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Hon. Speaker
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Assembly
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02/12/2018

COUNTY ASSEMBLY OF EMBU



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11/2/18

SECOND ASSEMBLY : FIRST SESSION

REPORT OF THE SECTORAL COMMITTEE ON
TRADE, TOURISM, INVESTMENT AND INDUSTRIALIZATION ON THE
CONSIDERATION OF THE EMBU COUNTY INVESTMENT AND
DEVELOPMENT CORPORATION BILL, 2018

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05/12/2018

SUBMITTED FOR ADOPTION BY THE COUNTY ASSEMBLY

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DOLCS
[Signature]
4/12/18



DATED: DECEMBER, 2018

Clerk's Chambers
County Assembly of Embu
P.O. Box 140-60100
Embu

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CCA
For further direction
[Signature]
4/12/2018



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Hon. Speaker
Pls Approve for
Tabling in the
Assembly

[Signature]
04/12/2018

COUNTY ASSEMBLY OF EMBU



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DATED: DECEMBER, 2018

Clerk's Chambers
County Assembly of Embu
P.O. Box 140-60100
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Tabled in
5/12/18
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C.C.A.
For further directions
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DPLCS
4/12/2018

Table of Contents

EXECUTIVE SUMMARY.....	3
1.0 BACKGROUND.....	4
1.1 MANDATE OF THE COMMITTEE.....	5
1.2 COMMITTEE MEMBERSHIP.....	6
1.3 PROBLEM STATEMENT.....	6
1.4 METHODOLOGY.....	7
1.5 TOOLS OF REFERENCE.....	7
1.6 OBJECTIVES/TERMS OF REFERENCE.....	7
1.7 ACKNOWLEDGEMENT.....	7-8
2.0 PUBLIC PARTICIPATION.....	9
2.1 SUMMARY OF THE VIEWS AND OPINIONS AS RECEIVED FROM THE PUBLIC.....	10
2.2 COMMITTEE RESPONSES ON MATTERS RAISED BY MEMBERS OF THE PUBLIC.....	10
3.0 COMMITTEE CONSIDERATION OF THE EMBU COUNTY INVESTMENT AND DEVELOPMENT CORPORATION BILL, 2018.....	11-12
4.0 COMMITTEE CONSIDERATION STAGE AMENDMENTS.....	13-19
5.0 CONCLUSION.....	130

EXECUTIVE SUMMARY

The Embu County Investment and Development Corporation Bill, 2018 has been made pursuant to provisions of Article 185 (2) part 2 (4) of the Constitution of Kenya, 2010 which confers powers to the County Government to make legislation through county assemblies.

The Bill was tabled in the house for the first time on 27th February, 2018 and consequently committed to the committee on Trade, Tourism, Investment and Industrialization for examination and scrutiny. Thereafter the committee embarked on planning for public participation forums as enshrined in the law of the land. This report therefore arises from the obligation imposed on the County Assemblies in Article 196 (1) (b) of the Constitution of Kenya, 2010, Section 6 (6) of the County Government Act, 2012 and the Embu County Assembly Standing Order No. 134(4). The constitution provides for public participation and involvement of the public in legislation at the county levels.

The Bill was subjected to public hearing forums in the four sub-counties to hear and receive opinions of the members of the public on the proposed Embu County Investment and Development Corporation Bill, 2018. Public hearings were held on 12th and 13th March, 2018 in Mbeere North and Runyenjes Sub-counties and Mbeere South and Manyatta sub-counties respectively.

Although the public participation forums did not elicit a lot of public interest, members who turned up gave opinions and made their views known to the committee.

The proposed Bill provides for the establishment of legal institutional framework for promotion and co-ordination of investment and development and for connected purposes.

The committee therefore wishes to present this report emanating from the observations with key recommendations before the County Assembly for adoption and subsequent implementation.

1.0 BACKGROUND.

This report is made on behalf of the committee on Trade, Tourism, Investment and Industrialization. The committee compiled the report to address issues raised by the committee after consideration of the opinions raised during the public participation forums held in the sub-counties in regard to the proposed Embu County Investment and Development Corporation Bill, 2018. The Embu County Investment and Development Corporation Bill, 2018 provides for a legislative framework for purposes of investment promotion and development in Embu County.

The Embu County Investment and Development Corporation Bill, 2018 was drafted by the County Executive committee member for Trade, Tourism, Investment and Industrialization and forwarded to the County Assembly for the necessary consideration. The Bill went through the prerequisite steps of publication in the County Gazette as outlined in Standing Order No.134 (4) of the County Assembly of Embu. The first reading of the Bill was done in the Assembly on 27th February, 2018 pursuant to Standing Order 134 (1) and subsequently committed to the committee on Trade, Tourism, Investment and Industrialization.

