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**THE COUNTY OVERSIGHT AND
ACCOUNTABILITY BILL, 2021**

A Bill for

AN ACT of Parliament to give effect to Articles 96(1) and (3) of the Constitution; to enhance public financial accountability by the county governments; and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY PROVISIONS

1. This Act may be cited as the County Oversight and Accountability Act, 2021.

Short Title.

2. In this Act—

Interpretation.

“county executive committee” has the meaning assigned to it in the County Governments Act;

No. 17 of 2012.

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

“effectiveness” means the extent to which a programme intervention has attained, or is expected to attain, its objectives efficiently in a sustainable manner;

“efficiency” means a measure of how economically resources or inputs, including fund, expertise and time, are converted to results;

“officer” means any person employed to work under the oversight office established under section 18; and

“public money” has the meaning assigned to it under section 2 of the Public Finance Management Act.

No. 18 of 2012

3. The object of this Act is to improve the efficiency, economy and effectiveness of county government operations by—

Object of the Act.

- (a) giving effect to Article 96(1) and (3) of the Constitution;
- (b) enhancing public financial accountability in the counties;
- (c) promoting accountability and transparency in the acquisition and disposal of assets and incurring of liabilities by county governments; and

- (d) providing a framework for the development of the infrastructure necessary to carry out public participation on financial matters within the counties.

4. All persons shall, in the performance of their functions under this Act, be guided by the following principles —

Guiding principles.

- (a) the principles of citizen participation under section 87 of the County Governments Act;
- (b) proper and prudent use of public finance by county governments;
- (c) the right of the residents, communities and organisations in a county to be affected by decisions on the finances of the respective county to be consulted and involved in the decision making process;
- (d) provision of an effective mechanism for the involvement of citizens that would be affected by or that would be interested in decisions made by the county government;
- (e) access to the information by residents of a county to enable them participate in a meaningful manner in the decision making processes in the respective county;
- (f) public views shall be taken into consideration in decision making;
- (g) the national values and principles under Article 10 of the Constitution; and
- (h) promotion of sustainable decisions recognising the needs and interests of all participants, including decision makers.

No. 17 of 2012.

PART II—PUBLIC PARTICIPATION FACILITIES

5. (1) Pursuant to Article 174 of the Constitution, each county government shall carry out infrastructural development programmes for the development of public participation facilities within the respective county.

County public participation facilities.

(2) A county government shall, for the purpose of subsection (1), appropriate funds for the construction and renovation of existing public participation facilities within the county.

6. (1) The infrastructural development and renovation programmes undertaken pursuant to section 5 by a county government shall extend only to the following—

Criteria for the infrastructural development of public participation facilities.

- (a) subject to subsection (2), the construction of public halls in wards where no public halls exist or where the halls are inadequate to carry out public participation;
- (b) the renovation, remodelling, maintenance and repair of public halls and other related facilities in wards that are in urgent need of such renovation or repair;
- (c) upgrading and capital maintenance to address urgent maintenance needs in existing public halls; and
- (d) the conversion of a building that was originally constructed or used for purposes other than a public participation facility.

(2) In determining whether an infrastructural development or renovation programme should be undertaken in relation to a public participation facility, the following criteria shall be taken into account—

- (a) the number of public participation facilities in the respective wards;
- (b) repairs to, or replacement of, the facilities is required within a reasonably short period;
- (c) the state of the facility and the need for maintenance or repairs be undertaken to avoid endangering the welfare of persons using the facility;
- (d) the facilities or building infrastructure requires urgent repair in order to make them fit for use or to avoid incurring higher costs in carrying out the repairs in the future;
- (e) the repairs are not so extensive as to require an overhaul of the existing buildings or facilities;
- (f) the cost of the repairs—
 - (i) are within the financial limits set by the respective county executive committee member; and

- (ii) the county government is able to set aside the funds required for the infrastructural repair and maintenance programme; and
- (g) the ratio of public participation facilities to the number of residents in the respective county.

7. (1) The county executive committee member shall, for the purpose of determining the public participation facilities that require urgent renovation within the county and prior to setting aside funds for the purpose of funding the infrastructural development and renovation programmes—

Assessment of infrastructural needs.

