

MIGORI COUNTY ASSEMBLY SERVICE ACT NO. 10 OF 2016

MIGORI COUNTY ASSEMBLY SERVICE ACT ARRANGEMENT OF SECTIONS

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BILL NO. 5 OF 2014
MIGORI COUNTY ASSEMBLY SERVICE BILL
AN ACT of Migori County Assembly to make provision for the County Assembly Service
and
the County Assembly Service Board as established under the
County Governments Act, 2012 and for connected purposes.

PART I – PRELIMINARY

1. Short title

This BILL may be cited as the County Assembly Service ACT, 2016.

2. Interpretation

In this ACT, unless the context otherwise requires—

“**chairperson**” includes the vice-chairperson or any other member of the Board when discharging the functions of the chairperson;

“**Clerk**” means the Clerk of the County Assembly appointed under section 13 of the County Governments Act 2012;

“**Board**” means the County Assembly Service Board established under section 12 of the County Governments Act, 2012;

“**Fund**” means the County Assembly Fund established under section 18;

“**Member**” in relation to the Board, includes the chairman and the vice-chairman of the Board;

“**Executive Committee Member**” means the executive member for the time being responsible for matters relating to the County Assembly;

“**office**”, in relation to the Service, means a paid office as an employee of the Service, not being the office of a member of the Board, or a part-time office, or an office the emoluments of which are payable at an hourly or daily rate;

“**Officer**” or “**employee**” means any person who holds or acts in any office of the Service otherwise than as a part-time officer or employee;

“**County Assembly Service Code of Conduct**” means the code of conduct prescribed under section 5;

“**County Assembly Service values**” means the values specified in or under section 4;

“Secretary” includes any other officer when discharging the functions of the secretary;
“Service” means the County Assembly Service established under section 12 of the County Governments Act, 2012;
“services and facilities” includes all means by which members of the county Assembly are officially assisted in performing their Assembly duties;
“Speaker” means the Speaker of the County Assembly or, where appropriate, the Deputy Speaker.

PART II – THE ASSEMBLY SERVICE

3. Nature of the Assembly Service

- (1) The Service shall be an institution of exemplary administrative and technical competence.
- (2) Employees of the Service shall not seek or receive directions from any source external to the Service.
- (3) Every member of the County Assembly shall respect the non-partisan and a political character of the Service and shall not seek to influence employees of the Service in the discharge of their functions.

4. Assembly Services values

The Service shall uphold the following values—

- (a) the promotion of democracy and the rule of law;
- (b) the fostering of patriotism, peace and national unity;
- (c) the provision of non-partisan and impartial advice and services to the County Assembly, its committees and its members;
- (d) the maintenance of the highest ethical standards;
- (e) the maintenance of honesty, accountability and integrity in the delivery of services, having regard to the principles of political neutrality, professionalism, economy, efficiency, equality and fairness, courtesy and discipline;
- (f) the provision of a workplace that is free from discrimination, recognizes the diverse backgrounds of the Service employees and promotes national integration;
- (g) the maintenance of the spirit of co-operation in the workplace based on consultation and communication;
- (h) the provision of a fair, flexible, safe and rewarding workplace;
- (i) the inspiration of public confidence in and respect for the institution of Parliament;
- (j) the fostering of understanding and co-operation among the three organs of State, to wit, the Legislature, the Executive and the Judiciary in the context of their autonomy and complementarity; and
- (k) such other values as the Board may, from time to time, prescribe.

5. Assembly Services Code of Conduct

- (1) The Board may, from time to time, prescribe an Assembly Code of Conduct.

