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CONTENT

| Bill for Introduction into the County Assembly of Marsabit— | PAGE |
|-------------------------------------------------------------|------|
| The Marsabit County Wards Development Fund Bill, 2022 | 1 |

**THE MARSABIT COUNTY WARD DEVELOPMENT FUND BILL,
2022**

ARRANGEMENT OF CLAUSES

Clause

PART I—PRELIMINARY

- 1—Short title and Commencement.
- 2—Interpretation.
- 3—Object and purpose of the Act.
- 4—Guiding principles.

**PART II—ESTABLISHMENT AND ADMINISTRATION OF THE
COUNTY WARD DEVELOPMENT FUND**

- 5—Establishment of the Fund.
- 6—Disbursements from the Fund.
- 7—Bank account of the Fund.
- 8—Allocation of Funds.
- 9—Funds to be retained in the Fund.
- 10—Administration expenses.
- 11—Books of Accounts to be kept.
- 12—Audit.

**PART III—ESTABLISHMENT OF THE COUNTY WARD
DEVELOPMENT BOARD**

- 13—Establishment of the Board.
- 14—Functions of the Board.
- 15—Powers of the Board.
- 16—Composition of the Board.
- 17—Conduct of the business and affairs of the Board.
- 18—Vacancies in the Board.
- 19—Removal of a member of the Board.
- 20—The Fund Administrator.
- 21—Staff of the Board.
- 22—Finances of the Board.

PART IV—THE WARD PROJECT PLANNING AND DEVELOPMENT COMMITTEE

- 23—Establishment of the Committee.
- 24—Functions of the Committee.
- 25—Vacancy in the Committee.
- 26—Removal of a member and dissolution of a committee.
- 27—Projects involving personal awards to be excluded.
- 28—Counter-part funding to be permitted.

PART V — NATURE OF PROJECTS

- 29— Projects to be in respect of county government functions.
- 30—Funding of projects.
- 31—Unspent funds and joint projects.

PART VI—IDENTIFICATION AND SUBMISSION OF PROJECT PROPOSALS

- 32—Identification and submission of projects.
- 33— Submission deadline.
- 34—Approval of projects.
- 35— Discretion of the Committee.
- 36—List to be serialised.
- 37— Criteria for projects.

PART VII— IMPLEMENTATION OF PROJECTS

- 38—The Committee to implement.
- 39—Procurement of services and works.
- 40—Record of receipts and disbursement.
- 41—Project funding.
- 42—Duplication of projects to be avoided.

PART VIII—COUNTY ASSEMBLY SELECT COMMITTEE

- 43—Establishment of the County Assembly Select Committee.
- 44—Quarterly reports on projects and disbursements.

PART IX—MISCELLANEOUS PROVISIONS

- 45— Member of the Executive Committee to make regulation.

46—Provisions in the Act are complimentary.

SCHEDULES

SCHEDULE—PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE COUNCIL.

1. The Act shall be read as if it contained the following provisions—

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

“Act” means the Marsabit County Wards Development Fund Bill, 2022;

“Council” means the Marsabit County Wards Development Fund Council;

“Chairman” means the person appointed as Chairman of the Council;

“Member” means a member of the Council;

“Secretary” means the person appointed as Secretary of the Council;

“Committee” means a committee appointed by the Council;

“Fund” means the Marsabit County Wards Development Fund;

“Ward” means a ward in Marsabit County;

“County Executive Committee” means the County Executive Committee;

“County Council” means the County Council;

“County Government” means the County Government;

“Minister” means the Minister in charge of the Ministry of Lands, Urban Planning and Construction;

“Ministry” means the Ministry of Lands, Urban Planning and Construction;

“County Government” means the County Government;

“Fund” means the Marsabit County Wards Development Fund;

“Ward” means a ward in Marsabit County;

“County Executive Committee” means the County Executive Committee;

“County Council” means the County Council;

“County Government” means the County Government;

“Minister” means the Minister in charge of the Ministry of Lands, Urban Planning and Construction;

“Ministry” means the Ministry of Lands, Urban Planning and Construction;

**THE MARSABIT COUNTY WARD DEVELOPMENT FUND
BILL, 2022**

A Bill for

AN ACT of the County Assembly of Marsabit to provide for the establishment of a fund for promoting development in the Wards and to set up institutional framework for coordinating development initiatives and projects in the Wards 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 Wards Development Fund Act, 2022 and shall come into force upon assent and publication.

