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No. 9 of 2015**

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**THE BUNGOMA COUNTY ASSEMBLY SERVICE
BOARD ACT, 2015**

AN ACT of the County Assembly of Bungoma to make provisions for the establishment of the Bungoma County Assembly Service Board pursuant to section 12(1) of the County Governments Act and for connected purposes

ENACTED by the County Assembly of Bungoma, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Bungoma County Assembly Service Act, 2015, and shall come into operation upon publication in the *Kenya Gazette* or *County Gazette* whichever comes earlier. Short title and commencement.

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

“Chairperson” means a person discharging the functions of the chairperson under this Act;

“Clerk” means the Clerk of the County Assembly of Bungoma;

“Board” means the Bungoma County Assembly Service Board established under section 8 of this Act;

“member” in relation to the Board, includes the Chairperson and the Vice-chairperson of the Board;

“Service” means the Bungoma County Assembly Service established under section 4 of this Act; and

“Speaker” means the Speaker of the County Assembly of Bungoma or, where appropriate, the Deputy Speaker;

“Assembly” means the County assembly of Bungoma;

“County Assembly Service Values” means the values specified in or under clause 5;

“County Assembly Service Code of Conduct” means the code of Conduct prescribed under clause 6;

3. The object and purpose of this Act is to—

- (a) provide for further functions and powers of the Board pursuant to section 12(7)(e) of the County Governments Act, 2012;

Object and purpose of the Act.

- (b) provide for the manner of appointment of a member of the Board under Section 12(3)(d) of the County Governments Act, 2012;
- (c) give further effect to Article 232 of the Constitution of Kenya, 2010 in respect of the County Assembly Service;
- (d) prescribe the qualifications of a member of the Board to be appointed under section 12(3)(d) of the County Governments Act;
- (e) provide for the functions of the Clerk of the County Assembly and his/her functions as the Secretary to the Board;
- (f) provide for the procedure, Conduct of business and the affairs of the Board;
- (g) provide for the execution of the functions of the Board;
- (h) provide for such other matters as may be necessary for the welfare, security and proper administration of the Service.

PART II—THE BUNGOMA COUNTY ASSEMBLY SERVICE

4. (1) There is established a service to be known as the Bungoma County Assembly Service which shall be an institution of exemplary administrative and technical competence.

Establishment and nature of the Assembly Service.

(2) Subject to the Constitution and any other written law, in the performance of their functions, employees of the Service shall not seek or receive directions from any source external to the Service.

(3) Every member of the County Assembly shall respect the non-partisan and a political character of the Service and shall not seek to influence employees of the Service in the discharge of their functions.

5. The Service shall uphold the following values—

County Assembly Service values.

- (a) the promotion of democracy and the rule of law;
- (b) the fostering of patriotism, peace and unity;
- (c) the provision of non-partisan and impartial advice and service to the County Assembly, its committees and its members;

- (d) the maintenance of the highest ethical standards;
- (e) the maintenance of honesty, accountability and integrity in the delivery of services, having regard to the principles of political neutrality, professionalism, economy, efficiency, equality, fairness, courtesy and discipline;
- (f) the provision of a workplace that is free from discrimination, recognizes the diverse backgrounds of the Service employees and promotes national integration;
- (g) the maintenance of the spirit of co-operation in the workplace based on consultation and communication;
- (h) the provision of a fair, flexible, safe and rewarding workplace;
- (i) the inspiration of public confidence in and respect for the institution of the County Assembly;
- (j) the fostering of understanding and co-operation between the County Executive and the County Assembly, in the context of their autonomy, separation of powers and complementarity; and
- (k) such other values as the Board may, from time to time, prescribe.

6. (1) The Board may, from time to time, prescribe the County Assembly Service Code of Conduct.

County Assembly
Service Code of
Conduct.

