committee Member may, by motion or on recommendation of the Unit, prescribe regulations to carry out the purposes of this section.

Access to

public records

37. (1) The Unit shall, on request, have access to the public records or documents of a lead agency in custody of a person or an establishment where, in his opinion, the information sought is for the purposes of obtaining the required county tourism data or completion or correction of the information already obtained.

(2). A person who does not grant the Unit access to the records or documents in accordance with subsection (1) commits an offence and shall be liable upon conviction to a fine of one hundred thousand or to imprisonment for a term not exceeding six months or to both.

Fee payment

38. (1) Subject to subsection (3), a person may, upon application, access any county tourism data or information upon payment of the prescribed fee.

(2) The Unit shall avail the data or information under subsection (1) in the format requested unless—

- a) it is reasonable for it to make the information available in another format; or
- b) the information is already publicly available and easily accessible to the applicant in another format.

(3). The Unit may refuse to grant an application under subsection (1) where the data or information requested is classified and restricted.

(4). The Unit shall communicate to the applicant, in writing, the reasons for refusal within twenty-one days from the date of the making the decision.

(5) The Executive Committee Member may, by motion or on recommendation of the Unit, prescribe regulations to effectively carry out of the provisions of this section.

Monitoring mechanisms

and indicators

39. (1) The Executive Committee Member may, by motion or on recommendation of the Unit, develop monitoring mechanisms and set indicators to determine—

- a) sound management of county tourism products and services;  
and
- b) trends affecting county's tourism sector;

(2). The Executive Committee Member shall require any person collecting data or information that is relevant to the county tourism sector to regularly report to the Executive Committee Member on the results of the monitoring mechanisms against the predetermined indicators.

(3). The Executive Committee Member shall, at least once every five years, submit to the County Assembly a monitoring report and avail the monitoring report to the public.

## **PART VIII – FINANCING THE TOURISM INDUSTRY**

### **A. COUNTY TOURISM LEVY**

Payment of county

tourism levy

40. (1) The Executive Committee Member may, by order, require the payment by persons engaged in tourism activities and services of a county tourism levy.

(2). The county tourism levy order may make different provisions in relation to different tourism activities and services.

(3). A county tourism levy may contain provisions as to the evidence by which a person's liability to the tourism levy, or his discharge of that, may be established, and as to the time at which any amount payable by any person by any of tourism activity and service shall become due.

(4). All monies received in respect of the tourism levy shall be paid to the Product Development and Financing Unit established under section 10 of this Bill.

(5). A person who fails to comply with any provision of a tourism levy order commits an offence.

### **B. Government tax incentives**

Promotion of

sustainable tourism

41. (1) Despite the provisions of any relevant national or county revenue Act, the Executive Committee Member responsible for matters relating to finance in consultation with the National Treasury may, on the recommendation of the Executive Committee

Member, propose tax and other fiscal incentives, disincentives or fees to induce or promote the development of sustainable tourism.

(2). Without prejudice to the generality of subsection (1), the tax and fiscal incentives, disincentives or fees may include—

- a) customs and excise waiver in respect of imported capital goods for investment in sustainable tourism activities and services;
- b) tax rebates to tourism activities and services that promote sustainable tourism and environmental conservation;
- c) tax disincentives to deter bad tourism activities and services;
- d) user fees to ensure that those who use tourism activities and services pay proper value for the tourism products and services rendered; and
- e) An investor or entrepreneur in the county tourism sector may obtain a loan or credit facilities in accordance with this Bill or any other legislation, on terms and conditions that may be prescribed.

## **PART IX – OFFENCES, PENALTIES AND ENFORCEMENT**

(A) an approved integrated county tourism development area plans under this Bill.

Offences 42. A person who contravenes any of the provisions of subsection (1) commits an offence and is liable on conviction to a fine not exceeding two hundred thousand shillings, or to imprisonment for a term not exceeding twenty-four months, or to both.

Rules 43. (1) A person shall not—  
a) discharge any dangerous materials, substances or oil into a designated county tourism development area contrary to the provisions of this Bill or any other law; or  
b) pollute wildlife habitats and ecosystems, or discharge any pollutant detrimental to the environment contrary to the provisions of this Bill or any other law.

(2). A person who contravenes any of the provisions of subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand shillings, or imprisonment, in case of a natural person, to a term not exceeding thirty-six months, or to both.

(3). In addition to the fine imposed under subsection (2), the court may direct the convicted person to –

- a) pay the full cost of cleaning up the polluted wildlife habitat and ecosystem and mitigating effects of pollution; and
  - b) clean up the polluted habitats and ecosystems and mitigating effects of pollution to the satisfaction of the county government.
- (4) Without prejudice to the provisions of subsections (2) and (3), the court may direct the accused person to meet the cost of the effect of pollution to a third party through adequate compensation, restoration or restitution.

