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KAJIADO COUNTY BILLS, 2020

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THE KAJIADO COUNTY CLIMATE CHANGE BILL, 2020

A Bill for

AN ACT of the County Assembly of Kajiado to provide for a regulatory framework for enhanced response to climate change; and for connected purposes

ENACTED by the County Assembly of Kajiado as follows—

PART I—PRELIMINARY

Citation

1. This Act may be cited as the Kajiado County Climate Change Act, 2020.

Interpretation

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

“Act” means the Kajiado County Climate Change Act, 2020;

“Adaptation” means adjustment in natural or human systems in response to actual or expected climatic stimuli or their effects which moderates harm or exploits beneficial opportunities;

“Climate Change” means a change in the climate system which is caused by significant changes in the concentration of greenhouse gases as a consequence of human activities and which is in addition to natural climate change that has been observed during a considerable period;

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

“Council” means County Climate Change Council;

“County” means Kajiado County;

“County Secretary” the Secretary to the County Executive Committee as established under the County Governments Act, 2012;

“Emissions” means in relation to a greenhouse gas, means emissions of that gas into the atmosphere where the emissions are attributable to human activity;

“Greenhouse gases” means any gaseous compound capable of increasing the earths atmospheric temperature, includes but is not limited to—

- (a) carbon dioxide;
- (b) methane;
- (c) nitrous oxide;

- (d) hydrofluoro carbons;
- (e) perfluoro carbons;
- (f) Sulphur hexafluoride; and
- (g) indirect greenhouse gases;

“Mitigation” means efforts that seek to prevent or slow down the increase of atmospheric greenhouse gas concentrations by limiting current or future emissions and enhancing potential sinks for greenhouse gases;

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

“Ward Council” means Ward Climate Change Council;

“Waste” includes any matter prescribed to be waste and any matter, whether liquid, solid, gaseous, or radioactive, which is discharged, emitted, or deposited in the environment in such volume composition or manner likely to cause an alteration of the environment.

Application

3. This Act shall be for the development, management, implementation and regulation of mechanisms to raise funds to enhance climate change resilience and low carbon development for the sustainable development in the County through but not limited to—

- (a) initiating and coordinating financing of Climate Change Adaptation and Mitigation activities in the County;
- (b) developing and enhancing Climate Finance mechanisms in the County;
- (c) facilitating community-initiated Climate Change Adaptation and Mitigation activities in the County;
- (d) facilitating planning for Climate Change Adaptation and Mitigation in the County planning and budgetary framework;
- (e) seeking and receiving grants from national and international entities, the National Government, the County Government and other relevant organizations;
- (f) providing support from the national Climate Change Policy and legislative framework; and
- (g) co-ordinating collection and dissemination of climate change information to the public to create awareness and preparedness.

Guiding Principle

4. The County in discharging its functions and duties under this Act 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) be guided by the provisions of Articles 42 and 69 of the Constitution;
- (c) ensure promotion of sustainable development under changing climatic conditions;
- (d) ensure equity and social inclusion in allocation of effort, costs and benefits to cater for special needs, vulnerabilities, capabilities, disparities and responsibilities;
- (e) ensure integrity and transparency;
- (f) ensure participation and consultation with stakeholders in accordance with the Schedule.

PART II— POLICY, CO-ORDINATING & OVERSIGHT

Establishment of the County Climate Change Council

5. (1) There is established an unincorporated body to be known as the County Climate Change Council which shall comprise of the following persons—

- (a) a Chairperson who shall be the Governor of the County;
- (b) the Deputy Governor of the County who shall be vice chairperson of the Council;
- (c) the County Executive Committee Member for the time being responsible for Environment and Natural Resources or a representative;
- (d) County Executive Committee Member for the time being responsible for County Treasury or a representative, who shall be the Secretary;
- (e) Chief Officer in charge of Environment;
- (f) Chief Officer in charge of Agriculture, livestock and fisheries;
- (g) Chief Officer in charge of Public Health;
- (h) the County Director of the National Drought Management Authority in the County;

- (i) the County Director of the National Environment Management Authority in the County;
- (j) the County Director of Meteorological Department in the County;
- (k) Fund Administrator;
- (l) a representative of the private sector nominated by the body representing the largest number of institutions in the private sector within the county; and
- (m) a representative of the Civil Society nominated by the CEC Environment and Natural Resources within the county.

(2) The Council may recruit staff on a need basis subject to the limitation on the administrative costs of the fund.

