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**THE MARSABIT COUNTY CLIMATE CHANGE FUND BILL,
2020**

A Bill for

AN ACT of the County Assembly of Marsabit for the establishment of a Climate Change Fund to facilitate and coordinate financing of Climate Change Adaptation and Mitigation activities; and for connected purposes

ENACTED by the County Assembly of Marsabit as follows—

PART I—PRELIMINARY

Short title and commencement

1. This Act may be cited as the Marsabit County Climate Change Fund Act, 2020 and shall come into operation on such date the Executive Committee Member may, by the notice in the *Gazette*, appoint.

Interpretation

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

No. 11 of 2016

“adaptation” has the meaning assigned to it under section 2 of the Climate Change Act, 2016;

“administrator” means the County climate change fund administrator appointed in accordance with section 11 of this Act;

“board” means the County climate change fund management board established under section 7 of this Act;

No. 11 of 2016

“climate change” has the meaning assigned to it under section 2 of the Climate Change Act, 2016;

“climate change adaptation” means adjustment in natural or human systems in response to actual or anticipated adverse effects of climate change or stimuli or their effects to moderate or exploit beneficial opportunities;

“climate change awareness” means publicity and capacity activities aimed at creating an awareness about Climate Change in the County;

“climate change mitigation” means measures undertaken to prevent or reduce the emission of greenhouse gases;

No. 11 of 2016

“climate finance” has the meaning assigned to it under section 2 of the Climate Change Act, 2016;

“climate finance framework” means a context specific policy items established under section 16 of this Act to guide in the application of the Fund;

“community projects” means projects that are initiated and implemented within a Ward by the Ward Planning Committees

No. 15 of 2013

“contract node” has the meaning assigned to it under section 2 of the Public Private Partnerships Act 2013;

“contracting authority” has the meaning assigned to it under section 2 of the Public Private Partnerships Act, 2013;

“County” means Marsabit County;

“County Assembly” means the County Assembly of Marsabit;

“County Executive Committee” means the County Executive Committee established in Marsabit County in accordance with Article 179 the Constitution;

No. 17 of 2012

“County Executive Member” means the County Executive Committee Member for the time being responsible for Environment in the County and appointed in accordance with section 35 of the County Governments Act 2012;

“County government” means the County Government of Marsabit;

“County climate change fund planning committee” means the County climate change planning committee established under section 17 of this Act;

“County planning framework” means a county planning framework established by the County Government and includes the County Integrated Development Plan as defined in the County Governments Act 2012 and the Public Finance Management Act, 2012;

No. 17 of 2012

“County Public Service Board” has the meaning assigned to it under section 57 of the County Government Act, 2012;

No. 18 of 2012

“County Treasury” has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012;

“County wide projects” are projects implemented for the benefit of more than one Ward and directly supervised by the County Planning Committee;

No. 15 of 2015

“environmental impact assessment” has the meaning assigned to it under section 58 of the Environmental Management and Co-ordination (Amendment) Act, 2015

No. 18 of 2012

“Financial year” means a period of twelve months ending on 30th June each year which is in conformity with the timelines for the County budget outlined in sections 125 and 131 of the Public Finance Management Act;

“Fund” means the climate change fund established under section 5 of this Act;

“Governor” means the Governor of Marsabit County;

No. 11 of 2016

“Greenhouse gases” means the gaseous substances defined under section 2 of The Climate Change Act, 2016;

No. 11 of 2016

“mitigation” has the meaning assigned to it under section 2 of the Climate Change Act, 2016;

“national government agencies” means any National Government institution that deals with climate change related activities which have operations in the County, including the National Climate Change Council and the Directorate established under section 5 of the Climate Change Act, National Environment Management Authority and the National Climate Change Secretariat;

“panel” means the conciliation panel established under section 31 of this Act;

“Participating institutions” means national or international institutions that have made contributions to the Fund;

No. 18 of 2013

“Public Benefit Organization” has the meaning assigned to it under section 2 of the Public Benefits Organizations Act, 2013;

“Ward” has the meaning assigned to it under Article 89 of the Constitution;

“ward climate change fund planning committee” means the ward climate change fund Committee established under section 16 of this Act;

Object and Purpose of the Act

3. The object of this Act is to create a fund in the County to provide for—

- (a) financing of climate change programs in the County;
- (b) initiating and coordinating of climate change adaptation and mitigation activities at the community level in the County;
- (c) facilitating incorporation of Climate Finance in the County planning and budgetary framework;
- (d) seeking and receiving grants from international sources, the National Government, the County Government and other organizations;
- (e) co-ordinating support from National Government climate change policy and legislative framework; and
- (f) co-ordinating the collection and dissemination of climate change information to the public to create awareness and preparedness.

