

LEGAL

**SPECIAL ISSUE**

*Kenya Gazette Supplement No. 12 (Kakamega County Acts No. 6)*



REPUBLIC OF KENYA

**KENYA GAZETTE SUPPLEMENT**

**KAKAMEGA COUNTY ACTS, 2020**

**NAIROBI, 29th December, 2020**

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# THE KAKAMEGA COUNTY CLIMATE CHANGE ACT, 2020

No. 6 of 2020

Date of Assent: 23rd October, 2020

Date of Commencement: See Section 1

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**THE KAKAMEGA COUNTY CLIMATE CHANGE ACT, 2020**

**AN ACT of the County Assembly of Kakamega to establish a framework for facilitating and co-ordinating climate change governance, mitigation, adaptation, financing and for connected purposes**

**ENACTED** by the County Assembly of Kakamega, as follows—

**PART I—PRELIMINARY****Short title and commencement**

1. This Act may be cited as the Kakamega County Climate Change Act, 2020 and shall come into operation on publication.

**Interpretation**

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

“climate change” means a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods;

“climate change adaptation” means adjustment in natural or human systems in response to actual or anticipated adverse effects of climate change or stimuli or their effects to moderate or exploit beneficial opportunities;

“climate change awareness” means publicity and capacity building activities aimed at creating an awareness about climate change in the County;

“climate change mitigation” means measures undertaken to prevent or reduce the impact of human activity that cause climate change;

“climate change resilience” means capability to maintain competent functions and return to some normal range of function even when faced with adverse impact of climate change;

“climate change finance” means monies or financing available for or mobilized by the national government, county government, international agencies, or non-government entities to finance climate change adaptation, mitigation and interventions;

“climate change finance framework” means a context specific policy items established under this Act and any other law to guide in the application of the Fund created under this Act;

“county” means Kakamega County;

“county government” means the County Government of Kakamega;

“county climate change action plan” means a documented set of coordinated actions to address climate change mitigation and adaptation to enhance resilience in the County;

“county climate change secretariat” means secretariat established under this Act to coordinate climate change governance, mitigation, adaptation, finance and resilience;

“county assembly” means the County Assembly of Kakamega County;

“county planning framework” means a county planning framework established by the County Government and includes the County Integrated Development Plan and other development plans as defined in the County Governments Act, 2012 and the Public Finance Management Act, 2012;

“county treasury” has the meaning assigned to it under section 103 of the Public Finance Management Act, 2012;

“executive committee member” means the County Executive Committee Member responsible for matters of climate change in the County;

“mainstreaming” means the integration of climate change actions into decision making and implementation of functions by the County departments.

“ward” means an electoral unit within a sub- county.

### **Object and purpose of the Act**

3. The object and purpose of this Act is to establish a county climate change framework and structures to—

- (a) mainstream climate change programs into development planning, decision making and advisory on climate change in the County;
- (b) co-ordinate, collate and disseminate information on climate change to the public to create awareness and preparedness; and
- (c) establish a climate change fund, financial mechanism and governance framework for climate change response and risk mitigation.

**PART II—ADMINISTRATION****Establishment of the county climate change steering committee**

4. (1) There is established a committee known as the County Climate Change Steering Committee comprised of—

- (a) the County Executive Committee Member responsible for climate change matters who shall be the chairperson;
- (b) the County Executive Committee Member responsible for Finance;
- (c) the County Executive Committee Member responsible for Agriculture;
- (d) the County Executive Committee Member responsible for Public Administration;
- (e) the County Executive Committee Member responsible for health services;
- (f) the County Executive Committee Member responsible for public works;
- (g) the County Attorney;
- (h) a person from national government responsible for meteorological services in the county; and
- (i) the Chief Officer responsible for climate change matters who shall be the secretary.

(2) The Fund Administrator shall be a co-opted member of the county climate change steering committee.

(3) The county climate change steering committee shall co-opt one or more persons with relevant expertise when needed to advise on specific matters.

