KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2022

NAIROBI, 27th May, 2022

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BILL, 2022

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SCHEDULE—PROVISIONS RELATING TO
THE CONDUCT OF BUSINESS AND
AFFAIRS OF THE BOARD
THE UNEMPLOYMENT INSURANCE AUTHORITY
BILL, 2022

A Bill for

AN ACT of Parliament to provide for the payment of
unemployment benefits to certain employees; to
provide for the establishment of the
Unemployment Insurance Authority and for
connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART 1— PRELIMINARY

1. This Act may be cited as the Unemployment
Insurance Authority Act, 2022.

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

"Authority" means the Unemployment Insurance
Authority established by section 6;

"benefits" includes the benefits paid out of the
unemployment insurance fund, to an unemployed person to
which this Act applies as may be prescribed by the Cabinet
Secretary under regulations;

"Board" means the Board of the Authority constituted
pursuant to section 10;

"Cabinet Secretary" means the Cabinet Secretary of
the ministry for the time being responsible for matters
relating to labour;

"child" has the meaning assigned to in the
Constitution;

"contribution" means the amount payable by the
employer or a contributor to the Unemployment Insurance
Authority;

"contributor" means a natural person—
(a) who is or was employed;
(b) to whom this Act, in terms of section 3, applies;
and
(c) who can satisfy the Director-General that he or she
has made contributions for purposes of this Act;
“employee” means a person employed for wages or a salary and includes an apprentice, intern and indentured learner;

“employer” means any person, public body, firm, corporation or company who or which has entered into a contract of service to employ any individual and includes the agent, foreman, manager or factor of such person, public body, firm, corporation or company;

“Director-General” means a person appointed as such under section 17;

“Fund” means the Unemployment Insurance Fund established by section 29;

“Unemployment insurance” means type of compulsory insurance the purpose of which is to provide labour market services, pay labour market benefits, except unemployment allowance, provide, upon unemployment, partial compensation for the lost income to insured persons for the time of the search for work, compensation of the expenses related to the termination of employment contracts to employees and service relationships to officials in the case of lay-offs, and the protection of the claims of the employees upon insolvency of employers;

“register” mean a register maintained by the Authority under section 25; and

3. The object and purpose of this Act is to establish an unemployment insurance fund to which employers and employees contribute and from which employees who become unemployed or their beneficiaries, as the case may be, are entitled to benefits and in so doing to alleviate the harmful economic and social effects of unemployment.

4. (1) This Act applies to—

(a) employees under a contract of employment contemplated under the Employment Act, 2007 and their employers; and

(b) employees in the national and county governments;

(2) Notwithstanding subsection (1)(a), this Act shall not apply to certain cadre of public officers as may be
prescribed in regulations by the Cabinet Secretary taking into consideration the advice of the Salaries and Remuneration Commission and Cabinet Secretary responsible for matters relating to finance.

5. All persons subject to this Act shall at all times respect, uphold and defend the values and principles enshrined in the Constitution.

PART II—ESTABLISHMENT AND COMPOSITION OF THE AUTHORITY

6. (1) There is established a body to be known as the Unemployment Insurance Authority.

(2) The Authority is 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;

(d) entering into contracts; and

(e) 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.

7. (1) The headquarters of the Authority shall be in Nairobi.

(2) The Authority shall ensure reasonable access of its services in all parts of Kenya, so far as it is appropriate to do so having regard to the nature of the service.

(3) Notwithstanding subsections (1) and (2), the Authority shall keep and maintain an up-to-date data system and other service delivery mechanisms that are accessible in all parts of Kenya.

8. The functions of the Authority shall be to—

(a) advise the Cabinet Secretary on unemployment insurance policy, unemployment policy and legislation;
(b) advise the national and county governments on policies for minimising unemployment;

(c) advise the national government on the creation of schemes to alleviate the effects of unemployment;

(d) advise both the national and county governments on any policy matter touching on unemployment and unemployment insurance;

(e) facilitate the implementation of national government policies and county government policies on unemployment insurance; and

(f) perform such other function as may be assigned to it by any other written law.

