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**NATIONAL ASSEMBLY BILLS, 2019**

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**CONTENT**

Bill for Introduction into the National Assembly—

**PAGE**

The County Governments' Retirement Scheme Bill, 2019 .....287



**THE COUNTY GOVERNMENTS' RETIREMENT  
SCHEME BILL, 2019**

**ARRANGEMENT OF CLAUSES**

*Clause*

**PART I — PRELIMINARY**

- 1—Short title.
- 2—Interpretation.
- 3—Application.
- 4—Objects of the Act.

**PART II — ESTABLISHMENT AND MANAGEMENT OF THE  
COUNTY GOVERNMENTS' RETIREMENT SCHEME**

- 5—Establishment of the County Governments Retirement Scheme.
- 6—Establishment of the Board of Trustees.
- 7—Composition of the Board.
- 8—Qualifications for appointment of Trustees.
- 9—Criteria for suitability.
- 10—Functions of the Board.
- 11—Powers of the Board.
- 12—Committees of the Board.
- 13—Tenure of office.
- 14—Remuneration of Trustees.
- 15—Removal from office.
- 16—Vacation of office.
- 17—Filling of vacancy.
- 18—Meetings of the Board.
- 19—Chief Executive Officer of the Scheme.
- 20—Removal of the Chief Executive Officer.
- 21—Employees of the Scheme.
- 22—Common seal of the Scheme.

**PART III—ADMINISTRATION OF THE COUNTY  
RETIREMENT SCHEME**

- 23—Appointment and functions of the Fund Manager.
- 24—Appointment and functions of the Custodian.
- 25—Appointment and functions of Administrator.
- 26—Liability to contribute.
- 27—Method of contribution.
- 28—Vesting of benefits.
- 29—Withdrawal of membership or benefits.
- 30—Retirement from the service.
- 31—Retirement on grounds of ill health.
- 32—Payment of retirement benefits.
- 33—Particulars of member and dependants of the member.
- 34—Death of a member in service.
- 35—Presumption of death of member.
- 36—Prohibited payments from the Scheme.

**PART IV—FINANCIAL PROVISIONS**

- 37—County Governments' Retirement Scheme Fund.
- 38—Trust and administrative expenses of the Scheme.
- 39—Investment of scheme funds.
- 40—Reserve account.
- 41—Annual estimates.
- 42—Accounts and audit.
- 43—Financial year.
- 44—Actuarial review of the Scheme.

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**PART V — GENERAL PROVISIONS**

- 45—Duty of care.
- 46—Protection from personal liability.
- 47—Offences.
- 48—Proceedings for recovery of deductions from sponsors.
- 49—General penalty.
- 50—Regulations.
- 51— Repeal of Cap. 272.
- 52—Exemption from other statutory schemes.
- 53— Phasing of contributions.
- 54—Saving and transitional provisions.

**SCHEDULE (S. 16)**

**PROVISIONS RELATING TO THE CONDUCT OF  
BUSINESS AND AFFAIRS OF THE BOARD**

**THE COUNTY GOVERNMENTS' RETIREMENT  
SCHEME BILL, 2019**

**A Bill for**

**AN ACT of Parliament to establish the County Governments' Retirement Scheme; provide for the management and administration of the Scheme; and for related matters.**

**ENACTED** by the Parliament of Kenya, as follows —

**PART I—PRELIMINARY**

**1.** This Act may be cited as the County Governments' Retirement Scheme Act, 2019. Short title.

**2.** In this Act— Interpretation.

“Administrator” means the person appointed under an instrument by the Trustees to manage the administrative affairs of the Scheme;

“Authority” means the Retirement Benefits Authority established under section 3 of the Retirement Benefits Act;

“Board” means the Board of Trustees established under section 6;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to finance;

“Chairperson” means the chairperson of the Board of Trustees elected in accordance with section 7 (3);

“Chief Executive Officer” means the chief executive officer of the Scheme appointed under section 18;

“child” means any child of a deceased member who has not attained eighteen years of age or if the child is receiving full time education, not more than twenty-five years of age and was at the time of the death of the deceased wholly or mainly dependent on the deceased:

Provided that this category of dependants—

- (a) includes an unborn child who, if already born, would have been a child of the deceased; and
- (b) shall be closed at the death of the member;

“contribution” means the amount payable by a member or sponsor into the Scheme;

“Council of Governors” means the Council of County Governors established in section 19 of the Intergovernmental Relations Act; No. 2 of 2012.

“County Assembly Service Board” means the county assembly service boards established in section 12 of the County Governments Act; No. 17 of 2012.

“County Public Service Board” means the county public service boards established in section 57 of the County Governments Act; No. 17 of 2012.

“custodian” means a person registered under the Retirement Benefits Act and appointed by the Board under section 23; No. 3 of 1997.

“dependant” in relation to a deceased member, means a relative of the deceased who survives the deceased and who, on the date of the deceased’s death, was—

- (a) a spouse to the deceased;
- (b) a child of the deceased; or
- (c) a parent of the deceased who was dependent on the deceased for the provision of the ordinary necessities of life;

“employer” means a county government or any of its entities, a state organ or associated organization or any other person or body, as may be approved by the Board and has signed a Deed of Adherence in accordance with this Act;

“Fund” means the County Governments’ Retirement Scheme Fund established under section 34;

“Fund Manager” means a manager registered under the Retirement Benefits Act and appointed by the Board under section 22; No. 3 of 1997.