Guiding Principles and Values

4. (1) The guiding values and principles of climate resilient and low carbon development in this section shall bind the County Government and all persons when—

- (a) enacting, applying or interpreting any provisions of this Act; and
 - (b) making or implementing public policy decisions on climate change adaptation and mitigation.
- (2) in discharging their functions under this Act, the Board, County Planning Committee, Ward Planning Committee, Fund Administrator or any organ of the County Government shall be guided by the following—
- (a) national values and principles of governance in Article 10 of the Constitution and the values and principles of public service in Article 232 of the Constitution;
 - (b) provisions of Article 42 and 69 of the Constitution;
 - (c) promote sustainable development in a changing climate;

- (d) promote equity and social inclusion in allocation effort, costs and benefits to cater for special needs, vulnerabilities, capabilities, disparities and responsibilities;
- (e) transparency and accountability; and
- (f) public participation.

PART II—ESTABLISHMENT OF THE FUND

Establishment of the Fund

5. (1) There is established a fund to be known as the Marsabit Climate Change Fund which shall be used to fund Climate Change projects, programs and activities provided for in the Climate Finance Framework established under this Act.

(2) The moneys in the Fund shall be disbursed according to criteria set out in the second Schedule to this Act.

(3) The Fund shall be used to finance priority climate change projects, programs and activities, including those provided for in the Climate Finance Framework established under this Act.

Sources of funds

6. The fund shall be financed through—
- (a) moneys appropriated by the County Assembly, constituting a minimum of two percent of the county audited revenue account in a financial year;
 - (b) grants and loans from the National Climate Fund;
 - (c) climate finance from national and international sources;
 - (d) moneys received from Public Benefit Organizations;
 - (e) fees and charges from climate finance activities; and
 - (f) grants and donations.

PART III—ADMINISTRATION OF THE FUND

Establishment of the Board

7. (1) There shall be an established Board which shall be known as the Marsabit County Climate Change Fund Board and which shall be a body corporate and shall in its corporate name be able to—

- (a) sue and be sued;
- (b) take, purchase or otherwise acquire, hold, charge or dispose of movable and immovable property;
- (c) borrow money or make investments; and

- (d) perform all functions under this Act which may lawfully be done or performed by a body corporate.
- (2) The Board shall be administered by a Board of Directors which shall comprise—
 - (a) One person, not being a public officer, appointed by the Governor, who shall be the chairperson.
 - (b) The Fund Administrator who shall be the Secretary to the Board;
 - (c) Chief Officer for the time being responsible for Environment;
 - (d) Chief Officer for the time being responsible for County Treasury;
 - (e) Chief Officer for the time being responsible for Agriculture, Livestock and Fisheries;
 - (f) One person representing Public Benefit Organizations, nominated by Fund Participating Institutions;
 - (g) one person representing women in the County;
 - (h) one person representing youth in the County; and
 - (i) one person representing people living with disability in the County.
- (3) A person shall be qualified for appointment as chairperson or a member appointed under subsection (2) if the person—
 - (a) is a resident of Marsabit County;
 - (b) holds at least a degree qualification from a reputable academic institution;
 - (c) has relevant experience in any aspect of environment management or Climate Finance for at least seven years, and
 - (d) meets the requirements of Chapter Six of the Constitution;
- (4) The appointment of the chairperson in subsection (2) above shall be approved by the County Assembly.

Removal of the Board Chairperson

8. The board chairperson may—

- (a) at any time resign from office by issuing three months notice in writing to the Governor through the County Executive Member;

- (b) be removed from office by the Governor upon the advice of the County Executive Member on either of the following grounds—
 - (i) serious violation of the Constitution or any other written law;
 - (ii) gross misconduct, whether in the performance of the functions of the office or otherwise;
 - (iii) physical or mental incapacity to perform the functions of office;
 - (iv) incompetence; or
 - (v) bankruptcy.

Functions of the Board

9. The Board shall—
- (a) approve and oversee implementation of the Climate Finance framework in the County;
 - (b) approve the Fund Eligibility Criteria developed by the County Planning Committee;
 - (c) approve the climate change projects and programs list compiled by the County Planning Committee;
 - (d) ensure that projects approved for funding conform to the Climate Finance Framework;
 - (e) approve and oversee execution of the County Climate Finance Budget in compliance with the Public Finance Management principles under article 201 of the Constitution of Kenya;
 - (f) oversee the coordination of research and development for climate finance in the County;
 - (g) approve the list of pre-qualified research consultants for Climate Finance research in the County;
 - (h) assign and coordinate technical assistance from County departments to projects funded under this Act;
 - (i) oversee the coordination and implementation of curriculum for capacity building and climate change awareness in the County;
 - (j) mobilize additional funding for projects, programs and activities listed in the Climate Finance Framework;

- (k) provide the essential linkages between the County Executive Committee and the County Assembly with regard to management of the Fund;
- (l) approve a Strategic Plan and Service Charter for the Fund developed by the County Planning Committee;
- (m) approve the ward and county-wide disbursement proposals by the Fund Administrator, and
- (n) any other matter relevant to the execution of the mandate of the Board.