**Functions of the county climate change steering committee**

5. The county climate change steering committee shall—

- (a) approve, mainstream and oversee the implementation of the county climate change action plan;
- (b) facilitate the coordination of climate change finance projects and programs in the County;
- (c) advise the county government on legislative, policy and other measures necessary for climate change adaptation and mitigation;

- (d) provide strategic direction, leadership and oversight to the climate change secretariat;
- (e) provide policy direction on research and training on climate change including on the collation and dissemination of information relating to climate change to the county government, the public and other stakeholders;
- (f) provide guidance on review, amendment and harmonization of sectoral laws and policies in order to achieve the objectives of this Act;
- (g) develop necessary linkages for the climate change fund established under this Act with the national government and other relevant stakeholders;
- (h) formulate programs and plans to enhance resilience and adaptive capacity of human and ecological systems to the impacts of climate change in the county;
- (i) mainstream disaster risk reduction strategies and actions of public and private entities in the county;
- (j) provide incentives and obligations for private sector contribution in achieving low carbon climate resilient development in the county;
- (k) promote monitoring, evaluation, reporting and verification of climate change mitigation and adaptation initiatives;
- (l) promote uptake and efficient use of low carbon emission technologies and practices at the community level;
- (m) mobilize resources to support climate change programs; and
- (n) perform any other function that may be assigned by the county executive committee.

#### **Department responsible for climate change**

6. (1) Subject to the provisions of this Act, the department responsible for climate change shall be responsible for the implementation of this Act.

(2) The department shall—

- (a) formulate and periodically review the climate change policy, strategy, regulations and submit to the County Climate Change Steering Committee for approval;
- (b) co-ordinate integration and mainstreaming of climate change actions, interventions and duties set out in this Act, into various sectors;

- (c) coordinate mainstreaming the advisory of the National Climate change action plan in county integrated development plan and the county sectoral plans; and
- (d) submit reports on climate change actions to the County Assembly for review and debate and a copy of the report to the National Directorate of Climate Change for information purposes at the end of every financial year.

(3) The County Assembly shall, within six months of receiving the climate change report, provide recommendations and proposed actions to the county steering committee, the executive committee member, the climate change secretariat and any other county department or entity.

(4) The department shall liaise with the county climate change steering committee in the discharge of its duties and functions under this Act.

#### **Climate change secretariat**

7. (1) There is established a climate change secretariat in the County department responsible for climate change which shall be the secretariat for the climate change steering committee.

(2) The secretariat shall be responsible for development of climate change plans and their implementation.

(3) The secretariat shall be headed by the director responsible for climate change.

#### **Functions of the Secretariat**

8. The secretariat shall perform the following duties and functions—

- (a) implement climate change legislation and policy;
- (b) implement climate change plans and actions and report to the county climate change steering committee;
- (c) advise the county climate change steering committee on matters relating to legislation, policy, coordination, and monitoring climate change governance;
- (d) be responsible for coordination and monitoring of climate change governance;
- (e) provide technical support on climate change matters to county departments and agencies;



- (f) establish and manage a county climate change database and registry for dissemination of information and knowledge on climate change;
- (g) develop and implement low carbon emission strategies;
- (h) prepare and submit operational and statutory reports to the relevant authorities;
- (i) develop, coordinate and implement climate change related research and innovations;
- (j) develop guidelines for climate change projects eligibility criteria;
- (k) ensure need based allocation of the monies available in the climate change fund with regard to the projects received from the ward administrators;
- (l) formulate monitoring and evaluation tools for projects financed by the climate change fund;
- (m) facilitate public participation at ward level in formulation of climate change programs and plans;
- (n) receive project proposals from the ward and develop technical components of the proposals, budgets and work plans; and
- (o) perform any other function related to climate change as may be assigned by the county climate change steering committee.

#### **Staff of the Secretariat**

9. The executive committee member shall ensure appropriate staffing levels for the climate change secretariat to effectively perform its functions under this Act.

#### **Delegation of powers of county climate change steering committee**

10. Subject to the provisions of this Act, the county climate change steering committee may delegate in writing the exercise of any of its functions under this Act.

#### **Conduct of affairs of county climate change steering committee**

11. (1) The county climate change steering committee shall meet once every three months.

(2) The county climate change steering committee shall conduct its affairs in accordance with guidelines under the Schedule.

(3) Members of the county climate change steering committee shall be paid such allowances in line with the guidelines of Salaries and Remuneration Commission.

### **PART III—COUNTY CLIMATE CHANGE EFFECTS ADAPTATION AND MITIGATION MEASURES**

#### **Climate change county action plan**

12. (1) The county climate change secretariat shall formulate a county climate change action plan that shall be presented to the county climate change steering committee.

