

REPUBLIC OF KENYA
COUNTY GOVERNMENT OF BOMET



for the Clerk of the Assembly

BOMET COUNTY ASSEMBLY
SECOND ASSEMBLY - THIRD SESSION

REPORT OF THE
SECTORAL COMMITTEE ON TRADE, INDUSTRY, TOURISM AND
COOPERATIVES ON THE
BOMET COUNTY ENTERPRISE DEVELOPMENT BILL, 2019.

CLERK'S CHAMBERS
BOMET COUNTY ASSEMBLY
COUNTY ASSEMBLY CHAMBERS BUILDINGS
BOMET

MAY, 2019

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PREFACE

Mr. Speaker, Sir,

The Sectoral Committee on Trade, Industry, Tourism and Cooperatives is constituted pursuant to the provisions of Standing Order No. 193(5) (f) of the Bomet County Assembly¹ and has executed its mandate in accordance with the provisions of the said Standing Order 191(5)² which mandates the Committee to, inter alia;

- a) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned departments;*
- b) study the program and policy objectives of departments and the effectiveness of the implementation;*
- c) study and review all county legislation referred to it;*
- d) study, assess and analyze the relative success of the departments as measured by the results obtained as compared with their stated objectives;*
- e) investigate and inquire into all matters relating to the assigned departments as they may deem necessary, and as may be referred to them by the County Assembly;*
- f) to vet and report on all appointments where the Constitution or any law requires the County Assembly to approve, except those under Standing Order 188(Committee on Appointments); and*

¹ Standing Order No. 193(5)(f) of the Bomet County Assembly




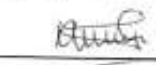
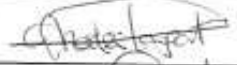

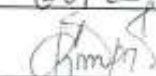
² Standing Order 191(5) of the Bomet County Assembly

- g) *make reports and recommendations to the County Assembly as often as possible, including recommendation of proposed legislation*

1.0 AFFIRMATION AND APPROVAL

Mr. Speaker,

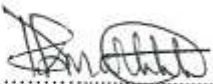
The composition of the committee comprises of the following members whose signatures have been appended confirming that the committee undertook the agenda therein and came up with the recommendations based on the contributions by the members of the public and the committee.

No.	Name	Position	Signature
1	Hon. David Maritim	Chairperson	
2	Hon. Marcella Chepkirui	V. Chairperson	
3	Hon. Cecilia Mutai	Member	
4	Hon. Winny Bore	Member	
5	Hon. Charles Langat	Member	
6	Hon. Samuel Keter	Member	
7	Hon. Barchok Kipngetich	Member	

Mr. Speaker, Sir,

On behalf of the Committee, and pursuant to Standing Order 193 (5)(g), it is my pleasant duty to table in the Assembly the Report of the Sectoral Committee on Trade, Industry, Tourism and Cooperatives on its scrutiny of the Bomet County Development Bill, 2019.

Thank you.

Signed.......... Date..... 14/5/2019.....

Hon. David Maritim, MCA

Chairperson, Sectoral Committee on Trade, Industry, Tourism and Cooperatives.

1.1 ACKNOWLEDGMENT

Mr. Speaker

I wish to thank the members of the committee on Trade, Industry, Tourism and Cooperatives for dedicating their time and energy to scrutinize the Bill and prepare this report. The Committee is equally grateful to the office of the Speaker the Clerk of County Assembly and the secretariat for the support received as it discharged its mandate.

1.2 EXECUTIVE SUMMARY

Mr. Speaker, Sir,

1.1 An Over View of the Bill

The Bomet County Enterprise Development Bill, 2019, establishes a fund for purposes of financing start up and existing businesses, including agri-business, the micro- and small enterprises business sector. The fund is for granting business loans to youth, women, persons with disabilities and vulnerable persons.

PART I of the Bill deals with preliminary matters. The Part sets out the objects of the Act and the guiding principles.

PART II of the Bill established the Bomet Enterprise Development Fund. This Part defines the sources of money for this Fund to include the County Assembly appropriations, interests earned from the Fund and any other legal sources. The Part also establishes bank accounts for the Fund and defines the authorized signatories. It also set out the categories of loans which can be granted under the fund, which includes the capital start –up loan, business financing for existing business, Local purchase order and local supply order financing, asset financing and agri-business financing.

PART III of the Bill provides for the administration structure of the fund. The Part sets out the roles of the Executive Member and the reporting responsibility to the County Assembly. The Part creates a Directorate of Enterprise Development Fund and defines its

functions. This Part also allows for the designation of the Fund Committee administering the fund, who will be appointed in accordance with the provisions of the Public Finance Management Act. It also recognizes that there will be need for recruitment and deployment of staff for better implementation of the Act.