Interpretation

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

“bank account of the Fund” means the County Ward Development Fund account maintained in accordance with section 7;

“Board” means the County Ward Development Fund Board established under section 14;

“County Executive Committee Member” means the County Executive Member responsible for either matters of Finance and planning of devolution;

“Chief Officer” means Chief Officer for Finance, planning and devolved units;

“committee” means the ward planning and development Committee established under section 28;

“community” means residents of a particular geographical area or region defined as a ward, location, sub location or village and having common interests;

“county government” means County Government of Marsabit;

“fund” means the County Ward Development Fund established under section 5 (1);

“Fund administrator” means the person appointed under section 21 and responsible for the day-to-day management of the affairs and staff of the Board;

“revenue” has the meaning assigned to it under the Commission on Revenue Allocation Act, 2011;

“ward” means one of the wards into which Kenya is divided under Article 89 of the Constitution; and

“ward administrator” means the county government officer responsible for the co-ordination of county government functions in the ward.

Objects and purposes of the Act

3. The objects and purposes of this Act are to —

- (a) provide for the equitable development of each ward in the county;
- (b) provide a mechanism for the identification of priority projects in each ward;
- (c) promote the decentralisation of functions and provision of services by county governments to the extent that it is efficient and practicable pursuant to Article 176 of the Constitution;
- (d) to ensure equitable sharing of resources within the county;
- (e) provide a mechanism through which the county governments are able to promote the interests of marginalized communities within the respective wards in accordance with Article 43 of the Constitution; and
- (f) provide a framework for the participation of residents in each county with respect to the application resources and the identification and implementation of projects through monies obtained from the resources allocated.

Guiding Principles

4. All persons and entities under this Act shall, in the performance of their functions under this Act, be guided by the following principles —

- (a) the promotion of the social and economic development of all persons residing within the ward in order to ensure the realization of their Socio-economic rights under Article 43 of the Constitution;
- (b) the principles and objects of devolution set out under Article 174 of the Constitution;
- (c) equity and the need to ensure that persons residing in marginalised areas in the wards access facilities and services that are available to other residents in the respective county; and

- (d) the promotion of the national values and principles of governance set out under Article 10 of the Constitution.

PART II—ESTABLISHMENT OF THE COUNTY WARD DEVELOPMENT FUND

Establishment of the Fund

5. (1) There is established in the county, a fund to be known as the County Ward Development Fund which shall be administered in accordance with this Act.

(2) The Fund shall comprise of—

- (a) at least 30% of the share of development budget allocated to the county government for the respective financial year to cater for ward development; and
- (b) comprise of any monies accruing to or received by the board from any other source in the discharge of its functions under this Act.

(3) The Controller of Budget shall not authorize withdrawal of monies under Article 207 of the Constitution where a county fail to comply with the provisions of this Act.

Disbursements from the Fund

6. (1) All disbursements from the Fund shall be—

- (a) approved by the respective Board and recorded in the minutes of the Board;
- (b) for specific projects as submitted by the Committee in accordance with the procedures outlined in this Act; and
- (c) made through the county bank account maintained in accordance with section 7 of this Act.

(2) Notwithstanding subsection (1), payments for a joint project or a joint procurement may be made directly to a supplier or to a joint account established by the respective wards for that purpose with the approval of the Board.

(3) The Board shall, for the purpose of ensuring the effective and efficient management of the funds, impose such conditions and requirements for the release of funds as it may consider appropriate.

(4) The Board may impose such conditions as it may consider appropriate, including restrictions on a particular ward and such conditions shall be reported together with the monthly returns to be submitted to the county executive member in accordance with this Act.

Bank Account of the Fund

7. (1) There shall be opened and maintained an account approved by the County Treasury into which all funds allocated to the wards under section 5(2) shall be deposited for the purpose of disbursements under this Act.

(2) The signatories to an account under subsection (1) shall be the Fund Administrator, Chief Officer Finance and Planning and one other person appointed by the Board from amongst its members.

(3) The signing instructions shall be such that the signature of the Fund Administrator and the appointed board member shall be mandatory on all payment cheques or instruments intended for actual release of money from the Fund, and at least one of the other three signatories.

