

SPECIAL ISSUE

Kenya Gazette Supplement No. 86 (Senate Bills No. 23)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

SENATE BILLS, 2024

NAIROBI, 12th April, 2024

CONTENT

Bill for Introduction into the Senate—

PAGE

The Environment Laws (Amendment) Bill, 2024.....

495



**THE ENVIRONMENT LAWS (AMENDMENT)
BILL, 2024**

A Bill for

AN ACT of Parliament to amend the Forest Conservation and Management Act to make further provision for afforestation and reforestation in Kenya; to promote tree-planting in all counties; to amend the Climate Change Act to provide for the setting and formulation of strategies to achieve annual carbon sequestration targets; and for connected purposes.

ENACTED by the Parliament of Kenya, as follows —

1. This Act may be cited as the Environment Laws (Amendment) Act, 2024.

Short title.

2. The Forest Conservation and Management Act is amended in section 8 by—

Amendment of
Cap 385.

(a) inserting the following new paragraphs immediately after paragraph (a)—

(aa) promote afforestation and reforestation in arid and semi-arid areas in the country;

(ab) promote the planting of trees on all public land in each county;

(b) inserting the following new paragraphs immediately after paragraph (e)—

(ea) formulate and implement plans for sourcing of tree seeds and seedlings that are suitable for the environment and climatic conditions in various parts of the Country;

(eb) establish at least one tree nursery in each county for trees suitable for the environment and climatic conditions of the respective counties;

(c) inserting the following new paragraphs immediately after paragraph (j)—

(ja) formulate and implement plans for afforestation, reforestation and protection of

existing forests to achieve carbon sequestration targets set by the Cabinet Secretary responsible for matters relating to climate change under section 8 (2) (da) of the Climate Change Act;

Cap 387A.

- (jb) direct and oversee the replanting and replacement of trees in accordance with this Act.

3. Section 21 of the Forest Conservation and Management Act is amended in subsection (1) by inserting the following new paragraphs immediately after paragraph (d) —

Amendment of Cap 385.

- (da) shall promote the planting of trees in all public land vested in the county government;
- (db) shall ensure that all trees that are felled for the implementation of any county project are relocated to an area designated by the Service.

4. The Forest Conservation and Management Act is amended by inserting the following new section immediately after section 40—

Insertion of new section 40A to Cap 385.

Replacement and replanting of harvested and felled trees.

40A. (1) A person who harvests a tree shall replace the tree under the direction and in an area designated by the Service.

(2) A person who fells a tree for a reason other than its harvesting shall replace the tree under the direction and in an area designated by the Service.

(3) A person who contravenes subsection (1) or (2) commits an offence and is liable, on conviction, to a fine not exceeding five million shillings or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment.

5. Section 54 of the Forest Conservation and Management Act is amended in subsection (2) by inserting the following new paragraph immediately after paragraph (c)—

Amendment of section 54 of Cap 385.

- (d) income and other tax deductions to private entities that implement a tree planting programme.

6. The Forest Conservation and Management Act is amended by deleting section 55 and substituting therefor the following new section —

Amendment of
Cap 385.

National tree planting
week.

55. (1) The National and county governments shall observe a national tree-planting week from the fifteenth day of March to the twenty first day of March in each year or such other week as the Cabinet Secretary may, by notice in the *Gazette*, designate.

(2) The Cabinet Secretary and the county executive committee member responsible for matters relating to forestry in each county shall plan and execute programmes necessary for observing the national tree-planting week and the International Day of Forests.

(3) Programmes planned and executed under subsection (2) shall include mobilization of public and private learning institutions, public officers in both levels of government and private entities to plant trees.

7. Section 57 of the Forest Conservation and Management Act is amended in subsection (2) by inserting the following new paragraph immediately after paragraph (c)—

Amendment of
Cap 385.

- (d) the person authorised shall replace each harvested tree in accordance with directions of the Service.

8. Section 8 of the Climate Change Act is amended in subsection (2) by inserting the following new paragraph immediately after paragraph (d)—

Amendment of
Cap 387A.

- (da) set and formulate strategies for achieving annual carbon sequestration targets for the country.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The Bill seeks to amend the Forest Conservation and Management Act, Cap 385, to make further provision for afforestation and reforestation of all forests and to promote tree-planting in all counties in Kenya generally. It further mandates the Kenya Forest Service to ensure the sourcing of tree seeds and seedlings that are suitable for the environment and climatic conditions of the various parts of Kenya and establish tree nurseries in each county.

The Bill incorporates tax and fiscal incentives to boost investments in forest land use and utilization, as suggested by the Cabinet Secretary for the National Treasury following recommendations from the Cabinet Secretary responsible for forestry. Among these incentives are income and other tax deductions for private entities that participate in a tree planting program.

The Bill further mandates county governments to promote tree planting in all public land vested in counties and to plan and execute programmes for observing the national tree planting week and the International Day of Forests.

The Bill also amends the Climate Change Act, Cap 387A, to mandate the Cabinet Secretary responsible for matters relating to climate change to set and formulate strategies for achieving annual carbon sequestration targets.

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

This Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms.

Statement on how the Bill concerns county governments

The Bill concerns county governments in that it mandates county governments to promote tree planting and observe the national tree planting week and the International Day of Forests in their respective counties. This is in line with the function assigned to county governments under paragraph 10 (b) of Part 2 of the Fourth Schedule to the Constitution.

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 27th March, 2024.

ABDUL MOHAMMED HAJI,
Senator.

