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FIRST SCHEDULE — Local Tourism Activities And Services

THE COUNTY TOURISM BILL, 2019

A Bill for

AN ACT of Parliament to provide for the development, management, marketing and promotion of local tourism by county governments; the regulation of sustainable local tourism and related activities and services; and for connected purposes.

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the County Tourism Act, 2019.

Short title.

2. In this Act—

Interpretation.

“Authority” means the Tourism Regulatory Authority established under section 4 the Tourism Act;

No. 28 of 2011

“county executive committee member” means the county executive committee member responsible for matters relating to tourism in the respective county;

“local tourism” —

(a) means the tourism activities and services set out under the First Schedule to this Act; and

(b) includes tourism activities based on local cultural identity, beliefs, practices and values with the participation of local communities.

No. 28 of 2011

“local tourism area” means an area designated as a tourism area under section 5;

“special local tourism management area” means an area designated as a special tourism management area under section 6; and

“Tribunal” has the meaning assigned to it under the Tourism Act;

“tourism” means the activities of a person travelling to and staying in a place outside his or her usual abode for more than twenty-four hours, but not more than one consecutive year, for leisure, business or other purpose, not being a work related activity remunerated from within the place visited.

3. This Act shall apply to local tourism within a respective county provided that provisions amending the Tourism Act shall not be restricted to local tourism.

Application.
No. 28 of 2011

4. (1) The county executive committee member shall—

Duties of the
county
executive
committee
member.

- (a) formulate a local tourism strategy at least once every five years, in accordance with which the tourism sector in the respective county shall be developed, marketed and managed;
- (b) market the county as a desirable tourist destination;
- (c) encourage and facilitate the sustainable development of local tourism in the county;
- (d) formulate guidelines and prescribe measures for sustainable local tourism in the county;
- (e) identify local tourism market needs and trends within the county and advise the Authority and tourism stakeholders accordingly;
- (f) regulate local tourism activities and services within the county in accordance with the national tourism strategies;
- (g) issue, suspend or revoke licences for local tourism activities and services;
- (h) monitor and assess local tourism activities and services within the county to enhance continuous improvement and adherence to sound principles and practices of sustainable tourism; and
- (i) perform any other functions that are necessary for the fulfillment of any of the county executive committee member's functions under this Act.

(2) The county executive committee member shall consider the views of members of the public in the county in the performance of functions under this Act.

5. (1) The county executive committee member may, by notice in the County Gazette and upon conducting public participation in the county, designate an area as a special local tourism management area where the county executive committee member considers the area to be—

Special local
tourism
management
area.

- (a) of archaeological, ecological or historical significance; or
- (b) of cultural or spiritual significance;

(2) When making a designation under subsection (1), the county executive committee member may restrict local tourism operators or local tourism activities in the designated area.

6. (1) A person shall not undertake any local tourism activity unless that person has a licence issued by the county executive committee member. Licence.

(2) A person seeking a licence or a variation of a licence shall apply to the county executive committee member in such manner and form as may be prescribed by the county executive committee member in county legislation.

(3) An application for a licence or for the variation of a licence under subsection (2) shall be accompanied by such fees as may be prescribed by the Authority the county executive committee member in county legislation.

(4) The county executive committee member shall, in considering the licence application, have regard to the material considerations which include—

- (a) the local tourism strategy;
- (b) the protection of fragile environmental resources, ecosystems and habitats;
- (c) an environmental impact assessment licence issued under Part VI of the Environmental Management and Co-ordination Act;
- (d) any representations received from members of the public; and
- (e) a recommendation or approval from any other relevant authority as may be necessary.

No. 8 of 1999

(6) After considering an application made under this section, the county executive committee member may grant the applicant the licence or variation applied for or may refuse the grant, and may attach to the licence granted terms or conditions as the county executive committee member may consider necessary.

(7) A licence issued under this Act shall expire on 31st December of the year in respect of which it is issued.

(8) An application for the renewal of an existing licence shall be made at least two months before the expiry date of the existing licence.

7. (1) A licence issued under this Act may be transferred by the holder to another person only in respect of the local tourism activity in relation to which that licence was issued.

Transfer of licence.

(2) Where a licence is transferred under this section, the person to whom it is transferred and the person transferring it shall in writing jointly notify the county executive committee member of the transfer within thirty days after the transfer.

(3) Where no joint notification of a transfer is given in accordance with subsection (2), the licence shall be deemed not to have been transferred.

(4) A transfer of a licence under this section shall take effect on the date the county executive committee member is notified of that transfer.

8. The county executive committee member may, subject to section 11, suspend a licence issued under this Act where—

Suspension of a licence.

- (a) a licensee is being investigated in relation to an offence under this Act;
- (b) an allegation of misconduct has been made against a licensee;
- (c) the licensee made a false declaration in the application for the licence; or
- (d) a licensee has contravened a provision of this Act.

9. The county executive committee member shall, subject to section 11, cancel a licence where a licensee—

Cancellation of a licence.

- (a) is convicted of an offence under this Act; or
- (b) ceases to be qualified for the issue of a licence under this Act.

10. (1) The county executive committee member shall not suspend or cancel a licence unless the county executive committee member has given the licensee at least thirty days

Representation to the county executive committee member.

notice of its intention to suspend or cancel the licence and has provided the licensee with an opportunity to make a representation to the county executive committee member.