Conduct of the affairs of the Board

10. The conduct of the affairs of the Board shall be as set out in the first schedule.

Fund Administrator

11. (1) The fund shall be administrated by a Fund Administrator who shall be appointed by the Marsabit County Public Service Board.

(2) To qualify for appointment as a Fund Administrator, a person must—

- (a) possess at least a Bachelors Degree from a recognized university preferably Finance, Environment or Economics background;
- (b) Certified Public Accountant in good standing at the Institute of Certified Public Accountants of Kenya and produce a letter to that effect;
- (c) have a minimum of seven years working experience in the core profession of the person or have run a registered own enterprise for a minimum of seven years; and
- (d) meet the Leadership and Integrity criteria set out under Chapter Six of the Constitution.

(3) The Fund Administrator shall hold office on a performance based contract for a period of three years, on such terms and conditions as may be imposed, and shall be eligible for a second and final term of three years.

Functions of the Fund Administrator

12. The Fund Administrator shall—

- (a) prepare a framework receiving and evaluating;
- (b) project proposals in consultation with the Board;

- (c) prepare and publish a yearly projects and program evaluation and implementation schedule stating—
 - (i) the key activities in a financial year,
 - (ii) the persons responsible for each task; and
 - (iii) the performance period for each process.
- (d) maintain a updated database of matters related to the fund;
- (e) publish the eligibility criteria for projects under this Act;
- (f) organize and coordinate the disbursement of moneys allocated to approved projects;
- (g) co-ordinate capacity building for the Ward Planning Committees;
- (h) facilitate and implement monitoring and evaluation framework established by the Board;
- (i) develop a complaints handling mechanism;
- (j) facilitate the functions of the institutions created under this Act where appropriate;
- (k) co-ordinate and compile a budget for the administrative costs for each institution under this Act; and
- (l) any other duty assigned by the Board.

Removal of the Fund Administrator

13. The Fund Administrator may—

- (a) at any time resign from office by issuing notice in writing to the chairperson of the Board;
- (b) be removed from office by the County Executive Member on recommendation of the Board either on the following grounds—
 - (i) serious violation of the Constitution or any other written law;
 - (ii) gross misconduct, whether in the performance of the functions of the office or otherwise;
 - (iii) physical or mental incapacity to perform the functions of office;
 - (iv) incompetence; or
 - (v) bankruptcy.

Staff of the Board

14. (1) The Marsabit County Public Service Board may recruit additional staff to support the Board on a needs basis or as may be appropriate.

(2) The recruitment of staff in subsection (1) above shall be subject to the limitation on the administrative costs of the Fund.

Climate Finance Framework

15. (1) The County Executive Member shall publish a Climate Finance Framework for the County every three years.

(2) The Climate Finance Frameworks shall be developed through a consultative process.

(3) The Climate Finance Framework shall address inter alia—

(a) the status of climate change awareness in the County;

(b) context specific items in the national climate change policy, legislation and plans relevant to the County;

(c) the impact of climate change in the County;

(d) human activities in the county that may impact climate change;

(e) compliance and enforcement of climate change related county laws and community bylaws;

(f) climate change adaptation and mitigation activities relevant to the County and anticipated impact; and

(g) any other relevant issues.

(4) The Climate Finance Framework shall be aligned to the County Planning Framework.

PART IV—ESTABLISHMENT OF COUNTY CLIMATE CHANGE FUND PLANNING COMMITTEE**Establishment of County Planning Committee**

16. (1) There is established a County Climate Change Fund Planning Committee and which shall include Directors of the following departments nominated by their respective Chief Officers or relevant authority —

(a) Department of Environment, as the chairperson.

(b) County Treasury, as the Secretary;

(c) Department of Health;

- (d) Department of Agriculture, Livestock and Fisheries;
- (e) National Drought Management Authority in the County;
- (f) National Environment Management Authority in the County;
- (g) Kenya Meteorological Department in the County;
- (h) Kenya Wildlife Service in the County;
- (i) Kenya Forest Service in the County;
- (j) One person representing the private sector, nominated by Fund Participating Institutions; and
- (k) One person representing Public Benefit Organizations, nominated by Fund Participating Institutions.

