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The Machakos County Assembly (Powers and Privileges) Bill, 2014

MACHAKOS COUNTY ASSEMBLY (POWERS AND PRIVILEGES) BILL, 2014

A Bill for

AN ACT of the Machakos County Assembly to provide for the establishment of a Board for the management and for matters incidental thereto and connected therewith.

ENACTED by the County Assembly of Machakos as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Machakos County Assembly (Powers and Privileges) Act, 2014.

2. In this Act, except where the context otherwise requires—

“Assembly” means the County Assembly;

“Chamber” means the chamber in which the proceedings of the Assembly are conducted, and includes any galleries and places therein provided for members of the public or representatives of the press, and any lobbies, offices or precincts used exclusively in connexion with the proceedings of the House;

“Clerk” means the person appointed to be Clerk to the Assembly;

“committee” means any standing, sessional, select or other committee of the Assembly;

“journals” means the minutes of the Assembly or the official record of the votes or proceedings thereof;

“member” means a member of the County Assembly;

“officer of the Assembly” includes any officer of the Assembly, any person acting within the precincts of the Assembly under the orders of the Speaker and any police officer on duty within the precincts of the Assembly;

“precincts of the Assembly” includes the Chamber, every part of the building in which the Chamber is situated, the offices of the Assembly, the galleries and places provided for the use or accommodation of members, strangers, members of the public and representatives of the
press, and any forecourt, yard, garden, enclosure or open space appurtenant thereto and used or provided for the purposes of the Assembly: Provided that any part of the buildings, forecourt, yard, garden, enclosures or open space may, by an order signed by the Speaker and published in the Gazette, be excluded from the foregoing definition, either generally or for specific purposes, and either temporarily or permanently;

"Sergeant-at-Arms" means the person appointed to be the Sergeant-at-Arms of the Assembly;

"Speaker" means the person elected to be Speaker of the Assembly under the Constitution, and includes the Deputy Speaker elected under the Constitution or any member while for the time being presiding at a sitting of the Assembly under the Constitution;

"Standing Orders" means the Standing Orders of the Assembly for the time being in force;

"stranger" in relation to the Assembly means any person other than the Speaker, a member of the Assembly or an officer of the Assembly.

PART II—PRIVILEGES AND IMMUNITIES

3. Where any member becomes disqualified for election to the Assembly under section 25 of the Elections Act, the disqualification shall not have effect until the expiration of the period prescribed by a written law for the entry of any appeal, or further appeal, which is open to the member in respect of that decision or, if an appeal is entered within that period, until the final determination of the appeal or further appeal, as the case may be.

4. No civil or criminal proceedings shall be instituted against any member for words spoken before, or written in a report to, the Assembly or a committee, or by reason of any matter or thing brought by him therein by petition, Bill, resolution, motion or otherwise.

5. No member shall be liable to arrest for any civil debt except a debt the contraction of which constitutes a criminal offence, whilst going to, attending at or returning from a sitting of the Assembly or any committee.

6. No process issued by any court of Kenya in the exercise of its civil jurisdiction shall be served or executed within the precincts of the Assembly while it is sitting, nor
shall any such process be served or executed through the Speaker or any officer of the Assembly unless it relates to a person employed within the precincts of the Assembly or to the attachment of a member's salary.

7. No stranger shall be entitled, as of right, to enter or to remain within the precincts of the Assembly.

8. (1) The Speaker may from time to time issue such orders as he deems necessary or expedient for the better carrying out of the purposes of this Act, and without prejudice to the generality of the foregoing power may by such orders make provision for—

(a) regulating the admittance of strangers to and the conduct of strangers within the Chamber; and

(b) regulating the admittance of strangers to and the conduct of strangers within the precincts of the Assembly and any part thereof other than the Chamber.

(2) Copies of orders made by the Speaker under this section shall be authenticated by the Clerk and exhibited in a conspicuous position in the precincts of the Assembly; and the copies when so authenticated and exhibited shall be deemed to be sufficient notice to all persons affected thereby.

9. (1) The Speaker may, from time to time as he deems expedient, issue directions in the form of a Code of Conduct regulating the conduct of members of the Assembly whilst within the precincts of the Assembly other than the Chamber.

10. (1) There shall be established a committee, to be known as the Committee of Privileges, consisting of the Speaker and ten other members of the Assembly under the chairmanship of the Speaker.

(2) The members of the Committee of Privileges other than the Speaker shall be nominated by the Sessional Committee of the Assembly.