(2) Without prejudice to the provisions of any Code of Conduct prescribed under subsection (1), every employee of the Service shall, in the course of his or her employment—

- (a) conduct himself or herself in a manner that promotes the image and interests of the county;
- (b) conduct himself or herself with honesty and integrity and act with care and diligence;
- (c) use the resources of the county conscientiously and combat corruption and misuse or wastage of public property;
- (d) respect and observe the law and co-operate with all lawful agencies in the maintenance of law and order;

- (e) treat all persons with respect and courtesy and, in particular, protect persons with disabilities and other vulnerable groups against any form of abuse, harassment or ill-treatment;
- (f) promote gender equality and respect for the rights and freedoms of others;
- (g) preserve and protect the environment and county heritage;
- (h) comply with any lawful and reasonable direction given by any person in the Service having authority to give such direction;
- (i) maintain appropriate confidentiality about dealings that the employee has with the County Assembly, its committees, its members and its staff (including employees of members, if any);
- (j) disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with the Service;
- (k) not provide false or misleading information in response to a request for information that is made for official purposes;
- (l) not make improper use of—
 - (i) any information obtained through or in connection with the office of such employee and which is not yet made available to the public; or
 - (ii) the employee's duties, status, power or authority, in order to gain, or seek to gain, a benefit or advantage for himself or for anyone else;
- (m) conduct himself or herself in a manner that upholds the letter and spirit of the values and the integrity and good reputation of the Service;
- (n) while on duty overseas, conduct himself in a manner that promotes the good image of the County and the country;
- (o) comply with any other requirement of conduct as may be prescribed by the Board.

7. The Service values and the Service Code of Conduct provided for in sections 5 and 6 shall be in addition to, and not in derogation from, any others that may be specified by or under any other written law in relation to the citizens of Kenya generally.

Complementarity
of values and
code of conduct.

PART III—THE BUNGOMA COUNTY ASSEMBLY SERVICE BOARD

8. (1) There is established a Board to be known as the Bungoma County Assembly Service Board which shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

Bungoma County
Assembly Service
Board.

- (a) suing and being sued;
- (b) purchasing or otherwise acquiring, holding, charging and disposing of movable or immovable property;
- (c) borrowing and lending money subject to approval by the County Assembly;
- (d) entering into contracts;
- (e) doing or performing all such other things or acts necessary for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.

(2) The Board shall consist of—

- (a) the Speaker of the County Assembly, as the Chairperson;
- (b) the leader of the majority party or a member of the county assembly deputed by him or her, as the vice-chairperson;
- (c) the leader of the minority party or a member of the county assembly deputed by him or her; and
- (d) one person resident in the county, appointed by the county assembly from among persons who have knowledge and experience in public affairs, but who is not a member of the county assembly.

(3) The Clerk of the County Assembly who shall be the Secretary to the Board.

9. (1) In nominating or appointing any person as a member of the Board, the County Assembly party or

Qualifications of
members of the
Board.

parties concerned shall have regard to the person's experience or interest in consolidating and advancing the ideals and objectives of devolution.

(2) A member of the Board shall serve in his personal capacity.

10. (1) A member of the Board shall vacate office— Vacation of office.

(a) if the person is a member of the County Assembly—

(i) at the end of the term of the County Assembly of which the person is a member; or

(iii) if the person ceases to be a member of the County Assembly; or

(b) if the person is an appointed member, on¹⁾ revocation of the person's appointment by the County Assembly; or

(c) if the person ceases to be a member of the Board under section 16(5).

(2) Despite subsection (1), when the term of the County Assembly ends, a member of the Board appointed under section 8 (2)(d) shall continue in office until a new member has been appointed in the member's place by the next County Assembly.

(3) The Board shall be responsible for—

(a) providing services and facilities to ensure the efficient and effective functioning of the County Assembly;

(b) constituting offices in the Service, appointing and supervising office holders;

(c) preparing annual estimates of expenditure of the Service and submitting them to the County Assembly for approval, and exercising budgetary control over the Service;

(d) undertaking, singly or jointly with other relevant organisations, programmes to promote the ideals of parliamentary democracy; and

(e) performing other functions—

- (i) necessary for the well-being of the members and staff of the County Assembly; or
- (ii) prescribed by national legislation.

11. (1) There shall be such number and types of departments and such categories and classifications of staff under the Service as the Board may, from time to time, determine.

Number and type of departments of the Service.

(2) The Board may from time to time—

- (a) allocate functions to any department of the Service;
- (b) make such arrangements that appear to the Board expedient in connection with the creation, division, amalgamation or abolition of any department of the Service.

12 (1) The Board shall prescribe a scheme of service setting out the terms and conditions for the appointment of the officers and other staff of the Service which shall provide for—

Scheme of service.

- (a) The appointment and confirmation of appointment of officers and other staff subject to approval by the County Assembly;
- (b) promotions, resignations and termination of appointments Subject to approval by the County Assembly;
- (c) the scales of salaries and allowances Subject to the approval by the County Assembly; and
- (d) the designation and grades of officers and other staff.

