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THE BOMET COUNTY AGENCIES ESTABLISHMENT ACT, 2014
(No. 6 of 2014)

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THE BOMET COUNTY AGENCIES ESTABLISHMENT ACT, 2014
(No. 6 of 2014)

[Date of Assent: 21st July 2014]

[Date of Commencement: 21st July 2014]

AN ACT of the County Assembly to make provisions for the establishment of county agencies; for control and regulation of county agencies; and for connected purposes.

ENACTED by the County Assembly of Bomet, as follows—

PART I—PRELIMINARY

Short title.

1. This Act may be cited as the Bomet County Agencies Establishment Act, 2014.

Interpretation.

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

“Board” means the Board constituted in accordance with section 6 or the body or person, by whatever name called, carrying out or empowered to carry out functions relating to the overall direction and management of a county agency;

“chief executive” means the person appointed and employed as such under this Act or any other Act or legal instrument or the person for the time being exercising the executive powers of a county agency;

“Committee” means the County Agencies Advisory Committee established under Section 37

“county agency” means —

- (a) an agency established under Section 3;
- (b) a body corporate established before or after the commencement of this Act by or under an Act of the County Assembly or other written law but not—
 - (i) a co-operative society established under the Co-operative Societies Act;

- (ii) a building society established in accordance with the Building Societies Act;
- (iii) a company incorporated under the Companies Act which is not wholly owned or controlled by the Government or by a county agency;
- (iv) a subsidiary of a county agency.

“Government” means the County Government of Bomet or the national government as the case may be;

“Tribunal” means the County Agencies Appeals Tribunal established by Section 33.

PART II—ESTABLISHMENT AND POWERS OF COUNTY AGENCIES

Establishment of county agencies.

3. (1) The Governor may, by an Act of County Assembly, establish a county agency as a body corporate to perform the functions specified in the Act.

(2) A county agency established under this section shall —

- (a) have perpetual succession;
- (b) in its corporate name be capable of suing and being sued;
- (c) subject to this Act, be capable of taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (d) be capable of borrowing and lending money; and
- (e) be doing or performing all other things or acts for the furtherance of the provisions of the Act which may be lawfully done or performed by a body corporate.

Ministerial responsibility for county agency.

4. The Governor shall assign ministerial responsibility for any county agency and matters relating thereto to the Deputy Governor and the several Executive Members as the Governor may by directions in writing determine.

Powers generally of
county agencies.

5. (1) Subject to this Act, every county agency shall have all the powers necessary or expedient for the performance of its functions.

Act No 18 of 2012

(2) After the commencement of this Act and notwithstanding subsection (1), the power of a county agency to borrow money in Kenya or elsewhere shall be exercised only with the consent of the Executive Committee Member responsible and subject to such limitations and conditions as may be imposed by the county Treasury and in accordance with the Constitution and the Public Finance Management Act with respect to county agencies generally or specifically with respect to a particular county agency.

(3) A county agency may engage and employ such number of staff, including the chief executive, on such terms and conditions of service as the Executive Committee Member responsible may, in consultation with the Governor and the Committee, approve.

(4) A county agency may, with the approval of the Executive member responsible in consultation with the Treasury and the Committee, establish pension, gratuity, superannuation, provident or other funds for the county agencies' employees and their dependants.

PART III—BOARDS AND MANAGEMENT OF COUNTY AGENCIES

Composition of
Board of county
agencies.

6. (1) Unless the written law by or under which a county agency is established or the articles of association of a county agency otherwise require, a Board shall, subject to subsection (4), consist of—

- (a) a chairperson appointed by the Governor;
- (b) the Chief Officer of the parent Ministry;
- (c) the Chief Officer to the County Treasury;
- (d) the chief executive;
- (e) six other members appointed by the Executive Member responsible.

(2) In the appointment under subsection (1) (e), the Executive Member shall have regard to the principle of gender equity and persons with disability.

Qualifications for appointment as chairperson and member of the Board of county agency.

7. A person shall be qualified for appointment as a Chairperson or member of the Board of a county agency under Section 6 (a) and (e) respectively if such person—

- (a) is a citizen of Kenya and a resident of the county;
- (b) holds a relevant degree from a university recognized in Kenya or its equivalent;
- (c) has had at least seven years' relevant professional experience; and
- (d) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution.

Term of office.

8. (1) A member of the Board of a county agency shall hold office, in the case of—

- (a) the Chairperson for a period of three years;
- (b) a member appointed under Section 6 (1) (e) for a period of three years.