(2) In formulating the county climate change action plan, the secretariat shall be informed by—

- (a) scientific knowledge about climate change;
- (b) technology and technological innovations about climate change;
- (c) legal and policy framework relating to climate change, biodiversity and ecosystem;
- (d) indigenous knowledge related to climate change adaptation and mitigation;
- (e) social, economic and political circumstances that are likely to impact the action plan; and
- (f) outcomes of public participation.

#### **Mechanisms for the county action plan**

13. (1) The county action plan shall prescribe measures and mechanisms to—

- (a) guide the county towards achieving low carbon emission and climate resilient sustainable development;
- (b) develop actions for mainstreaming climate change responses into sector functions for adaptation and mitigation against climate change;
- (c) develop a structure for public awareness and engagement in climate change response and disaster risk reduction;
- (d) enhance energy conservation, efficiency and use of renewable energy in industrial, commercial, transport, domestic and other uses;
- (e) identify outputs, overall budget estimates and timeframes to realize expected results; and

(f) strengthen climate change research and development training and technology transfer.

(2) The county climate change action plan shall address all sectors in the county and provide mechanisms for mainstreaming of the county climate change action plan into those sectors.

(3) Approval of the county climate change action plan by the county climate change steering committee shall be by notice in the *Gazette*.

(4) The department responsible for matters of climate change shall—

(a) review and update the county climate change action plan after every five years; and

(b) ensure that public and private bodies or a person engaged in climate change governance and administration is, when exercising any power or discharging any function under this Act, bound by the county climate change action plan.

#### **Duty of public sector in climate change**

14. (1) The Executive Committee Member may impose obligations relating to climate change on any public body falling within the mandate of the County Government.

(2) The executive committee member may with the concurrence of the national government impose obligations relating to climate change on any public body falling within the mandate of national government.

(3) The obligations that the Executive Committee Member may impose include a requirement that the public entity—

(a) integrates the county climate change action plan into sectoral strategies and other implementation projections for the assigned legislative or policy functions;

(b) reports on climate change mitigation and climate change adaptation interventions for county inventory;

(c) implements mechanisms for the sustainability in performance of sectoral mandates on climate change;

(d) reports annually to the Executive Committee Member on the status of progress of performance and implementation of all assigned climate change duties and functions;

(e) regularly monitors and reviews the performance of the integrated climate change functions through sectoral mandates;

- (f) coordinates the mainstreaming of the climate change action plan and other climate change statutory functions and mandates into sectoral strategies for implementation; and
- (g) designate a senior officer to coordinate the mainstreaming of the climate change action plan and other climate change statutory functions and mandates into departmental strategies for implementation.

#### **Collaborations on climate change compliance**

15. (1) The County Government may collaborate with other agencies both public and private on matters relating to climate change.

(2) Nothing contained in this Act prevents two or more wards with similar climate change projects from collaborating.

#### **Public awareness**

16. (1) The county climate change steering committee shall publish and publicize all important information within their mandate on County website.

(2) Any person may request for information from the county climate change steering committee, and such request for information—

- (a) shall be addressed to the secretary of the county climate change steering committee or the climate change fund administrator or such other designated person;
- (b) may be subject to the payment of the prescribed fee in instances where the county climate change steering committee incurs an expense in providing information; and
- (c) may be subject to confidentiality requirements of the county climate change steering committee.

(3) Subject to Article 35 of the Constitution, the county climate change steering committee may decline to give information to an applicant where—

- (a) the request is considered unreasonable in the circumstances;
- (b) the information requested is at a deliberative stage within the Council or Directorate;
- (c) the prescribed fee is not paid; or
- (d) the applicant fails to satisfy any confidentiality requirements of the County Climate Change Steering Committee.

(4) Every person is under an obligation to provide climate change information as may be required by law.

(5) A person commits an offence if the person—

(a) fails or refuses to give information that the person may lawfully be required to give to the county climate change steering committee; or

(b) gives false or misleading information to the county climate change steering committee.

(6) A person who commits an offence under subsection (5) is liable, on conviction, to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six month, or to both.

#### **PART IV—FINANCIAL PROVISIONS**

##### **Establishment of the climate change Fund**

17. (1) There is established a Fund known as Kakamega county climate change fund to generate funds for implementation of climate change programs.