- (a) undertake an assessment of the gaps of the public participation facilities needs within the county that have been identified as requiring urgent intervention;
- (b) undertake a costing and technical support assessment in relation to each public participation facility in order to ensure that the proposed programmes are within the scope of the budget projected by the county government;
- (c) prepare standards and guidelines for the upgrade and funding of the infrastructure development, repair and maintenance programmes undertaken pursuant to this Act; and
- (d) prepare a public participation facility infrastructure development plan for the subsequent financial year which shall be published in the county gazette and in at least one newspaper of wide circulation within the county.

(2) In undertaking an assessment under subsection (1)(a), the county executive committee member—

- (a) shall consider proposals that may be submitted to the committee member by residents within the county for the repair, renovation or development of public participation facilities; and
- (b) shall set out a list of public participation facilities that have been identified as requiring urgent intervention in order of priority.

(3) The county executive committee member shall, for the purposes of subsection (2), prescribe—

- (a) the timeframe for the submission of a proposal by a resident under subsection (2)(a);
- (b) the information required to be submitted in a proposal under subsection (2)(a) including the nature of the works required to be undertaken;
- (c) the process of costing of the works to be undertaken in relation to each public participation facility that is identified under subsection (1)(b) as requiring urgent intervention;
- (d) the process of implementation of the works to be undertaken in relation to public participation facilities under this Act; and
- (e) the process of engagement with the residents of the county under this Act.

8. (1) Where a county government intends to allocate funds for the carrying out of infrastructural development, renovation and maintenance of public participation facilities that meet the criteria under section 6, the county executive committee member shall prepare an infrastructural development and renovation plan for the subsequent financial year setting out —

Infrastructure
development plan.

- (a) the funds required to be set aside for the purpose of carrying out the infrastructural development and maintenance programmes;
- (b) the public participation facilities and areas identified by the county government as requiring urgent intervention for the development and maintenance;
- (c) the funds required in relation to each identified public participation facility and the works to be carried out with respect to the facility;
- (d) mechanisms for monitoring and evaluation, accountability and the conduct of an audit in relation to each project;
- (e) mechanisms for transparency in order to ensure maximum benefit and value for money; and
- (f) the process of engagement by the county government institutions that have been identified as requiring funding for the development of public

participation facilities and implementation of public participation programmes.

(2) The county executive committee member shall, in preparing the infrastructural development and renovation plan, take into account the recommendations of the officer set out in a report prepared under section (15)(2) assessments that may be carried out pursuant to the provisions of this Act.

(3) The county executive committee member shall submit the infrastructural development and renovation plan to the county executive committee for approval.

9. (1) The county executive committee member shall, upon the approval of the infrastructural development and renovation plan by the county executive committee under section 8(4) submit the plan to the county assembly for approval.

Approval of plan by county assembly.

(2) The county assembly may approve with or without amendment or reject the development plan submitted to it by the county executive committee member under subsection (1).

10. (1) The county executive committee shall with the approval of the county assembly, determine—

Setting aside and capping of funds.

- (a) the maximum amount of monies that may be set aside for the implementation of the infrastructural development and renovation plan;
- (b) the monies that may be set aside in relation to each public participation facility identified as requiring intervention under this Act; and
- (c) the conditions that are required to be met in the implementation of the development and maintenance plan in relation to a public participation facility.

(2) The county government may, upon the approval of the infrastructural development and renovation plan, set aside such funds as it shall consider necessary for the carrying out of the infrastructural developments and renovations of the public participation facilities set out in the plan.