Allocation of funds

8. (1) The county executive committee member shall, with the approval of the respective county assembly, allocate funds as per an agreed upon formula in accordance with County Revenue Allocation guidelines to all the wards in the respective county in each financial year in accordance with this Act.

(2) Funds allocated for a project shall remain allocated for that particular project and may only be re-allocated for any other purpose during the financial year with the approval of the Board.

(3) If for any reason a project is cancelled or discontinued during the financial year, funds allocated for such a project shall be returned to the Fund and credited to the account of the ward from which the funds were withdrawn.

(4) Unspent funds shall be returned to the fund and reallocated by the board in the next financial year.

Funds to be retained in the Fund

9. (1) All receipts, savings and accruals to the Fund and the balance of the Fund at the end of each financial year shall be retained in the Fund and applied in accordance with section 8(4) of this Act.

(2) All funds allocated to a ward shall be cumulative and shall be carried forward from one financial year to the next, including funds returned into the account or funds which are not utilized for whatever reasons.

(3) (a) A portion of the fund equivalent to five percent (herein referred to as the Emergency Reserve) shall remain unallocated and shall be available for emergencies that may occur within the ward.

(b) The committee shall determine the Allocation of the emergency reserve in accordance with this Act.

(4) Emergency shall be construed to mean an urgent and unforeseeable need for expenditure for which it is in the opinion of the committee that it cannot be delayed until the next financial year without harming the public interest of the members of the respective ward.

Administration expenses

10. The Board shall set aside a sum not exceeding 3% of the total allocation to cater for its administration expenses.

Books of Account

11. The sums set aside under the fund shall be properly accounted for and proper books of accounts shall be kept and returns made on how the monies have been utilized.

Audit

12. (1) All funds received by the Board and the respective Committees pursuant to this Act shall be audited and reported upon by the Auditor-General.

PART III— ESTABLISHMENT OF THE COUNTY WARD DEVELOPMENT FUND BOARD

Establishment of the Board

13. (1) There is established, in each county, a Board to be known as the County Ward Development Board.

(2) The Board shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of —

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) borrowing money or making investments; and
- (d) doing or performing all other acts or things for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.

Functions of the Board

14. The functions of the Board shall be to administer the Fund established in the respective county and shall, for this purpose—

- (a) ensure timely and efficient disbursement of funds from the Fund;

- (b) ensure efficient management of the Fund;
- (c) consider project proposals submitted from various wards in accordance with this Act;
- (d) recommend for approval by the county assembly the funding of project proposals that are consistent with this Act;
- (e) co-ordinate the implementation of projects at inter-ward level;
- (f) receive and address complaints that may arise from the implementation of this Act;
- (g) encourage best practices in the implementation of projects;
- (h) administer the funds and assets of the Board in such manner and for such purpose as shall promote the best interests of the Board in accordance with the Act to ensure efficient management of the Fund; and
- (i) perform such other duties as the Board may deem necessary from time to time for the proper management of the Fund.

Powers of the Board

15. The Board shall have all the powers necessary for the proper performance of its functions under this Act, and in particular, but without prejudice to the generality of the foregoing, the Board shall have power to-

- (a) receive gifts, donations, grants or other moneys and equipment and make legitimate disbursements therefrom;
- (b) receive and discuss annual reports and returns submitted by the wards; and
- (c) enter into association with such other persons, bodies or organisations within or outside Kenya as the Board may consider appropriate in furtherance of the objects of this Act.

Composition of the Board

16. (1) The Board shall consist of —

- (a) the Chief Officer in the department for the time being responsible for matters relating to county finance and economic planning;
- (b) the Chief Officer in the department for the time being responsible for matters relating to the County Public Service;
- (c) three persons, appointed by the County Executive Committee member from the existing work force; and

- (d) the Fund Administrator, appointed under section 21 of this Act, who shall be the secretary to the Board and an *ex officio* member.
- (2) The members of the Board shall elect the chairperson of the Board from amongst the three persons appointed in accordance with subsection (1) (c).
- (3) In appointing the persons under subsection (1) (c), the County Public Service Board shall take into consideration the constitutional principles of gender and the representation of Special interest groups.
- (4) Members appointed under subsection (1)(c) shall serve for a term of three years' renewable for one further term.