Functions of the County Planning Committee

17. The functions of the County Planning Committee shall be to—

- (a) Develop a Climate Finance Framework for the County;
- (b) develop, consultatively, Eligibility Criteria for selecting and prioritizing climate change projects and programs for approval by the board;
- (c) evaluate and recommend climate change proposals developed by the Ward Planning Committee and submit them to the board;
- (d) provide oversight to the project evaluation process by the Ward Planning Committee and prepare appropriate reports to the Climate Change Fund Board;
- (e) compile the list of approved projects and submit to the Board through the Fund Administrator;
- (f) facilitate and monitor the implementation of projects and programs financed by the Fund in the County;
- (g) develop a Climate Finance research priority needs for the county;
- (h) develop a Climate Awareness Strategy for the County;
- (i) develop a Strategic Plan and Service Charter for the Fund;
- (j) facilitate the coordination of Climate Finance projects and programs with other programs in the County; and
- (k) any other matter relevant to the execution of its mandate.

Staff of the County Planning Committee

18. (1) The Marsabit County Public Service Board may recruit additional staff to support the County Planning Committee on a needs basis or as may be appropriate.

(2) The recruitment of staff in subsection (1) above shall be subject to the limitation on the administrative costs of the Fund.

Conduct of affairs of the County Planning Committee

19. (1) The County Planning Committee shall meet at least once in every quarter during the financial year and —

- (a) the county planning Committee shall prioritize the development of Eligibility Criteria, approve and circulate it before the start of the financial year;
- (b) the County Planning Committee can meet any other time on a needs basis provided the limit on administrative costs per quarter is not exceeded; and
- (c) prepare and present Climate Change report quarterly to the Board.

(2) The quorum for the meetings of the County Planning Committee shall be one-half of the membership.

(3) A resolution of the County Planning Committee shall require an affirmative vote of at least one-half of the membership present at a meeting, excluding the chairperson's vote which shall be a casting vote.

(4) In the absence of the designated chairperson, the members present shall elect one person from its membership as the chairperson.

**PART V—ESTABLISHMENT OF WARD CLIMATE CHANGE
FUND PLANNING COMMITTEE****Ward Planning Committee**

20. (1) There is established a Ward Climate Change Fund Planning Committee in each Ward in the County.

(2) The Ward Planning Committee shall comprise the following persons who shall be appointed by the County Executive Member—

- (a) one person who shall be the chairperson and who shall meet following minimum qualifications—
 - (i) must not be a public officer;
 - (ii) must be a resident of the respective Ward;
 - (iii) able to read and write in English;

- (iv) exhibits good leadership and trusted by the Ward community;
- (v) proven track record of engaging in Ward development initiatives;
- (b) four persons, representing interest groups in the ward comprising of—
 - (i) one persons nominated by elders in the Ward;
 - (ii) one persons nominated by women in the Ward;
 - (iii) one persons nominated by the youth in the Ward;
 - (iv) one persons nominated by persons with disabilities in the Ward.
- (c) one person representing Ward based Public Benefit Organizations or community based organization, nominated by Participating Institutions;
- (d) two *ex officio* members with no voting rights comprising of—
 - (i) Sub-County Environment officer of the respective sub-county to provide advisory services, establish inter linkages and provide necessary coordination;
 - (ii) Ward Administrator of the respective ward as the secretary to the committee; and
 - (iii) One representative of each of the three key economic activities in the Ward.

(3) At least one-third of members under subsection (1) shall be from the other gender, a competent person living with disability and a competent youth should be included provided that the total number of members does not exceed eleven.

Functions of Ward Planning Committee

21. (1) The Ward Planning Committee shall—

- (a) consult with the community on the relevant Climate Finance activities at the Ward level;
- (b) facilitate public participation at the Ward level to develop and prioritise proposals for investments in public goods that promote climate change mitigation and adaptation;
- (c) receive project proposals from the community at the Ward level and develop technical components of the project proposals;

- (d) develop procurement plans for each project at the Ward level;
- (e) monitor project implementation at the Ward level;
- (f) prepare the Climate Finance Budget at the ward level;
- (g) ensure compliance with the provisions in this Act and regulations made hereunder;
- (h) prepare the Ward level project reports, and
- (i) any other duty assigned by the County Planning Committee.

(2) The Ward Planning Committee shall consult other County departments for technical assistance as may be required.

Conduct of the affairs of Ward Planning Committee

22. (1) The Ward Planning Committee shall meet at least once every quarter during the financial year or any other time on a needs basis provided the limit on administrative costs per quarter is not exceeded.

(2) The quorum for meetings of the Ward Planning Committee shall be at least half of the membership.

(3) A resolution of the Ward Planning Committee shall require affirmative vote of at least half of the membership present at a meeting, excluding the chairperson's vote which shall be a casting vote.

(4) Meetings of the Ward Planning Committee shall be held in respective Wards.

Staff of the Ward Planning Committee

23. (1) The Marsabit County Public Service Board may recruit additional staff to support the Ward Planning Committee on a needs basis or as may be appropriate.

(2) The recruitment of staff in subsection (1) above shall be subject to the limitation on the administrative costs of the Fund.

