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***KENYA GAZETTE SUPPLEMENT***

**MOMBASA COUNTY BILLS, 2024**

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**THE MOMBASA COUNTY CLIMATE CHANGE FUND BILL,  
2024****A Bill for**

**AN ACT of the County Assembly of Mombasa for the establishment of a Climate Change Fund to finance, facilitate and coordinate financing climate change adaption and mitigation projects; and for connected purposes**

**ENACTED** by the County Assembly of Mombasa, as follows—

**PART I — PRELIMINARY****Citation**

1. This Act may be cited as the Mombasa County Climate Change Fund Act, 2024.

**Interpretation**

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

“administrator” means the County climate change fund administrator appointed in accordance with Section 9 of this Act;

“Board” means the County climate change fund management Board of Trustees established under section 5 of this Act;

“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 anthropogenic greenhouse gases;

“climate finance framework” means a context specific policy items established under Section 13 of this Act to guide in the application of the Fund;

“County” means Mombasa County;

“County Assembly” means the County Assembly of Mombasa;

“County Executive Committee” means the County Executive Committee established in County Government of Mombasa;

“County Executive Member” means the County Executive Committee Member for Finance;

“County government” means the County Government of Mombasa;

“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;

“Fund” means the climate change fund established under Section 3 of this Act;

“national government agencies” means any National Government institution that deals with climate change related activities which have operations in the County.

### **Objects and purposes of the Act**

**3.** The object of this Act is to create a fund in the County for the purpose of facilitating Climate Finance in the County through—

- (a) initiating and coordinating finance for Climate Change Adaptation and Mitigation activities within the County;
- (b) establishing Climate Finance mechanisms in the County;
- (c) facilitating community initiated Climate Change Adaptation and Mitigation activities in the County;
- (d) facilitating and planning of Climate Change Adaptation and mitigation in the County planning and budgetary framework
- (e) seeking and receiving funds from international sources the National Government, the County Government and other organizations; and
- (f) support implementation of National Government Climate Change policy and legislative framework.

## **PART II—ESTABLISHMENT OF THE FUND**

### **Establishment of the Fund**

**4.** (1) There is established a fund to be known as the Mombasa Climate Change Fund.

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

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

**Sources of funds**

5. The fund shall be financed through—

- (a) moneys appropriated by the County Assembly at least two percent of the county. Or such other limit as the assembly may determine, of the development expenditure 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—MANAGEMENT OF THE FUND****Establishment of the Board**

6. (1) There shall be established a Board which shall be known as the Mombasa County Climate Change Fund Board.

(2) The Board shall be a body corporate and 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.

(3) The Board shall comprise of—

- (a) one person, not being a public officer, shall be appointed by the Governor shall be the Chairperson;
- (b) the chief officer for the time being in charge of matters relating to climate change;
- (c) the chief officer for the time being in charge of matters relating to finance;
- (d) the chief officer for the time being responsible for environment and solid waste management;
- (e) one representative of Ward Climate Change Planning Committees nominated by all Ward Climate Change Committees on rotational basis;

- (f) one representative of Public Benefit Organizations operating in the county dealing with climate change issues; and
- (g) one representative to represent women, youth and persons with disabilities;
- (h) the Fund Administrator of the Fund shall be an *ex officio* member without voting rights.

(4) A person shall be qualified for appointment under subsection (3) if the person—

- (a) is a resident of Mombasa County;
- (b) holds at least a Master degree qualification from a reputable academic institution;
- (c) has relevant experience in any aspect of environment management, Climate Change and/or Climate Finance for at least seven years for the chairperson; and;
- (d) meets the requirements of Chapter Six of the Constitution;

(5) A person shall not qualify to be nominated for appointment under subsections (3)(e), (f) and (g) unless the person has demonstrable experience, expertise and interest in issues of climate change, natural resource management and/ or environmental conservation and has actively and publicly engaged with these issues in the County.

(6) Without prejudice to the provisions of subsection (4), a person shall qualify to be nominated for appointment under subsections (3)(e), (f) and (g) if such person—

- (a) is a citizen of Kenya;
- (b) is a resident in the County for at least five (5) years;
- (c) fulfil the requirements of Chapter Six of the Constitution; and
- (d) has at least five (5) years' experience in the relevant field.

### **Removal of the Board Chairperson**

7. The Board chairperson may—

- (a) at any time resign from office by issuing one-month notice in writing to the Governor;
- (b) be removed from office 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.

**Removal of a Board Member**

**8.** A Board Member may—

- (a) at any time resign from office by issuing one-month notice in writing to the County Executive Member in matters related to climate change;
- (b) be removed from office 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.

**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 steering committee;
- (c) approve the climate change projects and programs list compiled by the county steering 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;
- (f) oversee the coordination of research and development for climate finance in the County;
- (g) assign and coordinate technical assistance from county departments to projects funded under this Act;

- (h) mobilize additional funding for projects, programs and activities listed in the climate finance framework;
- (i) develop and establish a complaints handling and resolution mechanism;
- (j) provide the essential linkages between the county executive committee and the county assembly with regard to management of the fund;
- (k) approve a strategic plan and service charter for the Fund;
- (l) approve disbursement proposals by the fund administrator; and
- (m) 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 County Executive Member.