Conduct of the business and Affairs of the Board

17. (1) The conduct and regulation of the business and affairs of the Board shall be as set out in the First Schedule.
- (2) Except as provided in the First Schedule, the Board may regulate its own procedure.
- (3) Where any issues of policy arise in the course of the performance of its functions under this Act, the Board shall refer the issue to the county executive committee member.
- (4) The Board may, in the discharge of its functions under this Act, make official or impromptu visits to projects at such times as it may consider appropriate.

Vacancies in the Board

18. The office of a member of the Board under section 16 (1) (c) shall become vacant if the holder —
- (a) dies,
- (b) resigns from office by notice in writing addressed to the County Public Service Board; or
- (c) is removed from office under any of the circumstances contemplated under section 20.

Removal of a member of the Board

19. (1) A member of the Board may be removed from office on the following grounds—
- (a) serious violation of the Constitution or any other law;
- (b) gross misconduct, whether in performance of the member's functions or otherwise;

- (c) if convicted of an offence punishable by imprisonment for at least six months;
- (d) physical or mental incapacity to perform the functions of office;
- (e) incompetence;
- (f) bankruptcy; or
- (g) engaging in active politics.

(2) A person desiring the removal of a member of the Board under subsection (1) may present a petition to the County Assembly setting out the alleged facts constituting the ground for removal.

(3) A member sought to be removed under subsection (1) shall be given a fair hearing before a decision is made by the County Assembly.

(4) The County Assembly shall, upon receiving a petition under subsection (2), consider the petition in accordance with its Standing Orders and may recommend that the member be suspended pending the outcome of the petition.

(5) The County Assembly shall consider the petition and if it is satisfied that it discloses a ground under subsection (1), it shall make a determination that the member be removed from office and the member shall stand removed from office upon the making of that determination.

(6) A vacancy arising as a result of the removal of a member under subsection (5) shall be filled in the manner set out in section 15 within thirty days of the occurrence of the vacancy.

The Fund Administrator

20. (1) There shall be a Fund Administrator who shall be appointed by the County Executive Committee Member for Finance and Planning from the existing work force.

(2) The Fund administrator shall, subject to the directions of the Board, be responsible for the day-to-day management of the affairs and staff of the Board.

(3) The Fund administrator shall be an employee in the County Public Service and shall serve upon such terms and conditions of service as the County Public Service Board may, in consultation with the Salaries and Remuneration Commission, determine.

Staff of the Board

21. The County Public Service Board shall recruit such officers and other staff as are necessary, but not more than two, for the proper management of the Fund and discharge of the functions of the Board under

this Act, upon such terms and conditions of service as it may, in consultation with the Salaries and Remuneration Commission, determine.

Finances of the Board

22. (1) There shall be set aside, at the beginning of the financial year, not more than three percent of the total allocation to the Fund as expenditure for running the Board and related purposes in accordance with the annual budget of the Board approved by the County Executive member with the concurrence of the County Assembly as provided for under section 10 of this Act.

PART IV—NATURE OF PROJECTS

Projects to be in respect of county government functions

23. A Project under this Act shall—

- (a) only be in respect of works and services falling within the functions of the county government under Part 2 of the Fourth Schedule to the Constitution; and
- (b) be community based to ensure that the benefits are available to a widespread cross-section of the inhabitants of a particular area.

Funding of projects

24. (1) Any funding under this Act shall be for a complete project or a defined phase of a project and may include the acquisition of land.

(2) Funds provided under this Act shall not be used for the purpose of supporting political bodies or political activities or for supporting religious bodies or religious activities.

Unspent Funds and joint projects

25. (1) A Ward with unspent funds at the end of the financial year shall submit new proposals to the Board for approval in accordance with section 35.

(2) Wards may pool resources for joint projects provided that the decision for such joint projects shall first be approved by the ward committees of each of the participating wards and shall be reflected on the projects listed for each of the participating wards.

(3) Where wards have joint projects, the respective ward committees shall co-ordinate the projects.

(4) Where the county government project has stalled, the Board may, on the request of the national government or the county government and having consulted the respective Ward, fund the stalled project upon a detail audit and report having been submitted setting out —

- (a) total cost of the project and the cost of the unfinished part; and
- (b) the reasons as to why the project stalled.

PART V—THE WARD PLANNING AND DEVELOPMENT FUND COMMITTEE

Establishment of the Committee

26. (1) There is established in each ward, with the approval of the County Assembly, a committee to be known as the Ward Planning and Development Fund Committee.