PART VI—DISBURSEMENT OF FUNDS

Allocation of Fund to the Wards

24. (1) The Fund Administrator shall prepare, publish and circulate information on the allocation of funds to each Ward which shall be approved by the Board.

(2) Disbursement of funds shall be based on cash flow projections submitted by implementers of the activities financed by the Fund and approved by the Board.

(3) The Fund Administrator shall be guided by the Climate Fund Sharing Criteria detailed in the second schedule to this Act.

Eligibility criteria

25. (1) The Board shall approve and publish an Eligibility Criteria for Climate Finance projects that will be eligible for funding under this Act.

(2) The eligibility criteria in subsection (1) above shall be as set out in the second schedule.

Community Consultation Forums

26. (1) Each Ward Climate Change Fund Planning Committee shall convene community consultation forums in at least three different locations in the Ward before commencement of every Financial Year.

(2) The agenda for the community consultation forums shall include—

- (a) climate change awareness;
- (b) the nature of projects that are eligible for financing from the Fund; and
- (c) identify and prioritize projects from community members.

(3) The Ward Planning Committee Secretary shall prepare a report on the community consultation forums under this part, and submit it to the County Planning Committee.

Development of Project Proposals

27. (1) The Ward Planning Committee shall develop project proposals from the project priorities identified in section (26 (2)(c)) above, and include any necessary technical details, including the procurement plan for each project.

(2) The Ward Planning Committee shall submit project proposals to the County Planning Committee for evaluation and approval.

(3) Upon receiving the project proposals from the Ward Planning Committee, the County Planning Committee shall within four weeks after receiving the project proposals—

- (a) approve the project proposals and communicate their decision to the respective Ward Planning Committee; or
- (b) reject project proposals, giving reasons in writing and communicate this decision to the respective Ward Planning Committee; or

(c) instruct the respective Ward Planning Committee to make necessary amendments to a project proposal and approve the amended project proposal within a further three weeks from the date of resubmission.

(4) Financing of the project proposals developed by the Ward Planning Committee shall be subject to the amount of money allocated to the Ward.

(5) The County Planning Committee may, in order to facilitate the approval of projects, constitute a Project Evaluation Team in every Ward comprising of—

- (a) staff seconded by the County Executive Committee;
- (b) personnel from Participating Institutions; and
- (c) consultants.

Disbursement of funds for projects

28. (1) The County Planning Committee Secretary shall submit a list of approved and ranked climate change projects to the Board through the Fund Administrator, including proposed procurement plans for each project.

(2) Only projects submitted and approved by the Board may be funded.

(3) Upon approval by the Board, the Fund Administrator shall release moneys for the approved projects upon receiving the procurement plans together with cash flow projections.

(4) The County Executive Member in consultation with the County Executive Member for the time being responsible for County Treasury may develop regulations for the better administration of this part.

Procurement

29. (1) The County Procurement Director shall issue guidelines for the establishment of appropriate procurement processes for each Ward Planning Committee in consultation with the County Executive Member.

(2) The Ward Planning Committee shall adhere to the relevant procurement procedures under the Public Procurement and Disposal Act, 2015 and the matrix in the Third Schedules to this Act.

(3) The County Procurement Director shall organize for the capacity building for the procurement entities of the Ward Planning Committee.

(4) The County Executive Member in consultation with the County Executive Member for the time being responsible for County Treasury may develop regulations for the better administration of this part.

Complaints mechanism

30. (1) Community members who are aggrieved by any decision of the Ward Planning Committee shall submit the complaints to the Fund Administrator, one week before the County Planning Committee begins evaluation of the project proposals.

(2) The Fund Administrator shall forward all complaints to the Board which shall constitute a Conciliation Panel comprising three persons.

(3) The Conciliation Panel formed in subsection (2) above shall make a final determination within a period of twenty one days and submit a report to the Board and Fund Administrator.

(4) The County Executive Member may develop regulations for the better administration of this part.

PART VII—FINANCIAL PROVISIONS

Bank account of the Fund

31. (1) A bank account of the Fund shall be opened and maintained at a public commercial bank by the Fund Administrator in accordance with the provisions of the Public Finance Management Act.

(2) The signatories to the bank account maintained in accordance with subsection (1) above shall be—

- (a) the Chairperson of the Board;
- (b) the Chief Officer for the time being responsible for Environment; and
- (c) the Fund Administrator.

(3) The signing instructions in subsection (2) above shall be such that the signatures of the Chairperson of the Board, Chief Officer for the time being responsible for Environment and the Fund Administrator shall be mandatory on all payment in cheques and/or instruments intended for actual release of money from the Fund.

(4) Authority to open and operate a bank account shall be sought from the County Executive Committee Member for the time being responsible for County Treasury.