2. The Secretary to the board shall be responsible for the administration of the Scheme of Service for the staff of the County Assembly.

13. (1) The Board—

Social security scheme.

- (a) shall establish a non-contributory pension scheme for all its employees;
- (b) may establish or adopt a contributory optional superannuation, provident or medical fund or other scheme for its employees and may grant pensions, gratuities, retirement allowances or sickness or injury benefits to any employee.

14. (1) The Board—Disciplinary
control of officers

- (a) shall exercise disciplinary control over the officers of the service;
- (b) may terminate the employment of an employee of the service in accordance with the provisions of this Act and regulations made there under.

(2). The provisions of Articles 234(2) (i) and 236 of the Constitution shall apply in relation to the exercise of the powers conferred under this section.

15. For the purpose of discipline and removal of officers and staff of the County Assembly service, the Board shall establish a committee.

Establishment of
staff advisory
committee

16. (1) The Chairperson shall convene a meeting of the Board at least once every fortnight.

Meetings and
procedure of the
Board.

(2) The Chairperson or in his absence the vice-chairperson may at any time convene a special meeting of the Board, and shall do so within seven days of the receipt by him of a written requisition therefor signed by at least three members.

(3) If the Chairperson fails to convene a special meeting of the Board pursuant to a requisition under subsection (2), the members making the requisition may convene such meeting which shall be held within seven days after the expiry of the period prescribed in that subsection.

(4) The quorum for a meeting of the Board shall be three members.

(5) A member of the Board other than an *ex officio* member may be removed from office by the appointing authority upon the recommendation of the Board, if such member—

- (a) has been absent from three consecutive meetings of the Board without the permission of the chairperson; or
- (b) is, in the opinion of the Board, otherwise unable or unfit to discharge the functions of his office.

PART IV—THE CLERK AND OTHER STAFF

17. (1) The Clerk shall be—

Status and general
functions of the
Clerk.

- (a) the Chief Executive Officer of the Service and secretary to the Board;
- (b) responsible to the Chairperson and the Board for the general working and efficient conduct of the business of the Service.

(2) The Board may delegate to the Clerk such of its functions as are necessary to carry out the day to day management of the Service, and subject to such directions as may be given by the Board, to direct and supervise the acts of all employees and agents of the Service.

(3) The Clerk may, in consultation with the Board, assign or delegate the functions under this section to any employee of the Service.

18. (1) The procedural functions of the Clerk shall include—

Procedural
functions of the
Clerk.

- (a) rendering expert, non-partisan and impartial advice to the members of the County Assembly on the Assembly procedure and practice;
- (b) carrying out such other duties and exercising powers as may be conferred on him by law or by the standing orders and practices of the County Assembly.

(2) In carrying out the functions specified in subsection (1), the Clerk shall be assisted by such other officers of the Service as may be necessary.

(3) Subject to this Act and any other written law, the Clerk shall, in carrying out and exercising the powers conferred on him or her by the standing orders and practices of the County Assembly, be under the direction of the Speaker.

(4) At any time when the office of the Speaker is vacant or the holder of the office is unable for any reason to carry out the duties and exercise the powers and functions of his office, the Clerk shall, during that period and in relation to the carrying out of the duties and exercise of the powers and functions referred to in this section, be under the direction of the Deputy Speaker.

19. If the office of the Clerk is vacant, or if for any reason the Clerk is unable to exercise the functions of his or her office, the deputy clerk, shall assume office and perform the duties of the Clerk, and in the event that the two for any reason are unable to exercise the functions of the office of the clerk, then the next officer in line shall assume office and perform all functions, duties and powers of the clerk pursuant to the standing orders of the County Assembly or by direction of the Speaker.

Exercise of functions of the Clerk during vacancy or inability.

20. The Clerk shall be suspended or removed from office by the Board, at any time and in such a manner as may be prescribed under this Act, for inability to perform the functions of his office (whether arising from infirmity of body or mind or from any other cause) or for misbehaviour, subject to approval by the County Assembly.

Suspension or removal of the Clerk.

21. (1) An employee shall retire from the Service on attaining the age of sixty years:

Retirement and resignation of employees.

Provided that the Board may re-engage him on contract for a single term not exceeding two years.

(2) An employee may —

(a) after attaining the age of fifty years, elect to retire from the Service at any time; or

(b) in such manner as may be provided under this Act, resign from the Service at any time.

(3) The Board may, in such manner and for such reasons as may be prescribed under this Act, require an employee to retire from the Service at any time.