##### **Sources of monies for the Fund**

18. (1) The sources of monies for the Fund shall include—

(a) monies appropriated by the County Assembly for the purpose of the Fund;

(b) grants, donations and endowments;

(c) income from fees, charges or penalties imposed for services;

(d) loans to the Fund; and

(e) interest accruing from bank deposits in respect of the Fund.

(2) Any unused monies at the end of the financial year shall be retained in the Fund and carried forward to the next financial year as provided for in section 116(3) of the Public Finance Management Act, 2012.

(3) Despite subsection (2) the executive committee member for finance may transfer to the county revenue account any unused monies at the end of the financial year but the money shall be transferred back to the Fund at the beginning of the new financial year.

(4) The County Government commits to allocate at least 1% of the annual development budget as Climate Change Fund.

**Expenditure of the Fund**

19. (1) There shall be paid out of the Fund payments in respect of any expenses incurred pursuant to the object for which the Fund is established including—

- (a) providing grants for climate change policy formulation, research and innovation;
- (b) providing grants to businesses, industry, civil society, academia and other stakeholders for development of innovative actions that benefit climate change responses in the County;
- (c) financing, through grants, the implementation of climate change adaptation and mitigation actions; and
- (d) providing technical assistance to other stakeholders, where appropriate.

(2) The expenditure incurred from the Fund shall be on the basis of, and limited to, annual work plan and cost estimates which shall be prepared by the administrator of the Fund and approved by the county climate change steering committee at the beginning of the financial year to which they relate.

(3) Any revision of the approved annual work plan and of any cost estimate shall be referred to the County Climate Change Steering Committee for approval.

**Annual estimates**

20. (1) At least three months before the commencement of each financial year the county climate change steering committee shall cause to be prepared estimates of the revenue and expenditure of the Fund for that year in accordance with the provisions of the Public Finance Management Act, 2012.

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

- (a) payments of climate change related projects;
- (b) the operations of the Fund;
- (c) payment of allowances;
- (d) maintenance of assets of the Fund;
- (e) compensation for claims; and

(f) such other matters as the County Climate Change Secretariat shall, in consultation with the county climate change steering committee determine.

(3) The annual estimates shall be prepared by the secretariat and submitted to the county climate change steering committee for approval and after the county climate change steering committee has given approval secretariat shall not change any sum provided in the estimates without the consent of the County Climate Change Steering Committee.

(4) No expenditure shall be incurred from the Fund except for the monies voted or appropriated by the County Assembly.

#### **Accounts and audits**

**21.** (1) The Fund administrator shall cause to be kept all proper books and records of accounts of the income, expenditure, cash flows, assets and liabilities of the Fund.

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

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

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

#### **Financial year**

**22.** The financial year of the Fund shall be the period of twelve months ending the thirtieth June of each year.

#### **Administration of the Fund**

**23.** (1) There is established the office of the Fund administrator of the County Climate Change Fund who shall be the accounting officer of the Fund.

(2) The executive committee member for finance shall designate the County Director responsible for climate change to be the administrator of the Fund.

(3) The Fund administrator shall be responsible for the day to day activities of the Fund.

**Functions of the Fund Administrator**

24. (1) Reporting to the county climate change steering committee, the Fund administrator shall—

- (a) within three months after the end of the financial year prepare accounts for the Fund for that financial year;
- (b) not later than three months after the end of each financial year submit statement relating to the account to the Auditor General;
- (c) prepare quarterly financial statements for the Fund and non-financial performance of the Fund;
- (d) present financial statements of the Fund to the County Assembly every financial year;
- (e) not later than 15 days after the end of each quarter submit the quarterly report to the county treasury and a copy to the controller of budget;
- (f) supervise and manage operations of the bank account of the Fund;
- (g) ensure adequate budgetary provision for the Fund;
- (h) ensure that the Fund balances are administered in accordance with the provisions of the Public Finance Management Act and that the Fund balances are re-budgeted at the end of financial year;
- (i) prepare a framework for receiving and evaluating project proposals;
- (j) prepare and publish a yearly work plan;
- (k) develop a framework for linkage between the county climate change steering committee and the ward structures and between the county and other stakeholders;
- (l) implement the decisions of the County Climate Change Steering Committee;
- (m) publish the eligibility criteria for selection of projects developed by the County Climate Change Steering Committee;
- (n) coordinate the disbursement of monies allocated to projects approved by the county climate change steering committee;
- (o) co-ordinate capacity building programs for the ward level structures; and



- (p) any other duty assigned by the County Climate Change Steering Committee.