(2) A licensee who is not satisfied with a decision made under subsection (1) may appeal to the Tribunal within twenty eight days from the date of receipt of the decision.

11. A person whose licence has been suspended or cancelled shall not engage in the local tourism activity in respect of which the licence was granted during the duration of suspension or after cancellation.

Effect of suspension or cancellation.

12. (1) The county executive committee member shall keep and maintain registers of—

Registers.

- (a) all licences issued under this Act;
- (b) local tourism facilities, activities and services licensed under this Act; and
- (c) all public and private sector institutions or associations involved in local tourism or related activities and services in the county.

(2) The county executive committee member shall provide the Authority with updated copies of registers kept and maintained under this section every month.

(3) All registers kept and maintained under this section shall be open for inspection by members of the public during official working hours at offices designated by the county executive committee member on the payment of a fee prescribed by the Authority.

13. (1) A person who—

Offences.

- (a) breaches or fails to comply with the provisions of this Act;
- (b) breaches or fails to comply with any of the terms or conditions of a licence issued under this Act
- (c) obstructs a person in the execution of powers or duties under this Act;
- (d) knowingly or recklessly makes a statement or representation which is false;
- (e) knowingly or recklessly furnishes a document or information required under this Act which is false; or

- (f) knowingly or recklessly uses or furnishes a fake or forged or invalid licence or a licence that has been altered without authorization commits an offence.

(2) A person who is found guilty of an offence under subsection (1) is liable, on conviction,—

- (a) in the case of a natural person, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding one year or to both such fine and imprisonment; and
- (b) in the case of a body corporate, to a fine not exceeding two million shillings.

(3) Where a body corporate is found guilty of an offence under this Act, every principal officer of that corporation is deemed to have committed an offence and is liable, on conviction, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

14. (1) The county executive committee member may make Regulations, not inconsistent with this Act, for the better carrying out of the provisions of this Act.

Regulations.

(2) In particular and without prejudice to the generality of the power conferred by sub-section (1), the county executive committee member shall make Regulations prescribing—

- (a) the conditions which a licence may be granted or issued under this Act;
- (b) the procedures to be followed and forms required when applying for a licence;
- (c) anything which is required to be prescribed or is necessary to give effect to this Act.

15. (1) A county may enact county legislation to make provision for local tourism in the respective county.

County legislation.

(2) Where a provision of legislation enacted by a county is inconsistent with this Act, that provision shall prevail.

16. Where a provision of the Tourism Act is inconsistent with the provisions of this Act, the provisions of this Act shall prevail.

Conflict of laws.
No. 28 of 2011.

FIRST SCHEDULE

[section 2]

LOCAL TOURISM ACTIVITIES AND SERVICES

(a) Class “A” enterprises —

- (i) hotels;
- (ii) members clubs;
- (iii) motels;
- (iv) inns;
- (v) hostels;
- (vi) health and spa resorts;
- (vii) tree houses;
- (viii) floatels;
- (ix) service flats;
- (x) service apartments;
- (xi) beach cottages;
- (xii) holiday cottages;
- (xiii) tented camps;
- (xiv) bandas;
- (xv) cultural homes and centres;
- (xvi) villas;
- (xvii) homestays;
- (xviii) guest houses; and
- (xix) cottages and private residences engaged in guest house services.

(b) Class “B” enterprises —

- (i) water sports;
- (ii) balloon operators; and
- (iii) boat excursions.

(c) Class “C” enterprises —

- (i) game fishing outfitters; and

- (ii) amusement parks.
- (d) Class “D” enterprises —
 - (i) local traditional boat operators;
 - (ii) curio vendors;
 - (iii) general vendors; and
 - (iv) beach operators.
- (e) Class “F” enterprises —
 - (i) restaurants; and
 - (ii) other food and beverage services.
- (f) Class “G” enterprises: entertainment facilities.
- (g) Class “H” enterprises: conference and event services.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The principle object of the Bill is to provide for the development, management, marketing, promotion and licensing of local tourism by county governments. The Bill also seeks to amend the Tourism Act, No. 28 of 2011, in order to make provisions for local tourism and involve counties in the development, management, marketing and regulation of local tourism.

This is in view of the fact that whereas paragraph 7(d) of Part 2 of the Fourth Schedule to the Constitution designates local tourism as a function of county governments, no national legislation makes provision for local tourism and its development, management, marketing, promotion or licensing.

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

This Bill, once enacted, would confer on the respective county executive committee member responsible for matters relating tourism the power to make regulations for the purpose of bringing into effect the provisions contained in the Bill. It therefore delegates limited and conditional legislative powers.

The Bill does not limit fundamental rights and freedoms.

Statement of how the Bill concerns County Governments

The Bill concerns county governments in that it contains provisions relating to the development, management, marketing and regulation of local tourism. Paragraph 7(d) of Part 2 of the Fourth Schedule to the Constitution designates local tourism as a function of county governments.

The Bill therefore affects the functions and powers of county governments in terms of 110(1)(a) of the Constitution.

Statement that the Bill is not a money Bill within the meaning of Article 114 of the Constitution

The Bill deals with matters other than those listed in the definition of a money bill under Article 114 (3) of the Constitution and is therefore not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 15th November, 2018.

AGNES P. ZANI,
Senator.