

SPECIAL ISSUE

Kenya Gazette Supplement No. 80 (Senate Bills No. 20)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

SENATE BILLS, 2024

NAIROBI, 28th March, 2024

CONTENT

Bill for Introduction into the Senate—	PAGE
The County Wards (Equitable Development) Bill, 2024	469

**THE COUNTY WARDS (EQUITABLE
DEVELOPMENT) BILL, 2024**
ARRANGEMENT OF CLAUSE

Clause

1. Short title.
2. Interpretation.
3. Objects of the Act.
4. Guiding Principles.

**PART II — ALLOCATION OF RESOURCES FOR
WARD DEVELOPMENT PROJECTS**

5. County government to ensure equitable development.
6. County assembly approval of criteria.

**PART III — IDENTIFICATION OF WARD-BASED
PROJECTS FOR EQUITABLE DEVELOPMENT
WITHIN WARDS**

7. Identification of projects.
8. Selection of projects by the county executive committee member.
9. Criteria for selection of projects.
10. Integration of projects in county planning.

PART IV — IMPLEMENTATION OF PROJECTS

11. Functions of the county executive committee member.
12. Funds allocated to ward development projects.

PART V — REPORTING AND OVERSIGHT

13. County Assembly approvals.
14. Maintenance of records.
15. Report to county assembly.
16. Funding of projects.

PART VI — MISCELLANEOUS PROVISIONS

17. Offences and penalties.

18. County legislation.

19. Amendment to No. 17 of 2012.

**SCHEDULE — CONDUCT OF THE AFFAIRS
OF THE WARD PROJECTS
IDENTIFICATION
COMMITTEE**

THE COUNTY WARDS (EQUITABLE DEVELOPMENT) BILL, 2024

AN ACT of Parliament: to provide a framework for the promotion of equitable development in the wards within the counties by providing for the allocation of funds for ward-based development projects; to provide mechanisms for selection of projects; to provide an oversight mechanism for the utilization of funds allocated for ward-based development projects; and for connected purposes.

ENACTED by the Parliament of Kenya, as follows—

PART I — PRELIMINARY

1. This Act may be cited as the County Wards (Equitable Development) Act, 2024.

Short title.

2. In this Act,—

Interpretation.

“Commission” means the Commission on Revenue Allocation established under Article 215(1) of the Constitution;

“community” means residents of a particular geographical area or region defined as a ward;

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

“relevant committee” means the county assembly committee responsible for matters related to finance and budget in the respective county assembly;

“revenue” has the meaning assigned to it under the Commission on Revenue Allocation Act; and

No. 16 of 2011.

“ward” means one of the wards into which Kenya is divided under Article 89 of the Constitution.

3. The objects of this Act are to—

Objects of the Act.

- (a) promote the objects of devolution set out under Article 174 of the Constitution by providing a legal framework that promotes equitable development across all wards in each county;
- (b) provide a framework for the participation of the residents of each county in the identification of

priority projects in county in respect of which funds are allocated under this Act;

- (c) promote the decentralisation of functions and provision of services by county governments to the extent that it is efficient and practicable pursuant to Article 176 of the Constitution;
- (d) to ensure equitable sharing of resources within the county; and
- (e) provide a framework for citizens led development to assist the county government in planning and prioritizing the use of its resources.

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

Guiding principles.

- (a) the promotion of the equitable social and economic development of all persons residing within the ward in order to ensure the realisation of their economic and social rights under Article 43 of the Constitution;
- (b) the principles and objects of devolution set out under Articles 174 and 175 of the Constitution;
- (c) the promotion of the national values and principles of governance set out under Article 10 of the Constitution; and
- (d) the use of public funds in a prudent and responsible manner in accordance with Article 201 of the Constitution.

PART II — ALLOCATION OF RESOURCES FOR WARD DEVELOPMENT PROJECTS

5. (1) A county government shall allocate its resources equitably across all the wards in the county.

County governments to ensure equitable development.

(2) For purposes of subsection (1) the county executive committee shall —

- (a) within the medium term, ensure that development projects are spread out equitably across all the wards in the county; and
- (b) on the advice of the Commission determine the criteria for allocation of a specific amount for ward

development projects identified in accordance with this Act.