“income drawdown” means the facility to continue to keep retirement savings invested and take an income at a specified period rather than buy an annuity;

“investment return” means a portion of the return of the investment declared by the Board and appropriated to the account of a member;

“member” means a person who is a member of the Scheme and includes a person entitled to or receiving a benefit under the Scheme;

“member account” means an account maintained by the Scheme for an individual member;

“public service” means the collectivity of individuals, other than State officers, performing a function within a state organ;

“retirement benefits scheme” has the meaning assigned to it in the Retirement Benefits Act;

“Scheme” means the County Governments' Retirement Scheme established under this Act;

“sponsor” means an employer or any other person or body who makes contributions on behalf of a member;

“spouse” means a male or female person to whom a member is married or was married immediately before their death under the law, whether monogamous or not; and

“Trustee” means a member of the Board of Trustees.

**3.** This Act shall apply to—

Application.

- (a) a person employed by a County Government;
- (b) a person employed by a county agency, county corporation or Associated Organisation;
- (c) a person seconded or transferred from the national government to a county government; or
- (d) a public officer or any other person approved by the Board to become a member of the Scheme.

**4.** The objects of this Act are—

Objects of the Act.

- (a) to provide for the adoption of an umbrella retirement scheme for all staff and officers of county governments;
- (b) to protect the retirement benefits of employees of county governments;
- (c) improve the social security of members of the Scheme by ensuring that the members save in order to cater for their livelihoods during their retirement;
- (d) provide for the transition from the existing system of retirement benefits schemes for staff of County Governments and former local and

central governments to a uniform, inclusive and comprehensive pension scheme for county governments;

- (e) to establish a uniform set of rules, regulations and standards for the administration and payment of retirement benefits for members of the scheme; and
- (f) to improve the social security of members of the Scheme by ensuring that the members save in order to cater for their livelihood during their retirement.

## **PART II—ESTABLISHMENT AND MANAGEMENT OF THE SCHEME**

**5. (1)** There is established the County Governments' Retirement Scheme which shall be administered by the Board in accordance with this Act and any other relevant law.

Establishment of the County Governments Retirement Scheme.

**(2)** The Scheme shall be established as a statutory trust and shall vest in and be operated and managed by the Board.

**(3)** The Scheme shall be a defined contribution providing social security benefits including—

- (a) periodic payments through the purchase of annuities;
- (b) lump sum payments as provident benefits;
- (c) income drawdown; and
- (d) any other benefit approved by the Board under this Act.

**6. (1)** There is established a Board to be known as the Board of Trustees of the County Governments Retirement Scheme, which shall be a body corporate with perpetual succession and a common seal.

Establishment of the Board of Trustees.

**(2)** The Board shall be capable in its corporate name of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;

- (c) entering into contracts;
- (d) borrowing and lending money; and
- (e) doing or performing all such other things or acts as may be necessary for the proper performance of its functions under this Act, and which may lawfully be done or performed by a body corporate.

7. (1) The Board shall consist of—

Composition of the Board.

- (a) one representative of the Council of Governors;
- (b) one representative of the County Public Service Boards;
- (c) one representative of the County Assembly Service Boards;
- (d) two persons independently nominated by the Cabinet Secretary by virtue of their knowledge and experience in the pension sector; and
- (e) four other trustees nominated by employees of the county governments, two of whom shall be of the opposite gender.

(2) The members shall appoint a Chairperson from among themselves at the first sitting of the Board.

(3) The Cabinet Secretary shall appoint the members of the Board by notice in the Gazette.

(4) The Chief Executive Officer shall be an *ex officio* member of the Board with no voting rights.

8. (1) A person is qualified for appointment as a trustee if that person—

Qualifications for appointment of Trustees.

- (a) is a citizen of Kenya;
- (b) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution;
- (c) holds a degree from a university recognized in Kenya;
- (d) has at least five years' experience in—
  - (i) finance;

- (ii) law;
- (iii) economics;
- (iv) actuarial science; or
- (v) any other profession directly relevant to the functions of the Board.

9. (1) The Board shall, in determining whether a person is suitable to act as a trustee, manager, custodian or an administrator under this Act, consider the—

Criteria for suitability.

- (a) financial status or solvency of the person;
- (b) educational or other qualifications or experience of the person, having regard to the nature of the functions which, if the application is granted, the person shall perform;
- (c) status of any other licence or approval granted to the person by any financial sector regulator;
- (d) ability of the person to carry on the regulated activity competently, honestly and fairly; and
- (e) reputation, character, financial integrity and reliability—
  - (i) in the case of a natural person, of that individual; or
  - (ii) in the case of a company, of the company, its chairperson, directors, chief executive, management and all other personnel including all duly appointed agents, and any substantial shareholder of the company, if the chairperson, director, chief executive, management or the personnel are shareholders of the company.

