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SENATE BILLS, 2024

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THE COUNTY TOURISM BILL, 2024

A Bill for

AN ACT of Parliament to provide for the development, management, marketing and promotion of local tourism by county governments; the regulation of sustainable local tourism and related activities and services; and for connected purposes.

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the County Tourism Act, 2024. Short title.

2. In this Act— Interpretation.

“Authority” means the Tourism Regulatory Authority established under section 4 the Tourism Act; No. 28 of 2011.

“Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to tourism;

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

“local tourism” —

(a) means the tourism activities and services set out under the Schedule; and

(b) includes tourism activities based on local cultural identity, beliefs, practices and values with the participation of local communities;

“National Environment Management Authority” means the National Environment Management Authority established under section 7 of the Environmental Management and Co-ordination Act; No. 8 of 1999.

“National Museums of Kenya” means the National Museums of Kenya established under section 3 of the National Museums and Heritage Act; No. 6 of 2006

“special local tourism management area” means an area designated as a special tourism management area under section 6;

“Tribunal” means the Tourism Tribunal established under section 87 of the Tourism Act; and

“tourism” means the activities of a person travelling to and staying in a place outside his or her usual abode for more than twenty-four hours, but not more than one consecutive year, for leisure, business or other purpose, not being a work related activity remunerated from within the place visited.

3. This Act shall apply to local tourism within a respective county.

Application.

4. The Cabinet Secretary shall, for the effective implementation of this Act—

Responsibilities of the Cabinet Secretary.

(a) formulate guidelines on—

(i) sustainable practices relating to local tourism and recommend to the Council of County Governors best practices for the promotion of local tourism; and

(ii) uniform standards for the promotion of local tourism;

(b) develop a framework for the monitoring and evaluation of programmes and activities on local tourism by county governments; and

(c) make recommendations to county governments based on monitoring and assessment of tourist activities and services to enhance continuous improvement and adherence to principles of sustainable tourism.

5. (1) Each county executive committee member shall —

(a) at least once every five years, formulate a local tourism strategy for the development, marketing and management of the respective tourism sectors;

(b) market the county as a desirable tourist destination;

(c) encourage and facilitate the sustainable development of local tourism in the county;

(d) formulate guidelines and prescribe measures for sustainable local tourism in the county;

- (e) identify local tourism market needs and trends within the county and advise the Authority and tourism stakeholders accordingly;
- (f) regulate local tourism activities and services within the county in accordance with the national tourism strategies;
- (g) issue, suspend or revoke licences for local tourism activities and services;
- (h) monitor and assess local tourism activities and services within the county to enhance continuous improvement and adherence to sound principles and practices of sustainable tourism; and
- (i) perform any other functions that are necessary for the implementation of this Act.

(2) A county executive committee member shall, in discharging the functions under this Act, facilitate public participation.

6. (1) A county executive committee member may, by notice in the *County Gazette* and upon conducting public participation in the county, designate an area as a special local tourism management area where the county executive committee member considers the area to be—

Special local
tourism
management area.

- (a) of archaeological, ecological or historical significance; or
- (b) of cultural or spiritual significance.

(2) In designating a special local tourism management area under subsection (1), the county executive committee member—

- (i) shall consult the National Environment Management Authority and the National Museums of Kenya; and
- (ii) may restrict local tourism operators or local tourism activities in the designated area.

7. (1) A person shall not undertake any local tourism activity unless that person applies for, and obtains a licence in accordance with this Act.

Licence.

(2) A person who intends to conduct a local tourism activity shall submit an application for a licence to the county executive committee.

(3) An application for a licence under subsection (2) shall—

- (a) be made in writing and in the prescribed form;
- (b) contain such information as may be prescribed by the respective county legislation; and
- (c) be submitted together with the prescribed fee and such other information as may be prescribed in the respective county legislation.

(3) The fee prescribed under subsection (2) shall not exceed the maximum amount prescribed in regulation by the Cabinet Secretary.