It sets out the application procedure, conditions and utilization of the loan. The application process allows for appointment of financial institution, that is to say the banks, and utilization of semi-financial institutions, registered groups and entities such as SACCOs in managing fund monies, receiving and evaluating applications, managing the disbursement and collection of guaranteeing the loans made from fund monies.

The Part also gives the Fund Committee the power to set the loan limits, interest rates, penalties for defaults payments as well as conditions for repayment of the loans subject to the County Executive Committee's approval. It also guides successful applicants on the manner of utilization of the loan.

PART IV of the Bill provides for financial provisions, budgeting and auditing of the Fund.

PART V provides for the general provisions. It set out an offence for giving false or misleading information in order to influence the decision on the loan application. The Act also creates an offence for disbursing loans contrary to this Act. The part also set out the power to make regulations. It provides for appeals through the Executive Member.

Mr. Speaker.

The Bomet County Enterprise Development Bill, 2019, underwent the First Reading on Tuesday, 23rd April 2019 and was effectively committed to the Committee on Trade, Industry, Tourism and Cooperatives as provided for under Standing order 115(2).

Pursuant to Article 196(b) of the Constitution and Standing Order 121(3) which demands public participation and involvement in the legislative and other business of the County Assembly and its Committees, a notification was placed in the mainstream print media on 26th April, 2019, informing the public that the Committee was considering the Bomet County Enterprise Development Bill, 2019 and inviting them to submit any representations they might have on the proposed Bill.

Mr. Speaker, Sir,

The Committee held a total of three meetings and a retreat to consider the Bill. A number of meetings were held with stakeholders from the County Executive during the scrutiny of the Bill. The committee did not receive any written memorandum regarding the bill, however, the members of the public made oral submissions during the public participation held on the 6th May 2019 at the Assembly Ground as stipulated by Article 196(b) of the Constitution.

Mr. Speaker,

The Bill is very important to county since it shall establish a fund for purposes of financing start up and existing businesses, including agri-business, micro- and small enterprises business sector. The fund is for granting business loans to youth, women, persons with disabilities and vulnerable persons.

Mr. Speaker, Sir,

The committee notes that the bill if passed by this county assembly is a game changer in the development of the business community in the county, especially for the youth, persons with disabilities, women and the vulnerable groups. Livelihoods are bound to change and more businesses will be created with this fund and thus the County will create employment and increase revenue for the county.

2.0 VIEWS FROM THE STAKE HOLDERS

The Committee noted and considered suggestions by the members of the public as follows;

1. Clause 3 (b) on the application of the loan, and Clause 17 (1) (b) on eligibility for a loan, the Bill should include men to benefit from this fund.
2. The members of the public, in Clause 2, on the definition of a 'resident' expressed their concerns on how the committee will establish with certainty on who exactly has been a resident in the county for the said five years.
3. The members of the public observed that in Clause 5, the bill should provide for a specific grace period for start-up business as a guiding principle.
4. Clause 7 (g) provides that the fund shall be managed by a committee amongst them being two members appointed by the Governor. The members of the public wanted to know whether these two members are from the general public or from the employees of the county government. Further, the Bill did not clearly indicate the duration in office of the members of the committee and what their expertise are.
5. It was also noted that the committee comprises of eight members which is an even number. In the event of voting there might arise a tie. It was proposed that the number be made odd by making it seven members.
6. The members of the public pointed out that the Chief Officers in the Funds Management Committee were too many and needed to be scaled down to only two; the Chief Officer responsible for Finance and Chief Officer responsible for Trade. The rest of the positions should be advertised to the general public for accountability and transparency.

7. The members of the public in relation to Clause 16 also suggested that the County Public Service Board in appointing other staff into the directorate should include other stakeholders from Non-Governmental Organizations, chamber of commerce and COMESA.
8. In Clause 16 (2) (a), the public inferred that the staff should not be accorded the powers indicated in this clause. These powers should solely be the functions of the committee.
9. In Clause 17, the members of the public should be clearly given a definition of micro, small and medium enterprises.
10. In Clause 18, it was suggested that an applicant of a startup business should not receive a maximum amount of fifty thousand but rather should be subjected to the nature of business that applicant wishes to start.
11. The members of the public felt that the Insurance in Clause 19(2) is expensive to the beneficiary. It was suggested that the committee should review the said insurances.
12. In Clause 25, the percentage interest should be lowered to two percent from six percent.
13. The members of the public noted that Clause 30 indicated the penalty of twenty thousand shillings imposed to an applicant who gives false or misleading statements in respect to loan application or utilization of the loan is lenient. It was agreed that such applicants should be fined in terms of at least eighty percent of whatever the amount they received from the fund and twenty percent to a person who disburses loans contrary to the provision of this Act.
14. The bill fails to indicate the repayment period of the loans issued.
15. In Clause 31, the word 'may' should be substituted with 'shall' to ensure that the Executive Member in accordance to the Public Finance Management Act makes the regulations.
16. The said members of the public further urged the committee to create an autonomous body whose role shall be to supervise and manage the utilization of the