Functions of the Council

6. The Council shall provide an overarching county climate change coordination mechanism and shall—

- (a) adopt relevant national policy and other measures necessary for climate change response and attaining low carbon climate change resilient development;
- (b) approve and oversee implementation of the County Climate Change Action Plan
- (c) approve and provide overall guidance for the development of a Climate Finance Framework for the County;
- (d) facilitate and monitor the implementation of the Climate Finance Framework at the ward level;
- (e) approve the ward disbursement proposal by the Fund Administrator;
- (f) ensure compliance of the Fund administration to the public finance management principles under Article 201 of the Constitution of Kenya;
- (g) prepare a Climate Change Awareness strategy for the County;
- (h) identify and implement incentives for the private sector and institutions such as schools, community groups, to develop affordable and locally appropriate adaptation and mitigation technologies for climate change.
- (i) prepare and submit annual report on progress of implementation of climate change actions to the County Assembly for review and

debate, and a copy of this report shall be forwarded to the Directorate for information purposes.

- (j) approval of county climate change project proposals.

Establishment of the Ward Climate Change Council

7. There is established the Ward Climate Change Council which shall comprise of the following persons—

- (a) a Chairperson who shall be elected from among the members;
- (b) five (5) Technical Officers each from; Finance, Agriculture, Environment, Public Health and Livestock appointed by the County Climate Change Council competitively sourced;
- (c) two (2) Youth representative of different gender nominated by the County Secretary through a competitive process;
- (d) one (1) Women representative nominated by the County Secretary through a competitive process;
- (e) a representative of persons living with disability nominated by the County Secretary through a competitive process;
- (f) a representative from a Ward based Public Benefit Organization nominated by the County Secretary through a competitive process;
- (g) a representative from the Civil Society Organization within the county nominated by the County Secretary through a competitive process;
- (d) a representative from the private sector within the county nominated by the County Secretary through a competitive process;

Functions of the Ward Climate Change Council

8. The Ward Climate Change Council shall—

- (a) mobilize and hold consultative meetings on climate change with local communities together with relevant agencies;
- (b) conduct public participation on climate change compliance and related matters;
- (c) prepare programs and project proposals through aggregation and coordination of climate change resilience;
- (d) prepare project budgets for the County Climate Change approval and allocation of funds;

- (e) oversee the implementation of climate change projects and programs under its mandate;
- (f) report on sectoral greenhouse gas emissions for the County inventory;
- (g) prepare and submit annual report on progress of implementation of climate change actions and or projects within its jurisdiction to the County Climate Change Council.

PART—III ESTABLISHMENT OF COUNTY CLIMATE CHANGE FUND

County Climate Change Fund

9. There is established a fund to be known as the County Climate Change Fund which shall be used to fund climate change programs, projects and activities provided for in the Climate Finance Framework established under this Act.

Purpose of the Fund

10. The purpose of the Fund shall be—

- (a) to finance climate change resilience and its assessment;
- (b) for technical and scientific research as well as county policy formulation;
- (c) to finance implementation of approved climate change projects;
- (d) for capacity building within the County;
- (e) for public participation within the County;
- (f) for any other approved climate change related activities.

Source of Fund

11. Sources of the Fund shall include—

- (a) monies appropriated by the County Assembly which shall not be less than two (2) percent or such other limit as the Assembly may determine, of the development expenditure in a financial year;
- (b) monies from the National Government;
- (c) grants and donations for purposes of climate change;
- (d) funds from Public Benefit Organizations

County Finance Framework

12. (1) The Executive Member of Environment in consultation with the Executive Member in charge of Finance shall publish a Climate Finance Framework for the County every two (2) years.

(2) The Climate Finance Framework shall address the following issues—

- (a) the status of Climate Change Awareness in the County;
- (b) the impact of climate change in the County;
- (c) human activities in the County that may contribute to Climate Change;
- (d) projects that are relevant in the County with regard to Climate Change Adaptation and Mitigation and the anticipated impact; and;
- (e) any other emerging climate change issues.

Fund Administrator

13. (1) There shall be Fund Administrator for the Fund who shall be the Secretary to the County Climate Change Council appointed by the County Executive Member for Finance competitively sourced.

(2) The Fund Administrator shall hold office for a period of three (3) years renewable once.

(3) There shall be established office of the fund administrator.

