

**SPECIAL ISSUE**

*Kenya Gazette Supplement No. 236 (National Assembly Bills No. 75)*

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REPUBLIC OF KENYA

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***KENYA GAZETTE SUPPLEMENT***

**NATIONAL ASSEMBLY BILLS, 2023**

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**NAIROBI, 4th December, 2023**

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THE UNIVERSITY OF CHICAGO

PHYSICS DEPARTMENT

PHYSICS 350



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**THE AFFORDABLE HOUSING BILL, 2023**

**A Bill for**

**AN ACT of Parliament to give effect to Article 43(1)(b) of the Constitution; to provide a framework for access to affordable housing; and for connected purposes**

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

**PART I—PRELIMINARY**

1. This Act may be cited as the Affordable Housing Act, 2023.

Short title.

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

Interpretation.

“agency” means an institution allocated monies for affordable housing under section 11;

“administrator of the Fund” means the person designated as the administrator of the Fund under section 22;

“affordable housing” means housing that is adequate and costs not more than thirty percent of the income of a person per month to rent or acquire;

“affordable housing scheme” means the construction of affordable housing units including such other social amenity, infrastructure or services and the acquisition, laying out, subdivision and the development of land comprised within the area of the scheme necessary for social welfare and trading;

“Board” means the Affordable Housing Board established under section 12;

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

“Chief Executive Officer” means the person appointed as such under section 21;

“collector” means—

(a) the Commissioner-General of the Kenya Revenue Authority, appointed under section 11(1) of the Kenya Revenue Authority Act; or

Cap. 469.



- (b) any other person appointed by the Cabinet Secretary for the time being responsible for National Treasury for the purposes of collection funds under this Act;

“Fund” means the Affordable Housing Fund established under section 8; and

“Levy” means the Affordable Housing Levy imposed under section 4.

(2) For the purposes of this Act, “affordable housing unit” refers to—

- (a) a social housing unit with a plinth area of between eighteen and thirty square metres and targeted to a person whose monthly income is below twenty thousand shillings;
- (b) an affordable housing unit with a plinth area of between thirty-six and eighty square metres and targeted at a person whose monthly income is between twenty thousand and one hundred and forty-nine thousand shillings; or
- (c) an affordable market housing unit with a plinth area of at least sixty square metres for the middle to high income housing targeted at persons whose monthly income is over one hundred and forty-nine thousand shillings.

3. (1) The objects of this Act shall be to—

Objects and  
guiding principles.

- (a) give effect to Article 43(1)(b) of the Constitution on the right to accessible and adequate housing;
- (b) impose a levy to facilitate the provision of affordable housing; and
- (c) provide a legal framework for the implementation of the affordable housing programmes and projects.



(2) The implementation of this Act shall be guided by—

- (a) the national values and principles of governance under Article 10(2)(b) of the Constitution;
- (b) the principles of public finance under Article 201 of the Constitution; and
- (c) the values and principles of public service under Article 232 of the Constitution.

## PART II—IMPOSITION OF AFFORDABLE HOUSING LEVY

4. (1) There is imposed a levy known as the Affordable Housing Levy. Imposition of Levy.

(2) The Levy shall be at the rate of one point five percent of—

- (a) the gross salary of an employee; or
- (b) the gross income of a person received or accrued which is not subject to the Levy under paragraph (a).

(3) The Levy shall be payable to the collector, for remittance into the Fund, not later than the ninth working day after the end of the month in which the gross salary was due or gross income was received or accrued.

5. An employer shall—

Obligation of an employer.

- (a) deduct and remit the amount referred to in section 4(2)(a) from the gross salary of an employee; and
- (b) remit an amount equivalent to the amount deducted under section 4(2)(a), to the collector.

6. The Cabinet Secretary for the time being responsible for the National Treasury may, on the recommendation of the Cabinet Secretary, provide, by notice in the *Gazette*, that—

Exemption from imposition of the Levy.

- (a) any income or class of income; or
- (b) any person or category of persons,

shall be exempt from the application of section 4 to the extent specified in the notice.