(2) a Chairperson or member of the Board may be re-appointed for one further term.

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

Vacancy of office of chairperson or member of the Board of a county agency.

9. (1) The office of the chairperson or a member of the Board of a county agency shall become vacant if the holder—

- (a) dies;
- (b) resigns from office by notice in writing addressed to the Governor in the case of the chairperson or the responsible Executive Committee Member in the case of any other member; or

(c) is removed from office under any of the circumstances specified in Section 10.

(2) The Governor or the responsible Executive Committee Member, as the case may be, shall notify every resignation, vacancy or termination in the county Gazette within seven days.

Removal of
chairperson and
members of a Board
of a county agency.

10. (1) A member of the Board (other than an ex officio member) of a county agency, may be removed from office only for—

- (a) violation of the Constitution or any other law;
- (b) gross misconduct, whether in the performance of the member's functions or otherwise;
- (c) physical or mental incapacity to perform the functions of office;
- (d) is absent from three consecutive meetings of the Board without reasonable cause;
- (e) fails to disclose to the Board any interest in any contract or matter before the Authority;
- (f) is convicted of a criminal offence;
- (g) incompetence; or
- (h) bankruptcy.

(2) Despite the provisions of subsection (1), a member may be removed after serving for a period of two and half years.

Meetings of the
Board of a county
agency.

11. (1) The meetings of the Board of a county agency shall be held as often as they may be necessary for the transaction of business but shall not be held less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the next.

(2) Subject to subsection (1), the Boards shall regulate its own procedure.

(3) A meeting of a Board shall be held on such date and at such time as the Board shall decide or, in the absence of such decision or on any occasion on which the chairperson in consultation with the chief executive shall decide that a meeting is necessary, on a date and at a time determined by the chairperson;

(4) No meeting of a Board shall be held at any place other than the registered or principal office of the county agency except with the prior written approval of the Committee;

The Chairperson to preside at all meetings of the Board of county agency.

12. (1) The Chairperson of a Board of a county agency shall preside at every meeting of the Board at which the chairperson is present but in the absence of the chairperson, the members of the Board present shall appoint a member from among their number to preside at that meeting.

(2) The Chairperson or, in the absence of the chairperson a member of the Board appointed by the Board to act in the place of the chairperson, may at any time call a special meeting upon a written request by a majority of the members.

Notice of meeting.

13. Unless five members otherwise agree, at least fourteen days' written notice of every meeting of the Board of a county agency shall be given to every member of the Board.

Decision of the Board of a county agency to be by majority.

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

A member of the Board or a chief executive is entitled to have opinion recorded.

15. Any member of the Board or a chief executive or an officer instructed by the chief executive in that behalf, present at a meeting of the Board of a county agency or a Committee thereof, shall have the right to require his or her opinion to be recorded in the minutes if the Board or the Committee, as the case may be, passes a resolution, which in the member's, chief executive's or officer's opinion, is contrary to his or her advice or to law.

Member of the Board to disclose interest.

16. A member of the Board of a county agency who has a direct or indirect interest in a matter being considered or to be considered by the Board shall, as soon as possible after the relevant facts concerning the matter have come to his or her knowledge, disclose the nature of his or her interest to the Board and shall not be present during any deliberations on the matter.

The Board to cause minutes to be recorded and kept.

17. The Board of a county agency shall cause the minutes of all proceedings of its meetings to be recorded and kept, and the minutes of each meeting shall be confirmed by the Board at the next meeting of the Board and signed by the Chairperson or the member presiding at the meeting.

Committees.

18. A county agency may establish committees consisting of members of the Board to deal with such matters as the Board may specify and notice of establishment of any committee in accordance with this section whether established before or after the commencement of this Act shall be served on the County Agencies Advisory Committee.

Quorum.

19. (1) Subject to subsection (2), five members of the Board of a county agency shall constitute a quorum for the conduct of business at any meetings of the Board.

Provided that where within half an hour after the time appointed for the meeting a quorum is not present, the meeting shall be adjourned to the same day in the next week, at the same time and place, or at such other place and at such time as the members may determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the members present shall be deemed to be a quorum.

(2) When there is no quorum at or for the continuation of a meeting of the Board only because of the exclusion of a member of the Board under Section 27, the other members present may, if they deem it expedient so to do—

- (a) postpone the consideration of that matter until there is a quorum; or
- (b) proceed to consider and decide the matter as if there was quorum.

Remuneration and
expenses of chairman
and members.