(2) Each Committee shall comprise —

(a) the ward administrator, who shall be the secretary to the Committee and an *ex-officio* member;

(b) Seven persons Elected by ward residents and appointed in accordance with subsection (3) as follows —

(i) two men;

(ii) two Women;

(iii) one person representing the youth;

(iv) one person with disability nominated by a registered group representing persons with disability in the ward in accordance with subsection (3);

(v) one religious leader; and

(vi) Village Unit Administrator (*ex-officio*).

(c) the member of the County Assembly for the respective ward who shall be an *ex-officio* member, and whose role shall be oversight, monitoring and evaluation

(3) The persons specified under subsection (2)(b), shall be nominated in such manner and shall have such qualifications as the Board may prescribe.

(4) The members of the Committee shall elect the chairperson of the Committee from amongst persons appointed in accordance with subsection (2)(b).

(5) The quorum of the Committee shall be five.

(6) The term of office of the members of the Committee shall be three years and may be renewed for two terms or for the remaining term before the next general election whichever is applicable but shall expire upon the

appointment of new members in the manner provided for in this Act, or at the expiry of the term of the County Assembly.

(7) The seven village representatives elected under paragraph (b) shall, in a ward public meeting convened by the Member of County Assembly in collaboration with ward administrator elect the persons who are members of the Ward Committee taking into account geographical, gender principles, ethnic, cultural and social diversity and interests; provided that no two persons shall be elected from the same village.

(8) The ward administrator shall be the custodian of all records and equipment.

(9) Whenever a vacancy occurs in the Committee by reason of resignation, incapacitation or demise of a member, the vacancy shall be filled from the same category of persons where the vacancy has occurred within a period of sixty (60) days.

(10) The Committee shall meet at least four (4) times in a year but it shall not hold more than six (6) meetings in the same financial year, including sub-committee meetings.

(11) The persons specified under subsection (2)(b), (c) and (d) shall be nominated in such manner and shall have such qualifications as the County Public Service Board may prescribe.

(12) The members of the Committee shall elect the chairperson of the Committee from amongst persons appointed in accordance with subsection (2)(b), (c) and (d).

(13) The quorum of the Committee shall be five.

(14) The term of office of the members of the Committee shall be two years and may be renewed but shall expire upon the appointment of new members in the manner provided for in this Act, or at the expiry of the term of the County Assembly.

(15) The Ward Administrator shall be the custodian of all records and equipment.

(16) Whenever a vacancy occurs in the Committee by reason of resignation, incapacitation or demise of a member, the vacancy shall be filled from the same category of persons where the vacancy has occurred within a period of 60 days.

(17) The Committee shall meet at least four times in a year but it shall not hold more than six meetings in the same financial year, including sub-committee meetings.

Functions of the Committee

27. The functions of the Committee shall be to administer the funds set aside under this Act in the respective ward and shall, for this purpose —

- (a) ensure efficient management of the funds allocated to the ward;
- (b) in consultation with relevant county department, identify projects for funding under this Act;
- (c) undertake public participation in identifying projects for funding;
- (d) submit ward projects to the Board for recommendation to the County Treasury and County Assembly for approval within a recommended timeframe without undue delay;
- (e) oversee and monitor the implementation of approved projects;
- (f) administer funds allocated to the ward and assets of the Board in such manner and for such purpose as shall promote the best interests of the Board in accordance with the Act; and
- (g) perform such other duties as the Board may deem necessary from time to time for the proper management of the funds set aside under this Act.

Vacancy in the Committee

28. The office of a member of the Committee appointed under section 28(2)(b), (c), and (d) shall become vacant if the holder—

- (a) dies;
- (b) resigns from office by notice in writing addressed to the County Public Service Board; or
- (c) is removed from office under any of the circumstances contemplated under section 31.

Petition to the Board

29. (1) A person may present a petition to the board for the dissolution of a committee or removal of a member of the Committee setting out the alleged facts constituting any one or more of the following grounds for dissolution or removal—

- (a) serious violation of the Constitution or any other law including a contravention of Chapter Six;
- (b) gross misconduct in performance of the member's functions or otherwise;
- (c) incompetence;

- (d) if convicted of an offence punishable by imprisonment for at least six months;
- (e) bankruptcy; or
- (f) any other cause as may be deemed justifiable.