fund compared to the directorate whose functions seem to duplicate those of the Funds Management Committee.

3.0 COMMITTEE'S FINDINGS AND RECOMMENDATIONS

The Committee deliberated on the Bill putting into consideration the views from the members of the Public and made the following findings and observations;

1. That Clause 3 (b) on the application of the loan, and Clause 17 (1) (b) on eligibility for a loan, the Bill should include men to benefit from this fund.
2. That the definition of resident be amended to include that a beneficiary of the fund must have carried out business for the last five years within the County and created employment for at least three people from within the County.
3. Issues of group and individual loans have been captured in section 22 (3) where it states that an application may be made by a person or groups of persons.
4. A grace period of three months for start-up business should be included in the regulations.
5. The regulation should clearly indicate the tenure of the members of the committee and specify what their qualification should be.
6. Applicant who gives false or misleading statements in respect to loan application or utilization of the loan should be fined in terms of at least eighty percent of whatever the amount they received from the fund and twenty percent to a person who disburses loans contrary to the provision of this Act.
7. The composition of the committee should comprise of seven members as follows Clause 7 (1);
 - a. The Committee Executive Member who shall be the chairperson

- b. The Chief Officer responsible for Finance
 - c. The Chief Officer responsible for Trade
 - d. Four members appointed by the governor and vetted by the Assembly. These members should include one persons with disabilities, a youth, a person of either gender (to comply with 2/3 gender rule) and a member of a non-governmental organization (Chamber of commerce)
8. Clause 16 (2) (a) where a member of staff to the directorate is tasked to assess potential financial and semi financial institution eligibility to disburse loans on behalf of the fund should be moved to section 7 (2) as a function of the committee
 9. Limits of capital for startup loans should be prescribed by the County Executive Committee Member.
 10. Loan applicants should cater for insurances
 11. There should be an easy and prompt access of funds.
 12. An interest of four percent should be charged for start-up business down from six percent.
 13. There is no need for autonomous body since there is already a directorate in place.
 14. In Clause 31, the word 'may' should be Substituted with 'shall' to ensure that the Executive Member of Public Finance Management Act makes the regulations.
 15. The payment period for the loans acquired should be captured in the regulations.
 16. That the County Executive Committee Member should fast track the regulations immediately after the enactment of this Act as most of the amendments suggested by the members of the public will be well addressed in the regulations.

4.0 PROPOSED AMENDMENTS

The Committee proposes the following amendments -

1. **THAT** the Bill be amended in clause 3 by deleting the words **“the youth, women, vulnerable persons and persons with disabilities”** and substitute therefore with the following **“beneficiary “**
2. **THAT** the Bill be amended in clause 7(1) by deleting paragraph **(d) (e) (f)**
3. **THAT** the Bill be amended in clause 7 (1) (g) by deleting the word two and substitute therefore with **“four”**
4. **THAT** the Bill be amended in clause 7 (1) (g) by inserting the following words after the word **“Governor” “with the approval of the County Assembly”**
5. **THAT** the Bill be amended in clause 7 (1) (g) by inserting the following paragraphs
(a) One person to represent youths;
(b) One person to represent persons with disabilities;
(c) One person from the non- governmental organization; and
(d) One person to represent women

who shall serve for a period of two years and eligible for appointment for one further term”

6. **THAT** the Bill be amended by deleting clause 17(1)(b) by inserting the word **“man”** immediately after the word **“woman”**
7. **THAT** the Bill be amended in clause 29(3) by deleting the word **“may”** and substitution therefore with **“shall”**
8. **THAT** the Bill be amended in clause 31(1) by deleting the word **“may”** and substitute therefore with the word **“shall”**.
9. **THAT** the Bill be amended in clause 2 by defining the word resident to include **“and has created employment opportunities for not less than three people who are permanent residents of the county”** immediately after the word **“County”** in the last sentence