20. (1) The chairperson and members of a Board, other than the chief executive, shall be paid out of the funds of the county agency such sitting allowances or other remuneration as the Board in consultation with the Executive Committee member may, within the scales of remuneration specified from time to time by the Committee and Salaries and Remuneration Commission, approve.

(2) A Board may, within the scales specified by the Committee and recommended by Salaries and Remuneration Commission, refund travelling and other expenses incurred by the chairman or members of the Board in the performance of their duties.

Financial year.

21. Notwithstanding anything to the contrary in any written law, the financial year of every county agency shall be from the 1st of July in a year to the 30th of June in the next year.

PART IV—CONTROL OF THE FINANCES, ETC. OF COUNTY AGENCIES

Annual estimates.

22. (1) Every county agency shall cause to be prepared and shall not later than the end of February in every year, submit to the Executive in charge and to the Treasury for approval, estimates of the county agency's revenue and expenditure for the following financial year accompanied by proposals for funding all projects to be undertaken by the county agency, or the implementation of which will continue during the financial year to which those estimates relate.

(2) No annual estimates and proposals for funding projects shall be implemented until they have been approved by the responsible Executive member with the concurrence of the Treasury.

Expenditure not included in annual estimates.

23. No county agency shall, without the prior approval in writing of the responsible Executive member and the Treasury, incur any expenditure for which provision has not been made in an annual estimate prepared and approved in accordance with Section 22.

Dealing with assets.

24. (1) The assets of a county agency may be disposed of—

- (a) if they are current assets in the normal course of business carried on by that county agency;
- (b) where the disposal and the utilization of the proceeds have been taken into account in an annual estimate prepared and approved in accordance with Section 11;
- (c) by way of sale or otherwise with the approval of the responsible Executive member and the Treasury where such disposal has not been taken into account in the estimates.

(2) Subject to subsection (1), the Executive member for the time being responsible for finance may, in consultation with the Committee, make rules for the acquisition and disposal of assets by county agencies and different rules may be made with respect to different county agencies; and such rules shall be brought to the notice of the county agencies and other persons affected thereby, and copies of the rules shall be made available to the public.

(3) This section does not apply with respect to procurements or disposals to which the Public Procurement and Disposal Act applies.

No. of 2005

Books of accounts,
records and audits.

25. (1) Every county agency shall keep or cause to be kept proper books recording all the property, undertakings, funds, activities, contracts, transactions and other business of the county agency.

(2) The Executive member for finance may prescribe the form of any book required to be kept under subsection (1) and unless a form has been prescribed, a form suitable for the purpose shall be used.

(3) The accounts of every county agency shall be audited and reported on annually in accordance with the Public Finance Management Act.

No. 18 of 2012

Accountability.

26. (1) A Board shall be responsible for the proper management of the affairs of a county agency and shall be accountable for the monies, the financial business and the management of a county agency.

(2) The chief executive of a county agency may be summoned by the Public Investments Committee of the County Assembly to answer on behalf of the Board any question arising from a report, including a special report, of the Director of audit or the Auditor-General concerning the county agency.

Renewal of
depreciating assets,
etc. and disposal of
surplus funds.

27. (1) Every county agency shall make provision for the renewal of depreciating assets by the establishment of sinking funds and for contributions to such reserve and stabilization funds as may be required.

(2) Where there are any surplus monies after making the provision required by subsection (1) the surplus monies shall be disposed of in such manner as the responsible Executive member, in consultation with the Board, may in writing, direct.

(3) Notwithstanding subsection (2), the Executive member for finance may require the whole or any part of the surplus monies to be paid into the Revenue Account where the exigencies of the financial situation so require.

Restriction on loans
to Board members
and staff.

28. Notwithstanding any other written law establishing a county agency or its memorandum and articles of association, no county agency shall grant to a member of the Board or staff any loan or advance or arrange any credit facility for him except in accordance with regulations made by the county agency under this section and approved by the Treasury, but in the absence of those regulations such loan, advance or credit facility may be granted in accordance with terms and conditions approved by the Committee.

Powers of the
Director of Audit.

29. (1) The Director of Audit shall have the following powers—

- (a) to call for and inspect all books, records, returns and documents which in his opinion relate to the accounts of, or to execution of the functions of, any county agency;
- (b) to enter and inspect the premises, including any plant and installation thereon, of any county agency;

- (c) to attend meetings of any county agency or of a Board or committee thereof if in his opinion it is necessary to do so for the effective carrying out of his duties under this section.

