SPECIAL ISSUE

Kenya Gazette Supplement No. 5 (Vihiga County Bills No. 2)

REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

VIHIGA COUNTY BILLS, 2019

NAIROBI, 15th February, 2019

CONTENT

Bill for Introduction into the County Assembly of Vihiga—

The Vihiga County Assembly Service (Amendment) Bill 2019 .................................................. 1
THE VIHIGA COUNTY ASSEMBLY SERVICE (AMENDMENT) BILL, 2019

A Bill for

AN ACT of the County Assembly of Vihiga to amend the Vihiga County Assembly Service Act, No 3 of 2013

ENACTED by County Assembly of Vihiga, as follows—

1 This Act may be cited as the Vihiga County Assembly Service (Amendment) Act, 2019

2 Section 2 of the Vihiga County Assembly Service Act, 2013, hereinafter referred to as the “Principal Act” is amended by arranging the definitions in proper alphabetical order as herein under,

“Assembly” means the County Assembly of Vihiga,

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

“Chairperson” includes the Vice Chairperson or any other member of the board when discharging the functions of the Chairpersons

“Clerk” means the Clerk of the County Assembly of Vihiga appointed under section 13 of the County Government Act, 2012,

“Constitution” means the Constitution of Kenya,

“County” means the County of Vihiga,

“County Assembly Service Code of Conduct” means the code of conduct prescribed under section 6,

“County Assembly Service Values” means the values specified in or under section 5 “County Public Service board” means the County Public Service Board of Vihiga as established under section 57 of the county Government Act 2012,

“Fund” means the Vihiga County Assembly Fund established under section 28,

“Office” in relation to the board means a paid office as an employee of the board, 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 board otherwise than as a part-time officer or employee,
"Revenue Fund" means a revenue fund established under Article 207 of the Constitution,

"Secretary" means the Clerk of the County Assembly of Vihiga or any other officer appointed by the clerk, when discharging the functions of the secretary,

"Service" means the County Assembly Service established under section 4,

"Services and Facilities" includes all means by which members of the County Assembly of Vihiga County are officially assisted in performing their legislative duties, and

"Speaker" means the Speaker of the County Assembly of Vihiga

3 Section 3 of the principal act is amended as follows—

(a) in paragraph (c) by inserting the words “provide for the application of, and” before the words “give further” and by further inserting the words “the values and principals of public service set out under” before the words “Article 232” to read—

(c) Provide for the application of, and give further effect to the values and principals of public service set out under Article 232 of the Constitution

(b) In paragraph (e) by inserting the word “procedural” before the words “functions of the Clerk” and by further inserting the words “or her” immediately after the word “his” and before the words “functions as the Secretary to the Board” to read—

(e) Provide for the procedural functions of the Clerk of the County Assembly and his or her functions as the Secretary to the Board

4 Section 8 of the principal act is amended as follows,

(a) By inserting a new subsection 8(1) to read,

The Board consists of—

(a) the Speaker of the county assembly, as the chairperson,

(b) a vice-chairperson elected by the Board from the members appointed under paragraph (c),

(c) two members of the county assembly nominated by the political parties represented in the county assembly according to their proportion of members in the county assembly, and
(d) one man and one woman appointed by the county Assembly from amongst persons who are experienced in public affairs, but are not members of the County Assembly

(b) Section 8 in the principal Act shall be amended to be section 8(2)

(c) Section 8(2) is further amended by deleting the numbers “12(2)” and substituting with the numbers “12(3)” to read

In nominating or appointing any person as a member of the Board under section 12(3)(d) of the County Governments Act, 2012 the County Assembly, shall have regard to—

(a) the person’s experience or interest in consolidating and advancing the ideals and objectives of parliamentary democracy

(b) the national values and principles set out in Article 10 of the Constitution

(c) the regional and ethnic diversity of the people of the county

5 Section 9 subsection 1 of the principal act is amended as follows—

(a) Sub clause (a) by deleting the words “and a resident of the County” to read “is a citizen of Kenya”

(b) by inserting a new clause after clause (a) to read,

“holds a degree from a university recognized in Kenya,” hence clause (b) becomes clause 9 (c) and clause 9 (c) becomes clause 9 (d)

(c) Subsection 9(1) clause (b) is amended by inserting the words ‘the management’ after the word ‘experience’ and before the word ‘public’ so as to read,

‘has at least ten years’ experience in the management of public affairs’

(d) Subsection (9) 3 is deleted entirely

6 Section 10 of the principal act is amended as follows—

(a) Subsection 3(b) is amended by inserting the words ‘the Speaker,’ after the words ‘to be the’ to read,

