

SPECIAL ISSUE

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MACHAKOS COUNTY BILLS, 2021

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**THE MACHAKOS COUNTY SAND HARVESTING
(AMENDMENT) BILL, 2021**

A Bill for

**AN ACT of the County Assembly of Machakos to amend the
Machakos County Sand Harvesting Act, 2014.**

ENACTED by the County Assembly of Machakos as follows—

Short Title

1. This Act may be cited as the Machakos County Sand Harvesting (Amendment) Act, 2021.

Interpretation

2. In this Act, unless the context otherwise requires—

“Principal Act” means the Machakos County Sand Harvesting Act of 2014.

Amendment of section 2

3. Section 2 of the Principal Act is amended by—

(a) including the following definition—

“County” means the County of Machakos;

(b) deleting the definition of “dealer” and substituting therefor the following definition—

“dealer” means a person who is involved in the business of buying and selling sand;

Amendment of section 4

4. Section 4 of the Principal Act is amended by—

(a) deleting subsection (1) (e) and substituting therefor the following new paragraph—

(e) two representatives of marginalized groups being one man and one woman appointed by the executive Committee member;

(b) including the following new paragraph after paragraph (f) of sub-section (1)—

(g) the Director responsible for matters relating to natural resources who shall be the Secretary.

(c) deleting sub-section (3).

Amendment of section 5

5. Section 5 of the Principal Act is amended as follows—
- (a) in sub-section (1) paragraph (a) by inserting the phrase “including Sand Harvesting Associations” immediately after the word “dealers”;
 - (b) deleting paragraph (c) of subsection (1) and substituting therefor the following new subsection—
 - (c) monitor, evaluate and report on sand harvesting activities to ensure that they are compliant with this Act, national laws, norms and standards.

Amendment of section 6

6. Section 6 of the Principal Act is amended in sub-section (4) by inserting the following new paragraph after paragraph (c)—
- (d) build sand dams and sand reservoirs.

Amendment of section 10

7. Section 10 of the Principal Act is amended by inserting the following new subsections immediately after sub-section (4)—
- (5) Sand harvesting may only be permitted on a previously designated sand harvesting site after it has been rehabilitated.
 - (6) No lorries shall be permitted to enter riverbeds to load sand.
 - (7) The use of machines for sand harvesting is not permitted.
 - (8) Loading of sand shall be done only at designated sand loading sites.

Amendment of section 12

8. Section 12 of the Principal Act is amended by inserting the following new sub-section immediately after sub-section (2)—
- (3) The Committee shall take such measures as are necessary to promote the conducting of transactions concerning the sale of sand on-site and within the County.

Amendment of section 26

9. The Principal Act is amended by deleting section 26 and substituting therefor the following new section—
26. (1) The Committee shall facilitate the collection of revenue from sand dealers at designated places including sand harvesting sites and along access roads.

(2) The charges for sand harvesting shall be per the first schedule or as may be revised by the Executive Committee member for Finance.

(3) In developing the annual budget, the County Executive committee member for finance shall ensure that revenue collected from sand harvesting activities is allocated as follows—

- (a) 10% to fund the operations of the Committee;
- (b) 5% to support Sand Harvesting Associations;
- (c) 30% for the rehabilitation of closed sand harvesting sites and infrastructure around the sand harvesting area including access roads;
- (d) 55% to fund Ward based community projects in line with the relevant County Integrated Development Plan.

Insertion of a new section 26A

10. The Principal Act is amended by inserting the following new section immediately after section 26—;

26A. The Committee shall ensure adequate public participation in matters concerning sand harvesting.

Amendment of section 27

11. Section 27 of the Principal Act is amended by deleting the number “27” appearing immediately after the word “section” and replacing it with the number “26(1).

Insertion of a new section 27A

12. The Principal Act is amended by inserting the following new section immediately after section 27— .

Moratoria on sand harvesting

27A. (1) The Executive Committee member may, upon consultation with the Committee, issue a moratorium on commercial sand harvesting activities within a specified Ward for a specified period of time.