- (2) Without prejudice to the provisions of any Code of Conduct prescribed under subsection (1), every employee of the Service shall, in the course of his employment—
- (a) be patriotic and loyal to **Migori County** and at all times conduct himself in a manner that promotes the **good** image of **county**;
 - (b) conduct himself/**herself** with honesty and integrity and **act** with care and diligence;
 - (c) use the resources of the nation conscientiously and combat corruption and misuse or wastage of public property;
 - (d) respect and observe the law of the land and co-operate with all# lawful agencies in the maintenance of law and order;
 - (e) treat all persons with respect and courtesy and, in particular, protect persons with disabilities and other vulnerable groups against any form of abuse, harassment or ill-treatment;
 - (f) promote gender equality and respect for the rights and freedoms of others;
 - (g) preserve and protect the environment and national heritage;
 - (h) comply with any lawful and reasonable direction given by any person in the Service having authority to give such direction;
 - (i) maintain appropriate confidentiality about dealings that the employee has with the County Assembly, its committees, its members and its staff (including employees of members, if any);
 - (j) disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with the Service;
 - (k) not provide false or misleading information in response to a request for information that is made for official purposes;
 - (l) not make improper use of—
 - (i) any information obtained through or in connection with the office of such employee and which is not yet made available to the public; or
 - (ii) the employee’s duties, status, power or authority, in order to gain, or seek to gain, a benefit or advantage for himself or for anyone else;
 - (m) conduct himself in a manner that upholds the letter and spirit of the values and the integrity and good reputation of the Service;
 - (n) while on duty **in Kenya, at all times** conduct himself/**herself** in a manner that promotes the good image of **Migori county Assembly and that of Kenya**;
 - (o) comply with any other requirements of conduct as may be prescribed by the Board.

6. Complementary of values and codes of conduct

The Assembly Service values and the Assembly Service Code of Conduct provided for in sections 4 and 5 shall be in addition to, and not in derogation from, any others that may be specified by or under any other written law in relation to the citizens of Kenya generally.

PART III – THE ASSEMBLY SERVICE BOARD

7. Incorporation of the Board

The Assembly Service shall be 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) purchasing or otherwise acquiring, holding, charging and disposing of movable or immovable property;
- (c) borrowing and lending money;
- (d) entering into contracts;
- (e) doing or performing all such other things or acts necessary for the proper performance of its functions under this BILL which may lawfully be done or performed by a body corporate.

8. Qualifications of members of the Board

- (1) The qualifications of members shall as provided under section 12(3)(a),(b),(c) and (d) of the County Governments Act,2012.

9. Number and type of departments of the Service

- (1) There shall be such number and types of departments and such categories and classifications of staff under the Service as the Board may, from time to time determine.
- (2) The Board may from time to time—
 - (a) allocate functions to any department of the Service;
 - (b) make such arrangements as appear to the Board expedient in connexion with the creation, division, amalgamation or abolition of any department of the Service.

10. Assembly scheme of service

The Board shall prescribe a scheme of service setting out the terms and conditions for the appointment of the officers and other staff of the Service which shall provide for—

- (a) the appointment and confirmation of appointment of officers and other staff;
- (b) promotions, resignations and termination of appointments;
- (c) the scales of salaries and allowances; and
- (d) the designation and grades of officers and other staff.

11. Social security scheme

- (1) The Board
 - (a) May establish a contributory pension scheme for all its employees **in line with pensions and Retirement Benefits Authority Act 2009.**
 - (b) may establish or adopt a contributory optional superannuation, provident or medical fund or other scheme for its employees and may grant pensions, gratuities, retiring allowances or sickness or injury benefits to any employee.
- (2) The provisions of this section shall come into operation on such date as the Board may, by notice in the *Gazette*, appoint.

12. Meetings and procedure of the Board

- (1) The **chairperson** shall convene a meeting of the Board at least once every fortnight.

- (2) The **chairperson** or in his absence the vice- **chairperson** may at any time convene a special meeting of the Board, and shall do so within seven days of the receipt by him of a written requisition therefore signed by at least three members.
- (3) If the **chairperson** fails to convene a special meeting of the board pursuant to a requisition under subsection (2), the members making the requisition may convene such meeting which shall be held within seven days after the expiry of the period prescribed in that subsection.
- (4) The quorum for a meeting of the Board shall be three members who shall include one member appointed under section 12 (3) (d)
- (5) A member of the Board other than an *ex officio* member may be removed from office as provided under section 12(5)(a),(b,)and(c) of the County Governments Act,2012

PART IV – THE CLERK AND OTHER STAFF

13. Status and general functions of the Clerk

- (1) The Clerk shall be—
 - (a) the chief executive of the Assembly Service and secretary to the board;
 - (b) Responsible to the **chairperson** and the Board for the general working and efficient conduct of the business of the Service.
- (2) The Board may delegate to the Clerk such of its functions as are necessary to carry out the day to day management of the Service, and subject to such directions as may be given by the Board, to direct and supervise the **acts** of all employees and agents of the Service.
- (3) The Clerk may, in consultation with the Board, assign or delegate the functions under this section to any employee of the Service.