(2) Without prejudice to the generality of subsection (1), the Board may, in considering whether a person is fit and proper—

- (a) take into account whether the person—
  - (i) has contravened the provision of any law, in Kenya or elsewhere, designed for the protection of members of the public against financial loss due to dishonesty,

- incompetence, or malpractice by persons engaged in transacting with marketable securities;
- (ii) was a director of a licensed person who has been liquidated or is under liquidation or statutory management;
  - (iii) has taken part in any business practice which, in the opinion of the Board, was fraudulent prejudicial to the market or public interest, or was otherwise improper, which would otherwise discredit the person's methods of conducting business; or
  - (iv) has taken part or has been associated with any business practice which casts doubt on the competence or soundness of judgment of that person; or
  - (v) has acted in such a manner as to cast doubt on the person's competence and soundness of judgment;
- (b) take into account any information in the possession of the Board, whether provided by the applicant or not, relating to—
- (i) any person who is to be employed by, associated with, or who shall be acting for or on behalf of, the applicant for the purposes of a regulated activity, including an agent;
  - (ii) where the applicant is a company in a group of companies—
    - (A) any other company in the same group of companies; or
    - (B) any substantial shareholder or key personnel of the company or any company referred to in subparagraph (a);
- (c) take into account whether the applicant has established effective internal control procedures and risk management systems to ensure its compliance with all applicable regulatory requirements; and

- (d) have regard to the state of affairs of any other business which the person carries on or purports to carry on.

(3) The Board shall give a person an opportunity to be heard before determining whether a person is fit and proper for the purposes of this Act.

(4) For the purposes of this section, "group of companies" means any two or more companies one of which is the holding company of the others.

**10.** The Board shall—

Functions of the Board.

- (a) formulate policies relating to retirement benefits schemes in the county governments;
- (b) collect contributions and income payable to the Fund under this Act;
- (c) pay out the various benefits to persons entitled to the benefits as provided under this Act;
- (d) protect the Fund's assets and ensure the long term viability of the Scheme;
- (e) ensure efficient management of the Scheme;
- (f) ensure prudent investment of the monies forming part of the Fund;
- (g) negotiate competitive annuity rates on behalf of the members;
- (h) ensure that the Scheme observes high standards of corporate and business ethics;
- (i) advise the Cabinet Secretary on any matter relating to the objects and functions of the Board under this Act; and
- (j) perform any other functions assigned to it under this Act.

**11.** (1) In the exercise of its functions, the Board shall be accountable to the sponsors and the members of the Scheme.

Powers of the Board.

(2) The Board shall have all powers necessary for the proper performance of the functions of the Scheme under this Act.

(3) Without prejudice to the generality of subsection (2), the Board shall have power to---

- (a) supervise the assets of the Scheme in such manner as best promotes the purpose for which the Scheme is established;
- (b) appoint a custodian, Fund Manager and other service providers to carry out their functions as specified in this Act;
- (c) determine the provisions to be made for administrative expenses and for reserves of the Fund;
- (d) ensure protection, where necessary, of the assets of the Scheme;
- (e) associate with any other institution so as to further the purpose for which the Scheme is established;
- (f) receive grants, gifts, donations or endowments and make legitimate disbursements from them;
- (g) enforce remittance of outstanding contributions by a sponsor;
- (h) invest any monies of the Scheme not immediately required for its purposes in the manner provided in section 37; and
- (i) undertake any activity necessary for the fulfilment of any of the functions of the scheme.

(4) The Board may, subject to such conditions as it may think fit, by directions in writing delegate any of its powers to any one or more of the Trustees or to the Chief Executive Officer or employee of the Scheme.

**12.** (1) The Board may establish such committees as it may consider necessary for the better carrying out of its functions under this Act.

Committees of the Board.

(2) The Board may co-opt persons with such skills and knowledge as it may consider necessary, to sit in committees established under subsection (1) for a particular reason, but such persons co-opted into the committees shall have no voting rights in respect of the decisions of the Board.

**13.** (1) A Trustee shall hold office on a part-time basis for a term of three years and shall be eligible for re-appointment for one further term of three years.

Tenure of office.

(2) Where a Trustee opts to apply for re-appointment under subsection (1), the re-appointment may be considered based on the performance of the applicant.

(3) The Board shall put in place arrangements to ensure that one-third of the Trustees are appointed in a staggered manner separated by six months so as to ensure continuity within the Board.

**14.** The members of the Board shall be paid such allowances as the Cabinet Secretary may, in consultation with the Salaries and Remuneration Commission, determine.

Remuneration of Trustees.

**15.** (1) A Trustee may be removed from office for—

Removal from office.

- (a) inability to perform the functions of the office arising out of physical or mental infirmity;
- (b) gross misconduct;
- (c) incompetence; or
- (d) absence from three consecutive meetings of the Board without a reasonable explanation in writing to the Chairperson.

(2) Before the Cabinet Secretary makes a decision under subsection (1), a Trustee shall be given an opportunity to provide a defence against any allegation.

**16.** A person shall cease to be a Trustee if the person—

Vacation of office.

- (a) resigns in writing, to the Cabinet Secretary;
- (b) is convicted of a criminal offence and sentenced to a term of imprisonment exceeding six months;
- (c) is declared bankrupt;
- (d) is unable to perform the functions of his or her office by reason of mental or physical infirmity;
- (e) is removed in accordance with section 14; or
- (f) dies.

**17.** Where a vacancy occurs in the membership of the Board under sections 15 or 16, the Cabinet Secretary shall appoint a new member in accordance with the provisions of this Act.

Filling of vacancy.

