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VIHIGA COUNTY BILLS, 2019

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THE VIHIGA COUNTY ENTITIES BILL, 2019

A Bill for

AN ACT of the County Assembly of Vihiga to provide a unified and comprehensive framework for the establishment, abolition, classification and management of Vihiga County Entities and for connected purposes

ENACTED by the County Assembly of Vihiga as follows—

PART I—PRELIMINARY

Short title and commencement

1 This Act may be cited as the Vihiga County Entities Act, 2019 and shall come into operation on such date as the Governor may, by notice in the Gazette, appoint

Interpretation

2 In this Act, unless the context otherwise requires—

“Auditor-General” means the Auditor-General appointed in accordance with Article 229 of the Constitution,

“Board” means the Board of directors of a County Entity charged with the responsibility of overseeing the activities of a County Entity,

“Committee Executive Member” means the County Executive Committee Member for Treasury and Economic Planning,

“Chief executive officer” means the person appointed and employed as such in accordance with section 38 or the person who is for the time being exercising the functions and powers of a chief executive in a County Entity,

“Commercial purpose” means a function whose dynamics are governed by a competitive profit making and market driven, or that can be performed commercially but serves a strategic socio-economic objective,

“County Corporation” means an entity howsoever incorporated that is solely or partly owned by the County Government of Vihiga for commercial purposes,

“County Agency” means an entity howsoever incorporated by the county government to undertake a specific strategic objective in the delivery of public service,
“County-linked Corporation” means an entity in which the county
government or a County Entity is a shareholder with fifty percent or less
of the share capital,

“County Entity” means a county corporation or agency and includes
a subsidiary,

“Oversight Office” means the County Agencies Oversight Office
established by section 19, “Relevant Executive Committee Member” in
relation to a County Entity means the Executive Committee Member of
the Department responsible for the entity,

“Subsidiary” means a company in which a County Entity has a
controlling interest

Object and Purpose

3 The objects and purpose of this Act is—

(a) to provide a legal framework for the classification of County
Entities for the purpose of streamlining their mandates, the
establishment, management, operation and regulation of County
Entities,

(b) to give effect to the provisions of the Constitution, the County
Governments Act, the Public Finance and Management Act and
the Public Finance (County Governments) Regulations, and

(c) to provide a uniform code of governance for County Entities

Application of the Act

4 (1) This Act shall apply to all Vihiga County Entities established
under this Act and or managed by the Vihiga County Executive under this
Act, the Companies Act or under any other written law

(2) For the avoidance of doubt this Act shall not apply to the
County Public Service Board and the County Assembly Service Board

PART II—CLASSIFICATION AND ESTABLISHMENT OF
COUNTY ENTITIES

Establishment of County Corporations

5 (1) The County Government may either on its own or jointly with
one or more counties or another investor, establish a County Corporation

(2) Where a county executive committee member intends to establish
a County Corporation or a subsidiary of a county corporation, the
Committee member shall submit to the County Treasury, a written request
for the proposed establishment of the corporation or subsidiary
(3) The county Treasury shall, within sixty days after receipt of the request, conduct or cause to be conducted a feasibility assessment for the purpose of ascertaining—

(a) the economic viability of establishing the proposed corporation,
(b) the practicability of the functions of the proposed corporation being carried out by an existing county corporation, and
(c) whether or not there is need to establish a new county corporation

(4) The County Treasury shall prepare and submit a feasibility assessment report of the assessment conducted under subsection (4) to the county executive committee for consideration and approval

(5) The county executive committee shall consider the report and may approve the establishment of the proposed county corporation

(6) Where the county executive committee approves the establishment of the county corporation under subsection (6), the county government may incorporate the proposed County Corporation as a company under the Companies Act

Establishment of County Agencies

6 (1) Where a county executive committee member intends to establish a county agency, the committee member shall submit to the Oversight Office, a written request for the proposed establishment of the agency

(2) The Oversight Office shall, within ninety days after the receipt of the request, conduct or cause to be conducted a feasibility assessment for the purpose of ascertaining—