14. Procedural functions of the Clerk

- (1) The procedural functions of the Clerk shall include—
 - (a) rendering expert, non-partisan and impartial advice to the members of the County Assembly on Assembly procedure and practices;
 - (b) carrying out such other duties and exercising powers as may be conferred on him by law or by the standing orders and practices of the County Assembly.
- (2) In carrying out the functions specified in subsection (1), the Clerk shall be assisted by such other officers of the Service as may be necessary.
- (3) Subject to this BILL and any other written law, the Clerk shall, in carrying out and exercising the power conferred on him by the standing orders and practices of the County Assembly, be under the direction of the Speaker.
- (4) At any time when the office of the Speaker is vacant or the holder of the office is unable for any reason to carry out the duties and exercise the powers and functions of his office, the Clerk shall, during that period and in relation to the carrying out of the duties and exercise of the powers and functions referred to in this section, be under the direction of the Deputy Speaker.

15. Exercise of functions of the Clerk during vacancy or inability

If the office of Clerk is vacant, or if for any reason the Clerk is unable to exercise the functions of his office, any other person for the time being performing the duties of the Clerk pursuant to the standing orders of the County Assembly or by direction of the Speaker shall have and may exercise all the functions, duties and powers of the Clerk.

16. Suspension or removal of the Clerk

The Clerk may, at any time and in such manner as may be prescribed under this BILL, be suspended or removed from office by the Board for inability to perform the functions of his office (whether arising from infirmity of body or mind or from any other cause) or for misbehaviour.

17. Retirement and resignation of employees

(1) An employee shall retire from the Service on attaining the age of sixty **years or sixty five years for persons with disability**: Provided that the Board may re-engage him on contract for a single term not exceeding two years.

(2) An employee may—

(a) after attaining the age of fifty years, elect to retire from the Service at any time; or

(b) in such manner as may be provided under this BILL, resign from the Service at any time.

(3) The Board may, in such manner and for such reasons as may be prescribed under this BILL, require an employee to retire from the Service at any time.

(a) **in addition requires that all officers retire in public interest**

PART V – FINANCIAL PROVISIONS

18. Establishment of Migori County Assembly Fund

(1) There is established a fund to be known as the **Migori** County Assembly Fund.

(2) There shall be paid into the Fund—

(a) such moneys as may, from time to time, be provided by Parliament and/or county Assembly

(b) such moneys as may be borrowed by the Board on such terms and for such purposes as the Board, in consultation with Executive Member for the time being responsible for Finance, may determine;

(c) any moneys accruing to or received by the Board from any other source.

(3) There shall be paid out of the Fund all payments in respect of any expenses incurred in pursuance of the provisions of this BILL.

(4) The Board may, with the approval of the County Assembly signified by resolution, establish such other funds as it may deem necessary.

19. Bank accounts

The Board shall open and maintain such bank accounts as are necessary for the exercise of its functions.

20. Estimates of expenditure

(1) At least three months before the commencement of each financial year, the Clerk shall cause to be prepared, estimates of all the expenditure required for the purposes of this BILL for that year and shall present such estimates to the Board for review.

(2) The Board shall review the estimates forwarded under subsection

(1) and may make such alterations thereto as it may deem appropriate and shall thereafter agree upon those estimates.

(3) The chairman of the Board shall dispatch a copy of the estimates agreed upon by the Board under subsection (2) to the Executive Member responsible for matters relating to Finance for information.

(4) The chairman of the Board or some other member thereof authorized by the Board in that behalf shall present the estimates agreed by the Board for consideration and approval by the County Assembly.