(2) In issuing the moratorium in subsection (1) the Executive Committee member shall state the purpose of the moratorium which may include—

- (a) the stoppage of illegal sand harvesting;
- (b) allowing time and space for the rehabilitation of infrastructure in sand harvesting areas;

- (c) allowing for time for the building of sand dams and sand reservoirs to boost the amount of sand available for commercial exploitation;
 - (d) where there is a dispute over a sand harvesting site;
 - (e) where the objectives of this Act will be achieved by imposing such a moratorium.
- (3) The Executive Committee member shall—
- (a) shall issue the moratorium in subsection (1) on the request of the Committee or upon the request by the residents of a particular Ward;
 - (b) conduct public participation and consult with the community leaders in the ward concerning the suitability of imposing the sand harvesting moratorium.
- (4) The County Government shall collaborate with the relevant national government agencies to impose a sand harvesting moratorium issued under this Section.
- (5) The Executive Committee member may, upon consultation with the Committee or on the request by the residents of the Ward, order for the lifting of a moratorium on sand harvesting in force in a particular Ward.

Amendment of section 33

13. Section 33 of the Principal Act is amended inserting the following new paragraph immediately after paragraph (h)—

- (i) violates a moratorium on sand harvesting issued under Section 27A of this Act;
- (j) scoops sand or otherwise harvests sand from public roads.

Amendment of section 35

14. Section 35 of the Principal Act is amended inserting the following new paragraph immediately after paragraph (j)—

- (k) procedure for public participation in matters contained in this Act.

Insertion of new First Schedule

15. The Principal Act is amended by inserting the following new First Schedule.

**FIRST SCHEDULE
(Section 26)**

SAND HARVESTING/ TRANSPORTATION CESS			
Description	Urban	Peri urban	Rural
Sand permit per month for a 7-tonne lorry and below (Direct)	9,000	19,000	19,000
Sand permit per month per 7 tonne lorry and below (sample, FSR, FVR)	29,000	29,000	29,000
Sand permit per month per 8 tonne lorry and above (FVZ, KUNGIA, CXZ)	39,000	39,000	39,000
Sand permit per month - Semi Trailer	59,000	59,000	59,000
Sand harvesting permit per site at gazetted designated places to SACCOs, associations	100,000	100,000	100,000
Payment of sand coming from all areas other than Machakos County for a 7-tonne lorry and below (Direct) per trip	1,200	1,200	1,200
Payment of sand coming from all areas other than Machakos County for an 8-tonne lorry and above (Sample, FSR, FVR) per trip	1,500	1,500	1,500
Payment of sand coming from all areas other than Machakos County Semi-trailer per trip	2,500	2,500	2,500
Payment of sand coming from all areas other than Machakos County Lorry eight (8) tonne lorry and above (FVZ, KUNGIA, CXZ) per trip	2,000	2,000	2,000
Penalty on non-payment of sand permit	100,000	100,000	100,000
Penalty for transporting sand through undesignated roads	20,000	20,000	20,000
Penalty for harvesting sand in undesignated areas	100,000	100,000	100,000

Penalty for harvesting/transporting sand during un authorized time	30,000	30,000	30,000
Transfer of sand permit from one lorry to another	1,000	1,000	1,000
Sand yard or sand deposit business other than transporting element of the business			
Application fee per year	1,000	1,000	1,000
Permit per year	30,000	30,000	30,000

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to amend the Machakos County Sand Harvesting Act (No. 3 of 2014) so as to ensure smooth implementation of the Act.

CLAUSE 1 of the Bill sets out the short title.

CLAUSE 2 of the Bill provides for interpretation.

CLAUSE 3 of the Bill proposes to amend section 2 of the Act so as to clarify the definitions of "County" and "dealer".

CLAUSE 4 proposes to amend section 4 of the Act in order to alter the membership of the County Sand Harvesting and Management Committee.

CLAUSE 5 proposes to amend section 5 of the Act to provide further functions of the County Sand Harvesting and Management Committee (the Committee).