(a) the economic and strategic viability of establishing the proposed county agency,
(b) the practicability of the functions of the proposed agency being carried out by an existing county agency, and
(c) whether or not there is need to establish a new county agency

(3) Upon conducting the feasibility assessment, the Oversight Office—

(a) may, approve the establishment of the proposed county agency, and
(b) shall inform the executive committee member of its decision in writing, within five days of conducting the assessment
(4) Upon approval by the Oversight Office of the establishment of
the proposed agency under subsection(3) —

(a) the Governor may, in consultation with the county Treasury and
approval of the County Assembly establish through a Gazette
Notice, the county agency, or

(b) the county executive committee member may prepare legislation
establishing the county agency for consideration and passage by
the county assembly

Procedure before the County Assembly

7 Where legislation introduced for enactment in the County
assembly proposes to establish a county agency the county Assembly shall
consider the recommendations of the relevant committee of the County
Assembly, which shall be informed by—

(a) the Executive Committee member of the county executive
responsible for finance,

(b) the relevant Committee Executive Member of the county
executive of the relevant county department, and

(c) the Oversight Office

PART III—ADMINISTRATION

Establishment of the office of Director-General-County Entities
Oversight Office

8 (1) There is established the Vihiga County Entities Oversight
Office—

(a) headed by the Director-General appointed by the Governor from
among persons competitively recruited by the Public Service
Board,

(b) such other officers as the Governor, in consultation with the
County Public Service Board, consider necessary for the
performance of its functions under this Act

(2) The Oversight Office shall be an office in the County Public
Service

Functions of the Oversight Office

9 The Oversight Office shall—

(a) oversee County Entities on matters concerning their financial
propriety, operations, governance and management,
(b) develop guidelines for the recruitment and appointment of the Boards of directors in accordance with this Act and Chapter Six of the Constitution,

(c) develop general guidelines on human resource policies, systems and practices,

(d) develop guidelines on good corporate governance practices,

(e) advise the County government on the establishment reorganization, amalgamation, transfer of functions or dissolution of County Entities,

(f) formulate, in consultation with the Salaries and Remuneration Commission, guidelines and a remuneration policy for the recruitment and terms and conditions of service of chief executive officers and staff of County Entities,

(g) formulate guidelines for performance rewards and sanctions,

(h) set standards of performance management for the county entities,

(i) carry out regular inspections, investigations and governance audits into the affairs of County Entities and report to the responsible Executive Committee Member, and

(j) prepare annual status reports on matters relating to county agencies and submit them to the Governor and County Assembly

**Director-General, County Entities Oversight Office**

10  (1) There shall be a Director-General in charge of County Entities Oversight Office appointed by the Governor from among persons competitively recruited by the County Public Service Board

(2) The Director-General and other officers of the Oversight Office shall be appointed on such terms and conditions as the Governor may, on the advice of the Salaries and Remuneration Commission, determine

(3) The Director-General shall be responsible for the management of the Oversight Office and the performance of its functions under this Act

**Qualifications for appointment of the Director, County Entities**

11  (1) A person shall be qualified for appointment as Director if that person—

(a) holds a degree from a university recognized in Kenya in a relevant field,

(b) has demonstrable experience in the implementation of public policy,
(c) has served in a management position for a period of at least three years,
(d) is a member of a national professional body, and
(e) meets the requirements of Chapter Six of the Constitution.

(2) The Director-General shall hold office for a term of three years and shall be eligible for reappointment for one further term of three (3) years.

Vacancy in the office of the Director-General

12 (1) The office of the Director-General shall become vacant if the holder—

(a) dies,
(b) resigns from office by a notice, in writing, addressed to the appointing authority,
(c) is convicted of a felony and sentenced to imprisonment,
(d) is declared bankrupt, or
(e) is removed from office by reason of serious violation of the Constitution, gross misconduct or incompetence, or inability to perform the functions of his or her office by reason of physical or mental incapacity.