(3) The quorum of the Committee of Privileges established under subsection (1) shall be six including the chairman, but otherwise, subject to this Act, the Committee shall regulate its own meetings and its own procedure.

(4) The Committee of Privileges shall, either of its own motion or as a result of a complaint made by any
person, inquire into any alleged breach by any member of
the Assembly of the Code of Conduct issued under section
9, or into any conduct of any member of the Assembly
within the precincts of the Assembly (other than the
Chamber) which is alleged to have been intended or likely
to reflect adversely on the dignity or integrity of the
Assembly or the member thereof, or to be contrary to the
best interests of the Assembly or the members thereof.

(5) The Committee of Privileges shall, after such
inquiry as is referred to in subsection (4), report its findings
to the Assembly together with such recommendations as it
thinks appropriate.

(6) The Assembly shall, in accordance with rules
made by it (which rules need not be published in the
Gazette), consider the report and the recommendations
thereon and may take such disciplinary action against the
member concerned as may be provided by those rules.

(7) Any disciplinary action such as is referred to in
subsection (6) may include suspension from the service of
the Assembly.

11. Where any member of the Assembly is, under the
Standing Orders or under section 10, suspended from the
service of the Assembly, he shall, during the period of
suspension and for the purposes of this Act, be deemed to
be a stranger and in addition he shall not enter the precincts
of the Assembly without the written consent of a Speaker.

12. No proceedings or decision of the Assembly or the
Committee of Privileges acting in accordance with this Act
shall be questioned in any court.

13. The Speaker, the Sergeant-at-Arms and any other
officer authorized in that behalf by orders issued under
section 8 (1) (a) or (b), may at any time order any stranger
to withdraw from the Chamber or the precincts of the
Assembly.

PART III—EVIDENCE

14. (1) The Assembly or any standing committee
thereof may, subject to the provisions of sections 18 and
20, 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.
(2) The powers conferred by subsection (1) on a standing committee may be exercised by any other committee which is specially authorized by a resolution of the Assembly to exercise those powers in respect of any matter or question specified in the resolution.

15. (1) Any order to attend to give evidence or to produce documents before the Assembly or a committee shall be notified to the person required to attend or to produce the documents by a summons under the hand of the Clerk issued by the direction of the Speaker.

(2) In every summons under subsection (1) there shall be stated the time when and the place where the person summoned is required to attend and the particular documents which he is required to produce, and the summons shall be served on the person mentioned therein either by delivering to him a copy thereof or by leaving a copy thereof at his usual or last known place of abode in Kenya with some adult person; and there shall be paid or tendered to the person so summoned, if he does not reside within four miles of the place of attendance specified in the summons, such sum for his expenses as may be prescribed by Standing Orders of the Assembly.

(3) A summons under this section may be served by an officer of the Assembly or by a police officer.

16. The Assembly or any committee may require that any facts, matters and things relating to the subject of inquiry before it be verified or otherwise ascertained by the oral examination of witnesses, and may cause any such witnesses to be examined upon oath, which the Speaker or the chairman of the committee, as the case may be, or other person specially appointed for that purpose may administer.

17. (1) Where any person ordered to attend to give evidence or to produce any paper, book, record or document before the Assembly refuses to answer any question that may be put to him or to produce the paper, book, record or document on the ground that it is of a private nature and does not affect the subject of inquiry, the Speaker may excuse the answering of the question or the production of the paper, book, record or document, or may order the answering or production thereof.

(2) Where any person ordered to attend or to give evidence or to produce any paper, book, record or
document before any committee refuses to answer any question that may be put to him or to produce the paper, book, record or document on the ground that it is of a private nature and does not affect the subject of inquiry, the chairman of the committee may report his refusal to the Speaker with the reasons therefore; and the Speaker may thereupon excuse the answering of the question or the production of the paper, book, record or document, or may order the answering or production thereof.

18. (1) Every person summoned to attend to give evidence or to produce any paper, book, record or document before the Assembly or a committee 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.

(2) Except with the consent of the President, no public officer shall—

(a) produce before the Assembly or a committee any paper, book, record or document; or

(b) give evidence before the Assembly or a committee, relating to the correspondence of any naval, military or air force matter, nor shall secondary evidence be received by or produced before the Assembly or a committee of the contents of any such paper, book, record or document.