CLAUSE 6 proposes to amend section 6 of the Act to add to the factors to be considered by the Committee when approving the formation of an Association.

CLAUSE 7 proposes to amend section 10 of the Act to make further provision on sand harvesting from a riverbed.

CLAUSE 8 proposes to amend section 12 of the Act to input a condition on the sale of sand.

CLAUSE 9 proposes to amend section 26 of the Act to substitute the section with a new section concerning the management of revenue from sand harvesting.

CLAUSE 10 proposes to the insertion of a new section requiring that the Committee conducts public participation on matters concerning sand harvesting.

CLAUSE 11 proposes to amend section 27 of the Act to correct the numbering.

CLAUSE 12 proposes to insert a new section concerning the issuance of a moratoria by the County Executive Committee Member (CEC);

CLAUSE 13 proposes to amend section 33 of the Act to provide for sanctions for any person who violates a moratorium.

CLAUSE 14 proposes to amend section 35 of the Act to add to the issues on which the CEC may make Regulations about.

CLAUSE 15 proposes to add a Schedule to the Act.

Statement on the limitation of fundamental rights and freedoms

The Bill does not delegate legislative powers to the County Executive Committee Member nor does it limit any fundamental rights and freedoms.

Statement that the Bill is a money Bill within the meaning of section 21 (3) of the County Governments Act.

The Bill is a money Bill within the meaning of section 21 (3) of the County Governments Act

ROBERT KISINI,
*Chairperson, Committee on Environment, Land,
Energy and Natural Resources.*

Section 2 of No. 3 of 2014, which is proposed to be amended—

“dealer” means the person who buys and sells sand.

Section 4 of No. 3 of 2014, which is proposed to be amended—

4. (1) There is established a County Sand Harvesting and Management Committee consisting of—

- (a) the Executive Committee member responsible for matters relating to natural resources who shall be the chairperson;
- (b) the chief officer responsible for matters relating to finance;
- (c) the chief officer responsible for matters relating to natural resources;
- (d) a representative of sand dealers appointed by the executive committee member;
- (e) a representative of special interest groups appointed by the Executive committee member;
- (f) two representatives of the sand harvesting associations being one man and one woman, appointed by the executive committee member;

(2) The quorum of the Committee for purposes of the meeting shall be four members.

(3) The Secretary of the committee shall be the chief officer responsible for matters relating to natural resources.

(4) The members under subsections 1 (a) and (b) may designate alternate members in writing and who shall be senior public officers.

Section 5 of No. 3 of 2014, which is proposed to be amended—

5. (1) The Committee shall—

- (a) maintain a register of all sand dealers;
- (b) advise executive committee member on the structure and operations of sand harvesting and related activities;
- (c) ensure that sand harvesting activities are compliant with this Act and any national norms and standards;
- (d) ensure sustainable exploitation and utilization of sand resource;
- (e) collaborate with other environmental agencies in management of environment as relates to matters of sand harvesting;

- (f) formulate environmental conservancy programmes in relation to sand harvesting;
- (g) recommend to the executive committee member designated sand harvesting areas for gazettelement;
- (h) recommend designated roads for transportation of sand and other excavated material in accordance with this Act; and
- (i) perform any other functions assigned by the Executive committee member.

(2) In the performance of its functions under this Act, the Committee shall, subject to any other law allow the participation of the people who affected by its decisions in making decisions of those decisions.

Section 6 of No. 3 of 2014, which is proposed to be amended—

6. (1) The Committee shall approve the establishment of such number of Sand harvesting Associations as it may deem fit and in accordance with the law relating to the registration of associations, self-help groups and community-based organizations.

(2) Before approving the formation of an association under subsection (1), the Committee shall have regard to the following factors—

- (a) drainage network of the river and the designated sand harvesting sites;
- (b) the need to ensure full participation of the community including all interest groups; and
- (c) viability and sustainability of the association.

(3) An association shall be composed of the following members elected by an interested community—

- (a) four representatives of the riparian landowners;
- (b) two women representatives who are not riparian land owners;
- (c) two youth representatives who are not riparian land owners;
- (d) two elders who are not riparian land owners; and
- (e) two persons representing special interest groups.

