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CONTENT

Bill for Introduction into the Nyeri County Assembly —

The Nyeri Assembly County Service Bill, 2014 ............................ 1
THE NYERI COUNTY ASSEMBLY SERVICE BILL, 2014
ARRANGEMENT OF SECTIONS

PART I – PRELIMINARY

Section
1 — Short title
2 — Interpretation

PART II – THE COUNTY ASSEMBLY SERVICE
3 — Nature of the County Assembly Service.
4 — County Assembly Service values.
5 — County Assembly Service Code of Conduct.
6 — Complementarity of values and codes of conduct.

PART III – THE COUNTY ASSEMBLY SERVICE BOARD
7 — Incorporation of the Board.
8 — Qualifications of members of the Board.
9 — Number and type of departments of the Service.
10 — County Assembly scheme of service.
11 — Social security scheme.
12 — Meetings and procedure of the Board.
13 — Vacation of Office.
14 — Removal from Office.

PART IV – THE CLERK AND OTHER STAFF
15 — Status and general functions of the Clerk.
16 — Procedural functions of the Clerk.
17 — Exercise of functions of the Clerk during vacancy or inability.
18 — Suspension or removal of the Clerk.
19 — Retirement and resignation of employees.
PART V—FINANCIAL PROVISIONS
20—Bank accounts.
21—Estimates of expenditure.
22—Accounts and audit.
23—Review of terms and conditions of service for members and employees of the Assembly.
24—Remuneration of members of the Board.

PART VI—MISCELLANEOUS PROVISIONS
25—Annual report of operations of the Board.
26—Designated member may present documents or other matter in the Assembly.
27—Oath of office for members and staff of the Board.
28—Evidence of proceedings in the Board not to be given without leave.
29—Protection of members and staff of the Board.
30—Communication of Board privileged.
31—Offences and penalties under the Act.
32—Regulations by the Board.

SCHEDULES
FIRST SCHEDULE—OATH/AFFIRMATION MEMBER OF THE BOARD
SECOND SCHEDULE—OATH/AFFIRMATION OFFICER OF THE BOARD
THE NYERI COUNTY ASSEMBLY SERVICE BILL

AN ACT of the County Assembly of Nyeri to make provision for the County Assembly of Nyeri Service and the County Assembly of Nyeri Service Board as established under the County Governments Act, 2012 and for connected purposes

Enacted by the County Assembly of Nyeri, as follows—

PART I—PRELIMINARY

Short title

1. This Act may be cited as the Nyeri County Assembly Service Act, 2014.

Interpretation

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

“Board” means the County Assembly Service Board established under section 12 of the County Governments Act, 2012;

“Chairman” includes the vice-chairman or any other member of the Board when discharging the functions of the chairman;

“Clerk” means the Clerk of the County Assembly appointed under section 13 of the County Governments Act, 2012;

“County” means the County of Nyeri

“County Assembly Service Code of Conduct” means the code of conduct prescribed under section 5;

“County Assembly Service values” means the values specified under section 4;

“County Assembly” means the County Assembly of Nyeri;

“Discrimination” means affording different treatment to different persons attributable wholly or mainly to their respective descriptions [by a protected characteristic] whereby persons of such descriptions are subjected to disabilities, gender, religion, race, age or descriptions to which persons of another such description are not made subject or are accorded privileges and advantages which are not accorded to persons of another such description.

“member” in relation to the Board, includes the chairman and the vice-chairman of the Board;

“office”, in relation to the Service, means a paid office as an employee of the Service, not being the office of a member of the Board, or
a part-time office, or an office the emoluments of which are payable at an hourly or daily rate;

“officer” or “employee” means any person who holds or acts in any office of the Service otherwise than as a part-time officer or employee;

“secretary” includes any other officer when discharging the functions of the secretary;

“Service” means the County Assembly Service established under section 13 of the County Governments Act 2012;

“services and facilities” includes all means by which members of the County Assembly are officially assisted in performing their County Assembly duties;

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

PART II—THE COUNTY ASSEMBLY SERVICE

Nature of the County Assembly Service

3. (1) The Service shall be an institution of exemplary administrative and technical competence.

(2) 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 apolitical character of the Service and shall not seek to influence employees of the Service in the discharge of their functions.

County Assembly Service values

4. The Service shall uphold the following values—

(a) the promotion of democracy and the rule of law;

(b) the fostering of patriotism, peace and national unity;

(c) the provision of non-partisan and impartial advice and services 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 and fairness, courtesy and discipline;
The Nyeri County Assembly Service Bill, 2014

(f) the provision of a workplace that is free from discrimination, recognizes the diverse backgrounds of the Service employees and promotes both local and 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 among the two organs of County Government, to wit, the County Assembly and the County Executive in the context of their autonomy and complementarity; and

(k) such other values as the Board may, from time to time, prescribe.