(2) Before removal under subsection (1)(e), the Governor shall—

(a) suspend the Director from office,
(b) inform him or her, in writing, of the reasons for the intended removal, and
(c) give him or her an opportunity to be heard in relation to the intended removal.

PART IV—GOVERNANCE AND ACCOUNTABILITY

Application of National Values to County Entities

13 (1) Every member of the Board and staff of a County Entity shall observe and uphold—

(a) the national values and principles of governance set out under Article 10 of the Constitution,
(b) the responsibilities of leadership set out under Article 73 of the Constitution,
(c) the values and principles of public service set out under Article 232 of the Constitution, and

(d) any other values or principles developed in accordance with this Act or any other written law

(2) Without prejudice to the generality of subsection (1), every Board of a County Entity shall—

(a) adhere to established systems, structures, programmers and guidelines for the promotion of the national values,

(b) integrate national values into county and sectoral policies,

(c) establish continuous training, awareness and dissemination programmes on the national values to its staff, key stakeholders and customers,

(d) develop a citizen service delivery charter in line with the national values,

(e) accord an enabling environment including partnerships and collaboration for purposes of mainstreaming of national values,

(f) institutionalize an internal code of conduct and ethics to mainstream the national values, and

(g) integrate national values in their performance contracting and management systems

**General Performance Principles**

14 (1) A County corporation shall ensure that all its activities conform to internationally recognized prudent commercial principles and endeavor to achieve a level of profit consistent with its functions

(2) A County agency shall perform its non-commercial functions in an efficient and effective manner consistent with the requirements of its strategic and annual plan

(3) The strategic plan of an agency as contemplated in subsection (2) shall be approved by the relevant Committee Executive Member and contain such information as the Executive Committee Member may in consultation with the agency determine

**Performance Management**

15 (1) The Board of a County Entity shall, in preparing the strategic or annual plan of the entity, prepare a performance statement specifying—

(a) the various performance targets that the entity intends to achieve in the subsequent financial year or other period specified in the statement,
(b) accountability and reporting mechanisms, and
(c) such other matters as the Company or Oversight Office may determine

(2) For the purposes of realizing performance management under this section, performance targets and performance contracts shall be set and signed between—

(a) the county corporations and the Governor, and

(b) the county agencies and the relevant county executive committee member

**General duties and responsibilities of Boards of County Entities**

16 (1) The Board of a County Entity shall be responsible for overseeing the operations of the respective entity and its subsidiaries with the goal of securing continuous improvement of performance, and protecting the long-term viability of the agency and the financial interests in the agency

(2) Without limiting the effect of subsection (1), the Board of a County Entity shall ensure that—

(a) the strategic and annual plans of the entity are consistent with the government sector policy,

(b) the business plans and targets of the entity are consistent with the entity’s charter and performance statement,

(c) the entity and its subsidiaries have appropriate management structures and systems for monitoring management performance against plans and targets,

(d) there are in place, systems necessary to ensure that corrective action is, where necessary, undertaken,

(e) appropriate systems and practices are established for management, financial planning and control, including systems and practices for the maintenance of accurate and comprehensive records of all transactions, assets and liabilities and physical and human resources of the entity and its subsidiaries,

(f) all the plans, targets, structures, systems and practices of the entity are regularly reviewed and revised as necessary to address changing circumstances and reflect best current commercial practices,

(g) the entity and its subsidiaries operate within the limits and requirements imposed by or under this Act or any other law,
(h) the entity and its subsidiaries observe high standards of corporate and business ethics,

(i) the entity receives regular reports on the performance of its subsidiaries,

(j) the relevant Executive Committee Member is advised, as soon as is practicable, of any material development that affects the financial or operating capacity of the entity or any of its subsidiaries or gives rise to an expectation that the entity or any of its subsidiaries may not be able to meet its debts as and when they fall due, and

(k) all information furnished by the entity or any of the subsidiaries is accurate and comprehensive

Duty of care

17 (1) A member of the Board of a County Entity shall at all times exercise a reasonable degree of care and diligence in the performance of the functions of that office and, without limiting the effect of the foregoing, shall for that purpose —