7. Where an amount of the Levy remains unpaid after the date when it becomes due and payable by a person liable to remit the amount, a penalty equal to three percent of the unpaid amount shall be due and payable for each month or part thereof that the amount remains unpaid and shall be summarily recovered as a civil debt from the person liable to remit the amount.

Default on payment of amount of Levy.

### **PART III—ESTABLISHMENT AND MANAGEMENT OF THE AFFORDABLE HOUSING FUND**

8. There is established a fund to be known as the Affordable Housing Fund which shall be vested in, and managed by, the Board.

Establishment of Fund.

9. There shall be paid into the Fund—

Sources of funds.

- (a) monies deducted or payable as the Levy under this Act;
- (b) monies appropriated by the National Assembly for the purposes of the Fund;
- (c) gifts, grants or donations;
- (d) income from investments made by the Fund; and
- (e) income accruing to the Fund in the course of the performance of its functions under any written law.

10. (1) The purpose of the Fund shall be to provide funds for the development of affordable housing and associated social and physical infrastructure.

Purpose of the Fund.

(2) Without prejudice to the generality of subsection (1), the Fund shall—

- (a) facilitate the provision of funds for affordable housing and affordable housing schemes in the promotion of home ownership;
- (b) provide low interest loans for the acquisition of affordable housing units within the approved affordable housing schemes;
- (c) facilitate the development of affordable housing schemes in all counties;



- (d) develop long term finance solutions for the development and off-take of affordable housing;
- (e) provide funds for maintenance of any land or building, estate or interest therein, for any of the purposes of the Fund; and
- (f) fund any other activities incidental to the furtherance of the objects of the Fund.

**11. The Board shall allocate out of the Fund—**

Allocations out of the Fund.

- (a) thirty percent of the monies to the National Housing Corporation for the development, maintenance, rehabilitation and off-take of affordable housing programmes and projects;
- (b) thirty percent of the monies to slum upgrading, maintenance, rehabilitation and offtake of affordable housing programmes and projects under the Public Finance Management (Kenya Slum Upgrading, Low-Cost Housing and Infrastructure Trust Fund) Regulations 2006;
- (c) thirty-six percent of the monies to the State Department responsible for matters relating to affordable housing for the development, maintenance, rehabilitation and offtake of institutional housing programmes and projects approved by Cabinet;
- (d) up to two percent of the monies to the collector for the collection of the Levy as may be approved by the Cabinet Secretary for the time being responsible for the National Treasury on the recommendation of the Cabinet Secretary; and
- (e) up to two percent of the monies to the Board for the administration of the Fund as may be approved by the Cabinet Secretary for the time being responsible for the National Treasury on the recommendation of the Cabinet Secretary.

L. N. No 68 of 2006.

**12. (1) There is established a board to be known as the Affordable Housing Board.**

Establishment of Board.



(2) The Board is a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) suing and being sued;
  - (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property; and
  - (c) doing or performing all other things or acts for the furtherance of the provisions of this Act which may be lawfully done or performed by a body corporate.
- (3) The Board shall consist of the following—
- (a) a non-executive Chairperson appointed by the President;
  - (b) the Principal Secretary to the National Treasury or his representative designated in writing;
  - (c) the Principal Secretary of the State Department for the time being responsible for matters relating to affordable housing or his representative designated in writing;
  - (d) three other persons who shall be appointed by the Cabinet Secretary, of whom—
    - (i) one shall be a nominee of the Council of County Governors;
    - (ii) one shall be a nominee of the Central Organization of Trade Union; and
    - (iii) one shall be a nominee of the Federation of Kenya Employers;
  - (e) three persons, not being public officers, appointed by the Cabinet Secretary and who shall possess qualifications in built environment, finance or law; and
  - (f) the Chief Executive Officer, who shall have no right to vote at a meeting of the Board.



(4) In nominating a person to be a member under subsection (3)(d), the nominating bodies shall present the names of three persons to the Cabinet Secretary from amongst whom one shall be appointed.

(5) The members of the Board referred to in subsection (3), (a), (d) and (e) shall be appointed at different times so that the respective expiry dates of their terms of office shall be at different times.