(5) Without prejudice to the generality of subsection (4) above, of the County Climate Change Fund Committee and respective Ward Climate Change Fund Committees shall through the Board seek authority from the

County Treasury to open and maintain a bank account through which they will receive funds.

Financial Year

32. The financial year of the Fund shall be the period of twelve months commencing on the first of July and ending on the thirtieth of June of the subsequent year.

Annual Estimates

33. (1) In every budget cycle, the Fund Administrator shall cause to be prepared estimates of the Fund's income and expenditure for the given fiscal year.

(2) The annual estimates shall make provisions for all estimates of expenditure relating to administration and management of the Fund for the given fiscal year.

(3) The estimates developed in subsection (1) above shall be submitted to the Executive Committee Member for the time being responsible for County Treasury for approval and forwarding to the County Assembly.

Accounts of the Committees

34. (1) The Fund Administrator shall keep proper books of account of the funds of the Board, County Planning Committee and the Ward Planning Committees.

(2) Within three months after the closure of the Financial Year, the Fund Administrator shall prepare an audit report for the Board, County Planning Committee and the Ward Planning Committees.

(3) The County Executive Member shall prepare accounts and a report for the County Assembly annually.

PART VIII—MISCELLANEOUS

Regulations

35. The County Executive Member in consultation with the County Executive Committee Member for the time being responsible for County Treasury shall make regulations for all matters necessary for the proper administration of this Act including—

- (a) sitting allowances for the Board, County Planning Committee and the Ward Planning Committees;
- (b) the banking arrangements for the Fund;
- (c) the disbursement of funds for approved projects; and;

(d) any matter in respect of which it is necessary or expedient to make regulations in order to achieve the objects of this Act.

(3) The County Executive member shall ensure that public participation is properly conducted under this part.

Protection from liability

36. Nothing done by a person exercising authority or a power under this Act shall, if the matter or thing was done or omitted in good faith for the purpose of executing this Act or any rule, regulation or order made under this Act, subject such a person in his personal capacity to any action, suit, claim or demand whatsoever.

Annual Report

37. (1) As soon as practicable after the end of each financial year, the Board shall submit a report to the County Assembly in accordance with the forms contained in the fourth schedule to this Act.

(2) The report of the Board shall, in respect of the financial year to which it relates, contain—

- (a) the financial statements of the Fund;
- (b) a description of the activities of the Board, County Planning Committee, Ward Planning Committee and the Fund Administrator;
- (c) information relating to the progress made in implementing the Act;
- (d) recommendations made by the Board to the County Government and the action taken on such recommendations;
- (e) any impediments to the work of the Board, County Planning Committee, Ward Planning Committee and the Fund Administrator; and
- (f) such other information as the Board considers appropriate or relevant in relation to any of its functions under the Act.

(3) Without prejudice to subsection (1), the County Assembly may at any time require the Board to submit a report on a particular issue.

Public participation

38. (1) Any procedures undertaken under this Act that directly affect community interests shall be subject to public participation.

(2) The Board shall take special measures to ensure that vulnerable groups are represented in public participation forums conducted under this Act.

Public Private Partnership

39. (1) Subject to provisions of the Public Private partnerships Act, 2013, the Board may enter into a public private partnership agreement with any person for the execution of climate change adaptation and mitigation activities in the County.

(2) The Chief Officer for the time being responsible for Environment shall serve as the contracting authority when instituting a public private partnership.

(3) In establishing a public private partnership under this section, the Fund Administrator shall be part of the contract node.

SCHEDULES (S. 15)
FIRST SCHEDULE— CONDUCT OF THE AFFAIRS OF THE BOARD

Meetings

1. (1) The meetings of the Board shall be convened at least once every quarter by the chairperson, but not more than eight times in a financial year.

(2) The chairperson may at anytime convene a special meeting of the County Planning Committee and shall do so within one month of the receipt by him of a written request signed by at least two members.

(3) In the absence of the chairperson, from any Board meeting, the members present shall elect one of the members to preside, and such member shall, as concerns that meeting, have all the powers and attributes of the chairperson under this Act.

(4) At every meeting of the Board the member presiding shall have a casting as well as a deliberative vote.

(5) The quorum for the meetings of the Board shall be more than one-half of the membership.

Committees

2. (1) The Board may establish such committees as it may deem appropriate to perform such functions and responsibilities as it may determine

(2) The Board shall appoint the chairperson for each committee established under sub-paragraph (1) from amongst its members.

(3) The Board may, where it deems appropriate, invite any person to attend the deliberations of any of its committees.

(4) All decisions by the committees appointed under subparagraph (1) shall be ratified by the Board.

Declaration of Interest

3. (1) A member who has an interest in any business before the Board or other matter present at a meeting shall at the meeting and as soon as reasonably practicable declare his/her interest and shall not take part in the consideration or discussion of, or vote on, any question with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter

(2) A disclosure of interest made under sub-paragraph (1) shall be recorded in the minutes of the meeting at which it is made.