**18.** (1) The business and affairs of the Board shall be conducted in accordance with the Schedule.

Meetings of the Board.

(2) Except as provided in the Schedule, the Board may regulate its own procedure.

(3) The Board may invite any person to attend any of its meetings and to participate in its deliberations, but such person shall not have a vote in any of the decisions of the Board.

**19.** (1) There shall be a Chief Executive Officer of the Scheme who shall be appointed by the Board on such terms and conditions as may be specified in the instrument of appointment.

Chief Executive Officer of the Scheme.

(2) The Chief Executive Officer shall be the secretary to the Board and Administrator of the Scheme and shall carry out such functions as the Board may determine.

(3) The appointment of the Chief Executive Officer shall be through a competitive recruitment process.

(4) A person is qualified for appointment as the Chief Executive Officer if the person—

- (a) is a citizen of Kenya;
- (b) holds at least a bachelors degree from a university recognized in Kenya;
- (c) has at least ten years' experience, five of which should be at a senior management level, in a profession relevant to the functions of the Scheme;
- (d) is a member of the professional body regulating the relevant profession; and
- (e) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution.

(5) The Chief Executive Officer shall be the accounting officer of the Scheme and, subject to the direction of the Board, shall be responsible for—

- (a) the implementation of the decisions of the Board;
- (b) the day to day management of the affairs of the Scheme;
- (c) the organization and management of the employees of the Scheme; and
- (d) any other function that may be assigned by the Board.

(6) The Chief Executive Officer shall hold office for a term of five years and shall be eligible for re-appointment for one further term of five years based on satisfactory performance.

**20.** (1) The Chief Executive Officer may be removed from office by the Board through a fair administrative action for—

Removal of the Chief Executive Officer.

- (a) inability to perform the functions of the office arising out of physical or mental infirmity;
- (b) gross misconduct;
- (c) being a declared bankrupt;
- (d) gross incompetence or neglect of duty; or
- (e) violation of the Constitution or any other written law.

(2) Before removal under subsection (1), the Chief Executive Officer shall be given—

- (a) sufficient notice of the allegations made against him or her; and
- (b) an opportunity to be heard either in person or by a legal representative.

**21.** (1) The Board may engage such number of employees as it may consider sufficient for the performance of its functions under this Act.

Employees of the Scheme.

(2) The terms and conditions of service of employees of the Scheme shall be determined by the Board on the advice of the Salaries and Remuneration Commission.

**22.** (1) The common seal of the Scheme shall be kept in such custody as the Board may direct and must not be used except on the order of the Board.

Common seal of the Scheme.

(2) The common seal of the Scheme when affixed to a document and authenticated shall be officially noticed and unless the contrary is proved, an order or authorization of the Board under this section shall be presumed to have been given.

### **PART III—ADMINISTRATION OF THE COUNTY GOVERNMENTS' RETIREMENTS SCHEME**

**23.** The Board shall appoint a Fund Manager of the Scheme who shall—

Appointment and functions of the Fund Manager.

- (a) implement the investment policy of the Scheme as approved by the Board;
- (b) manage the scheme funds and assets in accordance with this Act;
- (c) maintain books of account on all investment transactions relating to the Scheme;
- (d) provide regular information on investment strategy, market returns and other performance indicators to the Board; and
- (e) perform any other function that may be assigned in the instrument of appointment or in any other written law.

**24.** (1) The Board shall appoint a Custodian of the Scheme who shall—

Appointment and functions of the Custodian.  
No. 3 of 1997.

- (a) receive the total contributions remitted by the member and sponsor under this Act on behalf of the Board;
- (b) not later than the next business day following receipt of the contributions from a sponsor, notify the Fund Manager and the Administrator of such receipt;
- (c) receive and keep in safe custody the title documents, securities and monies of the Scheme in trust for the members and beneficiaries;
- (d) collect dividends for the members;

- (e) report to the Board on any matter relating to the assets being held by the custodian on its behalf at such intervals as may from time to time be determined by the Board;
- (f) undertake statistical analysis on the investments and returns on investments with respect to funds in its custody and provide data and information to the Administrator and the Board;
- (g) execute, on behalf of the Board, the relevant proxy for the purpose of voting in relation to the investments; and
- (h) perform any other function that may be assigned in the instrument of appointment or in any other written law.

(2) The Custodian shall maintain all funds and assets in his or her custody to the order of the Board and shall not utilise any pension fund or assets in his or her custody to meet his or her own financial obligation.

**25.** (1) The Scheme shall be administered by an Administrator appointed by the Board, and whose functions shall be—

Appointment and functions of the Administrator.

- (a) to open and maintain an account for each member;
- (b) upon receiving details of the contributions remitted under this Act, to cause the amount of the contributions to be credited in the account of the member in respect of whom the sponsor has made the payment;
- (c) to inform the Board if a member's contribution details differ from the expected;
- (d) to provide customer support services to the members, including access to members' account balances and statements;
- (e) to have responsibility for all calculations and payment relating to retirement benefits and any other benefits as they fall due; and
- (f) to carry out any other functions as may be directed by the Board from time to time.

(2) The Administrator shall ensure that all income earned from the investment of the Fund is distributed to the credit of the members' retirement savings accounts save for clearly defined and reasonable fees, charges, costs and expenses of transactions approved by the Board.