No. 8 of 1999.

(4) A county executive committee member shall, in considering an application, have regard to—

- (a) the local tourism strategy;
- (b) the protection of fragile environmental resources, ecosystems and habitats;
- (c) an environmental impact assessment licence issued under Part VI of the Environmental Management and Co-ordination Act;
- (d) any representations received from members of the public regarding the application; and
- (e) any recommendation or approval that may be made or submitted by any other relevant authority.

(5) Upon considering an application, the county executive committee member may—

- (a) grant an application for a licence unconditionally;
- (b) grant the application subject to such conditions as may be imposed under the respective county licensing legislation; or
- (c) refuse the application.

(6) The county executive committee member may refuse to issue a licence to an applicant where—

- (a) the applicant has submitted false or misleading information in the application;
- (b) the applicant does not meet the conditions for licensing prescribed under this Act or under any other written law; or
- (c) the application does not comply with the requirements imposed under this Act or any other applicable law.

(7) The county executive committee member shall inform the applicant of the decision under subsection (5) within seven days from the date of the decision of the committee member.

8. (1) A licensee shall be required to observe the following conditions in addition to those that may be imposed by the county executive committee member or under the respective county legislation-

Conditions for issuance of licence.

- (a) to provide the service or carry out the business specified in the licence;
- (b) to comply with all applicable laws and the conditions for issuance of the licence;
- (c) in the case of a body corporate, to provide, the county executive committee member with information with respect to any change in its directorship or shareholding;
- (d) to pay such fees as may be prescribed; and
- (e) to maintain, and where required, submit to the county executive committee member such information as may be necessary for the continued licensing of the licence holder.

(2) A county executive committee member shall, unless the circumstances or facts relating to the application vary and the county executive committee member considers it proper, impose the same conditions for the issuance of the same type of licence.

9. (1) A licence issued under this Act shall expire on 31st December of the year in respect of which it is issued.

Duration of a licence.

(2) The county executive committee member shall specify, in county legislation, the duration of the licence in

the licence issued under this Act and may prescribe different validity periods for the various classes of licences that are issued under this Act.

10. (1) An application for the renewal of an existing licence shall be made at least two months before the expiry date of the existing licence.

Renewal of a licence.

(2) Where an application for the renewal of a licence is not lodged within two months immediately preceding its expiry, the county executive committee member may consider such application upon payment of such additional fee as may be prescribed in the respective county legislation.

11. (1) A licence issued under this Act may be transferred by the holder to another person only in respect of the local tourism activity in relation to which that licence was issued.

Transfer of licence.

(2) Where a licence is transferred under this section, the person to whom it is transferred and the person transferring it shall, in writing, jointly notify the county executive committee member of the transfer within thirty days after the transfer.

(3) Where no joint notification of a transfer is given in accordance with subsection (2), the licence shall be deemed not to have been transferred.

(4) A transfer of a licence under this section shall take effect on the date the county executive committee member is notified of that transfer.

12. The county executive committee member may, subject to section 14, suspend a licence issued under this Act where—

Suspension of a licence.

- (a) a licensee is being investigated in relation to an offence under this Act; an allegation of misconduct has been made against a licensee;
- (b) the licensee made a false declaration in the application for the licence; or
- (c) a licensee has contravened a provision of this Act or any other relevant county legislation.

13. A county executive committee member shall, subject to section 14, cancel a licence where a licensee —

Cancellation of a licence.

- (a) is convicted of an offence under this Act;
- (b) ceases to be qualified for the issue of a licence under this Act or the respective county legislation;
- (c) ceases to carry on the business with respect to which the licence was issued;
- (d) contravenes the conditions for the issuance of the licence or the provisions of this Act or the respective county legislation; or

surrenders the licence to the relevant licensing authority together with a notice setting out a request that the licence be revoked.