PART V—FINANCIAL PROVISIONS

22. (1) At least three months before the commencement of each financial year, the Clerk shall cause to be prepared, estimates of all the expenditure required for the purposes of this Act for that year and shall present such estimates to the Board for review.

Estimates of expenditure.

(2) The Board shall review the estimates forwarded under subsection (1) and may make such alterations thereto as it may deem appropriate and shall thereafter agree upon those estimates.

(3) The Chairperson of the Board shall dispatch a copy of the estimates agreed upon by the Board under subsection (2) to the County Executive Committee Member responsible for matters relating to finance.

(4) The Chairperson of the Board or any other member thereof authorized by the Board in that behalf shall present the estimates agreed by the Board for consideration and approval by the County Assembly.

(5) Upon the approval of the estimates presented to the County Assembly under subsection (4), all monies from time to time required for the purposes of this Act shall be paid from the County Reserve Fund.

23. (1) The Clerk shall ensure that proper books and records of accounts of the Board are kept and maintained.

Accounts and audit.

(2) Within three months after the end of each financial year, the Clerk shall submit to the Controller of Budget and Auditor-General, the accounts of the Board for the year.

(3) Notwithstanding the provisions of any other written law, the accounts of the Board shall be audited and reported upon by the Controller of Budget and Auditor-General.

24. (1) The Board may, from time to time, appoint an independent body of experts to review the terms and conditions of service of members and employees of the County Assembly.

Review of terms and conditions of service of members and employees of the Assembly.

(2) The Board shall upon receipt of the report of experts appointed under subsection (1), transmit the report together with its comments thereon, if any, to the County Assembly.

25. Members of the Board shall receive such allowances as may be determined by the County Assembly in consultation with, and approval by the Salaries and Remuneration Commission.

Remuneration of members of the Board.

PART VI—MISCELLANEOUS PROVISIONS

26. Within three months after the end of each calendar year, the Board shall prepare and lay before the County Assembly, a report of its operations during that year.

Annual report of operations of the Board.

27. A member of the Board (not being the chairperson) authorized by the Board in that behalf may—

Designated member may present documents, etc, in the Assembly.

- (a) lay before the County Assembly any document or other matter;
- (b) reply to a question relating to the affairs of the Board.

28. (1) The members of the Board shall, on first appointment, take an oath in the form prescribed in the First Schedule.

Oath of office for members and staff of the Board.

(2) The secretary and such other officers of the Board as the Chairperson may require so to do, shall, on first appointment, take an oath in the form prescribed in the Second Schedule to this Act.

(3) Where any person required to take an oath has no religious belief or the taking of such oath is contrary to his religious belief, he or she may make and subscribe a solemn affirmation in the form of the oath appointed substituting the words **"solemnly and sincerely declare and affirm"** with the word **"swear"** and omitting the words **"So help me God"**.

(4) Every oath or affirmation taken by the chairperson shall be administered by the secretary and every oath or affirmation taken by any other member or the secretary shall be administered by the chairperson:

Provided that every oath or affirmation taken by any other officer shall be administered by the secretary.

29. The Board or any committee thereof may, subject to section 30, order any person to attend before it and to give evidence or to produce any paper, book, record or document in the possession or under the control of that person.

Power to order attendance of witnesses.

30. Every person summoned to attend to give evidence or to produce any paper, book, record or document before the Board or a committee thereof shall be entitled, in respect of that evidence or the disclosure of any communication or the production of any paper, book, record or document to the same right or privilege as before a court of law.

Privileges of witnesses.

31. (1) A member or an officer of the Board or any person employed to take minutes or evidence before the Board or any committee shall not give evidence elsewhere in respect of the contents of those minutes or evidence or of

Evidence of proceedings in the Board not to be given without leave.

the contents of any document laid before the Board or that committee or in respect of any proceedings or examination held before the Board or that committee without special leave first obtained from the chairperson.

(2) The special leave referred to in subsection (1) may be given by the vice-chairperson in the absence or other incapacity of the chairperson.

32. Any act or thing done by any member of the Board or by any officer or servant of the Board shall not, if the act or thing was done *bona fide* for the purposes of carrying out this Act into effect, subject him personally to any liability, action, claim or demand whatsoever.

Protection of
members and staff
of the Board.

33. A person shall not in any legal proceedings be permitted or compelled to produce or disclose any communication, written or oral which has taken place between the Board or any member or officer of the Board, in the exercise of, or in connection with the exercise of, the function of the Board unless the chairperson consents in writing to such production or disclosure.