If the person ceases to be the speaker a member of the county assembly or

(b) Subsection 3(d) is hereby amended by deleting it in its entirety
(c) Subsection 4 is amended by deleting it in its entirety and inserting therefor the following new section,

Where the Board considers it necessary to remove a Board Member under section 10(1), the Board shall—

(1) (a) frame a charge or charges against the Member

(b) forward the statement of the said charge or charges to the Member together with a brief statement of the allegations in support of the charges,

(c) invite the Member to respond to the allegations in writing setting out the grounds on which the Member relies to exculpate himself or herself, and

(d) invite the Member to appear before the Board, either personally or with an advocate as he or she may opt, on a day to be specified, to exculpate himself or herself

(2) If the Member does not furnish a reply to the charge or charges within Twenty one (21) days of the receipt of the charge or charges or if in the opinion of the Board the Member fails to exculpate himself for herself, the Board shall submit a notice of a motion to the Speaker seeking that the county assembly revokes the appointment of the Member

(3) A motion under subsection (1) shall specify—

(a) the grounds set out in section 21 in which the Member is in breach, and

(b) the facts constituting that ground

(4) Upon notice of the motion under sub-section (2), the Speaker shall refer the matter to a select committee of the assembly consisting of eleven member and established in accordance with the Standing Orders of the assembly to investigate the matter within ten days of receipt of the motion

(5) The select committee shall, within ten days, report to the assembly whether it finds the allegations against the Member to be substantiated

(6) The Member shall have the right to appear and be represented before the select committee during its investigations

(7) The assembly shall consider the report of the select committee and resolve whether to approve the motion
(8) If the assembly approves a motion filed under this section, the Member against whom the motion was filed shall be deemed to have been removed from office from the date the motion was approve.

7 Section 11 of the principal act is amended as follows,

(a) Subsection (1) clause (d) is amended by deleting sub-clauses(i)(ii) and substituting therefor with the following new sub-clauses to read,

"Initiate programmes—

(i) for training and capacity building of members and staff of the county assembly and other persons

(ii) that promote ideals of parliamentary democracy as setout in Article 127(6)(d) of the Constitution, and

(iii) that promote public awareness and participation in the activities of the county assembly, and"

(b) Clause (e) is amended by inserting the word “County” between the words “of” and “Assembly” to read,

"do such other things as may be necessary for the well-being of the members and staff of the County Assembly ”

8 Section 13 of the principal act is amended as follows—

(a) Sub-section (1) is amended by deleting the words "as may be" between the words "committees" and "necessary" and substituting with the words "it may consider" and adding the words "under this Act" after the words "exercise of its powers " to read,

"The Board may from time to time establish such committees it may consider necessary for the better carrying out of its functions and the exercise of its powers under this Act ”

10 Section 17 of the principal Act is amended as follows,

(a) By inserting a new subsection 17(2) after subsection 17(1) so as to read as follows,

'17(2) The Secretary shall be responsible to the chairperson of the Board and the Board for the general working and efficient conduct of business of the Service ‘

(b) Subsection (2) therein becomes subsection (3) and subsection (3) becomes subsection (4)
11 PART IV of the principal Act is amended by deleting the word ‘Clerks’ and substituting therefor with the word ‘Clerk’ to read, ‘the clerk and other staff’

12 Section 20 of the principal Act is amended by deleting the entire section and substituting therefor with the following clause

‘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 or, in the absence of the Deputy Clerk, any other officer in the Service appointed by the Board may exercise all the functions, duties and powers of the Clerk’

13 Section 21 of the principal Act is amended as follows,

(a) By deleting it entirely and substituting therefor with the following new sub-sections and paragraphs 21(1) to 21(9) to read,

21(1) The board may suspend or remove from office the clerk for—

(a) Inability to perform the functions of the office, whether arising from infirmity of body or mind

(b) gross misconduct or misbehaviour

(c) incompetence

(d) bankruptcy

(e) violation of the provisions of constitution, including Chapter Six of the constitution or

(f) Violation of the provisions of this Act

(2) Where the Board considers it necessary to remove the Clerk under section 21(1), the Board shall—

(a) Frame a charge or charges against the Clerk

(b) Forward the statement of the said charge or charges to the Clerk together with a brief statement of the allegations in support of the charges,

(c) Invite the Clerk to respond to the allegations in writing setting out the grounds on which the Clerk relies to exculpate himself or herself, and

(d) Invite the Clerk to appear before the Board, either personally or with an advocate as he or she may opt, on a day to be specified, to exculpate himself or herself,
(3) If the Clerk does not furnish a reply to the charge or charges within twenty-one (21) days from the date of receipt of the charge of charges or if in the opinion of the Board the Clerk fails to exculpate himself or herself, the Board shall submit a notice of a motion to the Speaker seeking that the county assembly revokes the appointment of the Clerk.