(3) A member of the Board who contravenes sub-paragraph (1) shall cease to be a member of the Board upon direction of the County Executive Committee.

(4) The Chairperson shall make arrangements for the appropriate representation with regard to sub-paragraph (3) above.

Common Seal

4. (1) The common seal of the Board shall be kept in such custody as the Board may direct and shall not be used except on the order of the Board.

(2) The affixing of the common seal of the Board shall be authenticated by the signature of the Chairperson, the Fund Administrator and one member nominated by the Board; and

(3) Any document not required by law to be made under seal and all decisions of the Board may be authenticated by the signatures of the Chairperson, the Fund Administrator and that member nominated by the Board.

(4) The common seal of the Board when affixed to a document and duly authenticated shall be judicially and officially noticed and unless and until the contrary is proved, any necessary order or authorization by the Board under this section shall be presumed to have been duly given.

Contracts and Instruments

5. Any contractual instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal may be entered into or executed on behalf of the Board by any person generally or specially authorized by the Board for that purpose.

SECOND SCHEDULE—SHARING OF FUNDS S. 5 (2)

Fund sharing criteria

1. The funds available in the Fund may be shared according to the following criteria —

- (a) ten percent of the moneys available in the Fund shall be allocated for administrative costs as follows —
 - (i) twenty percent of the administrative costs shall be assigned to the Board;
 - (ii) twenty percent of the administrative costs shall be assigned the County Planning Committee; and
 - (iii) Sixty percent of the administrative costs shall be assigned the administrative costs of the Ward Planning Committee;
- (b) twenty percent of the moneys available in the Fund shall be allocated to County wide projects as follows—
 - (i) twenty five percent shall be assigned to Climate Change Awareness activities;
 - (ii) twenty percent shall be assigned to County specific research and development; and
 - (iii) fifty five percent of the Fund shall be assigned to County wide development projects.
- (c) seventy percent of the moneys available in the Fund shall be allocated to projects received from the Ward Planning Committee and approved by the County Planning Committee ; and
- (d) moneys not spent at the end of any financial year shall be retained in the Fund for uses that are allowable under this Act.

Fund Allocation criteria

2. Allocation of funds to various projects may be done by the County Planning Committee considering the following agreed criteria:

- (a) **Relevance:** The intervention —
 - (i) will benefit many people including the most vulnerable groups with clear evidence of gender considerations;
 - (ii) supports the economy, livelihoods or important services on which many people depend, and has been identified, prioritized and included in ward, sub-county, county and cross-county plan or strategy for public good projects and

- promotes low carbon climate resilient growth and adaptive livelihoods;
- (iii) proof that it is relevant to building resilience to and mitigating climate change and has been identified and prioritised through community participation, based on identifiable vulnerabilities, as captured in risk assessment, vulnerability mapping and greenhouse gas emission reports available for the county.
- (b) **Programme or project description and risk analysis:** The target programme/project, is accompanied by detailed situation analysis with clear problem statement to facilitate clarity on level and urgency of vulnerability, and risks arising from delayed intervention e.g. impact on community livelihoods, environment, economy, etc.
- (c) **Gender and community cohesion considerations:** The Programme or project—
- (i) demonstrates evidence of expected improvement on the socio-economic status and resilience to the most vulnerable groups and incorporates gender considerations.
 - (ii) encourages peaceful coexistence, builds mutual relations and understanding among the beneficiaries, and
 - (iii) provide platforms for effective stakeholder engagement and demonstrates sensitivity to diverse cultures and religions.
- (d) **Intervention Benefits:**
- (i) Contributes to adaptation or mitigation and improving community resilience and other community benefits including poverty reduction
 - (ii) supports livelihoods through income generation, and improved livelihoods.
- (e) **Non duplication of funding:** Avoids duplication, where similar projects have been undertaken or provide complementarily and value addition to similar projects and has linkages with the existing projects with evidence of coordination.
- (f) **Learning and knowledge management:** provides opportunity for capacity building through training, awareness creation and sensitization, and capture, document and disseminate information and lessons learnt on climate change and its impacts.