(a) take reasonable steps to inform himself or herself about the agency and its subsidiaries, its businesses and activities and the circumstances under which they operate,

(b) take reasonable steps to obtain sufficient information and advice about all matters to be decided by the Board or pursuant to a delegation in order to enable him or her to make conscientious and informed decisions, and

(c) exercise an active discretion with respect to all matters to be decided by the Board or pursuant to a delegation

(2) A member of Board is bound to give continuous attention to the affairs of the entity and is in addition required to exercise reasonable diligence in the preparation for and attendance of for Board meetings

(3) In determining the degree of care and diligence required to be exercised by a member of the Board, regard shall be had to the skills, knowledge or acumen possessed by the member and the degree of risk involved in any particular circumstances

(4) A member of Board who is culpably negligent in the performance of his or her functions commits an offence

(5) A member of the Board is not culpably negligent for the purposes of subsection (4) unless the court is satisfied the member's conduct fell sufficiently short of the standards required under this Act of the director to warrant the imposition of a criminal sanction
Disclosure

18 (1) A member of the Board of a County Entity who has a direct or indirect personal or pecuniary interest in a matter decided or under consideration by the Board shall—

(a) as soon as reasonably practicable, disclose, in writing, to the Board the full and accurate details of the interest,

(b) not participate in any discussion by the Board relating to that matter,

(c) not vote in relation to that matter, and

(d) be absent from the meeting room when any such discussion or voting is taking place

(2) If a member of the Board makes a disclosure of interest and complies with requirements of subsection (1) in respect of a proposed contract, the contract shall not be avoided by the entity, and the member is not liable to account to the entity for any losses that may be incurred upon entering into the contract

(3) If a member of the Board fails to make a disclosure of interest or fails to comply with any other requirement of subsection (1) in respect of a proposed contract, the entity or Executive Committee Member may void the contract

(4) The entity or Executive Committee Member shall not void a contract under subsection (3) if the member of the Board has acquired an interest in property the subject of the contract in good faith for valuable consideration and without notice of the contravention

(5) Where a member of the Board of a County Entity has or acquires a personal or pecuniary interest, or is or becomes the holder of an office, such that makes it reasonably foreseeable that a conflict might arise with his or her duties as member of the Board of the entity, the member of the Board shall as soon as is reasonably practicable, disclose to the Board, in writing, of the entity the full and accurate details of the interest or office

(6) A disclosure under this section must be recorded in the minutes of the Board and reported to the County Executive Committee Member

(7) Without limiting the effect of this section, a member of the Board shall not be perceived to have an interest in a matter for the purposes of this section if an associate of the member of the Board has an interest in the matter

(8) This section shall not apply in relation to a matter in which a member of the Board has an interest while the director is not aware of the interest in the matter
(9) In any proceedings against a Board member, the burden will lie on the director to prove that he or she was not, at the material time, aware of the interest.

**Reporting requirements**

19 (1) Every Board of an agency shall, at the end of each financial year, publish a report outlining the measures taken by the entity towards the realization of the values and principles of the public service in accordance with Article 232 of the Constitution and the provisions of the code of governance referred to in section 23.

(3) The report under subsection (1) shall be submitted to the County Governor.

(4) Notwithstanding the provisions of subsection (1) the governor may at any time require a County Entity to submit a report on a particular issue.

**Composition of Boards of County Corporations and Agencies**

20 (1) The Board of a County Corporation or Agency shall consist of—

(a) a Chairperson,

(b) a representative of the county executive or county Treasury,

(c) at least two and not more than four persons appointed in accordance with subsection (3), and,

(d) the Chief Executive Officer of the entity.

(2) Every appointment under subsection (1) (a) and (c) shall be—

(a) be done by the Governor based on guidelines issued by the Oversight Office,

(b) by name through a notice in the Gazette, and

(c) for a period of three years but the Chairperson or Member of the Board shall, on the basis of satisfactory performance, be eligible for reappointment for one further term of three (3) years.