9. The Authority shall take steps to achieve its objects with the means at its disposal and may, subject to this Act and any other written law, for the purpose of achieving its objects—

(a) exercise such powers and perform such duties as may be given or assigned to the Authority by this Act or any other written law;

(b) enquire into and report to the Cabinet Secretary on any matter concerning the objects and functions of the Authority;

(c) advise the Cabinet Secretary on any matter deemed by the Authority to be necessary or expedient to be considered by the State in connection with the provisions of this Act or the application thereof, and on any other matter relating to unemployment which has been referred by the Cabinet Secretary to the Authority for the advice and recommendations of the Authority;

(d) conduct a study on any matter relating to its mandate;

(e) through the relevant State authorities, gather information relevant to the discharge of its functions;

(f) take the necessary steps to protect the youth against any form of abuse or exploitation;
(g) subject to the provisions of this Act, cause its work to be performed by persons employed or appointed by it in terms of this Act;

(h) develop, maintain and publish, online or otherwise, a computerized data base with information required for the proper performance of its functions;

(i) provide or disseminate information promoting and encouraging compliance with this Act;

(j) in the prescribed manner, establish a complaints office to receive, process, refer or deal with complaints regarding any matter pertaining to its mandate;

(k) furnish information required by any department or any organ of State for the purposes of its functions;

(l) become a member of an association or organisation which seeks to promote any matter in which the Authority has an interest;

(m) establish relations with or enter into co-operation agreements with bodies or offices offering similar services in other countries.

10. (1) The Authority shall be governed by a Board consisting of—

(a) a chairperson appointed by the President;

(b) the Principal Secretary of the Ministry for the time being responsible for matters relating to finance;

(c) the Principal Secretary of the Ministry for the time being responsible for matters relating to labour;

(d) the Secretary of the Public Service Commission;

(e) two youths, one man and one woman, nominated by the National Youth Council and appointed by the Cabinet Secretary;

(f) one person competitively recruited and nominated by the Federation of Kenya Employers;
(g) one person competitively recruited and nominated by the Central Organization of Trade Unions;

(h) one person competitively recruited with relevant academic qualifications nominated by the Council of Governors; and

(i) the Director-General, who shall be the secretary.

(2) A person shall be qualified for appointment as the chairperson of the Board if that person—

(a) is a citizen of Kenya;

(b) meets the requirements of Chapter Six of the Constitution; and

(c) has at least five years experience in labour matters.

11. Members of the Board shall be paid such remuneration and allowances as the Salaries and Remuneration Commission shall determine.

12. Members of the Board, other than the *ex-officio* members, shall hold office for a term of three years and shall be eligible for reappointment for one further and final term of three years.

13. (1) The Board may establish such committees as may be necessary for the proper discharge of its functions under this Act or any other written law.

(2) The Board may co-opt into the membership of the committees established under subsection (1) any person whose knowledge and expertise may be required.

14. (1) The Authority may, by resolution generally of the Board or in any particular case, delegate in writing, to a committee or any officer, member of staff or agent of the Authority, the exercise of any of the powers or the performance of any of the functions or duties of the Authority under this Act.

(2) A delegation under subsection (1) shall not prevent the Authority from exercising the power in question.
(3) A delegation under this section—

(a) shall be subject to such conditions as the Board may impose;

(b) shall not divest the Authority of the responsibility concerning the exercise of the powers or the performance of the duty delegated; and

(c) may be withdrawn, and any decision made by the person to whom the delegation is made may be withdrawn or varied by the Authority.

15. (1) The conduct of business and affairs of the Board shall be as set out in the Schedule.

(2) Except as provided in the Schedule, the Board may regulate its own procedure.

16. (1) The Authority shall operate under the supervision of the Cabinet Secretary.

(2) Where the Authority fails to maintain any prescribed standard in the fulfilment of its functions under this Act, the Cabinet Secretary may give general or special directions to the Authority describing the extent of the failure and stating the steps required to remedy the situation.