(3) The provisions of the Public Finance Management Act shall apply with respect to funds set aside under

- subsection (1) for the carrying out of an infrastructural development and renovation under this Act. No. 18 of 2012.
- (4) The Public Procurement and Asset Disposal Act shall apply to the procurement of services and works for the implementations of the project under this Act. No. 33 of 2015.
- 11.** The funds allocated by a county assembly to a specific public participation facility, shall remain allocated to that facility and shall not be utilised for any other purpose other than the purpose for which they were allocated. Allocation of funds.
- 12.** (1) The allocation of additional funds with respect to a public participation facility that received funds during the previous financial year shall have priority over a public participation facility which was not included in the infrastructural development, repair and maintenance plan under section 10 during the previous financial year where— Previously approved projects.
- (a) it is determined that the monies allocated for the carrying out of the works are not adequate owing to factors beyond the control of the county executive committee member;
 - (b) there is demonstrable actual work in progress in relation to the public participation facility;
 - (c) there an existing contract for the implementation of the project in the current financial year including the potential of significant penalties for the cancellation or delay in implementation of the contract; or
 - (d) there is in place a cost sharing agreement with the national government that the national government contributes at least forty nine percent of the total value of the project.
- (2) A previously approved funding for infrastructure repair or maintenance of facilities shall not include—
- (a) a political statement, commitment or promise;
 - (b) a project identified in the strategic plans or infrastructural development and renovation plan of the county government;
 - (c) pre-feasibility planning, study or design work;

- (d) an architectural or engineering design work that is not part of the proposed construction or erection work;
- (e) a negotiated contract; or
- (f) a potential commitment to a cost shared project with the national government that contributes less than forty nine percent of the total value of the project.

(3) Where—

- (a) an infrastructural repair and maintenance plan is to be prepared and carried out for a period of more than one financial year; and
- (b) the financial obligations relating to the project exist for the subsequent year,
the county executive committee member shall seek the approval of the county assembly for the appropriation of monies in any subsequent financial year during which the development is to be undertaken for the completion of the development.

(4) The county executive committee and the county assembly shall not approve the allocation or appropriation of funds under subsections (1) and (3) unless —

- (a) a contract or financial commitment exists in relation to the project; and
- (b) substantial work has commenced on the project and it cannot be completed within the planned time frame.

13. The county executive committee member shall prepare a report on the status of the implementation of works with respect to a public participation facility setting out information relating to the works including —

- (a) information relating to the procurement of services and works in relation to the project;
- (b) a schedule of the works required to be undertaken and status of the implementation of the project;
- (c) the timelines for completion of specific phases of the works;
- (d) the manner in which the funds have been utilised in relation to the project; and

Reports on the implementation of works by a public institution.

- (e) the monies disbursed and any balance of unspent funds.

14. Where there are unspent funds upon completion of works with respect to a public participation facility, the unspent funds shall be re-allocated to the implementation of a project identified under this Act in such a manner as the county executive committee member shall, with the approval of the county assembly, determine.

Unspent funds.

15. (1) The officers shall prepare an annual report on the status of public finances in the respective county set out the following information—

Annual Reports.

- (a) information relating to the procurement of services and works in relation to the projects in the county;
- (b) a schedule of the works required to be undertaken and status of the implementation of the project;
- (c) the timelines for completion of specific phases of the works;
- (d) a description of the assets acquired and the liabilities incurred in the respective financial year;
- (e) a description of the progress made by the County Government on the projects and programmes initiated with the use of public money allocated by the National Government;
- (f) the views of the citizens of the county on the effectiveness of the projects and programmes initiated by the County Government;
- (g) an assessment of the economy, efficiency and effectiveness of the use of public money allocated to the County Government;
- (h) a description of any complaints made against the institution in respect of public participation, the action taken and the period within which the complaint was addressed; and
- (i) any other information that may be considered as relevant.

(2) The respective Senator shall cause the annual report to be published and publicized in such other manner as the Senator may determine.

PART II—OVERSIGHT AND PUBLIC PARTICIPATION PROGRAMMES

16. (1) The Senate shall, pursuant to its oversight role conferred on it under Article 96 of the Constitution, exercise an oversight role over the national government revenue allocated to the County Governments.

Oversight of the County Revenue allocation by the National Government.

(2) Each Senator shall exercise power of oversight over their respective County.

(3) There shall be openness and accountability over the county budget oversight process and the use of public money which shall include public participation.

17. (1) Each Senator shall facilitate public participation through public awareness campaigns in each ward within the respective county.