(4) An association shall be responsible for sustainable management of sand harvesting activities in its area and in particular to—

- (a) ensure that before sand harvesting activities are commenced, an Environmental Impact Assessment is undertaken in accordance with the provisions of Environment Management Coordination Act;
- (b) ensure that annual Environmental Audits are conducted for all sand harvesting sites including closed sites; and
- (c) ensure sustainable management of sand harvesting along riverbeds;
- (d) undertake the rehabilitation of the closed sites; and
- (e) perform any other function assigned to it under this Act.

Section 10 of No. 3 of 2014, which is proposed to be amended—

10. (1) Sand harvesting from any riverbed shall be undertaken in a manner that allows adequate reserve of the sand is retained to ensure water retention.

(2) Sand harvesting shall not be undertaken on any riverbank.

(3) Loading of sand shall be done in the designated harvesting sites through controlled access points.

(4) No sand harvesting shall take place within one-hundred meters of either side of any physical infrastructure including bridges, roads, railway lines, dykes, among others.

Section 12 of No. 3 of 2014, which is proposed to be amended—

12. (1) The Committee shall provide minimum pricing guidelines for sale of sand within the county, but such prices shall take into consideration the requirements of the Restrictive Trade Practices Act and the market forces of the day.

(2) Any person who sells sand shall be required to issue a receipt to the purchaser and keep records of such for periodic inspection by the relevant authorities.

Section 26 of No. 3 of 2014, which is proposed to be amended—

26. The Committee shall —

- (a) facilitate the collection of revenue from sand dealers in designated sand harvesting sites or along access roads;
- (b) ensure that at least ten per cent of the revenue collected is allocated to the Committee and the Associations to facilitate their operations;

- (c) ensure that part of the revenue collected is allocated for community projects; and
- (d) ensure rehabilitation of closed sand harvesting sites and access roads within sand harvesting area.

Section 2 of No. 3 of 2014, which is proposed to be amended—

27. (1) For purposes of section 27, the government may mount barriers on access roads leading to sand harvesting sites in accordance with the Traffic Act, Cap. 403, Laws of Kenya.

(2) The barriers shall be supervised by authorized officers and revenue collectors.

(3) A trader transporting sand shall stop at such barrier and pay the prescribed fees and charges to the authorized officer.

(4) A person who contravenes this section commits an offence and the vehicle used to commit the offence may be impounded at a police station.

Section 33 of No. 3 of 2014, which is proposed to be amended—

33. A person who—

- (a) carries out sand harvesting or otherwise deals with sand without a valid license;
- (b) carries out sand harvesting outside designated sites;
- (c) overloads sand to a vehicle for transportation contrary to prescribed requirements;
- (d) collects fees or charges and is not authorized to do so under any law;
- (e) transports sand outside the designated roads for such transportation;
- (f) does not stop on a barrier erected by the county government, authorized officer or police officer;
- (g) obstructs any authorized person from conducting their functions under this Act; or
- (h) establishes a separate entity in a designated site without lawful authority under this Act;

commits an offence and shall, on conviction is liable to a fine not exceeding one million shillings or to an imprisonment term not exceeding five or to both.

Section 2 of No. 3 of 2014, which is proposed to be amended—

(1) Executive committee member shall make regulations generally for the better carrying out the provisions of this Act.

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

- (a) guidelines for sand harvesting and related activities;
- (b) criteria for determining the number of Associations approve under this Act;
- (c) the terms and conditions of all classes of licenses issued under this Act;
- (d) conditions applicable to different types of sand harvesting;
- (e) loading requirements depending on tonnage;
- (f) forms required under this Act;
- (g) rehabilitation of closed sites;
- (h) designation of sand sale yards;
- (i) pricing per lorry load based on tonnage;
- (j) grading, packaging and value addition of sand;
- (k) disputes resolution mechanisms; and
- (l) such other matters as the as may be necessary for full implementation of this Act.