(3) In determining the criteria for allocation under subsection (2)(b), the county executive committee shall ensure that the allocation -

- (a) is not less than sixty percent of the county government's allocation for development budget as provided under section 107(2)(b) of the Public Finance Management Act; and
- (b) is complimentary to any other development efforts by the county government or any other agency.

No. 18 of 2012.

(4) Nothing in this Act shall be construed to provide for the exclusion of an area from any other development programmes.

- (5) Any other county government development projects shall continue alongside the projects funded under this Act.

6 (1) The criteria under section 5(2)(b) shall—

County assembly approval of criteria.

- (a) be submitted by the county executive committee member to the respective county assembly for approval; and
- (b) apply for such period as shall be determined by the county assembly.

(2) The county assembly shall consider and either approve or reject the criteria within twenty-one days of receipt of the criteria.

(3) If the county assembly fails to approve or reject the criteria within the period specified under subsection (2), the criteria shall be deemed to have been approved and shall be applicable for a period of three years.

PART III — IDENTIFICATION OF WARD-BASED PROJECTS FOR EQUITABLE DEVELOPMENT WITHIN WARDS

7. (1) The residents of each ward shall identify development projects for implementation in the respective county in accordance with this Part.

Identification of projects.

(2) The county executive committee member shall coordinate the process of identifying projects for

implementation in the respective wards and shall, for this purpose, conduct public participation.

(3) The county executive committee member may, for purposes of subsection (2), establish a committee to be known as the Ward Projects Identification Committee which shall be an adhoc committee tasked with facilitating the identification of ward projects.

(4) The Ward Projects Identification Committee shall comprise of –

- (a) A chairperson who shall be appointed by the county executive committee member through a notice in the gazette
- (b) one person representing the business community in the ward;
- (c) one person representing the youth in the ward;
- (d) one person representing either gender in the ward;
- (e) one person representing professionals residing the ward;
- (f) one person nominated by a registered group representing persons with disability in the ward; and
- (g) the ward administrator who shall be the secretary.

(5) In nominating the members under subsection (4) the county executive committee member shall take into account gender balance and representation of ethnic minority groups.

(6) The Ward Projects Identification Committee may co-opt from time to time not more than three members with specialised knowledge or expertise to assist in the discharge of the functions of the committee on such terms as the committee may specify.

(7) The members of the Ward Projects Identification Committee shall serve a term of three years and shall be eligible for reappointment for one further term.

(8) The members of the Ward Projects Identification Committee shall be paid such sitting allowances as shall be determined by the county executive committee member.

(9) For the avoidance of doubt, the members of the Ward Projects Identification committee shall not be entitled to any salary.

(10) To be eligible for nomination to the Ward Projects Identification Committee, one shall—

- (i) be a Kenyan citizen above eighteen years of age;
- (ii) be a resident of the respective Ward;
- (iii) have a minimum of O-level academic qualification except the Chairperson who shall be expected to have a minimum of a university degree.

(11) The conduct and regulation of business and the affairs of the Ward Projects Identification Committee shall be in accordance with the schedule.

(12) The Ward Projects Identification Committee shall for the purpose of subsection (2), collaborate with the respective village councils established in the county under section 53 of the County Governments Act.

No. 17 of 2012.

(13) The county executive committee member shall designate county public service officers to offer technical assistance to the respective ward administrator during the project identification process.

8. (1) The county executive committee member shall consolidate and submit the proposals received under section 7 to the county executive committee for prioritization and determination of projects for implementation in each ward.

Selection of projects by the county executive committee.

(2) The county executive committee member shall submit to the county assembly, a report on the projects identified under subsection (1) to the respective county assembly for approval.

(3) The county executive committee member shall publicize the projects approved by the county assembly for implementation in each ward by notice in the county *Gazette* and through such other means as the county executive committee member shall consider appropriate

(4) The county executive committee member shall align the project identification and selection processes with the county budget cycle as set out in the Public Finance Management Act.

No. 18 of 2012.

9. When approving a project for implementation under this Act, the County Assembly and the county executive committee member shall ensure that the project—

Criteria for selection of projects.