(3) The recruitment process leading to the appointments under this section shall be conducted in an open, transparent and competitive manner.
Qualifications for appointment as a Chairperson or member of a Board

21 (1) A person shall be eligible for appointment as a chairperson or member of a Board of a County Entity if the person—

(a) holds a degree in the relevant field from a university recognized in Kenya,

(b) has proven business management or other relevant professional experience,

(c) has served in a position of management for a period of at least three years for the Chairperson and two years for a member,

(d) has not served in the same entity as an employee in the preceding five years,

(e) is a member of a professional body for the Chairperson, and

(f) meets the requirements of Chapter six of the Constitution

(2) A person shall qualify for appointment as a Chief Executive Officer of a Board of a County Entity if such person—

(a) holds a degree in the relevant field from a university recognized in Kenya,

(b) has at least five years knowledge and experience in the relevant field,

(c) has served in a position of management for a period of at least three (3) years, and

(d) meets the requirements of Chapter Six of the Constitution

(3) In nominating and appointing persons as chairperson and members of the Board of County Entities, County Executive Committee Member and the Governor shall ensure that the Board reflects the regional and ethnic diversity of the people of Vihiga and that not more than two-thirds of the members are of the same gender

Conduct of business and affairs of the Boards

22 (1) The Board shall regulate its own procedure in the conduct of its business and affairs

(2) The procedure adopted by the Board under subsection (1) shall comply to the Constitution, the fair Administrative Act and all written Laws
Vacation of office

23 (1) A member of a Board other than an ex-officio member may—

(a) at any time resign from office by notice in writing to the County Executive Committee Member of the relevant department,

(b) be removed from office by the appointing authority on recommendation of the Board if the member—

(i) commits a serious violation of the Constitution or any other law including a contravention of Chapter Six of the Constitution,

(ii) has been absent from three consecutive meetings of the Board without the permission of the appointing authority,

(iii) is convicted of a criminal offence that amounts to a felony under the law,

(iv) is incapacitated by prolonged physical or mental illness for a period exceeding six months,

(v) breaches the code of governance, or

(vi) is otherwise unable or unfit to discharge his functions.

(2) Where a vacancy arises under subsection (1), the provisions of sections new member(s) shall be appointed in accordance with this Act to serve for the remainder of the term of office of the member being replaced.

Committees of the Board

24 (1) The Board of County Entity may establish such committees as it may consider necessary for the performance of its functions.

(2) The Board shall appoint the chairperson of a committee established under subsection (1) from amongst its members.

(3) The Board may where it considers it necessary, co-opt any person to sit in a committee, whose knowledge and skills are necessary for the functions of the committee.

(4) A person co-opted into a committee under subsection (3) may attend the meetings of the committee and participate in its deliberations but shall not have power to vote.

(5) All recommendations of the committees appointed under subsection (1) shall be considered and may be approved by the Board.
Power of the Oversight Office to recommend removal

25 (1) Notwithstanding the provisions of any other written law establishing and governing a County Entity, the Oversight Office may, at any time it appears to it that the Board of a County Entity has failed to carry out its functions in the public interest, recommend the revocation of the appointment of any member of the Board or disband the entire Board.

(2) Where a member of the Board or the Board has been removed from office as in (1) above, a new member or a new Board as the case maybe shall be appointed in accordance with this Act to serve for the remainder of the term.

Corporate Status

26 A County Entity 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) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property,
(c) borrowing money or making investments, and
(d) doing or performing all other acts or things for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.

Powers of the Board of County Entity

27 (1) The Board of a County Entity shall have all powers necessary for the proper performance of the functions of the entity under this Act.