(5) Upon the approval of the estimates presented to the County Assembly under subsection (4), all monies from time to time required for the purposes of this BILL shall be paid from the County Revenue Fund into the County Assembly Fund.

21. Accounts and audit

(1) The Clerk shall ensure that proper books and records of accounts of the Board are kept and maintained.

(2) Within three months after the end of each financial year, the Clerk shall submit to the Controller and Auditor-General, the accounts of the Board for the year.

(3) Notwithstanding the provisions of any other written law, the accounts of the Board shall be audited and reported upon by the Controller and Auditor- General.

22. Review of terms and conditions of service of members and employees Of the Assembly

(1) The Board shall, from time to time, appoint an independent body of experts to review the terms and conditions of service of members and employees of the County Assembly.

(2) The Board shall upon receipt of the report of experts appointed under subsection (1), transmit the report together with its comments thereon, if any, to the County Assembly.

23. Remuneration of members of the Board

Members of the Board shall receive such allowances as may be determined by the Salaries and Remuneration Commission).

PART VI – MISCELLANEOUS PROVISIONS

24. Annual report of operations of the Board

Within three months after the end of each calendar year, the Board shall prepare and lay before the County Assembly, a report of its operations during that year.

25. Designated member may present documents, etc., in the Assembly

A member of the **Board** (not being the chairperson) authorized by the Board in that behalf may—

- (a) lay before the County Assembly any document or other matter;
- (b) reply to a question relating to the affairs of the Board.

26. Oath of office for members and staff of the Board

(1) The members of the Board shall, on first appointment, take an oath in the form prescribed in the First Schedule.

(2) The secretary and such other officers (including persons engaged, commissioned or appointed in accordance with the Constitution) of the **Board** as the chairperson may require so to do, shall, on first appointment, take an oath in the form prescribed in the Second Schedule to this **ACT**.

(3) Where any person required to take an oath has no religious belief or the taking of such oath is contrary to his religious belief, he may make and subscribe a solemn affirmation in the form of the oath appointed substituting the words “**solemnly and sincerely declare and affirm**” for the word “**swear**” and omitting the words “**So help me God**”.

(4) Every oath or affirmation taken by the chairman shall be administered by the secretary and every oath or affirmation taken by any other member or the secretary shall be administered by the chairman: Provided that every oath or affirmation taken by any other officer shall be administered by the secretary.

28. Power to order attendance of witnesses

The Board or any committee thereof may, subject to section 29, order any person to attend before it and to give evidence or to produce any paper, book, record or document in the possession or under the control of that person.

29. Privileges of witnesses

Every person summoned to attend to give evidence or to produce any paper, book, record or document before the Board or a committee thereof shall be entitled, in respect of that evidence or the disclosure of any communication or the production or any paper, book, record or document to the same right or privilege as before a court of law.

30. Evidence of proceedings in the Board not to be given without Leave

(1) A member or an officer of the Board or any person employed to take minutes or evidence before the Board or any committee shall not give evidence elsewhere in respect of the contents of those minutes or evidence or of the contents of any document laid before the or that committee or in respect of any proceedings or examination held before the Board or that committee without special leave first obtained from the chairman.

(2) The special leave referred to in subsection (1) may be given by the vice chairperson in the absence or other incapacity of the chairperson.

31. Protection of members and staff of the Board

Any act or thing done by any member of the Board or by any officer or servant of the Board shall not, if the act or thing was done *bona fide* for the purposes of carrying out this act into effect, subject him personally to any liability, action, claim or demand whatsoever.

32. Communication of Board privileged

A person shall not in any legal proceedings be permitted or compelled to produce or disclose any communication, written or oral which has taken place between the Board or any member or officer of the Board, in the exercise of, or in connection with the exercise of, the function of the Board unless the chairman consents in writing to such production or disclosure.