(2) The Director of Audit may conduct special investigations of any county agency on their behalf and to report the findings to them.

Powers of Director
of audit after
investigations.

30. (1) In any investigation conducted under this Act, the Director of Audit shall have power—

- (a) to disallow any item of account which is contrary to the law or to any direction lawfully given to a county agency;
- (b) to surcharge the amount of any expenditure so disallowed upon the person responsible for incurring or authorizing the expenditure;
- (c) to surcharge any sum which has not been duly brought to account upon the person by whom that sum ought to have been brought into account;
- (d) to surcharge the amount of any loss or deficiency upon any person by whose negligence or misconduct the loss or deficiency has been incurred;
- (e) to certify the amount due from any person upon whom he has made a surcharge.

(2) The Inspector shall, as soon as practicable after certifying the amount of surcharge, furnish the person surcharged with a certificate of surcharge in the prescribed form.

(3) For the purposes of this section, a member of the Board shall be deemed to be responsible for incurring or authorizing an expenditure if, being present when the resolution of the Board or committee thereof incurring or authorizing the expenditure was passed—

- (a) he or she voted in favour of it; or
- (b) he or she did not cause his or her vote against the resolution to be recorded in the minutes.

(4) A person shall not be freed from liability to surcharge under this section by reason only of the fact that, in the matter giving rise to the liability, he acted in pursuance of any resolution of a Board, or of any committee thereof, if that resolution was contrary to law.

Application for
written reasons for
Inspector's decision.

31. The Inspector shall, on the application of any person aggrieved by a disallowance or surcharge made under Section 30, within fourteen days of the application furnish the person with reasons in writing for the decision.

Appeals against
decision of the
Director of Audit.

32. (1) Any person who is aggrieved by a disallowance or surcharge may, within thirty days of the date of the certificate of surcharge, appeal by written memorandum to the Tribunal.

(2) The Tribunal shall, on appeal, have power to confirm, vary or quash the decision of the Inspector, and to remit the case to the Inspector with such directions as the Tribunal thinks fit for giving effect to the decision on appeal.

The County agencies
Appeals Tribunal.

33. (1) There shall be a Tribunal, to be known as the County Agency Appeals Tribunal, which shall consider and determine appeals under Section 32.

(2) The Executive member for finance shall provide the Tribunal with such facilities, material and funds as are necessary for the proper conduct of its functions.

(3) The Tribunal shall consist of—

- (a) a chairman who shall be a person qualified by law to be appointed a judge, appointed by the Governor;

(b) two other members appointed by the Executive member for finance each nominated by—

- (i) the Council of the Law Society of Kenya from amongst advocates of not less than three years' standing; and
- (ii) the Council of the Institute of Certified Public Accountants of Kenya from amongst accountants of not less than seven years' standing.

(4) The County Attorney shall appoint a public officer to be secretary to the Tribunal.

(5) There may be appointed such staff of the Tribunal whose offices shall be offices in the public service, as may be necessary.

(6) For the purposes of the hearing and determination of any appeal by the Tribunal the secretary may, under the direction of the Tribunal, administer oaths.

(7) The chairman may, by notice under his hand, summon any person to attend and give evidence and to produce any relevant book or document; and a person who fails to attend when so summoned shall be guilty of an offence and liable to a fine of two thousand shillings or imprisonment for one month.

(8) The Tribunal shall have power to make such order as to costs, including—

- (i) an order for the deposit by an appellant of money as security for costs before proceeding upon an appeal; and
- (ii) an order that the expenses incurred by an appellant or any other party to the proceedings shall be paid by the county agency concerned in the proceedings; and

(iii) orders as to taxation of costs in accordance with any scale prescribed for suits in the High Court.

(9) Any costs not recovered from security ordered under paragraph (i) of subsection (8) shall be recoverable as a civil debt.

(10) A person shall not be qualified to be appointed the chairman, or a member of the Tribunal if he is an employee of, or a member of the Board of, a county agency.

(11) Every appointment under this section other than an appointment under subsection (5) shall be by name and by notice in the Gazette and shall be for a renewable term of not less than five years with respect to the chairperson and not more than three years with respect to the members.

(12) The sessions of the Tribunal shall, unless the special circumstances of an appeal require, be in Bomet, convened by the chairman as occasion requires.

(13) The record of the proceedings and of every decision of the Tribunal shall be authenticated by the signature of the chairman and shall be kept by the secretary.