- (a) is a community-based project which aims at—
 - (i) ensuring the development of infrastructure that would promote the delivery of basic services and goods to persons residing at the lowest unit of decentralization established pursuant to section 54 of the County Governments Act;
 - (ii) enhancing the standards of living of persons residing within the respective ward through the delivery of basic goods and services;
 - (iii) promoting access to facilities that are key in the delivery of services to residents in the respective wards; or
 - (iv) promoting the economic development of residents within the respective ward through activities that promote the development of talent, growth of micro and small enterprises and access to markets;
- (b) falls within the scope of functions of county governments as set out under Part 2 of the Fourth Schedule to the Constitution;
- (c) does not duplicate any other project being undertaken under the national or county government;
- (d) is of such nature as to ensure that the prospective benefits arising out of the project are available to a cross-section of the residents of a particular area; and
- (e) meets such other criteria as a county government may, in county legislation, prescribe.

No. 17 of 2012.

10. The projects identified under section 7 shall be included in -

Integration of projects in county planning.

- (a) the county budget estimates provided for under section 13 of the Public Finance Management Act;
- (b) the County Fiscal Strategy Paper provided for under section 117 of the Public Finance Management Act;
- (c) the development plan provided for under section 126 of the Public Finance Management Act; and
- (d) any other plan or document provided for under law, which may be determined by the Commission as being necessary for the implementation of this Act.

No.18 of 2012.

PART III — IMPLEMENTATION OF PROJECTS

11. For the purposes of this Act, the county executive committee member shall —

Functions of the county executive committee member.

- (a) ensure timely and efficient disbursement of funds for the implementation of county ward development projects;
- (b) ensure efficient management of the funds in the implementation of county ward development projects;
- (c) co-ordinate the implementation of projects at inter-ward level;
- (d) receive and address complaints that may arise from the implementation of this Act;
- (e) keep an inventory of all projects undertaken by the county government under this Act;
- (f) prescribe guidelines on best practices and implement measures to enable the implementation of projects in line with the with those measures; and
- (g) perform such other duties as may be necessary for the proper implementation of this Act.

12. (1) Funds allocated for a project shall only be re-allocated for any other purpose during the financial year with the approval of the county assembly.

Funds allocated to ward development projects.

(2) If for any reason a project is cancelled or discontinued during the financial year, funds allocated for that project shall be reallocated to another project to be implemented in the same ward.

(3) Where —

- (a) a project is to be 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 the subsequent financial year during which the project is to be undertaken for the completion of that project.

(4) The allocation of additional funds to a ward with respect to a project that received funds during the previous financial year shall have priority over a new project where—

- (a) there is in place 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;
- (b) there is in place, a cost sharing agreement with the national government or other entity that contributes at least forty-nine percent of the total cost of the project;
- (c) it is determined that the monies allocated for the carrying out of the project are not adequate; and
- (d) there is demonstrable actual work in progress in relation to the project.

(5) The county executive committee member and the county assembly shall not approve the reallocation or appropriation of funds under subsection (3) unless —

- (a) a contract or financial commitment exists in relation to the project;
- (b) the completion time for the project does not extend to a period of more than two years; and

- (c) substantial work has commenced on the project and it cannot be completed within a period of one year.

(6) A project shall not include an activity that involves a personal award in cash or in kind to any person.

(7) All funds allocated to a ward shall be cumulative and shall be carried forward from one financial year to the next, including funds returned into the account or funds which are not utilized for whatever reasons.

PART IV — REPORTING AND OVERSIGHT

13. (1) A county budget or county plan under the County Governments Act or the Public Finance Management Act dealing with allocation of resources shall contain information on the manner in which the resources have been equitably distributed amongst the wards in the county.

County assembly
approvals.
No. 17 of 2012.
No. 18 of 2012.

(2) A county assembly –

- (a) shall not approve a county plan or budget that does not comply with subsection (1); and
- (b) may amend a county plan or the development expenditure in a county budget in order to ensure the equitable allocation of resources across the wards of the respective county.

14. A county executive committee member shall maintain comprehensive and accurate records including a system of internal accounts with respect to the projects, the process of accountability and the conduct of audits in relation to the funds allocated under this Act.

Maintenance of
records.

15. (1) A county executive committee member shall submit quarterly reports to the county assembly on setting out information on –

Report to county
assembly.