33. Offences and penalties under the BILL

Any person who—

- (a) in connexion with an application by himself or any other person for employment, appointment or promotion in the Service, or in connection with any matter on which it is the duty of the Board to require information or evidence, or into which it is the duty of the Board to inquire, wilfully gives to the Board or to any member thereof any information which is false or misleading in any material particular; or
- (b) without the consent in writing of the chairman, publishes or discloses to any unauthorized person or otherwise than in the course of duty the contents or any part of the contents of any document, communication or information whatsoever which has come to his knowledge in the course of his duties under this BILL, and any person who knowingly BILLS in contravention of this paragraph; or
- (c) having possession of any information which to his knowledge has been published or disclosed in contravention of paragraph (b) of this section, publishes or communicates to any other person otherwise than for the purpose of any prosecution under this ACT or in the course of his duty any such information; or
- (d) otherwise than in the course of his duty, directly or indirectly by himself or by any other person in any manner whatsoever influences or attempts to influence any decision of the Board or of any member thereof; or
- (e) disobeys any order made by the Board or a committee for attendance or for production of papers, books documents or records; or
- (f) refuses to be examined before, or to answer any lawful and relevant question put by, the Board or a committee, commits an offence and shall be liable on conviction to a fine not exceeding ten thousand shillings, or to imprisonment for a term not exceeding twelve months, or to both:

Provided that nothing in paragraph (d) of this section shall prohibit any person from giving a certificate or testimonial to any applicant or candidate for the Service or supplying any information or assistance upon formal request made by the Commission.

34. Examination and other boards

(1) The Board may, in such manner as it deems fit, make provision for examinations and appoint such selection, promotion or other boards as it deems necessary for the proper discharge of its functions.

(2) A board appointed under subsection (1) may wholly or in part consist of persons who are not members of the Board.

35. Saving of existing rights and liabilities

Without prejudice to the rights of any person, on the coming into operation of this BILL, all movable and immovable property and all the rights and liabilities of the former County Assembly Department and all the property movable or immovable held by any person on behalf of the Department shall be deemed to vest in them.

36. Regulations by the Board

(1) The Board may make regulations for prescribing anything required by this ACT to be prescribed and generally for the better carrying out of the purposes of this ACT.

(2) Without prejudice to the generality of subsection (1), regulations under this ACT may provide for—

- (a) the conduct of the business of the Board;
- (b) the administration and management of the services and facilities;
- (c) the terms and conditions of service, pension and other retirement benefits of employees;
- (d) the measures for the discipline of employees;
- (e) the financial procedures of the Board;
- (f) the orientation and training of members of the County Assembly and employees;
- (g) the security of members of the County Assembly.

(3) All regulations made under this section shall be laid before the County Assembly with reasonable despatch and, if a resolution is passed by the Assembly within twenty days on which it next sits after the regulation is laid before it that the regulation be annulled, it shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder, or to the making of any new regulation.

OATH/AFFIRMATION OF MEMBER OF THE BOARD

I having been appointed as Chairman/Vice Chairman/Member of the Assembly Service Commission do swear/solemnly and sincerely declare and affirm that I will without fear or favour, affection or ill-will discharge the functions of the office of Chairman/Vice-Chairman/Member of the Assembly Service Board, and that I will not, directly or indirectly, reveal any matter relating to such function to unauthorised persons or otherwise than in the course of my duty. SO HELP ME GOD. Sworn/Declared by the said before me this day of

*Chairman/Secretary
Assembly Service Board*

SECOND SCHEDULE

[Section 27(2).]

OATH/AFFIRMATION OF OFFICER OF THE BOARD

I being called upon to exercise the functions of secretary Officer/[other] of the Assembly Service BOARD, do swear/solemnly and sincerely declare and affirm that I will not, directly or indirectly, reveal to any unauthorized person or otherwise than in the course of duty the contents or any part of the contents of any document, communication or information whatsoever which may come to my knowledge in the course of my duties as an officer of the Board. SO HELP ME GOD. Sworn/Declared by the saidbefore me this Day of

Chairman/Secretary
Migori County Assembly Service Board

MIGORI COUNTY ASSEMBLY SERVICE BILL

SUBSIDIARY LEGISLATION

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MEMORUNDUM OF REASONS AND OBJECTS

The Bill provides for how the Migori County Assembly Service Board will be able to discharge its mandate as per the provisions of section 12 of the County Government Act, 2012