The committee subjected the Bill to public hearing forums in the four sub-counties to hear and receive opinions from the members of the public on the proposed legislation. Public hearings were held on 12th and 13th March, 2018. The public forums did not elicit a lot of public interest but the opinions and issues raised were noted and considered by the committee.

The committee forwarded its report on the bill in the committee of the whole house on 21st March, 2018 but recalled it. Subsequently the committee retreated on 18th to 23rd November, 2018 and successfully re-examined the Bill and made observations and came up with recommendations contained in this report.

1.1 Mandate of the Committee

The mandate of the committee is clearly stipulated out by the Provisions of Standing Order No. 204 (5) which defines among the functions of the committee as being;

- (a) *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the department;*
- (b) *To study the program and policy objectives the department and the effectiveness of the implementation.*
- (c) *To study and review all County legislation referred to it*
- (d) *To study, assess and analyze the relative success of the department as measured by the results obtained as compared with their stated objectives*
- (e) *To investigate and inquire into all matters relating to the department as it may deem necessary, and as may be referred to it by the County Assembly*
- (f) *To vet and report on all appointments where the Constitution or any law requires the County Assembly to approve, except those under Standing Order 198 (Committee on Appointments); and*
- (g) *To make reports and recommendations to the County Assembly as often as possible, including recommendation of proposed legislation*

1.2 Committee Membership

The Committee on Trade, Tourism, Investment and Industrialization is composed of the following members;

1. Hon. Masters Leonard Mwaniki Muriuki - Chairperson
2. Hon. Paul Muchangi Njiru - Vice- Chairperson
3. Hon. Morris Muchiri Nyaga - Member
4. Hon. Rose Ruguru Kinyua - Member
5. Hon. Jane Ann Muthoni Muriithi - Member
6. Hon. Philip Kinyutu Nzangi - Member
7. Hon. Margaret Lorna Kariuki - Member

1.3 PROBLEM STATEMENT

This report arises from the obligation imposed on the County Assemblies in Article 196 (1) (b) of the Constitution of Kenya, 2010, Section 6 (6) of the County Government Act, 2012 and the Embu County Assembly Standing Order No. 13(4). This Standing Order provides, *“The sectoral Committee to which a bill is committed shall facilitate public participation and shall take into account the views and recommendations of the public when the committee makes its report to the County Assembly”*.

The Embu County Investment and Development Corporation Bill, 2018 was read for the first time in the assembly on 27th February 2018 pursuant to Standing order No. 134(1). The committee therefore planned for Public participation forums in all sub-counties on 12th and 13th March, 2018 to gather views and opinions of the public in respect to the proposed law.

1.4 METHODOLOGY

In making its report the committee used the following methods:

1. Committee meetings.
2. Public hearings.
3. Written memoranda from the different groups.
4. Summary of proposals and recommendation from public and other stakeholders

1.5 TOOLS OF REFERENCE

The committee made reference to the following documents and relevant laws to come up with its observations, findings and recommendations;

1. The Constitution of Kenya, 2010
2. The County Government Act, 2012
3. The County Assembly of Embu Standing Orders
4. Proposed Embu County Investment and Development Corporation Bill, 2018
5. The Embu County Public Participation Act, 2015

1.6 OBJECTIVES/TERMS OF REFERENCE

The committee set out to achieve the following:-

1. To consider proposals from the public participation forums and other stakeholders
2. To make recommendations on the proposals from the public participation forums
3. To consider and present to the House the proposed amendments on the Embu County Investment and Development Corporation Bill, 2018

1.7 ACKNOWLEDGEMENT

The committee wishes to sincerely thank the offices of the Speaker and the Clerk of the County Assembly for the support and services extended to Members of the committee to enable them complete the exercise smoothly. I am grateful to the Members of the

Committee whose support enabled the Committee to accomplish this task. Special thanks to the secretariat for the support at all times.

On behalf of the Committee, I now have the honor and pleasure to present this report on the consideration of the Embu County Investment and Development Corporation Bill, 2018 for adoption.