- (a) the projects under implementation and the status of the implementation of such projects;
- (b) monies expended with respect to each project;
- (c) the management of the finances allocated with respect to a project including the receipt and disbursement of funds and the accountability of funds received pursuant to this Act;

- (d) mechanisms for the monitoring and evaluation of projects implemented under this Act;
- (e) services and works procured in relation to each project;
- (f) the schedule of the works required to be undertaken and status of the implementation of each project;
- (g) the timelines for completion of specific phases of the project including any delays in the completion of specific delays and the reasons for the delays;
- (h) compliance with principles of sound management systems;
- (i) compliance with the standards for service delivery, prescribed in this Act or any other law;
- (j) the manner in which the funds have been utilized in relation to the project;
- (k) the monies disbursed and any unutilized balance;
- (l) steps taken towards operationalization of all the projects;
- (m) activities undertaken to ensure the maintenance and continuity of projects;
- (n) any recommendations with respect to the criteria for apportionment of projects; and
- (o) such other information as the county executive committee member may considers necessary.

(2) It shall be gross misconduct for a county executive committee member to fail to report to the county assembly committee on the matters provided for under subsection (1).

16. (1) The relevant committee of a county assembly shall –

Funding of projects.

- (a) scrutinize the county budget and the county plans referred to under this Act, the County Governments Act, the Public Finance Management Act to ensure compliance with this Act and the integration of the principle of equitable development in the budget and the plans;

No.17 of 2012.

No.18 of 2012.

- (b) scrutinize the reports of the county executive committee member and make appropriate recommendations to the county assembly;
- (c) upon petition by a member of the public or on its own initiative, conduct inquiries on any project that the committee suspects impropriety;
- (d) oversee the implementation of the policy framework and legislative matters that may arise in relation to this Act;
- (e) engage the Commission on Revenue Allocation, the county executive committee member and any other relevant stakeholder so as to jointly deliberate and provide solutions to issues relating to achieving equitable development within the county; and
- (f) undertake any other function as may be assigned by the county assembly.

PART V — MISCELLANEOUS PROVISIONS

17. Any person who misappropriates any funds or assets from the Fund or assists or causes any person to misappropriate or apply the funds otherwise than in the manner provided in this Act commits an offence and shall, upon conviction, be liable to imprisonment for a term of not less than five years or to a fine of not less than five hundred thousand shillings, or to both.

Offences and penalties.

18. (1) The respective county government may enact legislation –

County legislation.

- (a) making further provision for the criteria for the allocation of funds to a ward under this Act;
- (b) setting the timelines for the activities to be undertaken under this Act;
- (c) setting the parameters for project identification;
- (d) outlining the format of preparation and submission of the list of, and the description of, projects proposed by the entity for funding pursuant to this Act;
- (e) determining the minimum and maximum number of projects that may be undertaken in a ward to

ensure efficiency and effectiveness in utilization of funds under this Act;

- (f) outlining the process of receipt, consideration and approval of projects for implementation under this Act;
- (g) outlining the procedure for consolidation of projects which are of the same nature and which would bring greater benefit to the residents of the county if implemented as one project;
- (h) specifying the process of engagement with the residents of the respective wards under this Act; and
- (i) any other matter not provided for under this Act.

19. Section 108(2) (a) of the County Governments Act is amended by inserting the following new sub-paragraph immediately after sub-paragraph (ii)-

Amendment to
No. 17 of 2012.

- (iii) the implementation of the County Wards (Equitable Development) Act;

SCHEDULE

(s. 7 (11))

CONDUCT OF THE AFFAIRS OF THE WARD PROJECTS IDENTIFICATION COMMITTEE

Election of the vice-
chairperson of the
Ward Projects
Identification
Committee.

Meetings of the Ward
Projects Identification
Committee

1. The members of the Ward Projects Identification Committee shall elect a vice chairperson from among themselves.

2. (1) The Ward Projects Identification Committee shall hold at least four but not more than six sittings in the same financial year.

(2) the meetings shall be convened by the secretary in consultation with the chairperson.

(3) A seven-days' notice shall be issued to every member of the committee before convening of any meeting of the committee.

(4) The Chairperson shall preside at all meetings of the Committee and in the absence of the chairperson, the vice chairperson shall preside.