(2) On receiving a petition under subsection (1), the board may suspend the Committee or member, as the case may be, pending the outcome of the petition.

(3) The Board shall consider the petition, hear all or part of the membership of the Committee and, where it is satisfied that the petition discloses sufficient ground for dissolution or removal, dissolve the Committee or remove a member.

(4) A decision to remove a member or dissolve the Committee under subsection (1) shall be made through a resolution of the board and the member sought to be removed shall be given a fair hearing before the resolution is made.

(5) Vacancies arising under subsection (3) shall be filled in the manner set out in section 28.

Projects involving personal awards to be excluded

30. A project or any part thereof which involves personal awards to any person whether in cash or in kind, shall be excluded from the list of projects submitted in accordance with section 35 of the Act.

Counter- part funding to be permitted

31. For the purposes of this Act, the Board may consider part funding of a project financed from sources other than the Fund provided that—

- (a) the other financiers or donors of that project have no objection; and
- (b) the part funding for the project availed pursuant to this Act goes to a defined unit or any part thereof or phase of the project in order to ensure that the particular portion defined in the allocation is completed with the funds allocated under this Act.

PART VI—IDENTIFICATION AND SUBMISSION OF PROJECT PROPOSALS

Identification and submission of the projects

32. (1) The Committee shall be responsible for the identification of projects to be funded under this Act, including joint projects with other wards and stalled projects, and shall prepare a list of projects proposed to be implemented in the ward projects submission form prescribed in the Second Schedule.

(2) The projects submission form shall be submitted together with—

- (a) minutes of the Committee approving the projects;
- (b) a description of the projects set out in a Project Description Form in accordance with the Third Schedule;
- (c) any other report or thing as may be considered relevant by the Committee or required by the Board.

(3) In preparing the list of proposed projects under subsection (1), the Committee shall take into account the county development plans and policies and shall, for this purpose, determine and set out in the form, the projects that require implementation on a priority basis, both immediate and long term.

(4) The list of proposed projects prepared under subsection (1) shall be submitted by the Committee shall be approved by the relevant county department before submitting to the Board for consideration and approval in accordance with this Act.

Submission deadline

33. (1) The list of the proposed projects prepared under section 35 shall be submitted to the Board within a specific time frame with stringent deadlines recommended by the county executive committee member in order to ensure timely inclusion of the projects in the annual county budget in a particular financial year.

Approval of projects

34. (1) The ward projects submission forms received by the Board pursuant to section 35 shall be tabled for consideration at a meeting of the Board.

(2) The Board shall consider the forms submitted to it and shall not recommend for approval for the allocation of funds to a ward unless the form and projects set out therein meet the requirements set out under this Act.

(3) Where the Board does not recommend for approval a ward projects submission form submitted to it under section 35, it shall refer the matter to the Committee setting out the reasons for the rejection of the projects.

(4) The Board shall submit all the forms received under this section and complying with this Act to the CECM Finance for approval.

Discretion of the committee

35. The Committee shall be responsible for the allocation of funds to various projects in the ward and shall exercise this power at its own discretion after obtaining requisite technical input and in accordance with the provisions of this Act.

List to be serialised

36. The projects listed with respect to each ward shall be numbered by the Board and the serial numbers of all projects in a ward shall bear the number of the ward as delineated by the Independent Electoral and Boundaries Commission in order to ensure that a project retains the same serial number every year until its completion.

Criteria for projects

37. (1) The types of projects submitted for funding under this Act shall meet the requirements set out under this Act.

(2) It shall be the responsibility of the Committee to ensure that the ward project submission form submitted for funding and the projects set out thereunder meet the requirements set out under this Act and the total cost of financing does not exceed the allowable ceiling for the particular ward.

(3) Where the ward project submission form submitted for funding does not meet the requirements set out under subsection (2) the same shall be referred back to the Committee for amendment and re-submission.

(4) Where the total costing for the implementation of projects in a ward is less than the allowable ceiling by reason of the fact that a project has been rejected under subsection (3), or for whatever reason, the shortfall shall be indicated as unallocated amount against that particular ward on the list to be forwarded to the County Executive Committee member.

PART VII—IMPLEMENTATION OF PROJECTS**The committee to implement**

38. (1) Projects under this Act shall be implemented by the Committee established with respect to each ward.

(2) All fixed and movable assets, including equipment bought under this Act for use by the Committee shall be the property of the Board and shall be issued in the name of the Board.