SIGNED  DATE: 26/11/18

MASTERS LEONARD MWANIKI MURIUKI
CHAIRPERSON
COMMITTEE ON TRADE, TOURISM, INVESTMENT AND
INDUSTRIALIZATION

2.0 PUBLIC PARTICIPATION

The committee sought views from the public from the forums held in the Mbeere North sub-county at Siakago Social Hall and in Runyenjes Sub-County at Runyenjes Social hall on 12th March 2018. On 13th March, 2018 views were collected from the Public in Mbeere South Sub-County at Kiritiri Constituency Development Fund hall and Manyatta sub-County in Embu social hall. The committee received the views of the public pursuant to provisions of the Article 196 (1) (b) which provides for facilitation of public participation and involvement in the legislative and other business of the Assembly and its committees.

Section 6 (6) of the County Government Act, 2012 envisages that in exercising its powers or performing any of its functions, a County Government shall ensure efficiency, effectiveness, inclusivity and participation of the people.

The Standing Order No.134 (4) of the County Assembly of Embu provides that the Sectoral Committee to which a bill is committed shall facilitate public participation and shall take into account the views and recommendations of the public when the committee makes its report to the County Assembly.

The committee received public views in the following categories;

1. Views submitted during the public forums
2. Written views from public on a tool designed by the committee.

2.1 SUMMARY OF THE VIEWS AND OPINIONS AS RECEIVED FROM THE PUBLIC

1. The process of dissemination of the bill to public was not effective. The County assembly to provide for alternative way of distribution of copies of the bill and policies.
2. Under clause 7, on qualification for appointment as a Chairperson or member of the Board there was concern that the qualifications were high.
3. Under clause 7(c), on the issue of knowledge and experience either in the public or private sector of at least ten years, there was concern that the young generation may not have such experience yet they were interested in becoming board members.

2.2 COMMITTEE RESPONSES ON MATTERS RAISED BY MEMBERS OF THE PUBLIC

The committee responded on the above concerns/opinion as follows:

1. That copies of the bills and any other information from the county assembly could be accessed from the Communications Office, MCAs ward offices or can be downloaded from the Assembly's website; www.assembly.embu.go.ke.
2. That, members observed that running such or managing such a corporation requires a person of higher qualification and hence the stated qualification should not be lowered.
3. That, the concern of required experience for other board members was genuine.

3.0 COMMITTEE CONSIDERATION OF THE EMBU INVESTMENT AND DEVELOPMENT CORPORATION BILL, 2018.

The committee deliberated on the Bill as follows:

Long title	:	agreed to
Clause 1	:	agreed to
Clause 2	:	agreed to
Clause 3	:	agreed to
Clause 4	:	agreed to
Clause 5	:	agreed to
Clause 6	:	proposed amendment
Clause 7	:	proposed amendment
Clause 8	:	proposed amendment
Clause 9	:	proposed amendment
Clause 10	:	proposed amendment
Clause 11	:	agreed to
Clause 12	:	agreed to
Clause 13	:	agreed to
Clause 14	:	proposed amendment
Clause 15	:	proposed amendment
Clause 16	:	proposed amendment
Clause 17	:	proposed amendment
Clause 18	:	agreed to

Clause 19 : agreed to

Clause 20 : proposed amendment

Proposed new Clause

Clause 21 : proposed amendment

Clause 22 : agreed to

Clause 23 : agreed to

Clause 24 : agreed to

Clause 25 : agreed to

Clause 26 : proposed amendment

Clause 27 : agreed to

Clause 28 : agreed to

Clause 29 : proposed amendment

Clause 30 : agreed to

Clause 31 : agreed to

Clause 32 : proposed amendment

Clause 33 : agreed to

Clause 34 : agreed to

Clause 35 : proposed amendment

Clause 36 : agreed to

Clause 37 : proposed amendment

Clause 38 : agreed to

4.0 COMMITTEE STAGE AMMENDMENTS

The Committee on Trade, Tourism, Investment and Industrialization, recommends the following amendments to the Embu County Investment and Development Corporation Bill, 2018.