(3) Except upon the direction of the President, no public officer shall refuse—

(a) to produce before the Assembly or a committee any paper, book, record or document; or

(b) give evidence before the Assembly or a committee, relating to the correspondence of any civil department or to any matter affecting the public service; and secondary evidence shall not be received by or produced before the Assembly or a committee of the contents of any such paper, book, record or document which the President has directed shall not be produced.
19. (1) No member or officer of the Assembly, and no person employed to take minutes of evidence before the Assembly or any committee, shall give evidence elsewhere in respect of the contents of those minutes of evidence or of the contents of any document laid before the Assembly or that committee or in respect of any proceedings or examination held before the Assembly or that committee without special leave first obtained.

(2) The special leave referred to in subsection (1) may be given during a recess or adjournment by the Speaker, or in the absence or other incapacity of the Speaker, the Clerk.

20. Where at any time any question arises in the Assembly or in a committee in regard to—

(a) the right or power of the Assembly or a committee to hear, admit or receive oral evidence; or

(b) the right or power of the Assembly or a committee to peruse or examine any paper, book, record or document or to summon, direct or call upon any person to produce any paper, book, record or document before the Assembly or committee; or

(c) the right or privilege of any person (including a member of the Assembly or committee) to refuse to produce any paper, book, record or document before the Assembly or committee; or

shall, subject to the preceding provisions of this Act, and except in so far as express provision is made in those provisions for the determination of that question, be determined in accordance with the usage and practice of National Assembly.

PART IV—OFFENCES AND PENALTIES

21. Any person who before the Assembly or any committee intentionally gives a false answer to any question material to the subject of inquiry which may be put to him during the course of any examination shall be guilty of an offence under section 108 of the Penal Code (Cap. 63) and liable to the penalty prescribed by the appropriate section for that offence.

22. Any person, being a stranger, who—

(a) enters or attempts to enter the Chamber or the precincts of the Assembly in contravention of any order of the Speaker; or
(b) fails or refuses to withdraw from the precincts of the Assembly or the Chamber when ordered under section 8 so to do; or

(c) contravenes any order made under this Act regulating the admittance of strangers to or the conduct of strangers within the precincts of the Assembly or the Chamber, or any rule or order made by the Speaker under the Standing Orders, shall be guilty of an offence and liable, on conviction before a subordinate court of the first class, to a fine not exceeding five hundred shillings or to imprisonment for a term not exceeding three months, or to both such fine and imprisonment.

23. Any person who—

(a) disobeys any order made by the Assembly or a committee for attendance or for production of papers, books, documents or records, unless his attendance or production is excused under section 17;

(b) refuses to be examined before, or to answer any lawful and relevant question put by, the Assembly or a committee, unless refusal is excused under section 17;

(c) offers to any member or officer of the Assembly any bribe, fee, compensation, gift or reward in order to influence him in his conduct as such member or officer, or for or in respect of the promotion of or opposition to any Bill, resolution, matter, rules or thing submitted to or intended to be submitted to the Assembly or any committee;

(d) assaults, obstructs, molests or insults any member coming to, being within or going from the precincts of the Assembly, or endeavours to compel any member by force, insult or menace to declare himself in favour of or against any proposition or matter pending or expected to be brought before the Assembly or any committee;

(e) assaults, interferes with, molests, resists or obstructs any officer of the Assembly while in the execution of his duty;
(f) creates or joins in any disturbance which interrupts or is likely to interrupt the proceedings of the Assembly or any committee while the Assembly or committee is sitting; or

(g) presents to the Assembly or a committee any false, untrue, fabricated or falsified document with intent to deceive the Assembly or committee;

(h) publishes any false or scandalous libel on the Assembly or its proceedings;

(i) speaks words defamatory of the Assembly or its proceedings, shall be guilty of an offence and liable, on conviction before a subordinate court of the first class, to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding twelve months, or to both such fine and imprisonment.

24. (1) No member shall accept or receive either directly or indirectly any bribe, fee, compensation, gift or reward for or in respect of the promotion of or opposition to any Bill, resolution, matter or thing submitted or intended to be submitted for the consideration of the Assembly or any committee.

(2) Any person who acts in contravention of this section shall be guilty of an offence and liable to imprisonment for a term not exceeding two years or to a fine not exceeding ten thousand shillings, or to both such imprisonment and fine, and every bribe, fee, compensation, gift or reward accepted or received by him shall be forfeited.

PART V—MISCELLANEOUS

25. Upon any inquiry touching the privileges, immunities and powers of the Assembly or of any member, any copy of the journals printed or purporting to be printed on behalf of the Assembly shall be admitted as evidence of those journals to all courts and places without any proof being given that such copy was so printed.