14. (1) The county executive committee member shall not suspend a licence under section 12 or cancel a licence under section 13 (a) to (d) unless the county executive committee member issues to the licensee at least thirty days notice of the intention to suspend or cancel the licence and has provided the licensee with an opportunity to make a representation to the county executive committee member.

Representation to the county executive committee member.

(2) A licensee who is not satisfied with a decision made under subsection (1) may appeal to the Tribunal within twenty eight days from the date of receipt of the decision.

15. A person whose licence has been suspended or cancelled shall not engage in the local tourism activity in respect of which the licence was granted during the duration of suspension or after cancellation.

Effect of suspension or cancellation.

16. (1) The county executive committee member shall keep and maintain a register of —

Registers.

- (a) all licences issued under this Act;
- (b) local tourism facilities, activities and services licensed under this Act; and
- (c) all public and private sector institutions or associations involved in local tourism or related activities and services in the county.

(2) The county executive committee member shall provide the Authority with updated copies of registers kept and maintained under this section every month.

(3) A register kept and maintained under this section shall be open for inspection by members of the public during official working hours at offices designated by the county executive committee member on the payment of a fee prescribed by the county executive committee member.

17. (1) A person who—

Offences.

- (a) breaches or fails to comply with the provisions of this Act or the respective county legislation;
- (b) breaches or fails to comply with any of the terms or conditions of a licence issued under this Act or the respective county legislation;
- (c) obstructs a person in the execution of powers or duties the respective county legislation;
- (d) knowingly or recklessly makes a statement or representation which is false;
- (e) knowingly or recklessly furnishes a document or information required under this Act which is false; or
- (f) knowingly or recklessly uses or furnishes a fake or forged or invalid licence or a licence that has been altered without authorization

commits an offence.

(2) A person who is found guilty of an offence under subsection (1) is liable, on conviction, —

- (a) in the case of a natural person, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding one year or to both such fine and imprisonment; and
- (b) in the case of a body corporate, to a fine not exceeding two million shillings.

(3) Where a body corporate is found guilty of an offence under this Act, every principal officer of that corporation is deemed to have committed an offence and is liable, on conviction, to a fine not exceeding five hundred

thousand shillings or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

18. (1) The Cabinet Secretary may, in consultation with the Council of County Governors, make Regulations for the better carrying out of the provisions of this Act.

Regulations.

(2) In particular and without prejudice to the generality of the power conferred by subsection (1), the Cabinet Secretary shall make Regulations prescribing —

- (a) the parameters for fees payable on application for the issuance, renewal or variation of a license under this Act by county governments;
- (b) anything which is required to be prescribed or is necessary to give effect to this Act.

19. (1) A county may enact county legislation to make provision for local tourism in the respective county.

County legislation.

(2) In particular and without prejudice to the generality of the power under subsection (1), a county may enact county legislation prescribing —

- (a) the conditions which a licence may be granted or issued under this Act;
- (b) the procedures and forms for the application for a licence;
- (c) the classes of licence that may be issued by the respective county executive committee member;
- (d) such further criteria for the issuance, transfer or cancellation of a licence;
- (e) the fees payable for the issuance or renewal of a license under this Act;
- (f) the process of appeal of the decision of the respective county executive committee member; or
- (g) such further provisions as may be necessary for the implementation of this Act and the effective conduct of local tourism in the respective county.

20. Where a provision of the Tourism Act is inconsistent with the provisions of this Act, the provisions of this Act shall prevail.

Conflict of laws.
No. 28 of 2011.

21. Section 7 of the Tourism Act is amended by inserting the following new subsection immediately after subsection (1) —

Amendment to
No. 28 of 2011.

(1A) In discharging its functions under subsection (1)(c), the Authority shall not issue, vary or renew licences for activities classified as local tourism activities under this Act or any other law.