- (g) **Sustainability:** Proof that the project is sustainable, beyond implementation with adequate arrangements to protect assets created after project completion and contributes to long-term beneficial impacts to the community.
- (h) **Innovation:** Proof that the project is innovative, demonstrates use of indigenous knowledge, technology and emerging trends.
 - (i) **Efficiency and effectiveness or fiduciary management:**
 - (i) Programme or project is cost-effective and gives value for money.
 - (ii) Administrative costs of the project to be incurred at the County and Ward level (usually estimated but not to exceed 5% of total project cost)
 - (iii) Contingency costs (estimated administrative costs not to exceed 5% - 10% of the total project cost) or as may be provide in Public Finance Management Act and Regulations made thereunder.
 - (iv) have clear accountability and reporting procedures;
- (j) **Monitoring and evaluation:** have a clear budgeted monitoring evaluation and Reporting plan with indicators to measure progress.
- (k) **Alignment to county development priorities:** The Board to finance only climate change projects and activities—
 - (i) included in or aligned to the County Integrated Development Plan,
 - (ii) Approved programme or project in subsequent financial period, and
 - (iii) no money may be used for unapproved project or activity.

THIRD SCHEDULE—PROCUREMENT MATRIX

<i>Approach to Seeking Quotation</i>	<i>Minimum Number</i>	<i>Cost of Goods and services (Kenya Shillings)</i>
Direct Purchase (single sourcing).	1	As specified in the Public Procurement and Disposal Act and its Regulations.
Targeted invitation to already Known or new suppliers, not widely circulated.	2	As specified in the Public Procurement and Disposal Act, 2005 and its Regulations.
Open Tender widely Circulated.	3	As specified in the Public Procurement and Disposal Act, 2015 and its Regulations.

FORM D: PROJECT EVALUATION (PROPOSED PROJECTS)

Financial Year.....(Cost in Kshs unless otherwise advised)

Ward Name.....

Project title and location

1. Project Priority Rank
2. Short Description and target beneficiaries
 - 2.1. Justification
 - 2.2. Description of proposed measures
3. Project Costs
 - 3.1. Pre-construction costs
 - 3.2. Construction Cost
 - 3.3. Additional Infrastructure
 - 3.4. Design and supervision
 - 3.5. Contingencies
 - 3.6. Total project cost
 - 3.7. Estimated annual operating costs
 - Total Estimated costs (for the year)
4. Sources of Finance
 - 4.1. Development Costs
 - 4.2. Operations and Maintenance costs
5. Staffing Arrangements
6. Relationship with other Projects
7. Project timeframe: (period of implementation)

MEMORANDUM OF AND OBJECTS REASONS

Statement of the objects and reasons of the Bill

Article 185 of the Constitution empowers County Governments to make laws that are necessary for, or incidental to, the effective performance and exercise of the powers of the County Governments as set out in the Fourth Schedule to the Constitution.

The Bill provides for establishment and management of Climate Change Fund in the County, financing of priority climate change initiatives, initiating and co-ordinating of climate change adaptation and mitigation activities at the community level, incorporation of Climate Finance in the county planning and budgetary framework, mobilizing additional resources for climate response in the County, co-ordinating support from the National government on climate change matters, collection and dissemination of climate change information to the public, and related matters.

PART I of the Bill provides for preliminaries, which include the short title and interpretation of terms as used in the Bill and the guiding principles.

Part II of the Bill provides the establishment of Marsabit County Climate Change Fund, including sources of the said funds.

Part III provides the administrative setup of the Fund which comprises the Board and Fund Administrator, functions of the Board and Fund Administrator, conduct of affairs of the Board, removal from office and County Climate Finance Framework.

Part IV establishes the County Climate Change Fund Planning Committee, membership, functions and the conduct of affairs of the Committee.

Part V establishes the Ward Climate Change Fund Planning Committee, membership, functions and the conduct of affairs of the Committee.

Part VI provides for allocation of the Fund, eligibility criteria, community consultation forums, evaluation and development of project proposals, disbursement of project funds, procurement procedures and complaints handling mechanisms.

Part VII details the financial provisions including bank account of the Fund, financial year, annual estimates, and accounting procedures.

Part VIII provides the miscellaneous provisions such as the power to make regulations by the County Executive, protection from liability, public participation and Public Private Partnerships.

Statement on how the Bill concerns County Governments

County Governments are mandated to mainstream climate change in their functions, including the enactment legislation that clarifies their obligations on climate change response as provided for in Section 19 of the Climate Change Act (2016). This legislative proposal provides a legal framework for mainstreaming climate finance in the county planning and budgeting cycle. This Bill affects the powers and functions of the County Government and, therefore, a Bill that concerns counties within the meaning of Article 110(1)(a) of the Constitution.

The Bill shall occasion additional expenditure to the county. The expenditure will be appropriated by the County Assembly

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not delegate legislative power. However, the County Government may delegate legislative authority to the relevant County Executive Committee Member or as may be appropriate.

Statement on the constitutionality and conflict of laws

The Bill does not contravene any of the provisions of the Constitution and is not *ultra vires* to any of the provisions of any national law relating to environment. In case of any conflict between the Bill and any National laws, the provisions of Article 191 of the Constitution shall take effect.

HASSAN WAQO JARSO,

Chairperson, Water, Environment and Natural Resources Committee,