13. (1) The object and purpose for which the Board is established is to oversee the development of affordable housing and associated social and physical infrastructure in Kenya, the maintenance and rehabilitation of affordable housing projects funded by the Fund and to advise the Cabinet Secretary on all matters related thereto.

Functions of the Board:

(2) Without prejudice to the generality of subsection (1), the Board shall—

- (a) co-ordinate the optimal utilisation of the Fund in the implementation of programmes and projects relating to the maintenance, rehabilitation and development of affordable housing and associated social and physical infrastructure;
- (b) seek to achieve optimal efficiency and cost effectiveness in the development of affordable housing programmes and projects funded by the Fund;
- (c) based on a five-year affordable housing investment programme approved by the Cabinet Secretary and the Cabinet Secretary for the time being responsible for the National Treasury, determine the allocation of financial resources required for the development, maintenance and rehabilitation of the affordable housing projects and associated social and physical infrastructure;
- (d) manage the Fund and allocate monies in accordance with section 11;
- (e) ensure that the monies allocated annually under section 11 are based on an annual work programme derived from the five-year affordable housing investment programme approved by the



Cabinet Secretary and the Cabinet Secretary for the time being responsible for the National Treasury;

- (f) ensure that not more than five percent of all monies allocated to each agency is utilised for the maintenance and rehabilitation of units and associated social and physical infrastructure by the said agency;
- (g) monitor and evaluate, by means of technical, financial and performance audits, the delivery of goods, works and services funded by the Fund;
- (h) in implementing paragraph (g), pay due regard to public procurement and disposal regulations and additional guidelines issued or approved by the Cabinet Secretary for the time being responsible for the National Treasury;
- (i) identify, quantify and recommend to the Cabinet Secretary such other potential sources of revenue as may be available to the Fund for the development, rehabilitation and maintenance of affordable housing programmes and projects and associated social and physical infrastructure for consideration by the Cabinet Secretary to the National Treasury;
- (j) approve the opening and closing of bank accounts of the Fund by the administrator of the Fund;
- (k) approve estimates of revenue and expenditure of the Fund for each financial year; and
- (l) perform such other duties as may be assigned by the Cabinet Secretary in writing.

14. (1) A person appointed as the Chairperson of the Board shall be appointed by virtue of their knowledge or experience in matters relating to housing, banking or law.

Qualifications for appointment.

(2) A person qualifies to be appointed as a member of the Board, other than as an *ex-officio* member, if the person—

- (a) meets the requirements of Chapter Six of the Constitution;



- (b) has not been convicted of a criminal offence which attracts imprisonment for a term not exceeding six months;
- (c) has not been adjudged bankrupt or entered into a composition or arrangement with the creditors of the person; and
- (d) is not disqualified under any other written law from appointment as such.

15. (1) The Chairperson and the members of the Board, other than the *ex-officio* members, shall hold office for a term of three years and may be eligible for re-appointment to a further and final term of three years.

Tenure of office.

(2) Despite the provisions of subsection (1), a member of the Board, other than an *ex-officio* member, may be removed from office if that person—

- (a) has been absent from three consecutive meetings of the Board without justifiable cause or the permission of the Chairperson;
- (b) is adjudged bankrupt or enters into a composition or arrangement with the creditors of the person;
- (c) is convicted of an offence involving dishonesty or corruption;
- (d) becomes incapable of carrying out the functions of his or her office, either arising from an infirmity of mind or body;
- (e) violates Chapter Six of the Constitution; or
- (f) fails to disclose any interest in a matter under consideration by the Board as provided for under section 19(1).

(3) A member of the Board, other than an *ex-officio* member, shall cease to be a member of the Board if that member resigns from office by a notice in writing addressed to the appointing authority.

16. Whenever the office of the Chairperson or a member, other than an *ex-officio* member, becomes vacant before the expiry of the term of office, the appointing authority shall, on the recommendation of the nominating body, where applicable, appoint a person who holds a

Filling of vacancy.



similar qualification to fill the vacant position for the remainder of the term.

17. (1) The conduct of affairs and business of the Board shall be in accordance with the Schedule.

Conduct of affairs and business of the Board.

(2) Subject to subsection (1), the Board may regulate its own procedures.