(3) The property referred to in subsection (2) —

(a) shall bear the name and number of the ward as delineated by the Independent Electoral and Boundaries Commission; and

(b) if bought for public institutions shall remain in the exclusive use of those institutions.

(4) No asset acquired under this section shall be disposed of without prior approval of the Board.

(7) Any proceeds that may accrue from the disposal of any asset acquired pursuant to subsection (4) shall be credited to the account of the

ward from whose funds the asset was acquired and such funds shall be reflected and declared as part of the ward's subsequent year funds.

Procurement of services and works

39. (1) All works and services relating to projects under this Act shall be procured by the relevant county department in accordance with the provisions of the Public Procurement and Asset Disposal Act and the attendant Regulations.

Record of receipts and disbursement

40. The Committee shall compile and maintain a record showing all receipts, disbursements and actual expenditures, on a monthly basis, in respect of every project under this Act.

Project Funding

41. The Board shall ensure that the list of projects forwarded to it by each Committee is, upon approval by the County Assembly, funded in accordance with this Act.

Duplication of projects to be avoided

42. The Board shall ensure that no duplication of projects occur particularly where it is prudent to combine efforts on projects designed to benefit a large section of a community which traverses two or more wards.

PART VIII— COUNTY ASSEMBLY SELECT COMMITTEE

Establishment of the county Assembly select Committee

43. (1) Each county assembly shall, in accordance with its standing orders, establish a select committee on the County Ward Development Fund Committee consisting of a chairperson and not more than eight other members of the County Assembly.

(2) In determining the membership of the County Assembly Committee, the county assembly shall ensure proportionate representation of the County Assembly's political parties and geographical representation.

(3) The term of office of the members of the County Assembly Committee shall be two years renewable or upon the appointment of a new committee in a manner provided for in this Act, whichever comes earlier.

(4) The procedures and rules for the operations of the County Assembly Committee shall be governed by the standing orders of the County Assembly.

(5) The functions of the County Assembly Committee shall be to —

- (a) oversee the implementation of this Act and in this respect, shall after every two years, submit a report to the county assembly and where necessary, propose any amendments to this Act, in particular, with respect to the quantum of funds repayable into the Fund in accordance with section 5 of this Act;
- (b) oversee the policy framework and legislative matters that may arise in relation to the Fund;
- (c) continually review the framework set out for the efficient delivery of development programmes financed through the Fund;
- (d) consider and report to the County Assembly, with recommendations, names of persons required to be approved by the County Assembly under this Act; and
- (e) carry out any other functions relevant to the work of the Fund or as directed by the County Assembly.

(6) The County Assembly Committee may make reports other than the statutory report stated in subsection 5(d) to inform the county assembly on various matters relating to the Fund and to seek various approvals as required by the Act.

Quarterly reports on projects and disbursements

44. (1) The Board shall, on a quarterly basis, submit a report to the County Executive Member for finance and planning committee detailing —

- (a) a summary of the project proposals received from the wards in the preceding months and indicating the approval status of such projects;
- (b) a summary of the status of disbursements of funds to the wards for the preceding months;
- (c) a summary of the status of funds received by the Board; and
- (d) any restriction imposed on a ward account in accordance with the Act.

(2) The county executive committee shall consider the reports received from the Board under subsection (1) and table a report to the County Assembly within fourteen days of receipt of the reports.

PART IX—MISCELLANEOUS PROVISIONS

Member of the County Executive Committee to make regulation

45. (1) The member of the Executive Committee may make regulations for the smooth running of the Fund and such regulations may shall be approved by the County Assembly before implementation.

Provision in the Act are complimentary

46. (1) The provision of this Act shall be complimentary to any other development efforts by the national Government, the county Government and any other agency and nothing in this Act shall be taken or interpreted to mean that an Area may be excluded from any other development programmes.

(2) For avoidance of doubt, normal government development allocations shall continue alongside the project funded under this Act.

FIRST SCHEDULE—CONDUCT OF THE BUSINESS AND AFFAIRS OF THE BOARD

Tenure of Office

1. The Chairperson or a member of the Board other than *ex officio* members 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 one further term.

Meetings

2. (1) The Board shall not meet less than six and not more than eighteen times in the financial year and not more than two months shall elapse between the date of one meeting and the date of the next meeting.