Oversight and Public Participation Programmes.

(2) For the purpose of subsection (1), the Senator shall—

- (a) establish public participation and oversight programmes for the respective county;
- (b) hold public hearings on matters of public interest within the respective counties;
- (c) facilitate access to information held by the county government;
- (d) engage the communities and interest groups on the formulation of plans for the economic development of the county;
- (e) facilitate the participation of the communities in the engagement with the departments and the county government on financial matters;
- (f) monitor spending patterns of public entities within the county; and
- (g) monitor compliance by the respective county with the Constitution and national legislation on public finance.

18. (1) A Senator shall, in carrying out the oversight role over public participation and oversight role over the collection, use and management of finances in the respective county, establish an oversight office in the county consisting of such persons as the Senator may consider necessary.

Oversight Office.

(2) The Senator may employ such officers not exceeding three officers for the purpose of assisting the Senator in carrying out their oversight role in the county.

(3) The Senator shall not employ a person under subsection (3) unless such person—

- (a) is a Kenyan citizen;
- (b) has a university degree from an institution recognized in Kenya; and
- (c) has at least three years relevant experience in budget control, audit, monitoring and evaluation.

(4) The Senator shall carry out the required evaluation and may prepare for circulation within the county, a report on the public finances of the county and the participation of residents in the decision making process with respect to the public finances in the county.

(5) The Senator shall promote public awareness on the county public finance processes through the usage of available forms of media.

(6) The county executive committee member shall avail to the Senator with all pertinent information necessary to carry out the oversight role under this Act.

19. (1) The county executive committee member and the Clerk of the respective county assembly shall keep and maintain the information relevant to the allocation of monies, collection of revenue and such other information on the finances of the respective county and shall upon request avail the information to a member of the public.

Role of the
County Assembly.

(2) The Clerk of the County Assembly may provide such logistical support as is necessary for the carrying out of a successful public participation and oversight exercise.

PART III—MISCELLANEOUS PROVISIONS

20. (1) The county executive committee member, with the approval of the county assembly, shall make regulations generally for the better carrying out of the provisions of this Act.

Regulations.

(2) Notwithstanding the generality of subsection (1), the county executive committee member may make Regulations—

- (a) processes related to the management and implementation of the project in relation to a public participation facility;
- (b) management of the finances allocated with respect to a public participation facility including the receipt and disbursement of funds and the accountability of funds received pursuant to this Act; and
- (c) maintenance of adequate and accurate records including a system of internal accounts with respect to the process of accountability and the conduct of audits in relation to the funds received under this Act.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of the Bill is to provide a framework for effective oversight over the county government by the Senate.

The Constitution of Kenya 2010, created a bicameral parliament to replace the existing unicameral parliament. Accordingly, the Senate was tasked with oversight over national revenue allocated to the county governments. Moreover, under the constitutional concept of devolution and the principles of public finance, the input of the public is required in all executive decision making processes.

This Bill therefore proposes to provide a mechanism on how oversight over the County budgets can be carried out. The Bill therefore gives effect to the Constitutional provisions on oversight, public participation and participatory democracy as enunciated in Articles 96, 174 and 201 of the Constitution respectively.

The Bill provides for preliminary matters including the short title, objects of the Act and the guiding principles that guide Senatorial oversight. The Bill also designates the roles of the responsible bodies and officers in the oversight and public participation processes.

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

Clause 20 of the Bill empowers the county executive committee member to make Regulations for the better carrying into effect of the provisions of the legislative proposal. However, the Bill does not limit fundamental rights and freedoms.

Statement on how the Bill concerns county governments

The Bill seeks to provide a national framework for Senatorial oversight in national government allocations to county governments. The Bill therefore concerns county governments in terms of Article 110(1)(a) of the Constitution in that it contains provisions that affect the functions and powers of the county governments as set out in the Fourth Schedule to the Constitution.

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

This is a framework legislation. Any cost relating to Senatorial oversight is already provided for in the institutional budgets and therefore there are no new structures that are set to be established. The Bill is therefore not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 16th February, 2021.

LEDAMA OLEKINA,
Senator.