(14) The chairman and members of the Tribunal, other than public officers in receipt of a salary, shall be paid out of public funds such sitting allowances or other remuneration as the Committee may, in consultation with the Treasury approve.

(15) Subject to this section, the Tribunal may, with the approval of the Chief Justice, regulate its own procedures and the conduct of proceedings before it.

Appeals to the
County Court.

34. (1) The Director of Audit or the person surcharged may, if aggrieved by the decision of the Tribunal, within thirty days appeal to the High Court which shall have power to confirm, vary or annul the decision of the Tribunal.

(2) The procedure in and relating to appeals in civil matters from subordinate courts to the County Court and the powers of the County Court in such appeals shall govern appeals from the Tribunal to the County Court under this Act.

(3) The decision of the County Court under this section shall be final and shall not be subject to further appeal.

Payment and
recovery of sums
certified to be due.

35. (1) Every sum certified by the Director of Audit to be due from a person shall be paid by that person to the county agency within thirty days after it has been so certified or, if an appeal with respect to the sum has been made, within fourteen days after the appeal has been disallowed, abandoned or has failed by reason of the non-prosecution thereof.

(2) The Director of Audit shall take all necessary steps in any competent court to recover from the persons surcharged any sum which is not paid in accordance with subsection (1).

(3) In any proceedings for the recovery of any sum which is not paid in accordance with subsection (1), the certificate of the Director of Audit shall be conclusive evidence that the sum is due and payable by the person surcharged.

(4) On the production of the Director of Audit's certificate, the Court shall give a decree for the sum sued for and the decree shall have the effect of a decree under the Civil Procedure Act and any rules made thereunder.

Expenses of the
Inspector.

36. (1) Any expenses incurred by the Director of Audit in the defence of any allowance, disallowance or surcharge shall, so far as not recovered from any other party and except as may otherwise be ordered by the County Court or the Tribunal, be reimbursed to him by the county agency the subject of investigation.

(2) The costs and expenses incurred by the Director of Audit in any legal proceedings taken under Section 35 (2) shall if not recovered from any other source, be borne by the county agency that is the subject of investigation.

PART V—THE COUNTY AGENCIES ADVISORY COMMITTEE

Establishment of the
Committee.

37. (1) There shall be a Committee to be known as the County Agencies Advisory Committee which shall consist of—

- (a) a chairman to be appointed by the Governor;
- (b) the Chief Officer, Treasury;
- (c) the Director in charge of personnel matters;
- (d) the Director of Audit;
- (e) four other members appointed by the Governor with the approval of the County Assembly.

(2) The Governor shall appoint a public officer to be secretary to the Committee.

(3) Subject to directions by the Governor, the Committee shall determine its own procedure.

(4) The members and the secretary of the Committee shall be paid out of public funds such remuneration and in such manner as the Governor may approve.

Functions of the
Committee.

38. (1) The Committee shall advise on the matters relating to county agencies and perform any function it is required by this Act to perform and in addition shall—

- (a) with the assistance of experts where necessary, review and investigate the affairs of county agencies and make such recommendations to the Governor as it may deem necessary;
- (b) in consultation with the County Attorney and the Treasury, advise the Governor on the establishment, reorganization or dissolution of county agencies;
- (c) unless written law provides, advise on the appointment, removal or transfer of officers and staff of county agencies, the secondment of public officers to county agencies and the terms and conditions of any appointment, removal, transfer or secondment;
- (d) examine any management or consultancy agreement made or proposed to be made by a county agency with any other party or person and advise thereon;
- (e) examine proposals by county agencies to acquire interests in any business or to enter into joint ventures with other bodies or persons or to undertake new business or otherwise expand the scope of the activities and advise thereon.

PART VI—MISCELLANEOUS PROVISIONS

Dissolution of county
agency.

39. Where the Committee advises that a county agency shall be dissolved then nothing in this Act shall be construed as derogating from the procedure by which the county agency would be dissolved under the law by or under which it was established.

Offences and penalty.

40. A county agency which, or an officer thereof who fails to render or submit or make available for inspection any record, book, account or information required by or pursuant to this Act, or which or who restricts the director of Audit in the performance of his duties commits an offence cognizable to the police and punishable by a fine of five hundred thousand shillings or imprisonment for a term of five years or both and Section 23 of the Penal Code shall, where the offence is committed by a county agency, apply mutatis mutandis.

Regulations.

41. The Governor may make regulations generally, with the approval of the County Assembly, for the better carrying into effect of the provisions of this Act and the powers conferred by this section may be assigned to any person in accordance with the law.