(2) Without prejudice to the generality of the foregoing, the Board of a County Entity shall have power to—

(a) control, supervise and administer the assets of the entity in such manner as best promotes the purposes for which the entity is established,
(b) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the entity,
(c) receive any grants, gifts, donations or endowments and make legitimate disbursements therefrom,
(d) open such banking accounts for its funds as may be necessary,
(e) invest any of its funds not immediately required for its purposes in any manner authorized under this Act, and
(f) undertake any activity necessary for the fulfilment of any of its functions

Remuneration

28 The Oversight Office shall, in consultation with the Salaries and Remuneration Commission, determine the payment of remuneration, fees or allowances of the members of Boards of County Entities

Appointment of the Chief Executive Officer

29 (1) Every County Entity shall have a chief executive officer who shall be competitively recruited and appointed by the Board of the entity in such manner as may be prescribed by the Oversight Office

(2) The terms and conditions of service of the chief executive officer shall be specified in the instrument of appointment having regard to the advice of the Salaries and Remuneration Commission, and the market trends

(3) The chief executive officer shall be appointed for a period of four years and may be re-appointed for one further term of four (4) years on the basis of satisfactory performance

(4) The chief executive officer shall be responsible to the Board of the entity for the day-to-day management of the affairs of the entity, and perform such other functions as the Board may direct

(5) A person shall not be qualified for appointment under this section unless that person—

(a) holds a degree from a university recognized in Kenya,
(b) has at least three years professional experience, and
(c) meets the requirement of Chapter six of the Constitution

(6) The Chief Executive Officer may be removed from office on any of the following grounds—

(a) serious violation of the Constitution or other law,
(b) gross misconduct,
(c) physical or mental incapacity to perform the functions of the office,
(d) incompetence,
(e) unsatisfactory performance, or
(f) bankruptcy
(7) Before removal under subsection (6), the chief executive officer—

(a) may be suspended from office by the Board,

(b) shall be informed, in writing, of the reasons for the intended removal, and

(c) shall be given an opportunity to put in a defense against any such allegations.

Secretary to the Board

30 (1) The Chief Executive Officer shall be the Secretary to the Board of a County Entity.

(2) The Secretary to the Board shall attend all the meetings of the Board and may, with the consent of the person presiding at a meeting, take part in the deliberations on any matter arising at the meeting, but shall not be entitled to vote on any such matter.

(3) The Secretary to the Board shall be responsible for arranging the business of the Board’s meetings, keeping records of the Board’s meetings, keeping records of the proceedings of the Board, and shall perform such other duties as the Board may direct.

Staff of County Entities

31 (1) A County Entity may appoint such officers and other staff as are necessary for the proper discharge of the functions of the entity under this Act, upon such terms and conditions of service as its Board may on, the advice of the Salaries and Remuneration Commission, determine.

(2) The appointment of staff under subsection (1) shall be subject to the general guidelines and directions of the Board as the case maybe.

(3) The County Secretary may, at the request of a County Entity, second such officer(s) from the County Public Service to serve in a County Entity for a specified period of time, terms and conditions.

Delegation by a County Entities

32 The Board of a County Entity may, by resolution either generally or in any particular case, delegate to any committee or member of the Board or to any officer, employee or agent of the entity, the exercise of any of the powers or the performance of any of the functions or duties of the entity under this Act or under any other written law.
Common Seal

33 (1) The common seal of a County Entity shall be kept in such custody as the board may direct and shall not be used except on the order of the Board

(2) The affixing of the common seal of an entity shall be authenticated by the signature of the chairperson and the chief executive officer of the entity and any document not required by law to be made under seal and all decisions of the entity may be authenticated by the signatures of both the chairperson and the chief executive officer

(3) Notwithstanding the provisions of subparagraph (2) an entity shall, in the absence of either the chairperson or the chief executive officer in a particular matter, nominate one member to authenticate the seal on behalf of either the chairperson or the chief executive officer

(4) The common seal of an entity when affixed to a document and duly authenticated shall be judicially noticed and unless the contrary is proved, any necessary order or authorization by the entity under this section shall be presumed to have been duly given

Funds of a County Entity

34 (1) The funds of a County Entity shall include—

(a) such monies as may be appropriated to the entity by the county assembly as may be appropriate,

(b) such fees, monies or assets as may accrue to or vest in the entity in the course of the exercise of its powers or the performance of its functions under this Act or under any written law, and