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

- (a) possess at least a Bachelor’s 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;
- (c) have a minimum of five 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 for a period of three years 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 project proposals in consultation with the Board;



- (b) 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.
- (c) maintain an updated database of matters related to the fund;
- (d) publish the eligibility criteria for selection of projects;
- (e) organize and coordinate the disbursement of moneys allocated to approved projects;
- (f) co-ordinate capacity building;
- (g) facilitate and implement monitoring and evaluation framework established by the Board;
- (h) any other duty assigned by the Board.

**Removal of a Fund Administrator**

**13.** 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.** The staff shall be seconded to the Board on a needs basis or as may be appropriate.

**Climate Finance Framework**

**15.** (1) The County Executive Member in charge of finance shall publish a Climate Finance Framework for the County after every three years in consultation with County Executive Member in charge of climate change.

(2) The Climate Finance Frameworks shall be developed through a consultative process spearheaded by the Steering Committee.

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- (3) The Climate Finance Framework shall address—
- (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—DISBURSEMENT OF FUNDS**

##### **Allocation of Funds**

**16.** (1) Disbursement of funds shall be based on the budget of the activities financed by the Fund and approved by the Board.

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

##### **Eligibility criteria**

**17.** (1) The Board shall approve an eligibility criteria developed by the county steering committee 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.

##### **Disbursement of funds for projects**

**18.** (1) The County Steering 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 Executive Member in charge of Finance shall develop regulations for the better administration of this part.

### **Complaints mechanism**

**19.** (1) Community members who are aggrieved by any decision of the Community Committees shall submit the complaint to the Fund Administrator, at least two weeks before the Board begins validation of projects

(2) The Fund Administrator shall forward all complaints to the Board which shall constitute a Conflict Resolution Panel.

(3) The Conflict Resolution Panel formed in subsection (2) above shall make a final determination within a period of seven working days and submit a report to the Board with a copy to the Fund Administrator.

## **PART VI—MISCELLANEOUS**

### **Regulations**

**20.** The Executive Member in charge of Finance shall make regulations for all matters necessary for the proper administration of this Act including issues on—

- (a) sitting allowances for the County Climate Change Fund Steering Committee, County Climate Change Planning Committee and Ward Climate Change Planning Committee;
- (b) the banking arrangements for the Fund; and
- (c) the disbursement of funds to approved projects.

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**PART V—FINANCIAL PROVISIONS**

**Bank account of the Fund**

**21.** (1) The Board shall seek authority from the County Executive Member to open and maintain a bank account.

(2) The bank account for the Fund shall be managed by the Fund Administrator as per under the provisions of the Public Finance Management Act and accounting, reporting and auditing standards of Public entities.

(3) The Executive Member in charge of Finance may developed regulations by in consultation with the Board for administration of the fund.

**Withdrawals from the Fund**

**22.** (1) Withdrawals from the Fund shall only promote the purpose for which the Fund is established.

(2) The records of expenditure relating to the Fund shall be kept and maintained in accordance with the provision of the Public Finance and Management Act, 2012 and Regulations made thereunder.

**Winding Up**

**23.** The Fund administrator shall pay an amount remaining in the Fund into the county Exchequer Account while other assets of the Fund shall be transferred to the Department for the time being responsible for matters relating to Climate Change with the approval of the County Assembly.

**SCHEDULES (S. 8)****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.

(2) The chairperson may at any time convene a special meeting of the board and shall do so within one month of the receipt by him of a written request signed by at least three members.

(3) In the absence of the chairperson, the members shall elect one of the members to preside over the meeting.

(4) At every meeting of the Board when there is a tie, the member presiding shall have a casting 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 declare 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.

**Contracts and Instruments**

5. Any contractual instrument which, if entered into or executed by a person not being a body corporate, 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 (14))**

<b>Fund Allocation criteria</b>	<b>1.</b> Allocation of funds to various projects may be done by the Board considering the following agreed criteria:
	(a) <b>Relevance:</b> 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) <b>Programme or project description and risk analysis:</b> 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) <b>Gender and community cohesion considerations:</b> 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) <b>Intervention Benefits:</b>
	(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) <b>Non duplication of funding:</b> 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) <b>Learning and knowledge management:</b> 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) <b>Sustainability:</b> 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) <b>Innovation:</b> Proof that the project is innovative, demonstrates use of indigenous knowledge, technology and emerging trends.
	(i) <b>Efficiency and effectiveness or fiduciary management:</b>
	(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 shall not to exceed 3% of total project cost.

	(iii) have clear accountability and reporting procedures;
	(j) <b>Monitoring and evaluation:</b> have a clear budgeted monitoring evaluation and reporting plan with indicators to measure progress.
	(k) <b>Alignment to county development priorities:</b> The Board to finance only climate change projects and activities— (i) included in or aligned to the County Integrated Development Plan, (ii) included in or aligned to the County Climate Change Action Plan (iii) Approved programme or project in subsequent financial period; and (iv) no money may be used for unapproved project or activity.



**MEMORANDUM OF OBJECTS AND RESONS**

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, 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 Mombasa County Climate Change Fund, including sources of the funds.

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

**Part IV** provides for allocation of the Fund, evaluation and development of project proposals and disbursement of project funds.

**Part V** contains the financial provisions which includes bank accounts of the Fund.

**KIBWANA SWALEH,**  
*Chairperson, Finance & Economic Planning Committee.*