(2) Notwithstanding subparagraph (1), the Chairperson may, and upon requisition in writing by at least three members, convene a special meeting of the Board at any time for the transaction of the business of the Board.

(3) Unless three quarters of the total members of the Board otherwise agree, at least fourteen days' written notice of every meeting of the Board shall be given to every member of the Board.

(4) The quorum for the conduct of the business of the Board shall be three members.

(5) The Chairperson shall when present, preside at every meeting of the Board but the members present shall elect one member to preside whenever the Chairperson is absent, and the person so elected shall have all the powers of the Chairperson with respect to that meeting and the business transacted thereat.

(6) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of the votes of the members present and voting, and in case of an equality of votes, the Chairperson or the person presiding shall have a casting vote.

(7) Subject to subparagraph (4), no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.

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

Committees of the Board

3. (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 of a committee established under subparagraph (1) from among 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 subsection (1) shall be ratified by the Board.

Disclosure of Interest

4. (1) A member who has an interest in any contract, or other matter present at a meeting shall at the meeting and as soon as reasonably practicable after the commencement, disclose the fact thereof and shall not take part in the consideration or discussion of, or vote on, any questions 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 subparagraph (1) shall be recorded in the minutes of the meeting at which it is made.

Contracts and investments

5. Any contract or 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.

Common seal

6. (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 manager and one member nominated by the Board and 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 manager or that member nominated by the Board.

(3) 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.

Provisions of the Schedule to apply to the conduct of the business of the Committee

7. The provisions of this Schedule shall apply to the conduct of the business of the Committee but only where no specific provisions have been made in this Act, and only in so far as they do not constitute a contradiction or negation of the provisions of the Act.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The Bill seeks to provide a framework for establishment of a County Ward Development Fund and the establishment of administrative structures to oversee the management of the Fund. It also seeks to provide a framework for the determination of projects that are to be implemented through the Fund by the county governments and an oversight mechanism to ensure the efficient and proper use of the funds and implementation of the projects.

The Bill principally seeks to promote the decentralization of development within the counties by identifying projects that are beneficial to the residents of the respective wards and the county generally and providing a framework for the implementation of such projects. The Bill is premised on Article 174 of the Constitution which sets out the objects of devolution, among them being—

- (a) to give powers of self-governance to the people and enhance the participation of the people in the exercise of the powers of the State and in making decisions affecting them;
- (b) to recognize the right of communities to manage their own affairs and to further their development;
- (c) to promote social and economic development and the provision of proximate, easily accessible services throughout Kenya by decentralizing the provision of services pursuant to Article 176(2) of the Constitution; and
- (d) to ensure equitable sharing of national and local resources throughout Kenya.

The Bill therefore seeks to establish a County Wards Development Fund consisting of at least eight percent of the revenue allocated to the respective county government in each year and such other monies that may accrue to the Fund. This Fund is to be managed by County Wards Development Board which shall be responsible for the administration of the Fund.

The Bill also provides a framework relating to the projects that are to be implemented through the Fund. It sets out the framework for the identification of such projects in each Ward by the Ward planning and development Committee which is required to identify projects and prepare a project list for submission to the Board for the purposes of funding. It sets out the framework for the application of funding with respect to the projects in the Wards within each County

The Bill further provides a structure for the implementation and management of projects implemented in the manner set out under the Bill

and also provides an oversight mechanism through the county assembly which is to ensure that all entities proposed to be established under the Bill conduct their affairs in an effective manner and that funds are properly utilized.

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

The Bill under Clause 52 proposes to empower the Board to make regulations for the better carrying into effect the provisions of this Act. However, the Bill does not limit fundamental rights and freedoms.

Statement of how the Bill concerns County Governments

The Bill seeks to provide a framework for the funding of projects identified under Clause 24 at the ward level in each county with a view to promote the socio-economic development in the respective counties. The Bill specifically requires that such projects shall be within the functions of county governments as set out under Part 2 of the Fourth Schedule to the Constitution.

The Bill is therefore one that concerns county governments in terms of Article 10(1)(a) of the Constitution as its provisions affect the functions and powers of county governments as set out in the Fourth Schedule to the Constitution.

Statement that the Bill is not a money Bill within the meaning of Article 114 of the Constitution

The Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 2nd June, 2022.

DAUD TAMASOT,

Chairperson, Budget, Finance and Economic Planning.