Section 8 of Cap 385 that the Bill proposes to amend—

8. Functions of the Service

The functions of the Service shall be to—

- (a) conserve, protect and manage all public forests in accordance with the provisions of this Act;
- (b) prepare and implement management plans for all public forests and, where requested, assist in preparation of management plans for community forests or private forests in consultation with the relevant owners;
- (c) receive and consider applications for licenses or permits in relation to forest resources or management of forests or any other relevant matter in accordance with this Act;
- (d) establish and implement benefit sharing arrangements in accordance with the provisions of this Act;
- (e) assist county governments to build capacity in forestry and forest management in the counties;
- (f) in consultation with relevant stakeholders, develop programmes for tourism and for recreational and ceremonial use of public forests;
- (g) promote forestry education and training;
- (h) register and maintain a register of all forest management plans prepared for public forests;
- (i) collaborate with relevant persons in identifying research needs and applying research findings in relation to forests and forestry;
- (j) manage water catchment areas in relation to soil and water conservation, carbon sequestration and other environmental services in collaboration with relevant stakeholders;
- (k) prepare—
 - (i) a Forest Status Report for the Cabinet Secretary once in every two years; and
 - (ii) a Resource Assessment Report for the Cabinet Secretary once in every five years;
- (l) consider and recommend to the Cabinet Secretary the establishment of public forests on un-alienated public land or any other public land;

- (m) consider and recommend to the Cabinet Secretary the determination and alteration of boundaries of public forests;
- (n) establish forest conservancy areas for purposes of conservation and management;
- (o) approve the provision of credit facilities and technical training for community-based forest industries, and the provision of incentives to persons for the sustainable utilization of wood and non-wood forest products;
- (p) implement and enforce rules and regulations governing importation, exportation and trade in forest produce; and
- (q) develop, maintain and regularly update a geographic information system database of all forests in Kenya.

Section 21 of Cap 385 that the Bill proposes to amend—

21. Forestry functions of County Governments

(1) Each County Government—

- (a) shall implement national policies on forest management and conservation;
- (b) shall manage all forests on public land defined under Article 62 (2) of the Constitution;
- (c) shall prepare an annual report, with the approval of the County Assembly, for the Service on the activities of the county government in relation to this Act and any national policies on forest management and conservation;
- (d) shall promote afforestation activities in the county;
- (e) shall advice and assist communities and individuals in the management of community forests or private forests; and
- (f) may enter into joint management agreements with communities or individuals for the management of community forests or private forests.

(2) A county assembly may enact legislation for the better carrying into effect of the provisions of this section.

(3) The Service may if requested, collaborate, partner or offer assistance to the County Government for the better carry out the provisions of this Act.

Section 54 of Cap 385 that the Bill proposes to amend—

54. Tax and fiscal incentives

(1) The Cabinet Secretary for the National Treasury, may on the recommendation by the Cabinet Secretary, propose tax and other fiscal incentives to increase investments in forest land use and forest resource utilization in order to promote forest conservation and management, and to prevent or abate forest degradation.

(2) Without prejudice to the generality of subsection (1), the tax and fiscal incentives, may include—

- (a) customs and excise waiver in respect of imported capital goods or tax rebates to forest industries and other establishments investing in plants, equipment and machinery for improved resource utilization and for using other energy resources as substitutes for hydrocarbons;
- (b) exemption from payment of all or part of the land rates and such other charges as may be levied in respect of the land on which a private forest is established; and
- (c) income and other tax deductions to landowners in exchange for the establishment of a forest conservation easement.

Section 55 of Cap 385 that the Bill proposes to amend—

55. National tree planting week

The Cabinet Secretary shall plan and execute programmes necessary for observing the national tree-planting week and the International Day of Forests.

Section 57 of Cap 385 that the Bill proposes to amend—

57. Eligibility for authorization

(1) A person shall not be eligible to apply for an authorisation under section 59 unless that person—

- (a) possesses the capacity to enter into binding agreements with the Service;
- (b) has the technical and financial capacity to undertake the forestry activities for which the authorisation is sought; and
- (c) in the case of a foreign investor, has complied with all the laws for the time being in force relating to investment by foreigners.

(2) In the case of a timber licence, special use licence, contract, joint management agreement or concession—

- (a) capacity under subsection (1)(a) includes competence to enter into contracts;
- (b) technical capacity under subsection (1)(b) includes the competence to undertake forestry activities, as demonstrated by employment of technical staff, access to equipment, satisfactory past performance and a record of statutory and regulatory compliance; and
- (c) financial capacity under subsection (1)(b) includes solvency and ability to conform to good business practices as demonstrated by the applicant's financial statements for the past three years, where applicable, and tax compliance certificates.

(3) When issuing authorizations under this Act, the Service shall comply with the relevant public procurement and asset disposal laws, and any other relevant written law.

Section 8 of Cap 387A that the Bill proposes to amend—

8. Powers and duties of the Cabinet Secretary

(1) Subject to the provisions of this Act, the Cabinet Secretary shall exercise control and provide guidance over climate change governance and implementation of this Act.

(2) The Cabinet Secretary shall—

- (a) formulate and periodically review the climate change policy, strategy and the National Climate Change Action Plan and submit to the Council for approval;
- (b) co-ordinate negotiations on climate change related issues in consultation with the Cabinet Secretary responsible for foreign affairs;
- (c) formulate a national gender and intergenerational responsive public education and awareness strategy on climate change and implementation programme;
- (d) provide through the Directorate, technical assistance on climate change actions and responses to county governments, based on mutual agreement and needs cited by the county governments; and
- (e) report biannually to Parliament on the status of implementation of international and national obligations to respond to climate change, and progress towards attainment of low carbon climate resilient development.

(3) The Cabinet Secretary in discharge of the duties and functions under this Act shall be assisted by the Climate Change Directorate established under this Act.