County Assembly Services Code of Conduct

5. (1) The Board may, from time to time, prescribe a 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 duty—

(a) be patriotic and loyal to Nyeri County and Kenya at large and at all times act in a manner that promotes the image and interests of the country;

(b) Display honesty and integrity and act with care and diligence;

(c) use the resources of the County and the Nation conscientiously and combat corruption and misuse or wastage of public property;

(d) respect and observe the law of the land 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 marginalized 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 national 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 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 any information obtained through or in connection with the office of such employee and which is not yet made available to the public;

(m) Not to use his/her position, duties, status, power or authority in order to gain, or seek to gain, a benefit or advantage for himself/herself or for anyone else;

(n) conduct himself/herself in a manner that upholds the letter and spirit of the values and the integrity and good reputation of the Service;

(o) while on duty outside the County, conduct oneself in a manner that promotes the good image of the County and Kenya generally;

(p) Comply with any other requirements of conduct as may be prescribed by the Board.

Complementarity of values and codes of conduct

6. The County Assembly Service values and the County Assembly Service Code of Conduct provided for in sections 4 and 5 respectively 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.

PART III—THE COUNTY ASSEMBLY SERVICE BOARD

Incorporation of the Service Board

7. The County Assembly Service 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) purchasing or otherwise acquiring, holding, charging and disposing of movable or immovable property;

(c) borrowing and lending money;

(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.

Qualifications of members of the Board

8. As prescribed in Section 12(3) of the County Government Act, the County Assembly Service Board shall consist of the following:-

(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.

(e) The County Assembly Clerk who shall be the secretary to the Board.

Number and type of departments of the Service

9. (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.

(2) The Board may from time to time—

(a) allocate functions to any department of the Service;

(b) make such arrangements as appear to the Board expedient in connexion with the creation, division, amalgamation or abolition of any department of the Service.

County Assembly scheme of service

10. 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 but not limited to—

(a) the appointment and confirmation of appointment of officers and other staff;

(b) promotions, resignations and termination of appointments;

(c) the scales of salaries and allowances; and

(d) the designation and grades of officers and other staff.
Social security scheme

11. (1) The Board—

(a) May 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, retiring allowances or sickness or injury benefits to any employee.

(2) The provisions of this section shall come into operation on such date as the Board may, by notice in the Gazette, appoint.

Meetings and procedure of the Board

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

(2) The chairperson or in his/her absence the vice-chairperson may at any time convene a special meeting of the Board, and shall do so within seven days of receiving a written requisition therefore 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.

Vacation of Office

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

(a) If the person is the member of the County Assembly—
   i) at the end of the term of the County Assembly; or
   ii) if the person ceases to be a member of the County Assembly;

(b) If the person is an appointed member, on revocation of the person’s appointment by the County Assembly; or

(c) If the person is the speaker, leader of majority party or leader of minority party when the person ceases to be such a speaker, leader of majority party or leader of minority party.

Removal from Office

14. (1) 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 Chairman; or

(b) is, in the opinion of the Board, otherwise unable or unfit to discharge the functions of his/her office.

(2) Despite subsection 1, when the term of the County Assembly ends, a member of the Board under Section 8(d) shall continue in office until a new member has assumed office in the members place in the next County Assembly.

PART IV—THE CLERK AND OTHER STAFF

Status and general functions of the Clerk

15. (1) The Clerk shall be—

(a) the chief executive of the County Assembly 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.

Procedural functions of the Clerk

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

(a) rendering expert, non-partisan and impartial advice to the members of the County Assembly on County Assembly procedure and practice;

(b) carrying out such other duties and exercising powers as may be conferred on him/her 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 power conferred on him/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 the 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 until the election of a new speaker.

**Exercise of functions of the Clerk during vacancy or inability**

17. If the office of Clerk is vacant, or if for any reason the Clerk is unable to exercise the functions of his office, any other person for the time being performing the duties of the Clerk pursuant to the standing orders of the County Assembly or by direction of the Speaker shall have and may exercise all the functions, duties and powers of the Clerk.

**Suspension or removal of the Clerk**

18. The Clerk shall at any time and in such manner as may be prescribed under this Act, be suspended or removed from office by the Board for—

(a) Inability to perform the functions of his office (whether arising from infirmity of body or mind or from any other cause).

(b) Abuse of Office as defined in the Public Officers Ethics Act.

(c) Corruption.

(d) Contravening Chapter 6 of the Constitution.

(e) Misbehaviour.

(f) Contravention of Code of Conduct prescribed under Section 5 of this Act.

(g) Contravention of any other County or National Law.

(h) Resolution of the County Assembly supported by at least fifty per cent of the members of the County Assembly.

**Retirement and resignation of employees**

19. (1) An employee shall retire from the Service on attaining the age of sixty years: Provided that the Board may re-engage him/her on contract for a single term not exceeding two years.

(2) The age of retirement of an employee living with disability shall be five years above the mandatory age of retirement set by the public service.

(3) 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.

(4) 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.

**Bank accounts**

20. The Board shall open and maintain such bank accounts as are necessary for the exercise of its functions in accordance with the relevant provisions of the Public Finance Management Act.