(4) A motion under sub-section 21(2) shall specify—

(a) the grounds set out in sub-section 21(1) in which the Clerk is in breach, and

(b) the facts constituting that ground.

(5) Upon notice of the motion under sub-section 2, the Speaker shall refer the matter to a select committee of the Assembly consisting of eleven members and established in accordance with the Standing Orders of the Assembly to investigate the matter within ten days of receipt of the motion.

(6) The select committee shall, within ten days report to the Assembly whether it finds the allegations against the Clerk to be substantiated.

(7) The Clerk shall have the right to appear and be represented before the select Committee during its investigation.

(8) The Assembly shall consider the report of the select committee and resolve whether to approve the motion.

(9) If the Assembly approves the motion, filed under this section, the Clerk against whom the motion was filed shall be deemed to be removed from office from the date the motion was approved.

15 The principal Act is amended by inserting a new section 25(A) to read,

(1) The Board shall establish a committee to be known as the Management Committee which shall be responsible for advising the Board on matters relating to the functions and powers of the Board under sections 11 and 12.

(2) The Management Committee shall consist of the Clerk, the deputy clerk, heads of departments and such other officers as the Board may determine.

16 Section 26 of the principal Act is amended as follows,

(a) Subsection 26(1) clause (a) is amended by deleting it entirely and substituting therefor with, a chairperson elected from amongst the members.
(b) Section 26 (1) clause (b) is amended by inserting the words ‘and an ex-officio member’ after the word ‘secretary’ to read,  
“the officer in charge of human resource as the secretary and an ex-officio member”

(a) Sub section 26(1) clause (d) is further amended by deleting the word ‘one’ and substituting therefor by the word ‘four’ and further substituting the word ‘officer’ by the word ‘officers’ to read,  
‘Four more officers appointed by the board on the recommendation of the clerk ’

(b) Section 26(2) of the principal Act is amended by deleting it entirely and substituting therefor with the following,  
The Committee established under section 26(1) above shall be responsible for advising the Board on matters relating to staff including—  
(a) Appointment, including acting appointment, promotion and transfer of employees,
(b) Confirmation in appointment of an employee on probation or the extension of the probationary period of an employee,
(c) Termination of the appointment of an employee,
(d) Compulsory retirement of an employee who has reached the age at which he can lawfully be required to retire from the Service,
(e) Retirement of an employee on the ground of ill health,
(f) Interdiction of an employee,
(g) Suspension of an employee,
(h) Stopping, withholding or deferring the normal increment of an employee,
(i) Stopping the pay or salary of an employee,
(j) Reprimanding an employee, and
(k) Reduction in the rank or seniority of an employee

(a) Section 26 subsection of the principal Act is further amended by inserting a new clause (4) to read as follows,  
“The members of the committee established under section 26(1) above shall serve for a two year renewable term ”

17 Section 30 of the principal Act is amended as follows,
(a) Section 30 subsection (2) clause (a) of the principal Act is amended by inserting the words ‘Commission on Revenue Allocation’ after the words ‘controller of Budget’ to read

‘s submit to the Auditor General the Accounts of the Board for the year with copies to the County Treasury, Controller of Budget and Commission on Revenue Allocation, and

18 Section 31 of the principal Act is amended as follows,

(a) Section 31 (2) is amended by inserting the words ‘on the advice of the Salaries and Remuneration Commission after the word ‘Board’ to read,

‘ the employees of the Board shall be paid such remuneration and allowances as shall be determined by the Board on the advice of the Salaries and remuneration commission’

(b) Section 31 of the principal Act is further amended by inserting a new sub section 3 after subsection (2) to read

‘The terms and conditions of employees of the Service shall be reviewed every three years or within such shorter period as the Board may determine’

19 Section 39(1) of the principal Act is amended by deleting the words ‘officer of Board’ and substituting therefor by the words ‘officer of the service’ to read

‘(1) A member or an officer of the Service 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

20 Section 41(2) (a) of the Principal Act is amended by deleting the word ‘National’ and substituting therefor with the word ‘County’ further deleting the word ‘parliament’ and substituting therefor with the words ‘the County Assembly’ to read,

‘the giving of the information requested is prejudicial to county security or the interests of the county assembly in the performance of its functions’

21 Section 42(1)(f) is amended by deleting the word ‘oard’ and substituting therefor with the word ‘Board’ to read, ‘Refuses to be examined before, or to answer any lawful and relevant question put by the Board or by a committee’
22 The principal Act is amended by inserting a new section 42(A) after section 42(2) to read:

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

(2) A panel appointed under subsection (1) may wholly or in part consist of persons who are not members of the Board.