**26.** (1) Every member shall, as long as they remain in the employment of a sponsor, contribute to the Scheme in the manner prescribed in section 25.

Liability to contribute.

(2) Every sponsor shall contribute to the Scheme, in addition to the sums deducted from its employees under subsection (1), their part of the contributions.

(3) The contributions under subsections (1) and (2) shall be a percentage of the member's salary as the Board may, by regulations, prescribe.

**27.** A contribution required to be made under this Act shall be deducted by a sponsor from the salary of the contributor on each occasion on which the salary is paid and shall be paid into the Scheme together with the sponsor's contribution within such period as the Board may prescribe.

Method of contribution.

No. 3 of 1997.

(2) Despite actual date on which the deduction is made pursuant to subsection (1), each contribution shall be deemed for the purposes of this Act to be credited to the contributors account in the scheme on the last day of the month in respect of which the salary is due.

**28.** All the benefits derived from contributions by a member and sponsor shall vest in the member.

Vesting of benefits.

**29.** A member may withdraw benefits from their account before attaining normal retirement age in the event of—

Withdrawal of membership or benefits.

- (a) early retirement;
- (b) resignation;
- (c) dismissal;
- (d) ill health;
- (e) emigration; or
- (f) transfer to another scheme.

**30.** (1) Despite any other provisions in this Act, a member who retires is entitled to make withdrawals—

Retirement from the service.

- (a) on attaining the retirement age;
- (b) on compulsory retirement under subsection (4);
- (c) on the advice of a qualified medical practitioner appointed by the Board certifying that the member is no longer mentally or physically capable of carrying out the functions of his or her office; or
- (d) on termination of service in the public interest.

(2) The proof of age of a retiring member for the purposes of subsection (1) is the date of birth in either of the following documents—

- (a) birth certificate;
- (b) national identification card; or
- (c) a valid passport.

(3) The sponsor may require an officer to retire from the public service in any other case, at any time after the officer attains the age of fifty years.

(4) For the purposes of this section, “retirement age” means the retirement age for public officers as may be prescribed in regulations.

(5) Despite subsections (1) and (5), a member may continue membership of the scheme past the retirement age provided that the member has signed an agreement with the Board.

**31.** A member may be permitted to receive benefits before attaining retirement age if medical evidence is submitted to the scheme showing that the member is permanently incapacitated and cannot perform their normal gainful employment or any other occupation for which they are reasonably suited by education, training or experience.

Retirement on grounds of ill health.

**32.** (1) Where a member retires as provided in this Act, the member may request the Board in writing to pay to them—

Payment of retirement benefits.

- (a) a lump sum from the balance in his or her retirement savings account that shall not exceed the equivalent of one third of that balance;
- (b) a monthly or quarterly income drawdown in accordance with a formula prescribed by the Board on the advice of an actuary;

- (c) a lumpsum of the balance in his or her retirement saving account as provident; or
- (d) a monthly or quarterly annuity for life purchased from an approved issuer of their choice provided that, the annuity shall include a provision for benefits payable to dependants upon a member's death.

(2) Despite subsection (1) (a), a member may withdraw any additional voluntary contributions made into the scheme and accrued interest in full.

(3) Despite the provisions of any other written law, a benefit granted under this Act shall not be---

- (a) assignable or transferable except for the purpose of satisfying---
  - (i) a tax due to the national or county government; or
  - (ii) in accordance with the terms of a mortgage guarantee facility approved by the Board; or
- (b) liable to be attached in settlement of any claim.

(4) The payment of a retirement pension shall commence from the end of the month immediately following the month of the retirement of the member.

**33.** (1) Every member shall provide their particulars and those of their dependants to the Administrator in the prescribed manner.

Particulars of member and dependants of the member.

(2) A member may update the particulars provided under subsection (1) at any time before retirement.

(3) Upon the death of a member, their benefits shall be paid to the person whose particulars the member had provided.

(4) Where a dispute arises under this section, the Board shall consider any evidence presented before it and determine the rightful beneficiary.

**34.** (1) Upon the death of a member, the Board shall apply the benefits of the member under this Act in favour of the nominated beneficiary.

Death of a member in service.

(2) In the absence of a nomination, the Board while taking into consideration any evidence presented before it,

shall apply the benefits referred to in subsection (1) to either the dependants or the personal representatives of the estate of the deceased.

**35.** (1) Where a member is missing and it is proved that the member has not been heard of for such period as prescribed by the law relating to presumption of death by those who might be expected to have heard of the member if that member was alive, there shall be a rebuttable presumption that the member is dead as provided under the law.

Presumption of death of member.

(2) Where a person is presumed dead under this section, the provisions of section 30 apply.

**36.** No monies under this Act shall be made by the Scheme to—

Prohibited payments from the Scheme.

- (a) a sponsor without the prior written consent of the Authority;
- (b) a member while the member is still in the employment of a sponsor; or
- (c) any person as a loan, advance or other similar benefit or payment except as provided under this Act.

#### **PART IV—FINANCIAL PROVISIONS**

**37.** (1) There is established a Fund to be known as the County Governments' Retirement Scheme Fund which shall be administered by the Board.

County Retirement Scheme Fund.