**Estimates of expenditure**

21. (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.

(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 chairman of the Board shall dispatch a copy of the estimates agreed upon by the Board under subsection (2) to the County Executive responsible for matters relating to Finance for information.

(4) The chairman of the Board or some 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 Consolidated Fund into the County Assembly bank account.

**Accounts and audit**

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

(2) Within three months after the end of each financial year, the Clerk shall submit to the 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 Auditor-General.
Review of terms and conditions of service of members and employees of the Assembly

23. The Board may, from time to time, and upon the advice of the Salaries and Remuneration Commission review the terms and conditions of service of the employees of the County Assembly.

Remuneration of members of the Board

24. Members of the Board shall receive such allowances as may be determined by the County Assembly upon the advice of the Salaries and Remuneration Commission.

PART V—MISCELLANEOUS PROVISIONS

Annual report of operations of the Board

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

Designated member may present documents or other matter in the Assembly

26. A member of the Board (not being the chairperson or the member appointed under section 12(3) d of the County Governments Act, 2012) authorized by the Board in that behalf may—

(a) lay before the County Assembly any document or other matter;

(b) reply to a question relating to the affairs of the Board.

Oath of office for members and staff of the Board

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

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

28. (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 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 in writing.

(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.

Protection of members and staff of the Board

29. 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 or her personally to any liability, action, claim or demand whatsoever.

Communication of Board privileged

30. 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 chairman consents in writing to such production or disclosure.

Offences and penalties under the Act

31. (1) No person shall—

(i) willfully give the Board or any member thereof misleading or false information with the intention of acquiring the benefit of employment, promotion or appointment in the service or any other matter, that is before the Board;

(ii) publish or disclose to any person, any document, communication or information relating to the Board except while performing his or her duty or with the consent of the chairman.

(iii) unduly influence or attempt to influence any decision of the board or that of any member of the Board in relation to any matter pending or before the Board.

(2) Any person who contravenes this section shall be guilty of an offence under this section and shall be liable on conviction to a fine not exceeding Kshs. 50,000 or to imprisonment to a term not exceeding twelve months or both.
Regulations by the Board

32. (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.

(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;
(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;
(h) management of Ward Offices.

(3) All regulations made under this section shall be laid before the County Assembly in accordance with the relevant provisions of the Standing Orders. (4) Until the Board makes its regulations, the regulations under the Parliamentary Service Act shall with the necessary modifications, apply to the Board.

FIRST SCHEDULE

OATH/AFFIRMATION OF MEMBER OF THE BOARD

I ........................................ having been appointed as Chairperson/Vice Chairperson/Member of the 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 Chairperson/Vice-Chairperson/Member of the County Assembly Service Board, and that I will not, directly or indirectly, reveal any matter relating to such function to unauthorized persons or otherwise than in the course of my duty. SO HELP ME GOD.

Sworn/Declared by the said before me this ....... Day of....... 20 .........

CHAIRMAN/SECRETARY,
County Assembly of Nyeri Service Board.
SECOND SCHEDULE

OATH/AFFIRMATION OF OFFICER OF THE BOARD

I .............................................. being called upon to exercise the functions of secretary Officer/[other] of the County Assembly Service Board, do swear/solemnly and sincerely declare and affirm that I will not, directly or indirectly, reveal 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 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 ..... 20 ............

CHAIRMAN/SECRETARY,
County Assembly of Nyeri Service Board.
MEMORANDUM OF OBJECTS AND REASONS

The object of this bill is to provide for a legal framework for the Nyeri County Assembly Service Board. The board is established under section 12 of the County Governments Act with the mandate of establishing offices in the service to facilitate the efficient and effective running of the Assembly. However, the County Government Act only provides for the substantive responsibility of the Board. It does not provide for the procedural working of the Board living a vacuum. This Bill therefore was necessitated to fill the gaps left both in the substantive mandates as well as the procedural undertaking of the County Assembly Service Board.

PART I of the Bill provides for preliminary matters; short title and interpretation.

PART II sets out the Assembly Service values including those set out in article 10 of the Constitution as well as any other laws. It also provides for the County Assembly Service Code of Conduct upon which officers working in the County Assembly Service shall adhere to.

PART III provides the corporate status as well as membership of the board and the removal from office of the members, as contained in the County Governments Act. It also gives the board the responsibility to departments, scheme of service and the social security scheme. This part also provides for how the board should conduct its meetings.

PART IV relates to matters affecting the office of the clerk including the functions of the Clerk and removal from office. It also requires that the Board maintains an account as well as come up with budgets estimates for the County Assembly. This part also requires audits and reporting of the expenditures of the County Assembly.

PART V protects members of the Board and staff from prosecution when performing their lawful duty. It also provides offences under the Act as well as powers of the board to make regulations.

This is not a money bill as contemplated under article 114 of the Constitution.

D. M. MUGO,

Speaker/Chairperson Procedure and Rules Committee.