18. (1) The Board may establish such committees consisting of such members of the Board to deal with such matters as the Board may specify.

Committees of the Board.

(2) The Board may co-opt persons who are not members of the Board to committees established under subsection (1) for a particular reason and such persons shall serve in such committees for such period as the Board may determine.

19. (1) If a member of the Board is present at a meeting of the Board or any committee of the Board at which any matter is the subject of consideration and in which matter the member or the dependants of the member are directly or indirectly interested in a private capacity, the member shall, as soon as practicable, after the commencement of the meeting, disclose such interest and shall not, unless the Board otherwise directs, take part in any consideration or discussion, or vote on any question relating on such matter.

Disclosure of interest.

(2) A disclosure of interest made under this section shall be recorded in the minutes of the meeting at which it is made.

(3) Failure to disclose such interest shall lead to the disqualification of the member from holding office as a member.

20. The Chairperson and the members of the Board shall be paid such sitting allowances or other remuneration for expenses as recommended by the Salaries and Remuneration Commission.

Remuneration of Board members.

21. (1) There shall be a Chief Executive Officer of the Board who shall be competitively recruited and appointed by the Board, in consultation with the Cabinet Secretary, on such terms and conditions of service as shall be specified in the instrument of appointment or otherwise in writing from time to time.

Chief Executive Officer of the Board.



(2) A person qualifies to be appointed as the Chief Executive Officer if that person has at least ten years' experience in a managerial capacity in affordable housing matters, finance, investment, or the banking sector.

22. (1) The Chief Executive Officer shall be the administrator of the Fund.

Administrator of the Fund.

(2) The administrator of the Fund shall—

- (a) supervise and control the day-to-day administration of the Fund;
- (b) receive the annual work plans and the five-year affordable housing investment programmes and recommend the same to the Board approval;
- (c) open and operate the accounts of the Fund with the approval of the Board and the National Treasury;
- (d) prepare estimates of annual revenue and expenditure of the Fund and submit to the Board for approval;
- (e) implement policies approved by the Board for the attainment of the objects of the Fund;
- (f) advise the Board on matters relating to the administration of the Fund;
- (g) co-ordinate the monitoring and evaluation of affordable housing projects and programmes financed from the Fund;
- (h) keep books of accounts and other books and records in relation to the Fund of all activities and undertakings financed by the Fund;
- (i) be the custodian of the assets, property, and equipment of the Fund;
- (j) establish proper systems of internal control and management in accordance with provisions of the relevant laws;
- (k) prepare, in respect of each financial year and within three months after the end thereof, a statement of accounts relating to the Fund and showing the expenditure incurred from the Fund in accordance with the Public Audit Act, 2015; and

No. 34 of 2015.



(l) undertake any other duty the Board may assign in furtherance of the objects and purpose of the Fund.

23. The administrator of the Fund shall ensure that no bank accounts of the Fund are overdrawn.

Fund not to be overdrawn.

24. The administrative costs of the Fund shall not exceed two percent of the latest audited financial statement of the Fund.

Administrative costs.

25. The administrator of the Fund may access any programme and project related data that the Administrator considers necessary for the performance of their functions under this Act.

Power of the administrator of the Fund to access information.

26. (1) There shall be a Corporation Secretary to the Board who shall be competitively recruited and appointed by the Board.

Corporation Secretary.

(2) A person shall be qualified to be appointed as the Corporation Secretary if that person—

- (a) holds a degree from a university recognised in Kenya;
- (b) is a Certified Public Secretary and a member of the Institute of Certified Public Secretaries of Kenya in good standing;
- (c) has at least ten years' experience in offering the services of a certified public secretary; and
- (d) meets the requirements of Chapter Six of the Constitution.

(3) The Corporation Secretary shall be responsible for—

- (a) providing guidance to the members of the Board on their duties, responsibilities and powers and how these should be exercised in the best interests of the Board;
- (b) ensuring that the procedures of the Board are followed and reviewed regularly, and that the members of the Board comply with written law;
- (c) assisting the Chairperson of the Board to organise the activities of the Board, including providing information, preparing agenda, issuing notices and



preparing for meetings, conducting evaluations of the Board and development programmes of the Board;

- (d) providing secretarial services to the Board, including ensuring that the work plan of the Board is prepared and adhered to, circulating Board papers in advance of the meeting and keeping the record of attendance of the meetings;
- (e) ensuring that the minutes of the meetings of the Board and committees of the Board are promptly prepared and circulated;
- (f) keeping the members of the Board abreast of and informed on current governance practice;
- (g) keeping a record of conflicts of interest declared by each member of the Board; and
- (h) co-ordinating the governance audit process.