(5) In the absence of both the chairperson and the vice-chairperson, the members present and forming a quorum shall elect one of their members to preside over the meeting of the committee.

Conflict of interest.

3. (1) If a member of the committee is directly or indirectly interested in any proposed project or matter before the committee and is present at a meeting of the committee at which the project or other matter is the subject of consideration, the member shall, at the meeting and as soon as practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the project or be counted in the quorum of the meeting during the consideration of the matter.

(2). A member or any other staff serving the committee and whose personal interest conflicts with their official duties shall—

(a) in writing, declare the personal interest to their supervisor or other appropriate person or body and comply with any directions given to avoid the conflict; and

(b) refrain from participating in any deliberations with respect to the matter.

(3) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.

(4) a person who contravenes subsection (1) shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding five hundred thousand or to imprisonment for a term not exceeding 3 years or to both such fine and imprisonment.

Quorum.

4. The quorum of the meetings of the Ward Projects Identification Committee shall be six members'

Decisions of the committee.

5. A decision of the Ward Projects Identification Committee shall be carried out by a majority of the members present and voting and, in case of an equality of votes, the person presiding at the meeting shall have a second or casting vote.

Minutes.

6. Minutes of all meetings shall be kept and entered in records kept for that purpose.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The Bill principally seeks to promote the decentralization of development within the counties by creating a framework for identifying projects that are beneficial to the residents of the respective wards and the county generally and providing a framework for the implementation of such projects.

The Bill is premised on Article 174 of the Constitution which sets out the objects of devolution, among them being to give powers of self-governance to the people and enhance the participation of the people in the exercise of the powers of the State and in making decisions affecting them; to recognize the right of communities to manage their own affairs and to further their development; to promote social and economic development and the provision of proximate, easily accessible services throughout Kenya by decentralizing the provision of services pursuant to Article 176 (2) of the Constitution; and to ensure equitable sharing of national and local resources throughout Kenya.

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

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

Statement of how the Bill concerns County Governments

The Bill seeks to provide a framework for the identification of development projects in wards within counties and the modalities for the allocation of resources for these projects. The Bill requires, inter alia, that such projects shall be within the functions of county governments as set out under Part 2 of the Fourth Schedule to the Constitution. The Bill is therefore one that concerns county governments in terms of Article 110 (1) (a) of the Constitution as its provisions affect the functions and powers of 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

The Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 11th March, 2024.

KARUNGO THANGWA,
Senator.
GODFREY OSOTSI,
Senator.

Section 108 of No. 17 of 2012 of which it is proposed to amend

108. County integrated development plan

(1) There shall be a five-year county integrated development plan for each county which shall have—

- (a) clear goals and objectives;
- (b) an implementation plan with clear outcomes;
- (c) provisions for monitoring and evaluation; and
- (d) clear reporting mechanisms.

(2) Each county integrated development plan shall at least identify—

- (a) the institutional framework, which shall include an organization chart, required for—
 - (i) the implementation of the integrated development plan; and
 - (ii) addressing the county's internal transformation needs;
- (b) as informed by the strategies and programmes set out in the plan—
 - (i) any investment initiatives in the county;
 - (ii) any development initiatives in the county, including infrastructure, physical, social, economic and institutional development;
 - (iii) all known projects, plans and programs to be implemented within the county by any organ of state; and
 - (iv) the key performance indicators set by the county.

(3) An integrated development plan shall—

- (a) have attached to it maps, statistics and other appropriate documents; or
- (b) refer to maps, statistics and other appropriate documents that are not attached but held in a GIS based database system:

Provided that the plans under paragraphs (a) and (b) are open for public inspection at the offices of the county in question.

(4) A resource mobilization and management framework shall be reflected in a county's integrated development plan and shall at least—

- (a) include the budget projection required under the law governing county government financial management;
- (b) indicate the financial resources that are available for capital project developments and operational expenditure; and
- (c) include a financial strategy that defines sound financial management and expenditure control: as well as ways and means of increasing revenues and external funding for the county and its development priorities and objectives, which strategy may address the following—
 - (i) revenue raising strategies;
 - (ii) asset management strategies;
 - (iii) financial management strategies;
 - (iv) capital financing strategies;
 - (v) operational financing strategies; and
 - (vi) strategies that would enhance cost-effectiveness.