(c) monies from any other source provided for or donated or lent to the entity

(2) Revenues generated by a County Entity shall form part of the funds of the entity

Financial year

35 Except as otherwise provided, the financial year of a County Entity shall be the period of twelve months ending on the Thirtieth June in each year

Annual estimates

36 (1) At least four months before the commencement of each financial year, every County Entity shall cause to be prepared estimates of the revenue and expenditure of the entity for that year
The Vihiga County Entities Bill 2019

(2) The annual estimates shall make provision for all estimated expenditure of the entity for the financial year and in particular, the estimates shall provide for—

(a) the payment of the allowances and other charges in respect of members of the Board of entity,

(b) the payment of salaries, pensions, gratuities and other charges in respect of the staff of the entity,

(c) the proper maintenance of the buildings and grounds of the entity,

(d) the maintenance, repair and replacement of the equipment and other property of the entity and

(e) the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other matter as the entity may deem appropriate

(3) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and shall be submitted to the county executive committee for approval and after the approval, the entity shall not increase the annual estimates without the consent of the member of the county executive committee

Accounts and Audit

37 (1) A County Entity shall cause to be kept all proper books and records of accounts of the income, expenditure and assets of the entity

(2) Within a period of four months from the end of each financial year, the entity shall submit to the Auditor-General, the accounts of the entity together with—

(a) a statement of the income and expenditure of the entity during that year,

(b) a balance sheet of the entity on the last day of that year, and

(c) any other records of account required under the Public Audit Act

(3) The accounts of County Entities shall be audited and reported upon in accordance with the Public Audit Act and the Public Finance Management Act

Restriction on loans to Board members and staff

38 Notwithstanding any other written law establishing a County Entity or its memorandum and articles of association, a County Entity shall not grant to a member of the Board or staff any loan or advance or
arrange any credit facility for the member or member of staff except in accordance with regulations made by the entity under this section and approved by the County Executive Committee

**Inspection of County Entities**

39 (1) For the purposes of carrying out the functions under this Act the Oversight Office as the case may be, shall have the power to—

(a) call for and inspect all books, records, returns and documents which relate to the accounts of, or to execution of the functions of, any state corporation or state agency, respectively, and

(b) enter and inspect the premises, including any plant and installation thereon, of any state corporation or state agency, respectively

(2) The County Executive Committee and Auditor-General may, if they consider it desirable, require the Oversight Office to conduct special investigations of any County Entity on their behalf and to report the findings to them

**Powers of Oversight Office after investigations**

40 (1) In any investigation conducted under this Act, the Oversight Office shall have power to—

(a) disallow any item of account which is contrary to the law or to any direction lawfully given to a County Entity,

(b) surcharge the amount of any expenditure so disallowed upon the person responsible for incurring or authorizing the expenditure,

(c) surcharge any sum which has not been duly brought to account upon the person by whom that sum ought to have been brought into account,

(d) surcharge the amount of any loss or deficiency upon any person by whom negligence or misconduct the loss or deficiency has been incurred,

(e) certify the amount due from any person upon whom the has made a surcharge

(2) The Oversight Office shall not make an order pursuant to subsection (1) unless it—

(a) issues to the County Entity or concerned person, a notice of at least fourteen days of its investigations and its findings, and

(b) grants the entity or concerned person, an opportunity to be heard on the mattei
(3) The Oversight Office shall, as soon as practicable after hearing the entity or concerned person on the matter under subsection (2) and certifying the amount of surcharge, furnish the person surcharged with a certificate of surcharge in the prescribed form

(4) For the purposes of this section, a member of the Board of a County Entity shall be deemed to be responsible for incurring or authorizing an expenditure if, being present when the resolution of the Board or committee thereof incurring or authorizing the expenditure was passed, the member voted in favour of it, or he did not cause his or her vote against the resolution to be recorded in the minutes

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

Decisions of the Oversight Office

41 (1) A decision of the Oversight Office on disallowance or surcharge made under this section shall be communicated in writing and be accompanied by the reasons for the decision