1. CLAUSE 6

THAT, Clause 6 be amended:-

- (i) In sub-clause (1) by deleting the word **“vesting”** and substituting therefor the words **“vest in”**
- (ii) In sub-clause(1) paragraph (a) by inserting the words **“with the approval of the County Assembly”** immediately after the word **“Governor”**
- (iii) In sub-clause (1) paragraph (d) by deleting the words **“not more than five other professionals”** and substituting therefor the words **“one professional from each sub-county”**
- (iv) In sub-clause(1) paragraph (d) by deleting the words **“in consultation with the Governor”** and substituting therefor the words **“with the approval of the County Assembly”**
- (v) In sub-clause(1) paragraph (e) by inserting the words **“appointed by the Board with the approval of the County Assembly”** between the words **“Managing Director”** and **“ who shall”**;
- (vi) In Sub-clause (2) by deleting the entire sub-clause and substituting therefor the following new sub-clause:
 - (2) *“The appointments under this section shall reflect the diversity of the residents in the County, Gender, Youth, persons with disability and regional balance.”*
- (vii) By inserting the following new sub-clauses immediately after sub-clause (2);
 - (3)*“The corporation established under section 4, shall for purposes of section 5 of the Public Finance Management Act, 2012 be a County government entity.”*
 - (4) *A person shall be qualified for appointment as a chairperson or member of the Board if that person;*

- a) *Is a citizen of Kenya;*
 - b) *Holds a degree from a university recognized in Kenya;*
 - c) *Has knowledge and experience either in the public or private sector of at least ten years, in case of the Chairperson or five years in the case of a member, in matters relating to the field of Economics, Law, Finance, Accounting, Business studies, Tourism, Public administration or any other relevant field .*
 - d) *Meets the requirements of chapter six of the Constitution; and*
 - e) *Has had a distinguished career in their respective fields.*
- (5) *The term of office for the chairperson or a member appointed under sub section (1) (d) shall be three years, which may be renewed for one further term, after which the person shall retire from the Board .*
- (6) *Notwithstanding subsection (5), the members of the Board shall retire on rotation, in a manner that will ensure that not more than two thirds of the members retire at the same time.*
- (7) *The Chairperson and members of the Board shall serve on the Board on a part-time basis.*
- (8) *Not more than two thirds of the members of the Board under (1) shall be of the same gender.*
- (9) *The office of the Chairperson or a member of the Board shall become vacant at the expiry of the term of contract or if the holder -*
- (a) *dies;*
 - (b) *by notice in writing addressed to the executive member resigns from office;*
 - (c) *is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months; or*
 - (d) *is removed from office in accordance with sub-Section 10;*
- (10) *The Chairperson or member of the Board may be removed from office on any of the following grounds-*
- (a) *violation of the Constitution or any other written law;*

- (b) *gross misconduct;*
- (c) *physical or mental incapacity that leads to inability to perform the functions of office;*
- (d) *incompetence;*
- (e) *bankruptcy;*
- (f) *absence from three consecutive meetings of the Board without justifiable cause;*
- (g) *if the Chairperson or a member becomes a director of any other corporation or holds shares or has any other interest in a corporation, partnership or other body, directly or through another person, if the holding of those shares or having that interest would result in a conflict of interest with that member's official duty and does not declare the interest;*
- (h) *if the chairperson or member is convicted of a criminal offence and sentenced to imprisonment for a period of more than six months.*

(11) Where there is an allegation on any of the grounds listed in subsection (1) the Executive Member shall appoint a committee of not more than five Heads of County Departments to investigate and recommend to the appointing authority and the County Assembly of the possible measure to be taken."

2. CLAUSE 7

THAT, clause 7 be deleted in its entirety;

3. CLAUSE 8

THAT, clause 8 be deleted in its entirety;

4. CLAUSE 9

THAT, clause 9 be deleted in its entirety;

5. CLAUSE 10

THAT, clause 10 be deleted in its entirety;

6 CLAUSE 14

THAT, Clause 14 be amended by deleting it in entirety and substituting therefor the following new Clause:- Remuneration of the Board

“14. The remuneration of the members of the Board shall be determined by the County Executive Committee upon the advice of Salaries and Remuneration Commission.”

7. CLAUSE 15

THAT, Clause 15 be amended

(i) in sub-clause (1) by inserting the words “the accounting officer and” between the words “shall be ” and the words “the chief executive officer”.

(ii) by deleting sub-clause (3) and substituting therefor the following new sub-clause:-

(3) The Managing Director shall hold office for a term of four years, on such terms and conditions of employment as the Board may determine, and shall be eligible for re-appointment for a further and final term of four years.

(iii) by inserting the following new sub-clause immediately after sub-clause (6)

“(7) Until the appointment of the Managing Director under subsection (2), the Executive Member shall in consultation with the County Public Service Board appoint an officer from the county public service to act as the Managing Director and secretary of the Board

PROVIDED that the officer so appointed shall possess the qualification of the Managing Director provided for in this Act and the substantive managing director shall be appointed within six months after appointment of the Chairperson.”