**27.** (1) The Board may appoint such members of staff as may be necessary for the proper discharge of the functions of the Board, on such terms and conditions of service as the Board may determine.

Staff of the Board.

(2) The staff of the Board shall be the secretariat of the Fund reporting to the Chief Executive Officer.

**28.** The Board may, by resolution generally or in any particular case, delegate to the administrator of the Fund, an officer, employee or agent of the Board, the exercise of any of the powers or the performance of any of its functions under this Act or under any other written law.

Delegation of powers.

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

The common seal.

(2) The common seal of the Board shall, when affixed to a document and is duly authenticated, be judicially and officially noticed, and unless and until the contrary is proved, any necessary order or authorisation by the Board under this section shall be presumed to have been duly given.



**PART IV—ELIGIBILITY CRITERIA AND  
APPLICATION PROCEDURE FOR AFFORDABLE  
HOUSING UNIT**

**30.** A person qualifies to be allocated an affordable house unit if that person is a Kenyan citizen who is at least eighteen years of age and holds a Kenyan identity card.

Eligibility criteria.

**31.** (1) A person who meets the criteria set out under section 30 and desires to be allocated an affordable housing unit, shall make an application to the relevant agency in a manner specified by that agency.

Application for allocation of affordable housing unit.

(2) An application made under subsection (1) shall be accompanied by—

- (a) proof of requisite deposit approved by the relevant agency of at least ten percent of the value of the affordable housing unit being applied for;
- (b) a copy of the national identity card;
- (c) a copy of Kenya Revenue Authority personal identification number certificate; and
- (d) such other information as may be determined by the relevant agency.

(3) In determining the allocation of an affordable housing unit under this section, the relevant agency shall give preference to marginalised persons, vulnerable groups, youth, women and persons with disabilities.

**32.** An agency may off-take affordable housing units under an affordable housing scheme if the affordable housing scheme—

Off-taking of affordable housing units.

- (a) has been approved by the agency;
- (b) meets policy and statutory requirements; and
- (c) meets any other criteria or conditions set by the agency.

**33.** (1) An allottee may make an application to the respective agency requesting for a change of an affordable housing unit upon meeting the requirements set by the agency from time to time.

Change of affordable housing unit.

(2) Where a request made under subsection (1) is granted, the allottee shall—



- (a) enter into an agreement with the respective agency requiring that all his or her loan repayments be transferred to the new allocation;
- (b) forfeit the current affordable housing unit; and
- (c) where there is an existing loan, and if necessary, make a new loan application to facilitate the new allocation.

**34.** (1) An eligible person who desires to be considered for a loan towards the purchase of an affordable housing unit shall make an application to the respective agency in the manner specified by that agency.

Loan application.

(2) Every eligible person who has been advanced a loan shall be issued with a loanee account number.

**35.** (1) Upon receipt of a loan application, an agency shall evaluate the application to ensure compliance with the criteria set by that agency.

Evaluation of loan applications.

(2) Upon evaluation under subsection (1), the agency may approve or reject the application for a loan giving reasons thereof.

(3) An applicant whose application has been rejected may submit a new application upon fulfilment of the requirements set by the agency.

**36.** The interest rate or administration fee for a loan issued under this Act shall be payable on a reducing balance as follows—

Loan interest rate.

- (a) for social housing units, up to three percent or an administrative fee of an equivalent amount;
- (b) for affordable housing units, up to three percent or an administrative fee of an equivalent amount; and
- (c) for affordable market housing units, up to nine percent or an administrative fee of an equivalent amount.

**37.** (1) A loan advanced under this Act for an affordable housing unit shall be repaid in full within the period specified in the loan agreement.

Loan repayment.