17. (1) There shall be a Director-General of the Authority who shall be appointed competitively by the Board.

(2) A person shall be qualified to be appointed as a Director-General if that person—

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

(b) meets the requirements of Chapter Six of the Constitution; and

(c) has at least ten years experience, two of which shall be in a management level.

(3) The Director-General shall hold office for a period of three years, on such terms and conditions of employment as the Board may determine, and shall be eligible for re-appointment.
(4) The Director-General may be removed from office by the Board in accordance with the terms and conditions of service for—

(a) inability to perform the functions of the office of the Director-General arising out of physical or mental incapacity;
(b) gross misconduct or misbehaviour;
(c) incompetence or neglect of duty;
(d) violation of the Constitution; or
(e) any other ground that would justify removal from office under the terms and conditions of service.

(5) Prior to removal under subsection (4), the Director-General shall be given—

(a) sufficient notice of the allegations made against him or her; and
(b) an opportunity to present a defence against the allegations.

(6) The Director-General shall—

(a) subject to the direction of the Board, be responsible for the day to day management of the Authority;
(b) in consultation with the Board, be responsible for the direction of the affairs and transactions of the Authority, the exercise, discharge and performance of its objectives, functions and duties, and the general administration of the Authority;
(c) be the secretary of the Board.

18. (1) The Board shall competitively appoint suitably qualified staff as may be necessary for the efficient performance of the functions of the Authority.

(2) In the appointment of staff of the Authority, the Board shall comply with the values and principles set out in the Constitution and in particular—

(a) afford adequate and equal opportunities for appointment and advancement at all levels, of youth, men and women, members of all ethnic groups, gender and persons with disabilities;
(b) exercise transparency in the recruitment process;
(c) ensure competitive recruitment and selection on the basis of personal integrity, competence and suitability.

19. The staff of the Authority shall serve the Authority on such conditions of service as the Board may, in consultation with the Public Service Commission and the Salaries and Remuneration Commission, determine.

PART III—REGISTRATION

20. (1) A person seeking employment may register with the Authority.

(2) The Authority shall not charge a fee or any form of charges for registration under this Act.

21. A person shall be eligible for registration under this Act if the person—

(a) is a citizen of Kenya or a person who is ordinarily resident in Kenya;
(b) is subject to the Act; and
(c) is of sound mind.

22. It shall be the responsibility of the applicant to continuously update or communicate to the Authority any changes on their bio-data as and when they arise.

23. (1) An applicant shall at all times ensure that all information given to the Authority is factual.

(2) The Authority shall not be responsible for false or inaccurate information submitted by an applicant.

(3) An applicant who offers false or inaccurate information to the Authority commits an offence and shall be liable, on conviction, to a fine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding three months, or both.

24. (1) The Authority shall keep and maintain an up-to-date register of all unemployed persons.
(2) The register referred to under subsection (1) shall contain—

(a) particulars of the unemployed person;
(b) academic qualifications of the unemployed person;
(c) work experience, if any, of the unemployed person;
(d) contact details of the unemployed person;
(e) the county from which the unemployed person comes from;
(f) ethnicity and tribe of the unemployed person, if known;
(g) details of whether the unemployed person is living with any form of disability or challenge;
(h) gender;
(i) area of specialization, interest or qualifications;
(j) such other detail as the Authority may consider necessary.

25. (1) The Authority shall seek authorization from each particular person seeking employment to share with prospective employers all or any particular details of the youth seeking employment contained in the register.

(2) The consent and authorization obtained under subsection (1) shall be given to the Authority at the registration of the unemployed persons under section 21.

(4) Where the Authority wishes to use the data for any other purpose other than the purposes authorized under this Act, the Authority shall seek individual consent from the respective or affected unemployed person.

26. (1) The Authority shall, at all times, take measures to ensure protection of data on unemployed persons in its possession against abuse or any other adverse consequences.

(2) The right to privacy and other constitutional and statutory rights of unemployed persons shall not be compromised.
27. (1) The Authority shall not use the data obtained under this Act for any other purpose other than the purpose authorized under this Act.