8. CLAUSE 16

THAT Clause 16 be amended in sub-clause (4) by deleting the words ,“County Executive” and substituting therefor the words “Embu County Public Service Board”

9. CLAUSE 17

THAT clause 17 be amended in sub-clause (1) by deleting the words “or of such other person as the Board may direct,” between the words “managing director” and “and shall not”

10. CLAUSE 20

THAT Clause 20 be amended by inserting the words “applicable to county corporations and county government entities” between the words “practices” and “which shall”

11. CLAUSE 21 (New Clause)

THAT the following new Clause be inserted immediately after clause 20; on Quarterly reports:

- 21 (1) *The Corporation shall prepare a report for each quarter of the financial year in respect of the Corporation in accordance with the provisions of Public Finance Management Act, 2012*
- (2) *In preparing a quarterly report for the Corporation, the Managing Director shall ensure that the report—*
- (a) *contains information on the financial and non-financial performance of the entity;*
 - (b) *has been approved by the Board; and*
 - (c) *is in a form determined by the Accounting Standards Board.*
- (3) *the managing Director shall submit a copy of the quarterly report to the County Executive Committee member responsible for the corporation, who, upon approving it, shall not later than fifteen days after the end of each quarter, submit a copy to the County Treasury*
- (4) *Not later than one month after the end of each quarter, the County Treasury shall—*
- (a) *consolidate the quarterly reports and submit them to the county assembly;*
 - (b) *deliver copies to the Controller of Budget, National Treasury and the Commission on Revenue Allocation; and*
 - (c) *publish and publicize them.*

12. CLAUSE 21

THAT Clause 21 be amended in sub-clause (2) paragraph (i) by adding the words “and shall thereafter submit the report to the County assembly.” immediately after the words “implementing the report”

13. NEW CLAUSE

THAT the following new clause be inserted immediately after Clause 21

Dissolution of the Corporation.

22. The Corporation may be dissolved only with the prior approval of the County Executive Committee and in accordance with provisions of Public Finance Management Act, 2012 and Regulations made thereunder.

14. CLAUSE 26

THAT Clause 26 (1) be amended by inserting the words “and the County Assembly” between the words “auditor general” and “, the accounts”

15. CLAUSE 29

THAT, Clause 29 be amended

(i) in sub-clause (1) by deleting the words “where applicable” between the words “committee and” and “the county”

(ii) by inserting the following new sub-clause immediately after sub-clause (3);

“(4) The means of raising of capital provided for in sub-clauses (1) shall be done in accordance with the provisions of the Public Finance Management Act, 2012, the Public Procurement and Asset Disposal Act, 2015 and any other Embu county and national legislations.”

16. CLAUSE 32

THAT, Clause 32 (5) be amended by deleting the repeated Clauses (d) and (e).

17. CLAUSE 35

THAT, clause 35 be amended by deleting the word “dividend” wherever it appears and substituting therefor the words “returns on investment”

18. CLAUSE 37

THAT, Clause 37 be amended

- (i) in sub-clause (1) by inserting the words “in consultation with the Board” between the words “the executive member may,” and “ make Regulations”
- (ii) in sub-clause (2) by deleting the word “policy” and substituting therefor the words “return on investment”
- (iii) in sub-clause (2) by inserting the following new paragraphs after paragraph (c)

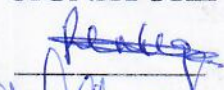

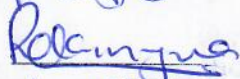

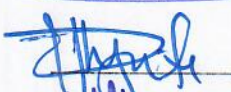
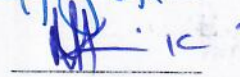
“(d) prescribe the code of conduct for members and staff of the Board;

(e) prescribe the code of governance for the Corporation in accordance with this Act and any other relevant Embu county or national legislation; and

(f) prescribe anything required by this Act to be prescribed.”

5.0 CONCLUSION

The committee urges the Honorable house to adopt this report with the recommendations contained therein.

NAME	POSITION	SIGNATURE
1. Hon. Paul Muchangi Njiru	Vice- Chairperson	
2. Hon., Morris Muchiri Nyaga	Member	
3. Hon. Rose Ruguru Kinyua	Member	
4. Hon. Jane Ann Muthoni Muriithi	Member	
5. Hon. Philip Kinyutu Nzangi	Member	
6. Hon. Margaret Lorna Kariuki	Member	

SIGNED..........DATE:

HON.MASTERS LEONARD MWANIKI MURIUKI
CHAIRPERSON
COMMITTEE ON TRADE, TOURISM, INVESTMENT AND
INDUSTRIALIZATION