Functions of the Fund Administrator

14. The Fund Administrator shall—

- (a) provide mechanisms for daily operations of the Fund;
- (b) ensure quality assurance in execution of the mandate of the Fund;
- (c) undertake resource mobilization for various sources;
- (d) set out other procedures and requirements for effective and transparent administration of the Fund, including tracking and accounting for climate change finance and monitoring and evaluation procedures.

Allocation of Funds to the Ward Climate Change Council

15. (1) The Fund Administrator shall prepare and publish information on the disbursements of funds available to each Ward.

(2) The Fund Administrator shall be guided by the following factors in determining the allocation of funds to the Wards—

- (a) equitable distribution of the Fund in accordance with the eligibility criteria;
- (b) wards that are more prone to climate disasters; and Population of each ward.

Project Eligibility Criteria

16. (1) The County Climate Change Council shall approve and publish eligibility criteria for Climate Finance projects that will be eligible for funding under this Act.

(2) The eligibility criteria in subsection (1) shall be based on the following parameters—

- (a) The magnitude and possibility of risk occurrence
- (b) promotion of climate resilience in the locality through Climate Mitigation or Adaptation;
- (c) support for economic growth through Climate Adaptation;
- (d) communal benefit including vulnerable groups and have clear considerations for gender representation;
- (e) properly conducted situation analysis with clear problem statement to facilitate clarity on level and urgency of vulnerability, and risks arising from delayed intervention
- (f) environmental impact assessment in line with communal land use;
- (g) Proper monitoring and evaluation plan;
- (h) provision of a platform for public participation and stakeholder engagement;
- (i) any other consideration that may be deemed relevant.

Incentives for Local Communities for Promotion of Climate Change

17. (1) The County shall use market-based instruments and other economic inducement to provide incentive (s) for climate change activities including reduction of greenhouse emissions and use of renewable energy by local communities.

(2) The County shall through the County Executive Committee Member Finance, for the purpose of subsection (1), in regulations set out the nature of the incentives, the conditions for the grant or withdrawal of

such incentives and such other matter as may be necessary for the exercise of the power conferred under subsection (1).

(3) Such incentives may be in form of subsidized and tax credits, tradable permits, accessible funding for projects as well as partnerships.

(4) The County Climate Change Council shall make the regulations specified under subsection (2) within a period of twelve months (12) from the commencement of this Act.

Public Participation

18. (1) Public participation shall be carried out within the County when developing strategies, laws and policies relating to climate change, and undertake public awareness.

(2) Public participation shall be carried out in a manner that ensures the public contribution makes an impact on the threshold of decision making.

PART IV—MISCELLANEOUS PROVISIONS

Procurement

19. All approved and funded projects shall be done in accordance to the Public Procurement and Assets Disposal Act, 2015 and the Public Finance Management Act, 2012.

Remuneration

20. The members of the councils established under this Act shall be paid allowances to cater for their expenses as such reimbursement for reasonable and necessary expenses as shall be advised by the Salaries and Remuneration Commission.

Seal of the County Climate Change Council

21. (1) The seal of the Council shall be such device as may be determined by the Council and shall be kept by the Secretary of the Council.

(2) The affixing of the seal shall be authenticated by the chairperson of the Council.

(3) Any document purporting to be under the seal of the Council or issued on behalf of the Council shall be received in evidence and shall be deemed to be so executed or issued, as the case may be, without further proof, unless the contrary.

Protection of Liability

22. No matter or thing done by a member of the Council or by any officer or agent of the Council shall, if the matter or thing is done *bona fide* for executing the functions, powers or duties of the Council under this Act, render the member, officer or agent or any person acting on their directions personally liable to any action, claim or demand whatsoever.

FIRST SCHEDULE

[Section 4(f).]

PROVISIONS ON PUBLIC CONSULTATION

1. (1) Where this Act imposes a requirement for public consultation in matters relating to climate change policy, strategy, programme, plan or action, the relevant Council or private entity shall publish a notice—

- (a) in the newspapers with national and local circulation and;
- (b) 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 policy, strategy, programme, plan or activity;
- (b) state the premises at which the details of the policy, strategy, programme, plan or action may be inspected;
- (c) invite written comments on or objections to the policy, strategy, programme, plan or action;
- (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.

2. The Council or public or private entity shall make arrangements for the public to obtain copies, at a reasonable cost, of documents relating to the policy, strategy, programme, plan or action which are in the possession of the respective entities.

3. The Council or the respective public or private entity shall consider the—

- (a) written comments or objections received on or before the date specified under paragraph 1(2)(e); and
- (b) Comments, whether in writing or not, received at a public meeting held in relation to the policy, strategy, programme, plan or action at which the Council or respective public or private entity was represented, or by any other invitation, to comment.