(2) All sums due to an agency under this Act shall be recoverable as a debt due to that agency and, without



prejudice to any other remedy, may be recovered summarily as a civil debt.

38. (1) An eligible person may make voluntary savings with an agency for purposes of raising a deposit towards the allocation of an affordable housing unit.

Voluntary savings.

(2) An agency shall open separate bank account where voluntary savings shall be kept and any interest arising from investment of voluntary savings shall be credited to this account.

(3) An agency shall issue an account number to each person making a voluntary saving.

(4) A person who has made a voluntary saving and has not been allocated an affordable housing unit and desires to withdraw his or her savings shall give a ninety-days' notice to the agency for refund with accrued interest, if any.

#### **PART V—FINANCIAL PROVISIONS**

39. (1) The administrator of the Fund shall cause to be kept proper books and records of account of the income, expenditure and assets of the Fund.

Accounts and audit.

(2) Within a period of three months from the end of each financial year, the administrator of the Fund shall submit to the Auditor-General the accounts of the Fund together with—

(a) a statement of the income and expenditure of the Fund during the year; and

(b) a statement of the assets and liabilities of the Fund on the last day of that year.

(3) The accounts of the Fund shall be audited and reported upon in accordance with the Public Audit Act, 2015.

(4) The Board shall inform the public of its activities and operations through regular publications unless there are reasons of commercial confidentiality or security justifying exclusions.

#### **PART VI— MISCELLANEOUS PROVISIONS**

40. A person who—

Offences.

(a) misappropriates any funds or assets of the Fund, or assists or causes any person to misappropriate or



apply the funds otherwise than in the manner provided in this Act;

- (b) fails to give information or gives inaccurate or misleading information or falsifies information or misrepresents information required under this Act;
- (c) having possession of, or control over, or access to any documents, information, returns or forms relating to applications or granting of loans, communicates anything contained therein—
  - (i) to any person other than a person to whom he is authorized by the Board to communicate it; or
  - (ii) otherwise than for the purposes of this Act,

commits an offence and shall be liable, on conviction, to a fine not exceeding ten million shillings or imprisonment of a term not exceeding five years, or to both.

**41.** No matter or thing done by any person under this Act shall, if the matter or thing is done in good faith, render that person personally liable to any action, claim or demand whatsoever.

Protection from personal liability.

**42.** (1) The Cabinet Secretary may, in consultation with the Board, make Regulations for better carrying into effect the provisions of this Act.

Regulations.

(2) Without prejudice to the generality of subsection (1), the Regulations made under this section may prescribe—

- (a) the criteria for exemptions granted under section 6;
- (b) the criteria for change of affordable housing unit;
- (c) the provisions on voluntary savings;
- (d) the provisions relating to off-take of affordable housing units;
- (e) the inclusivity and diversity within affordable housing schemes; and
- (f) the application and integration of technology-based platforms in the administration and management of affordable housing schemes.



43. (1) The Employment Act, 2007, is amended by—

Consequential  
amendment and  
transition.

(a) repealing section 31B; and

(b) repealing section 31C.

(2) Any payment made or action taken under the sections repealed under subsection (1) shall be deemed to have been paid or taken under this Act.

(3) Any commitment or obligation on the National Government on affordable housing which may have arisen or made in accordance with an Act of Parliament shall be deemed to be a commitment or obligation made under this Act.

## **SCHEDULE**

*(s. 17(1))*

### **CONDUCT OF AFFAIRS AND BUSINESS OF THE BOARD**

1. (1) The Board shall meet not less than four times 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) The notice for a meeting of the Board shall be in writing, and shall be for a period of at least seven days from the expected day of the meeting.

(3) The Chairperson of the Board shall preside over all meetings of the Board and in the absence of the Chairperson, a person designated by members of the Board present at a meeting shall preside.

(4) The Chairperson of the Board may, on the written request made by at least half of the members of the Board and within seven days of the request, convene an extraordinary meeting of the Board at such time and place as the Chairperson may appoint.

(5) 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 decision of the Board.