SCHEDULE

Schedule

[section 2]

LOCAL TOURISM ACTIVITIES AND SERVICES

- (a) Class “A” enterprises —
 - (i) hotels;
 - (ii) members clubs;
 - (iii) motels;
 - (iv) inns;
 - (v) hostels;
 - (vi) health and spa resorts;
 - (vii) tree houses;
 - (viii) floatels;
 - (ix) service flats;
 - (x) service apartments;
 - (xi) beach cottages;
 - (xii) holiday cottages;
 - (xiii) tented camps;
 - (xiv) bandas;
 - (xv) cultural homes and centres;
 - (xvi) villas;
 - (xvii) homestays;
 - (xviii) guest houses; and
 - (xix) cottages and private residences engaged in guest house services.
- (b) Class “B” enterprises —
 - (i) water sports;
 - (ii) balloon operators; and
 - (iii) boat excursions.
- (c) Class “C” enterprises —
 - (i) game fishing outfitters; and
 - (ii) amusement parks.
- (d) Class “D” enterprises —
 - (i) local traditional boat operators;

- (ii) curio vendors;
- (iii) general vendors; and
- (iv) beach operators.
- (e) Class “F” enterprises —
 - (i) restaurants; and
 - (ii) other food and beverage services.
- (f) Class “G” enterprises: entertainment facilities.
- (g) Class “H” enterprises: conference and event services.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The principle object of the Bill is to provide for the development, management, marketing, promotion and licensing of local tourism by county governments. The Bill also seeks to amend the Tourism Act, No. 28 of 2011, in order to make provisions for local tourism and involve counties in the development, management, marketing and regulation of local tourism.

This is in view of the fact that whereas paragraph 7(d) of Part 2 of the Fourth Schedule to the Constitution designates local tourism as a function of county governments, no national legislation makes provision for local tourism and its development, management, marketing, promotion or licensing.

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

Section 15 of the Bill delegates legislative powers to the Cabinet Secretary responsible for tourism, who is required to make regulations for the better carrying out of the provisions of the Bill, once enacted, in consultation with the Council of County Governors.

The Bill does not limit fundamental rights and freedoms.

Statement of how the Bill concerns County Governments

The Bill concerns county governments in that it contains provisions relating to the development, management, marketing and regulation of local tourism. Paragraph 7(d) of Part 2 of the Fourth Schedule to the Constitution designates local tourism as a function of county governments.

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 11th June, 2024.

BETTY BATULI MONTET,
Senator.

Section 7 of No. 28 of 2011 which it is proposed to amend –

Functions of the Authority.

- 12.** (1) The functions of the Authority shall be to—
- (a) formulate guidelines and prescribe measures for sustainable tourism throughout the country;
 - (b) regulate tourism activities and services countrywide, in accordance with the national tourism strategy;
 - (c) register, licence and grade all sustainable tourism and tourist-related activities and services including cottages and private residences engaged in guest house services;
 - (d) develop and implement, in consultation with relevant stakeholders, criteria for standardization and classification of tourism facilities and services;
 - (e) develop and regulate, in consultation with the ministry for the time being responsible for matters relating to education, tourism and hospitality curriculum, examination and certification;
 - (f) develop and implement a code of practice for the tourism sector;
 - (g) ensure the development and implementation of high quality tourism sector;
 - (h) vet and recommend expatriates seeking employment in the tourism and hospitality sector;
 - (i) monitor and assess tourist activities and services to enhance continuous improvement and adherence to sound principles and practices of sustainable tourism;
 - (j) undertake, annually, an assessment and audit of tourism activities and services, measures and initiatives at the national level, and prepare and publish an annual national tourism sector status report, in consultation with the Minister and the relevant lead agencies; and

(k) perform any other functions that are ancillary to the object and purpose for which the Authority is established.

(2) The Minister shall, in each financial year, lay a national tourism sector status report published under subsection (1)(j) before the National Assembly, as soon as reasonably practicable after its publication, where the National Assembly is in session, or where not in session, within twenty one days of the day the National Assembly next sits after the publication.