Communication
of Board
privileged.

34. Any person who—

Offences and
penalties under
the Act.

- (a) in connection with an application by himself or herself or any other person for employment, appointment or promotion in the Service, or in connection with any matter on which it is the duty of the Board to require information or evidence, or into which it is the duty of the Board to inquire, wilfully gives to the Board or to any member thereof any information which is false or misleading in any material particular; or
- (b) without the consent in writing of the chairperson, publishes or discloses to any unauthorized person or otherwise than in the course of duty the contents or any part of the contents of any document, communication or information whatsoever which has come to his knowledge in the course of his duties under this Act, and any person who knowingly acts in contravention of this paragraph; or
- (c) having possession of any information which to his knowledge has been published or disclosed in

contravention of paragraph (b) of this section, publishes or communicates to any other person otherwise than for the purpose of any prosecution under this Act or in the course of his duty any such information; or

- (d) otherwise than in the course of his or her duty, directly or indirectly by himself or herself or by any other person in any manner whatsoever influences or attempts to influence any decision of the Board or of any member thereof; or
- (e) disobeys any order made by the Board or a committee for attendance or for production of papers, books documents or records; or
- (f) refuses to be examined before, or to answer any lawful and relevant question put by the Board or a committee,

commits an offence and shall be liable on conviction to a fine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding twelve months, or to both:

Provided that nothing in paragraph (d) of this section shall prohibit any person from giving a certificate or testimonial to any applicant or candidate for the Service or supplying any information or assistance upon formal request made by the Board.

35. (1) The Board may, in such manner as it deems fit, make provision for examination and appoint such selection, promotion or other Committees as it deems necessary for the proper discharge of its functions.

Examination and
other Committees.

(2) A committee appointed under subsection (1) may wholly or in part consist of persons who are not members of the Board and should not be more than seven members.

36. (1) The Board may make regulations for prescribing anything required by this Act to be prescribed and generally for the better carrying out of the purposes of this Act.

Regulations.

(2) Without prejudice to the generality of subsection (1), regulations under this Act may provide for—

- (a) the conduct of the business of the Board;

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- (b) the administration and management of the services and facilities;
- (c) the terms and conditions of service, pension and other retirement benefits of employees;
- (d) the measures for the discipline of employees;
- (e) the financial procedures of the Board;
- (f) the orientation and training of members of the County Assembly and employees;
- (g) the security of members of the County Assembly.

Bungoma County Assembly Service Board
Chairperson/Secretary

SECOND SCHEDULE

OATH/AFFIRMATION OF OFFICER OF THE BOARD

I being called upon to exercise the functions of the
 Clerk/other of the Bungoma County Assembly Service Board, do
 swear/solemnly and sincerely declare and affirm that I will not, directly or
 indirectly, reveal any part of the contents of any document, communication
 or information whatsoever which may come to my knowledge in the
 course of my duties as an officer of the Board.

SO HELP ME GOD.

Sworn/Declared by the said

before me this

Bungoma County Assembly Service Board
Chairperson/Secretary

FIRST SCHEDULE

[Section 28(1).]

OATH/AFFIRMATION OF MEMBER OF THE BOARD

Ihaving been appointed as Chairperson/Vice-Chairperson/Member of the Bungoma County Assembly Service Board do swear/solemnly and sincerely declare and affirm that I will, without fear or favour, affection or ill-will, discharge the functions of the office of the Chairperson/Vice-Chairperson/Member of the Bungoma County Assembly Service Board, and that I will not, directly or indirectly reveal any matter relating to such function to an unauthorised person or otherwise than in the course of my duty.

SO HELP ME GOD.

Sworn/Declared by the said.....

before me this.....day of

*Chairperson/Secretary,
Bungoma County Assembly Service Board.*

SECOND SCHEDULE

[Section 28(2).]

OATH/AFFIRMATION OF OFFICER OF THE BOARD

Ibeing called upon to exercise the functions of the Clerk/(other) of the Bungoma County Assembly Service Board, do swear/solemnly and sincerely declare and affirm that I will not, directly or indirectly, reveal any part of the contents of any document, communication or information whatsoever which may come to my knowledge in the course of my duties as an officer of the Board.

SO HELP ME GOD.

Sworn/Declared by the said.....

before me this.....day of

*Chairperson/Secretary,
Bungoma County Assembly Service Board.*