- (2) The Fund shall consist of—
- (a) monies as may vest in or accrue to the Scheme in the performance of its functions under this Act or under any other written law;
  - (b) contributions by a member or a sponsor;
  - (c) grants, gifts, donations or other endowments given to the Scheme;
  - (d) income from investments made by the Scheme that are approved by the Board;
  - (e) monies earned by the Scheme from any other source; and

(f) monies from any other source provided or donated or lent to the Scheme.

(3) There shall be paid out of the Fund—

(a) all payments which are due as provided under this Act; and

(b) the expenses incurred in the management and administration of the Scheme.

**38.** The Board shall establish an account into which shall be paid—

Trust and administrative expenses of the Scheme.

(a) the monies transferred from the Fund for the trust expenses incurred by the Board in the exercise of its powers or the performance of its functions under this Act;

(b) the annual administrative expenses deducted from the value of the Fund at the rate approved from time to time by the Board but subject to a maximum of five percent of the Fund value or any such rate as the Board in consultation with the Authority may prescribe; and

(c) income from the investment of the monies held in the account established under this section.

**39.** (1) The Board shall have a prudent investment policy on the investment of the funds of the scheme so as to maintain the capital funds of the scheme and generally to secure market rates of return on such investment:

Investment of scheme funds.

Provided that where the value of the scheme is one hundred million Kenya shillings or less, the Board may invest up to one hundred *per centum* of its scheme funds in Government securities.

(2) Notwithstanding the provisions of any other written law, the investment policy of the Scheme shall be implemented subject to any regulations the Cabinet Secretary may, in consultation with the Board, make for that purpose.

(3) There shall be submitted to the Chief Executive Officer, in respect of the Scheme, a statement of all investments of the scheme fund, in such form, manner and at such intervals as may be prescribed.

**40.** (1) The Board shall maintain a reserve account of the Scheme into which the following shall be deposited— Reserve account.

- (a) any special contribution paid into the Scheme by a sponsor or the Government for the purpose of improving the benefits of the members; and
- (b) any income of the Scheme that the Board determines should be set aside to stabilize the returns to members subject to a maximum of ten per cent of such income or such sum as directed by the Authority.

(2) No money shall be drawn out of the reserve account except as directed by the Board.

(3) Any monies determined to be income of the reserve account shall be treated as income forming part of the general income of the Scheme.

**41.** (1) Before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Scheme for that year. Annual estimates.

(2) The annual estimates shall make provision for all the estimated expenditure of the Scheme for the financial year concerned and, in particular, shall provide for the—

- (a) payment of the salaries, allowances, and other charges in respect of the employee of the Scheme;
- (b) payment of benefits and other charges which are payable out of the funds of the Scheme;
- (c) funding of the registration, monitoring and evaluation activities of the Scheme;
- (d) maintenance of the buildings and grounds of the Scheme;
- (e) funding of training, research and development of activities of the Scheme;
- (f) reserve funds to meet future or contingent liabilities in relation to retirement benefits, insurance or replacement of buildings or equipment; and
- (g) such other matters as the Board may consider fit.

(3) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary for approval.

(4) The expenditure of the Scheme shall not be incurred except in accordance with the annual estimates approved under subsection (3).

**42.** (1) The Board shall cause to be kept proper books and records of account of the income, expenditure, assets and liabilities.

Accounts and audit.

(2) Within a period of three months after the end of each financial year, the Board shall submit to the Auditor-General the accounts of the Scheme in respect of that year together with—

- (a) a statement of the income and expenditure of the Scheme during that year; and
- (b) a statement of the assets and liabilities of the Scheme on the last day of that financial year.

(3) The annual accounts of the Scheme shall be prepared, audited and reported upon in accordance with the provisions of Articles 226 and 229 of the Constitution and the law relating to public audit.

**43.** The financial year of the Scheme shall be the period of twelve months ending on the thirtieth June in each year.

Financial year.

**44.** (1) The Scheme shall be reviewed by an actuary appointed by the Board at such intervals as the Board may consider necessary.

Actuarial review of the Scheme.

(2) The actuary appointed under subsection (1) shall—

- (a) prepare a report on the state of the Scheme; and
- (b) recommend any necessary action to be taken.

(3) The actuary shall submit the report prepared under subsection (2) to the Board within the stipulated time in the instrument of appointment.

(4) The Board shall, within six months of the receipt of such report, consider any recommendations made by the

actuary and in so doing, may take any other action recommended by the actuary.

#### **PART V—GENERAL PROVISIONS**

**45.** (1) The Board shall—

Duty of care.

- (a) ensure that the Scheme is at all times managed in accordance with the provisions of this Act and any other relevant law; and
- (b) take reasonable care to ensure that the management of the scheme or safe keeping of the assets of the Scheme is carried out in the best interests of the members of the Scheme.

(2) The Administrator, Fund Manager and Custodian shall—

- (a) report to the Board, as soon as reasonably practicable, any unusual occurrence with respect to the Scheme which in their view could adversely affect the rights of the owner of a member's account under the Scheme; and
- (b) report to the Board, as soon as is reasonably practicable, if an employer has not remitted the required contribution and such remittance remains due for more than ten days.

**46.** No action or omission by any member of the Board or employee of the Scheme shall, if the act was done in good faith for the purpose of carrying out the provisions of this Act or any other law, subject the person to any liability, action, claim or demand.

Protection from personal liability.

**47.** (1) A person who—

Offences.