(2) A person who contravenes subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding one million shillings.

28. (1) Upon successful interview and securing of employment by a person registered under this Act, the successful applicant shall communicate the same to the Authority in the prescribed manner.

(2) The Authority shall maintain a record of all successful applicants who have secured employment through the Authority.

(3) The Authority shall update its records accordingly and remove an applicant who obtains employment from the register kept under section 25.

PART V—UNEMPLOYMENT INSURANCE FUND

29. (1) The Unemployment Insurance Fund is hereby established.

(2) The Fund is a body corporate with perpetual succession and a common seal and shall have power, in its corporate name, to sue and to be sued and, in the exercise and performance of its powers and functions, to do and permit all such things as may lawfully be done or permitted by a body corporate in furtherance of its objects.

30. The object of the Fund is to provide benefits to employees who become unemployed or their beneficiaries in order to alleviate them from the harmful economic and social effects of unemployment.

31. The monies of the Fund shall consist of monies —

(a) appropriated by Parliament from the national budget for the purposes of the Fund;

(b) provided to the Fund by a county government;

(c) contributed by employers;

(d) received by the Fund from donations, grants, and bequests from other sources;
(e) payable into the Fund under any Act

PART V—FINANCIAL PROVISIONS

32. (1) The funds of the Authority shall comprise—

(a) such funds as may be appropriated by the National Assembly for purposes of the Authority;

(b) such moneys or assets as may accrue to or vest in the Authority in the course of the exercise of its powers or the performance of its functions under this Act of any other written law; and

(c) all moneys from any other source provided for, donated or lent to the Authority.

(2) Notwithstanding subsection (1)(c), the Authority shall not accept funds, gifts or other donations from any person it regulates.

(3) Any moneys donated to the Authority shall be declared at the end of each financial year.

(4) There shall be paid out of the funds of the Authority all sums required to defray the expenditure incurred by the Authority in the exercise of its powers and the performance of its functions under this Act.

33. The financial year of the Authority shall be the period of twelve months ending on the thirtieth day of June in each year.

34. (1) At least three months before the commencement of each financial year, the Authority shall cause to be prepared estimates of revenue and expenditure of the Authority for that year.

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

(a) the payment of salaries, allowances, pensions, gratuities and other charges in respect of the staff of the Authority;

(b) the proper maintenance of the buildings and grounds of the Authority;
(c) the maintenance, repair and replacement of the equipment and other property of the Authority;

(d) the creation of such reserve funds as the Authority may consider appropriate to meet the recurrent expenditure and contingent liabilities of the Authority.

(3) The annual estimates shall be approved by the Authority before the commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary for approval with the concurrence of the Treasury, and thereafter the Authority shall not increase the annual estimates without the consent of the Cabinet Secretary.

35. (1) The Authority shall cause to be kept all proper books and other records of accounts of the income, expenditure, assets and liabilities of the Authority.

(2) The accounts of the Authority shall be audited and reported upon in accordance with the provisions of the Public Audit Act, 2003.

PART VI—MISCELLANEOUS PROVISIONS

36. (1) At the end of each financial year or upon request by the Cabinet Secretary, the Authority shall submit an annual report on the discharge of its functions under this Act or any other written law.

(2) The report referred to under subsection (1) shall include—

(a) number of unemployed person registered in the period under review;

(b) number of unemployed who have secured employment during the period under review;

(c) any impediment encountered in the discharge of the functions of the Authority;

(d) any policy matters that the Authority may require to be addressed by the Cabinet Secretary, national or county governments;

(e) any other matter pertinent to the discharge of its functions under this Act.
(3) An annual report referred to under this section shall be published and publicized.

37. A person who contravenes any provision of this Act to which no penalty has been prescribed commits an offence and shall be liable, on conviction, to a fine not exceeding five hundred thousand shillings in the case of a natural person, and two million shilling in the case of a firm or body corporate, or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.