Rules

44. (1) A person shall not—

- a) breach or fail to comply with the provisions of this Bill;
- b) breach or fail to comply with any of, the terms or conditions of a licence issued to him under this Bill;
- c) fail to comply with a lawful requirement or demand made or given by an authorized officer;
- d) obstruct a person in the execution of his powers or duties under this Bill;
- e) knowingly or recklessly make a statement or representation which is false;
- f) knowingly or recklessly furnish a document or information required under this Bill which is false; or
- g) knowingly or recklessly use or furnish a fake or forged or invalid licence or a licence that has been altered without authorization.

(2). A person who contravenes any of the provisions of subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding eighteen months, or to both.

Exemptions

45. Where an offence under this Bill is committed by a body corporate or any other association of individuals, a director, partner or any other person involved in, or acting or purporting to act in the management of its affairs commits an offence unless that person proves that—

- a) the act or omission constituting the offence took place without his knowledge; or
- b) he or she took reasonable steps to prevent the commission of the offence for which no specific penalty is provided is liable, on conviction, to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding twelve months, or to both.

Appointment

46. (1) The Executive Committee Member may, in writing, appoint any person to be an authorized officer for the purposes of the carrying out of the provisions of this Bill.

(2). Despite subsection (1), any other person upon whom any written law vests functions of maintenance of law and order shall be an authorized officer.

Functions

47. An authorized officer may, with the leave of the Director of Public Prosecutions given under the Criminal Procedure Code conduct prosecution for an offence committed under this Bill.

Petition to the

High Court

48. (1) Any person who has reason to believe that the provisions of this Bill have been, are being, or are about to be violated, may petition the High Court for—

- a) a declaration that the provisions of this Bill are being, have been, are about to be contravened;
- b) an injunction restraining any specified person from carrying out the contravention;
- c) the writ of mandamus against an officer or a person who has failed to perform a duty imposed by or under this Bill; or
- d) any remedy at law or equity for preventing or enforcing the provisions of this Bill.

Status and

enforcement

49. Where any conflict arises between the provisions of this Bill and any other county legislation with respect to the development, management, marketing or regulation of the tourism sector, in the county the provisions of this Bill shall prevail.

Regulations

50. (1) The Executive Committee Member may, by motion or on the recommendation of the respective tourism units, make regulations prescribing all matters which by this Bill are required to be prescribed or which are necessary for the better carrying out of, or giving effect to, the provisions of this Bill.

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

- a) the conditions which a licence or permit may be granted or issued under this Bill;
- b) the procedures to be followed when applying for a licence or permit;

- c) the criteria for standardization and classification of county tourism facilities and services;
- d) the classification of tourism activities and services;
- e) fees and other charges required to be paid under the Bill;
- f) the restriction, regulation or other control of county tourism activities and services;
- g) the training of personnel for the tourism agencies and the county tourism and hospitality sector in general; and
- h) the Code of Practice for the local tourism and hospitality sector.

(3). Regulations made under this section may require acts or things to be performed or done to the satisfaction of the Executive Committee Member, and may empower the respective tourism units established under this Bill to issue orders imposing conditions and dates upon, within or before which the acts or things shall be performed or done.

#### FIRST SCHEDULE (s.3 (5))

##### PROVISIONS RELATING TO PUBLIC CONSULTATION

(1) Where this Bill imposes a requirement for public consultation in matters relating to a tourism strategy, plan, activity or service, the respective tourism agency shall publish a notice –

- a) In the Gazette;
- b) In at least two newspapers with national circulation; and
- c) In at least one Kenyan radio station broadcasting in that locality

(2). The notice shall in each case—

- a) set out a summary of the strategy, plan, activity or service;
- b) State the premises at which the details of the strategy, plan, activity or service may be inspected;
- c) Invite written comments on or objections to the strategy, plan, activity or service;
- d) Specify the person or body to which the comments are to be submitted; and
- e) Specify a date by which the comments or objections are required to be received, not being a date earlier than sixty days after publication of the notice.

(3) The respective tourism agency shall make arrangements for the public to obtain copies, at reasonable cost, of documents relating to the strategy, plan, activity or service which are in the possession of the respective tourism agency.

- a) The respective tourism agency shall consider the—
- b) Written comments or objections received on or before the date specified under paragraph 1(2) (e); and



c) Comments, whether in writing or not, received at a public meeting held in relation to the strategy, plan, activity or service at which the respective tourism agency was represented, or by any other invitation, to comment.

(4.) The respective tourism agency shall publish, in accordance with paragraph 1 of this Schedule, notice of the fact that a copy of the written decision of the respective tourism agency relating to the strategy, plan, activity or service, and the reasons thereof, is available for public inspection at the same premises as were notified under paragraph 1(2) (b).