26. Any person who prints or causes to be printed a copy of any Act now or hereafter in force, or a copy of any report, paper, minutes or votes and proceedings of the Assembly as purporting to have been printed by the Government Printer or by or under the authority of the Assembly, or by the Speaker, and it is not so printed, or
tenders in evidence any copy purporting to be so printed knowing that it was not so printed, shall be guilty of an offence and liable, on conviction before a subordinate court of the first class, to imprisonment for a term not exceeding three years.

27. Any person, being a defendant in any civil or criminal proceedings instituted for or on account or in respect of the publication by him or by his servant, by order or under the authority of the Assembly, of any reports, papers, minutes, votes or proceedings, may, on giving to the plaintiff or prosecutor twenty-four hours' written notice of his intention, bring before the court in which the proceedings are being held a certificate under the hand of the Speaker stating that the reports, papers, minutes, votes or proceedings in respect whereof the proceedings have been instituted were published by him or by his servant by order or under the authority of the Assembly together with an affidavit verifying the certificate, and the court shall thereupon immediately stay the proceedings, and every process issued therein shall be deemed to be finally determined.

28. In any civil or criminal proceedings instituted for publishing any extract from or abstract of any report, paper, minutes, votes or proceedings referred to in section 26, if the court is satisfied that the extract or abstract was published bona fide and without malice, judgment or verdict, as the case may be, shall be entered for the defendant or accused.

29. Neither the Speaker nor any officer of the Assembly shall be subject to the jurisdiction of any court in respect of the exercise of any power conferred on or vested in the Speaker or such officer by or under this Act or the Standing Orders.

30. Every officer of the Assembly shall, for the purposes of this Act and of the application of the provisions of the criminal law, have all the powers and enjoy all the privileges of a police officer.

31. No prosecution for an offence under this Act shall be instituted except with the written sanction of the Director of Public Prosecutions.

32. Every offence under this Act shall be cognizable to the police.
MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to regulate the privileges and powers of the members of the Assembly. The Act provides for a Code of Conduct regulating the conduct of members of the Assembly whilst within the precincts of the Assembly other than the Chamber. It establishes the Committee of Privileges whose function is to ensure the County Assembly members adhere to the code of conduct. It also provides for the offenses and penalties.

The structure of the Bill is as follows:

Part I (clauses 1-2) of the Bill contains preliminary provisions. These include the title of the Bill and interpretation of terms as used in the Act.

Part II (clauses 3-13) of the Bill provides for postponement of disqualification of any member who is disqualified for election until the appeal is finalized. It also provides for immunity from legal proceedings, freedom from arrest for civil debt during session and service of civil process. It also states the right to enter the Assembly and empowers the speaker to give orders necessary to carry out the functions of this Act. It establishes the Committee of Privileges comprised of the Speaker who will be the chairperson and ten other members of the Assembly. It provides for the Code of Conduct of members of the Assembly and provision on their suspension. This Part also provides for proceedings of the assembly not to be questioned in court and the power of the Speaker, the Sergeant-at-Arms and any other officer to order withdrawal of strangers.

Part III (clauses 14-20) this part deals with production of evidence before the Assembly or any other standing committee. It provides for power to order attendance of witnesses and that their attendance should be notified by summons. The witnesses may be examined on oath. This part gives the speaker power to excuse a witness where the witness refuses to answer questions or produce papers as evidence. It goes further to state the privileges of witness and also how to deal with questions relating to evidence and production of documents before the Assembly or committee to be determined in accordance with usage of the National Assembly.

Part IV (clauses 21-24) gives provisions on offences. It set out the offences and penalties relating to admittance to the Assembly or the Chamber among other offences. This part also provide that members should not receive reward for promotion of or opposition to Bills.

PART V (clause 27-35) sets out the miscellaneous provisions. These include Journals printed by order of the Assembly to be admitted as
evidence, penalty for printing false copy of Act, journal, and protection of persons responsible for publications authorized by the Assembly. It also gives provision on publication of proceedings without malice, prohibition that courts should not exercise jurisdiction in respect of acts of Speaker and officers of the Assembly. This part gives officers of the Assembly powers of police officer and the Director of Public Prosecutions to sanction prosecutions. It also provides that every offence under this Act shall be cognizable to the police.

The enactment of this Bill shall occasion additional expenditure of public funds which shall be provided through the estimates.

Dated the 20th March, 2014

CECELIA M. SEREKA,
Member of the County Assembly.