- (a) wilfully fails to remit contributions to the Scheme as required;
- (b) knowingly gives false information to the Scheme; or
- (c) being a Trustee or employee of the Scheme, wilfully misappropriates the assets of the Scheme,

Commits an offence and is liable on conviction to a fine not exceeding five million shillings or to imprisonment for a term not exceeding two years or to both.

(2) Where an offence under this section is committed by a body corporate, every person who at the time of the commission of the offence was—

- (a) a director, general manager, secretary of the company or other similar officer of the body corporate; or
- (b) Purporting to act in any such capacity as provided in paragraph (a), commits that offence.

(3) Despite subsection (2), it is a defence if a person proves that the offence was committed without their consent or involvement and that they exercised due diligence to prevent the commission of the offence as ought to have been exercised having regard to the nature of their functions in that capacity and to all the circumstances.

**48.** (1) Where a sponsor having made a deduction from the member's emoluments for remittance to the scheme, fails to remit the deduction within fifteen days of the deduction, the scheme may, after giving such sponsor not less than seven days' notice, institute proceedings for the recovery of the deduction.

Proceedings for recovery of deductions from sponsors.

(2) A notice under subsection (1) shall be in writing and copied to the Authority, and shall—

- (a) require the sponsor to pay the sum deducted to the scheme within seven days of the notice; and
- (b) Inform the sponsor that if the sponsor fails to pay the sum before the expiration of the notice, proceedings for summary recovery of the sum shall be filed in court without further reference to the sponsor.

(3) Any sum which is the subject of proceedings of summary recovery under this section shall attract a compound interest at the rate of three per cent per month.

(4) Without prejudice to any proceedings instituted under this section, a person who refuses or fails to comply with a notice given under subsection (1) commits an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings, or in the case of a natural person, to imprisonment for a term not exceeding three years, or to both.

(5) Where an offence under subsection (4) is a continuing offence, the person convicted, in addition to the penalty prescribed in that subsection, is liable to a further fine of one thousand shillings for every day or part thereof during which the offence continues.

**49. (1)** A person who—

General Penalty.

- (a) contravenes any provision of this Act which is expressly stated to be an offence but for which no other penalty is prescribed; or
- (b) fails to comply with any direction given by the Chief Executive Officer of the Authority;

commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding one year, or to both.

(2) A person does not commit an offence under subsection (1), if the person proves, to the satisfaction of the court, that the act or omission constituting the offence was done without their knowledge, consent or connivance and that they attempted to prevent the commission of the offence having regard to all the circumstances of the case.

**50. (1)** The Board may make regulations generally for the carrying out of the provisions of this Act.

Regulations

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

- (a) mode of paying out pension and provident benefits;
- (b) mode of provision of the details of members and their dependants;
- (c) guidelines for operating and the general management of the Scheme;
- (d) rules for nomination and appointment of trustees;
- (e) rules for winding up of the scheme;
- (f) rules and guidelines for the Board to manage the closed schemes; and
- (g) such other matters as the Scheme considers necessary.

**51.** The Local Authorities Provident Fund Act is repealed. Repeal of Cap. 272.

**52.** A sponsor and a person who is a member of the Scheme is exempt from making Tier 11 contributions to the National Social Security Fund. Exemption from other statutory schemes.

**53.** The contributions by the members of the Scheme who were previously employed by the national government shall be phased out in the first three years after the commencement of this Act, at the rates of five per cent, eight per cent and twelve per cent of a Member's Pensionable Emoluments in the first, second and third years respectively. Phasing of contributions.

**54.** (1) A person who is eligible under this Act and who joined the service of a sponsor on permanent and pensionable terms after the first general elections under the Constitution is deemed to be a member of the Scheme with effect from the date of employment. Saving and transitional provisions.

(2) A person who is eligible under this Act and who is an employee of a sponsor on a contractual basis, may opt upon agreement with the sponsor, to join the Scheme in lieu of gratuity for the duration of their contract term provided that the extent of contribution in such case shall be in accordance with section 23 of this Act

(3) A person who is an eligible employee under this Act and who prior to the commencement of this Act—

- (a) was a member of a contributory pension scheme, may subject to the Regulations made by the Cabinet Secretary, port any such contributions to the Fund;
- (b) joined a sponsor on or after the commencement of this Act and was a member of a contributory pension scheme, may subject to Regulations made by the Cabinet Secretary, port any such contributions to the Fund;
- (c) was an employee of the national government and whose remaining period of service is five years or less, is not eligible to join the scheme and shall have his or her pension paid out in accordance with the Pensions Act and the Widows' and

Children Pensions Act or any other relevant legislation;

- (d) was an employee of the national government shall have his or her pension paid out under the Pensions Act and the Widows' and Children Pensions Act for the period they served the national government; and

(4) The persons who, immediately before the commencement of this Act, were the Chairperson and members of the Board of Local Authorities Provident Fund shall serve their unexpired term.

(5) A person who immediately before the commencement of this Act was an employee of Local Authorities Provident Fund Board shall, upon the commencement of this Act, be deemed to be an employee of the Scheme.

(6) The Scheme shall be the successor to the Local Authorities Provident Fund existing immediately before the commencement of this Act, and subject to this Act, all rights, obligations, assets and liabilities of that Scheme existing at the commencement of this Act shall be transferred to the Scheme.