2. The quorum for the conduct of business at a meeting of the Board shall be fifty plus one of the total members of the Board. **Quorum.**

3. Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of the votes of the members present and voting, and in the case of an equality of votes the Chairperson or person presiding shall have a casting vote. **Decisions of the Board.**



## MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to provide a legal framework for the establishment of the Affordable Housing Fund, access to affordable housing and in particular give effect to Article 43(1)(b) of the Constitution on the right to accessible and adequate housing. It further imposes the Affordable Housing Levy to finance the provision of affordable housing and associated social and physical infrastructure.

**Part I (Clauses 1-3)** of the Bill provides for preliminary matters including the short title and interpretation of terms used in the Bill with a technical meaning. It further sets out objects and guiding principles of the Act.

**Part II (Clauses 4-7)** of the Bill contains provisions on the imposition of the Affordable Housing Levy. Clause 4 specifies the obligations of an employer in respect of the Levy and empowers the Cabinet Secretary to the National Treasury issue exemptions from payment of the Levy to any income or class of income or any person or categories of persons that he may determine.

**Part III (Clauses 8-29)** of the Bill provides for the establishment and management of the Affordable Housing Fund. It provides for the establishment of the Fund, sources of funds and the payment out of the Fund. The payments shall include—

- (a) thirty percent to the National Housing Corporation;
- (b) thirty percent to slum upgrading, maintenance, rehabilitation and off-take of affordable housing programmes; and
- (c) thirty-six percent to the State Department responsible for matters relating to affordable housing in respect of institutional housing programmes and projects approved by Cabinet.

**Part IV (Clauses 30-38)** of the Bill contains provisions on the eligibility criteria and application procedure for affordable housing units.

**Part V (Clause 39)** of the Bill contains the financial provisions in respect of the accounts and audits of the Fund.

**Part VI (Clauses 40-43)** of the Bill contains the miscellaneous provisions providing for offences and penalties, power to make regulations by the Cabinet Secretary and consequential amendments to the Employment Act, 2007.

**The Schedule** to the Bill provides for the conduct of business and affairs of the Board.



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

The Bill delegates legislative powers to the Cabinet Secretary, but does not limit fundamental rights and freedoms.

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

The Bill relates to the broader policy framework on housing, with particular emphasis on the mobilisation of funds for affordable housing, geared towards the actualisation of the right to accessible and adequate housing under Article 43(1)(b) of the Constitution. This is a function of the national government under Part 1 of the Fourth Schedule to the Constitution. The Bill therefore does not affect the functions and powers of county governments, and is therefore not a Bill concerning counties within the meaning of Article 110 of the Constitution and the Standing Orders.

**Statement on the financial implications of the Bill**

The enactment of this Bill shall occasion additional expenditure of public funds to be provided for in the estimates.

Dated the 4th December, 2023.

**KIMANI ICHUNG'WAH,**  
*Leader of the Majority Party.*



*Section 31B of No. 11 of 2007 which it is intended to repeal—*

Affordable Housing  
Levy.

**31B.** (1) Notwithstanding the provisions of section 3(2) (a), (b), (c) and (d) of the Act, each employee and employer shall pay a monthly levy to be known as the Affordable Housing Levy.

(2) The purpose of the Affordable Housing Levy shall be to provide funds for the development of affordable housing and associated social and physical infrastructure as well as the provision of affordable home financing to Kenyans.

(3) The Affordable Housing Levy shall not be used for any other purpose other than the development of affordable housing and associated social and physical infrastructure as well as the provision of affordable home financing to Kenyans.

(4) The monthly levy payable by the employer and employee shall be—

- (a) one point five per centum of the employee's gross monthly salary for the employee;
- (b) one point five per centum of the employee's monthly gross salary for the employer.

*Section 31C of No. 11 of 2007 which it is intended to repeal—*

Obligations of the  
employer.

**31C.** (1) An employer shall—

- (a) deduct an employee's monthly payment from the employee's gross monthly salary;
- (b) set aside the employer's monthly payment for each employee; and
- (c) not later than nine working days after the end of the month in which the payments are due, remit an amount comprising the employee and the employer's payment.

(2) An employer who fails to comply with this section shall be liable to payment of a penalty equivalent to two per cent of the unpaid funds for every month the same remains unpaid.