(5). Where regulations made under this Bill so require, the respective tourism agency shall cause a public meeting relating to a strategy, plan, activity or service to be held before the respective tourism agency makes its decision on the strategy, plan, activity or service.

## SECOND SCHEDULE (s.13)

### PROVISIONS RELATING TO MEETINGS OF THE COUNTY TOURISM BOARD

(1.) The County Tourism Board shall meet at least once in every three months to conduct the business of the Board.

(2.) The Chairperson may or upon request call a special meeting of the Board at any time, where he or she considers it expedient for the transaction of the business of the Board.

(4). Other than a special meeting, or unless three quarters of members agree, at least twenty-one days' written notice of every meeting of the Board shall be given to every member of the Board by the secretary.

(5). The quorum at a meeting of the Board shall be half of the members or a greater number determined by the Board in respect of an important matter.

(6). The Chairperson shall preside at the meetings of the Board and in the absence the vice-chairperson, and in his absence, a member of the Board elected by the members present from among their number shall preside.

(7). The matters of the Board shall be decided by a majority of the members present and voting and in the event of equality of votes, the Board of the unit shall not be invalidated by reason of a vacancy among the members or a defect in the appointment or qualification of a member.

(8). At the first meeting of the Board, the members shall elect a vice chairperson, not being an ex-officio member, from among its members.

(9). Subject to the provisions of this Schedule, the Board may determine its own procedure and the procedure for any committee of the Board and for attendance of any other persons at the meetings and may make standing orders in respect thereof.

## PROVISIONS RELATING TO REGULATED TOURISM ACTIVITIES AND SERVICES

### Class “A” Enterprises

- a) Hotels;
- b) Members clubs;
- c) Motels;
- d) Inns;
- e) Hostels;
- f) Health and spa resorts;
- g) Retreat lodges;
- h) Eco lodges;
- i) Tree houses;
- j) Floatels;
- k) Service flats,
- l) Service apartments,
- m) Beach cottages,
- n) Holiday cottages,
- o) Game lodges,
- p) Tented camps;
- q) Safari or mobile camps,
- r) Bandas,
- s) Cultural homes and centres,
- t) Villas; Homestays; Guest houses; and Time shares.

(b) Class “B” Enterprises Restaurants; and Other food and beverage services.

### (c) Class “C” Enterprises

- a) Tour or safari operators;
- b) Tourist service vehicle hire;
- c) Local air charter;
- d) Travel agency;
- e) Water sports;
- f) Balloon operators; and
- g) Boat excursions;

### (d) Class “D” Enterprises

(a) Game fishing outfitters;

Enterprises offering camps and camping equipment for hire;

- a) Nature parks;
- b) Nature reserves;
- c) Nature trails;
- d) Game ranches;

- e) Amusement parks;
- f) Non-citizen tour leaders or guides.
- g) Local traditional boat operators;
- h) Professional safari photographers;
- i) Curio vendors; and
- j) Private zoos;

#### OTHER LICENSING REQUIREMENTS

In addition to the requirements set out in the Third Schedule above, the Licensing Committee shall consider the following:

- a) a certificate of approval by public works and public health of the premises (hotel/restaurant);
- b) Lease Agreement or Title Deed of premises occupied by office;
- c) evidence of insurance cover for the premises, occupants and their property;

in the case tourist vans -

- a) insurance cover,
- b) public service vehicle (PSV) sticker and
- c) vehicle inspection,
- d) a valid driver's license and
- e) certificate of good conduct;

If foreign tourist vans -

- a) motor vehicle ownership documents,
- b) licence to carry on the business of tourism from the country of origin,
- c) a valid driver's licence and
- d) certificate of good conduct.

summary of skilled and unskilled staff in employment;

**MEMORANDUM OF OBJECTS AND REASONS**

This Bill seeks to provide a legal framework for the proper management of the County Tourism by formulating a tourism strategy.

The Bill is organized in ten parts covering the following-

Part I provides for Preliminaries including- short title and interpretation;

Part II Provides for Formulation of County Tourism Strategy including Functions and Powers;

PART III Provides for Establishment of tourism regulatory, Development and Marketing Units;

Part IV Provides for Establishment of the County Tourism board;

Part V Provides Establishment of County Tourism Tribunal;

Part VI Provides Tourism Licensing Provisions;

Part VII Research Permit, Data records and Monitoring;

Part VIII Financing the Tourism Industry;

Part IX Offences, Penalties and Enforcement;

Part X is the Miscellaneous Part providing for Schedule.

The Bill shall occasion additional expense which will be provided for in the estimates.

Daniel M. Mwakisha

Signed ----- Date -----

County Executive Committee Member - Trade, Tourism, Cooperatives & Industrialization.

TAITA TAVETA COUNTY GOVERNMENT