(7) All the funds, assets and other property, movable and immovable which immediately before the coming into operation of this Act, were held by or on behalf of the former Local Authorities Provident Fund Board shall by virtue of this subsection vest in the Scheme.

(8) All rights, powers, liabilities and duties, whether arising under any written law or otherwise, which immediately before the coming into operation of the Act were vested in, imposed on or enforceable by or against the former Local Authorities Provident Fund Board shall by virtue of this subsection be transferred to, vested in, imposed on, or be enforceable against the Fund.

(9) On and after the coming into operation of this Act, all actions, suits or legal proceedings by or against the former Local Authorities Provident Fund Board shall be carried on or prosecuted by or against the Fund and no such suit, action or legal proceedings shall abate or be affected by the coming into operation of this Act.

(10) The annual estimates approved for the former Local Authorities Provident Fund Board in respect of the financial year in which this Act comes into operation shall be considered to be the annual estimates of the Scheme for the remainder of the financial year but those estimates may be varied by the Cabinet Secretary.

**SCHEDULE (s.18)**  
**PROVISIONS RELATING TO THE CONDUCT OF  
 BUSINESS AND AFFAIRS OF THE BOARD**

1. (1) The Board shall have at least four meetings in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting. Meetings.

(2) Meetings shall be convened by the Secretary of the Board in consultation with the Chairperson and shall be held at such times and such places as the Chairperson shall determine.

(3) The Chairperson shall preside over all meetings and in the absence of the Chairperson by a trustee elected by the Board at the meeting for that purpose.

(4) The Chairperson may at any time convene a special meeting of the Board, and shall do so within seven days of the receipt by the Chairperson of a written request signed by at least five other trustees.

(5) Unless six Trustees otherwise agree, at least seven days' notice of a meeting shall be given to every trustee.

2. (1) The quorum of a meeting of the Board is five Trustees present and voting. Quorum.

(2) For special meetings, the quorum is six Trustees present and voting.

3. A decision of the Board shall be by a majority of the trustees present and voting and, in the case of an equality of votes; the person presiding at the meeting shall have a second or casting vote. Voting.

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

5. (1) If a person is present at a meeting of the Board or any committee at which any matter is the subject of consideration and in which matter that person is directly or indirectly interested in a private capacity, that person shall as soon as is practicable after the commencement of the meeting, declare such interest. Disclosure of interest.

(2) The person making the disclosure of interest under subsection (1) must not, unless the Board or committee

otherwise directs, take part in any consideration or discussion of, or vote on any question touching on 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) commits an offence and upon conviction is liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding seven years or to both such fine and imprisonment.

(5) A trustee or employee of the Scheme shall not transact any business or trade with the Scheme.

**MEMORANDUM OF OBJECTS AND REASONS**

The principal object of this Bill is to establish the County Governments' Retirement Scheme as a mandatory Scheme for all County Government Officers; provide for the establishment of the Scheme's Board of Trustees and provide for the Scheme's management and administration. The Bill proposes to have the scheme offer lump sum payments as provident, periodic payments as pensions and income draw-downs. The proposed Scheme will provide one universal scheme for all the forty seven county governments besides being open to other person approved by the Board.

**Part I (clauses 1-4)** contains preliminary matters.

This part contains the short title, interpretation of terms, the application clause which includes all County Government employees as well as any public institution, organization or officer who may wish to join and the scope of the Bill which is to extend the range of those who may access the Scheme's services.

**Part II (clauses 5-22)** provides for the establishment and management of the Scheme. It establishes the County Governments' Retirement Scheme and its Board of Trustees. It provides the procedure for appointment of the Trustees and the necessary qualifications. It also provides the Trustees' functions and powers and sets their tenure to four years renewable once based on performance.

**Part III (clauses 23-38)** contains provisions on the administration of the Scheme and provides for the appointment of the Fund Manager and the Custodian. It also sets out their functions. The functions of the Administrator are also set out. Further, the part provides for membership of the Scheme without a sponsor, the vesting of benefits, and withdrawal from the retirement savings account and retirement from the service among others. Finally, it sets out the prohibited payments from the Scheme.

**Part IV (clauses 39-43)** contains the financial provisions and establishes the County Governments' Retirement Scheme Fund. It also provides how surplus funds may be invested as well and sets out a requirement for the Board to have a reserve account.

**Part V (clauses 44-53)** sets out the general provisions including the duty of care of the Board, protection of the Trustees and employees of the Scheme from personal liability, offences, and proceedings for recovery of deductions from employers and a general penalty clause. It also contains a provision on the making of regulations and gives this power to the Board, in consultation with the Cabinet Secretary. The repeal of the Local

Authorities Provident Fund Act is also provided for in this part. Finally, this part contains a provision exempting members of the Scheme from Tier II contributions to National Social Security Fund. The Part also contains detailed provisions on the transitional provisions, and transition of staff and membership of previous scheme to the new Scheme.

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

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

**Statement on how the Bill concerns county governments**

The Bill concerns county governments in terms of Articles 110(1) (a) of the Constitution in that it contains provisions that affect the functions and powers of the 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 enactment of this Bill may occasion additional expenditure of public funds.

Dated the 6th March, 2019.

CHACHU GANYA,  
*Member of Parliament.*