(2) Any person who is aggrieved by a disallowance or surcharge may, within thirty days of the date of the certificate of surcharge, appeal by written memorandum to the County Executive Committee

(3) The County Executive Committee shall, on an appeal, have power to confirm, vary or quash the decision of the Oversight Office, and to remit the case to the Oversight Office with such directions as the County Executive Committee may consider fit for giving effect to its decision

(4) Appeals from the decision of the County Executive Committee under this section may be challenged in the Court of Law with the requisite jurisdiction

(5) The Courts of Law shall not have jurisdiction over any disputes under this Act until and unless the procedure under this section is exhausted

PART VI—MISCELLANEOUS PROVISIONS

Dissolution and merger of County Entities

42 (1) The Oversight Office shall conduct regular audits of County Entities to assess the relevance of the mandate and the justification for their continued existence and where necessary make recommendations to the County Executive Committee for the dissolution or merger of entities
(2) The Oversight Office may by notice in the gazette prescribe guidelines for dissolution and merger of County Entities

(3) Upon approval of the recommendation to dissolve or merge an entity, the Oversight Office shall forthwith dissolve or merge the entity with another

Offences and penalty

43 An entity which, or an officer who, fails to render or submit or make available for inspection any record, book, account or information required by or pursuant to this Act, or which or who restricts the Oversight Office in the performance of its duties commits an offence and shall be liable, on conviction to a fine not exceeding two hundred thousand shillings or imprisonment for a term not exceeding one year or both

Regulations

44 The County Executive Committee Member in charge of Finance and Economic Planning may, in consultation with the Oversight Office, make regulations generally for the better carrying into effect of the provisions of this Act

Existing County Entities

45 (1) The County Entities existing before the commencement of this Act including Vihiga FM Limited and Amatsi Water Services, shall be deemed to have been established under this Act

(2) The responsible County Executive Committee Member shall, within Ninety (90) Days from the commencement of this Act establish mechanisms to ensure that the management and governance of existing County Entities is in accordance with this Act
MEMORANDUM OF OBJECTS AND REASONS

The Principal Object of this Bill is to provide for a unified and comprehensive legal framework for the Classification of County Entities for the purpose of streamlining their establishment, abolishment, management and mandates within the County.

The Bill is structured as follows:

PART I (Clauses 1–4) of the Bill contains preliminary provisions. These include the title of the Bill, interpretation of terms as used in the Bill, object and purpose of the Bill as well as its application.

PART II (Clauses 5–7) of the Bill contains provisions on classification and establishment of County Entities that comprise of County Corporations, County Agencies and/or their Subsidiaries. It provides for procedure for their establishment and outlines the roles of the Oversight Office, the relevant County Executive Committee Member, the Governor and the County Assembly.

PART III (Clauses 8–12) of the Bill provides for the general administration of the County Entities. This part provides for the establishment of the County Entities Oversight Office to be headed by a Director-General. It describes the functions of the Oversight Office as well as outlining the qualifications for appointment to the Office of the Director-General and other staff of the Office. It explains the vacation of the office of the Director-General and procedure for his/her removal.

PART IV (Clauses 13–41) of the Bill contains provisions for the governance of County Entities. The part outlines the general performance principles that guide the County Entities. It describes composition and general duties and responsibilities of the Boards of County Corporations and Agencies. The part explains the conduct of business and affairs of members of the Boards.

The part provides for the establishment of Committees of the Boards as well as powers of the Oversight Office to remove a member of or/and the entire Board. It describes the Remuneration of staff of the County Oversight Office as well as procedure for the appointment of a Chief Executive Officer in the Oversight Office. It explains the sources of funds of the County Entities and financial management procedures and accountability mechanisms.

PART V (Clauses 42–45) of the Bill describes miscellaneous provisions that include power by the Oversight Office to dissolve/merge County Entities. The part also provides for powers to make regulations and includes transition clauses.

ZAKARIAH MUREFU,
Chairperson Finance Committee