23 Section 43(2) is amended by introducing a new subsection 43(2)(l) to read:

(l) Public participation and outreach, and

24 Section 43(3) of the principal Act is amended by inserting a new clause after clause 3(c) to read:

3(d) 'the principles and standards set out under the Interpretation and General Provisions Act and the Statutory Instruments Act, 2013 in relation to subsidiary legislation shall apply to regulations made under this Act.'

25 The Principal Act is amended by inserting a new section 45 to read:

45) A member of a County Assembly Service Board appointed under section 12 (3)(b), (c) and (d) of the County Governments Act, shall continue to serve as a member of the Board, as one of the persons appointed under section 12(3)(b), (c) and (d) until such time as a new Board is sworn into office.

26 The FIRST SCHEDULE in the principal Act is amended by inserting the following new sections:

2 Any person qualified in accordance with this Act may make an application to the Secretary within fourteen days of the publication of the notice.

3 The Board shall, within fourteen days after the last date of submission of applications under paragraph 2, consider the applications, shortlist, conduct interviews and recommend the name of one applicant qualified for the position.

4 The name of a person recommended under paragraph 3 shall be submitted to the county assembly for approval and appointment in accordance with the Standing Orders of the assembly.

5 If the assembly approves a person recommended under paragraph 3, the Secretary shall, within seven days after the approval, publish the name of the person in the Gazette.
6 Where the assembly rejects the person recommended under paragraph 3, the Speaker shall communicate the decision of that assembly to the Board and shall request for a fresh nomination by the Board.

7 If the county assembly rejects any of the subsequent nominees submitted by the Board for approval under paragraph 7, the provisions of paragraphs 1 to 6 shall apply.

27 The SECOND SCHEDULE in the principal Act is amended by inserting a new section.

14 The quorum for a meeting of a Committee of the Board shall be two members.

28 The principal Act is amended by inserting a new Schedule.

THIRD SCHEDULE

PROVISIONS AS TO THE CONDUCT OF THE BUSINESS AND AFFAIRS OF THE MANAGEMENT AND ADVISORY COMMITTEES

1 The committee shall meet as often as may be necessary for the carrying out of its business but it shall meet at least once every calendar month.

2 A meeting of the committee shall be held on such date and at such time as the chairperson shall determine.

3 The chairperson or in the absence of the chairperson, the vice-chairperson, shall, within seven days of receipt of a written application of at least four members, convene a special meeting of the committee.

4 Unless the majority of the total membership of the committee otherwise agree, at least seven days' written notice of every meeting of the committee shall be given to every member.

5 The quorum for a meeting of the Committee shall be three members.

6 The quorum for a meeting of a Committee of the Committee shall be two members.

7 The chairperson shall preside at every meeting of the Committee and in the absence of the chairperson at a meeting, the vice-chairperson shall preside and in the absence of both the chairperson and the vice-chairperson, the members present shall elect one of their member to preside and who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson.
8 The Committee may act notwithstanding a vacancy in its membership or absence of a member, and its proceedings shall not be invalidated by the presence or participation of a person not entitled to be present at or to participate in those proceedings.

9 The Committee shall endeavour to reach every decision by consensus.

10 Where on any matter consensus cannot be obtained, the decision of the Committee shall require the concurrence of a majority of all the members present at the meeting.

11 The Committee shall cause minutes of all proceedings of meetings of the Committee to be entered in books by the secretary for that purpose.

12 The committee shall submit quarterly reports to the County Assembly Service Board.

29 The Principal Act is amended by inserting a new FOURTH SCHEDULE as follows,

FOURTH SCHEDULE
OATH/AFFIRMATION OF OFFICE

Oath/Affirmation of Member of the Board

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

SO HELP ME GOD

Sworn/Declared by the said

Before me this day of

Chairman/Secretary

County Assembly Service Board

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

SO HELP ME GOD

Sworn/Declared by the said

Before me this day of

Chairman/Secretary

County Assembly Service Board

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 unauthorised 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

Chairman/Secretary

County Assembly Service Board
MEMORANDUM OF OBJECTS AND REASONS

The principal purpose of this Bill is to amend the Vihiga County Assembly Service Act, No 3 of 2013 to align it with the Constitution of Kenya and proper legal frame work

MASINI WYCLIFE,
Member of County Assembly