4. The Council or the respective public or private entity shall publish, in accordance with paragraph 1 of this Schedule, notice of the fact that a copy of the written decision of the Council or the respective public or private entity relating to the policy, strategy, programme, plan or action, 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 Council or respective public or private entity shall cause a public meeting relating to a policy, strategy, programme, plan or action to be held before the Council or the respective public or private entity makes its decision on the policy, strategy, programme, plan or action.

SECOND SCHEDULE

[Section 23]

CONDUCT OF BUSINESS AND AFFAIRS OF THE COUNCILS

Tenure of Office

1. The Chairperson or a member of the Ward Climate Change Council appointed under Section 7 Shall subject to the provisions of this Schedule hold office for a period of three years, on such terms and conditions as may be specified in the instrument of appointment, but Shall be eligible for appointment for not more than two terms.- move to above

Vacation of office

2. The chairperson or a member appointed under section 7 may—

(a) at any time resign from office by notice in writing to the CEC;

(b) be removed from office on recommendation of the Ward Climate Change Council if the member-

(i) has been absent from three consecutive meetings of the Ward Climate Change Council without permission

(ii) is convicted of a criminal offence that amounts to a felony under the Laws of Kenya;

(iii) is incapacitated by prolonged physical or mental illness for a period exceeding six months; or

(iv) is otherwise unable or unfit to discharge his functions

Meetings

3. (1) The Councils shall meet not less than six and not more than eighteen times in every financial year and not more than two months shall elapse between the date of one meeting and the date of the next meeting.- SRC issued a circular on guidelines on number of meetings

(2) Notwithstanding sub- paragraph (1), the chairman may, and upon requisition in writing by at least five members shall, convene a special meeting of the Council at any time for the transaction of business of the Council.

MEMORANDUM OF OBJECTS AND REASONS

Climate change is a global phenomenon that largely impacts urban life. Rising global temperatures causes sea levels to rise, increases the number of extreme weather events such as floods, droughts and storms, and increases the spread of tropical diseases. All these have costly impacts.

Only with a coordinated approach and action at the global, regional, national and local levels, can success be achieved on management of climate change. It is essential, therefore, that counties become an integral part of the solution in fighting climate change.

The objectives of Bill are—

- (a) adopt relevant national policy and other measures necessary for climate change response and attaining low carbon climate change resilient development;
- (b) Implementation of the County Climate Change Action Plan
- (c) approve and provide overall guidance for the development of a Climate Finance Framework for the County;
- (d) Implementation of the Climate Finance Framework at the ward level;
- (e) approve the ward disbursement proposal by the Fund Administrator;
- (f) ensure compliance of the Fund administration to the public finance management principles under Article 201 of the Constitution of Kenya;
- (g) prepare a Climate Change Awareness strategy for the County;
- (h) identify and implement incentives for the private sector and institutions such as schools, community groups, to develop affordable and locally appropriate adaptation and mitigation technologies for climate change.
- (i) prepare and submit annual report on progress of implementation of climate change actions to the County Assembly for review and debate, and a copy of this report shall be forwarded to the Directorate for information purposes.
- (j) approval of county climate change project proposals

PART I (Clauses 1-4) of the Bill provides for preliminary provisions. These include the title of the Bill, interpretation of terms and a statement of objects of the Bill. Clause 4 provides for the guiding principles which are the national values and principle of governance as set out in Article 10 and 232 of the Constitution plus Articles 42 and 69 which are environment rights and obligations in respect of the environment.

PART II (Clauses 5-8) of the Bill provides for policy, co-coordinating & oversight. It establishes the County Climate Change Council & Ward Climate Change Council and gives the mandate of the Councils.

PART III (Clauses 9-18) of the Bill establishes the County Climate Change Fund. It also states the purpose of the Fund, sources of the Fund. This part also gives the CECM Finance the power to make climate finance framework.

PART IV (Clauses 19-22) sets out the miscellaneous provisions. These include procurement processes, remuneration, and seal of the County Climate Change Council and protection of liability.

The Bill is a money Bill for purposes of Article 114 of the Constitution as the enactment of this Bill shall occasion additional expenditure of public funds which shall be provided through budgetary estimates.

Dated the 16th March, 2020.

JAMES WAICHANGURU,
*Chairperson, Water, Irrigation,
Environment and Natural Resources Committee.*