38. (1) The Cabinet Secretary may, in consultation with the Authority, make regulations for the better carrying into effect the provisions of this Act

(2) For the purposes of Article 94(6) of the Constitution—

(a) the authority of the Cabinet Secretary to make regulations under this Act shall be limited to bringing into effect the provisions of this Act and for the fulfillment of the objectives of this Act;

(b) the principles and standards applicable to the regulations made under this section are those set out in the Interpretation and General Provisions Act and the Statutory Instruments Act, 2013.

SCHEDULE

PROVISIONS RELATING TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

1. The chairperson and members of the Board, other than ex-officio members, shall hold office for a term of three years and shall be eligible for re-appointment for one further and final term of three years.

2. Members of the Board, other than ex-officio members, shall be appointed in such a manner that the respective expiry dates of their terms of office fall at different times.
3. A member of the Board, other than an *ex-officio* member, may—

(a) at any time resign from office by notice in writing, in the case of the chairperson, to the President, and in the case of any other member, to the Cabinet Secretary;

(b) be removed from office by the President or the Cabinet Secretary, as the case may be, if the member—

(i) has been absent from three consecutive meetings of the Board without the permission of the Board;

(ii) is adjudged bankrupt or enters into a composition scheme or arrangement with his or her creditors;

(iii) is convicted of an offence involving dishonesty or fraud;

(iv) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings;

(v) is incapacitated by prolonged physical or mental illness;

(vi) is found to have acted in a manner inconsistent with the aim and objectives of this Act;

(vii) fails to comply with the provisions of this Act relating to disclosure; or

(viii) is otherwise unable or unfit to discharge his or her functions as member of the Board.

4. At the first meeting of the Board, the members shall elect a vice-chairperson, from among the members appointed under this Act.

5. (1) The Board shall meet at least four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.
(2) Notwithstanding the provisions of subparagraph (1), the chairperson may, and upon requisition in writing by at least five members shall, convene a special meeting of the Board at any time for the transaction of the business of the Board.

6. Other than in the case of a special meeting or unless three quarters of members agree, every member of the Board shall be given at least fourteen days written notice of every meeting of the Board.

7. The quorum for the conduct of business of the Board shall be half of the members, and unless a unanimous decision is reached, decisions shall be by a majority vote of the members present, and in the case of an equality of votes, the chairperson or the person presiding shall have a casting vote.

8. The chairperson shall preside over all meetings of the Board in which he or she is present, but in his or her absence, the vice-chairperson shall preside and in the absence of the vice-chairperson, the members present shall elect one of their members who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson.

9. (1) If a member is directly or indirectly interested in any matter before the Board, and is present at the meeting of the Board at which the matter is the subject of consideration, he or she shall, at the meeting and as soon as practicable after the commencement, disclose that fact and shall be excluded at the meeting at which the matter is being considered.

(2) A disclosure of interest made under this section shall be recorded in the minutes of the meeting at which it is made.

10. Subject to the provisions of this Schedule, the Board may regulate its own procedure.
MEMORANDUM OF OBJECTS AND REASONS

The principal objective of this Bill is to provide for the payment of unemployment benefits to certain employees; to provide for the establishment of the Unemployment Insurance Authority.

Part I of the Bill contains preliminary provisions.

Part II of the Bill provides for the establishment, functions and powers of the Authority. It vests the management of the Authority on a Board constituted in accordance with this Part. The Part further provides for access to services of the Authority in all parts of Kenya.

Part III of the Bill provides for the register of unemployed persons and collection of information on the same.

Part IV of the Bill provides for the establishment and objects and purposes of the unemployment insurance fund.

Part V of the Bill contains financial provisions.

Part VI of the Bill contains miscellaneous provisions.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not contain any provisions limiting any fundamental rights or freedom.

Statement on how the Bill concerns county governments

The Bill does affect the functions of County governments as set out in the Fourth Schedule to the Constitution.

Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill may occasion additional expenditure of public funds.

Dated the 26th May, 2022.

BENARD SHINALI,
Member of Parliament.