#### **Monies to be allocated to wards**

25. (1) The County Climate Change Steering Committee shall ensure that adequate resources are allocated to climate change activities at ward level.

(2) The County Climate Change Steering Committee shall prepare and publicize through the county website and public participation for a information on the allocation of funds available for each Ward.

(3) The County Climate Change Steering Committee shall be guided by the following factors in determining the allocation of funds to the wards—

- (a) equitable distribution of the resources from the Fund in accordance with the eligibility criteria in section 26;
- (b) propensity of a ward to climate disasters; and
- (c) the level of vulnerability to climatic disasters of the populations in each ward.

(4) The county climate change steering committee shall develop and publish eligibility criteria for climate change programs financing.

#### **Project eligibility criteria**

26. The eligibility criteria for equitable distribution of resources from the Fund to climate change projects shall be based on the following parameters—

- (a) possibility and magnitude of the risk occurrence;
- (b) promotion of climate resilience in the locality through climate mitigation or adaptation;
- (c) support for economic growth through climate adaptation;
- (d) communal benefit including vulnerable groups with clear consideration for gender representation;
- (e) conducted situation analysis including social safety nets;
- (f) defined monitoring and evaluation plan;
- (g) a sustainability plan; and
- (h) provision of a platform for stakeholder engagement.

**Community consultative forums****No. 5 of 2015**

27. (1) The sub county administrator shall establish a community consultation for a in every ward within the sub county.

(2) Each ward administrator shall convene community consultation for a of all the community area councils established under section 4 of the Kakamega County Decentralized Units Act, 2015.

(3) The agenda for the community consultation fora shall be to—

(a) create climate change awareness;

(b) sensitize the community on climate change Fund project eligibility criteria; and

(c) identify priority projects.

(4) The ward administrator shall prepare a report on community consultation for a, and submit it to the sub county administrator for consolidation and onward submission to the County Climate Change Secretariat.

**No. 7 of 2015**

(5) Each ward administrator shall ensure efficacy of public participation and consultations at the ward forum as prescribed under the Kakamega County Public Participation Act, 2015 in enforcing provisions of this Act.

(6) Notwithstanding subsection (2) any person who wishes to participate at a ward climate change forum shall have the liberty to do so.

**Development of project proposals**

28. (1) The county climate change secretariat shall in consultation with sub county administrator prioritize project proposals from the project priorities identified in section 25 (3) and include any necessary technical details for each project.

(2) The county climate change secretariat shall publish the list of all project proposals received on the county website and submit the selected project proposals to the county climate change steering committee for consideration within two weeks of completion of the process in subsection (1).

### Validation of project proposals

29. (1) The county climate change steering committee shall undertake a project validation process within four weeks after receiving the project proposals from the county climate change secretariat and—

- (a) approve the project proposals and communicate its decision to the county climate change secretariat and the respective sub county administrators;
- (b) reject the project proposals with reasons and communicate its decision to the county climate change secretariat and the respective sub county administrators; or
- (c) return the project proposals to county climate change secretariat and the respective ward administrators with recommendations for amendments.

(2) The county climate change steering committee may, in order to facilitate the approval of the project proposals, constitute a project team comprising relevant county public officers for in-depth analysis of the project proposals.

### Publication of approved project proposals

30. The Fund administrator shall publish on county website and at respective sub county and ward offices a list of the approved project proposals for each ward.

### Complaints

31. (1) A person from the respective ward who is aggrieved by the decision of the ward administrator, sub county administrator, County Climate Change Secretariat or County Climate Change Steering Committee shall submit the complaint to the Chairperson of the County Climate Change Steering Committee within one week of the completion of the validation process.

(2) Where the chairperson of the County Climate Change Steering Committee receives a complaint under sub section (1), he or she may accord the complainant a hearing before the County Climate Change Steering Committee, if the complainant so requests, and provide feedback to the complainant within thirty days of receipt of the complaint.

### Disbursement of funds for projects

32. (1) The Fund Administrator shall disburse funds for approved project proposals in accordance with prescribed procedures.

(2) The Fund administrator shall in consultation with the County Climate Change Steering Committee reallocate funds allocated to a project where he or she becomes aware that the funds may not be utilized within a financial year within which it is budgeted.

(3) The reallocations of any funds in subsection (2) shall only be done within the respective ward.

## PART V—MISCELLANEOUS PROVISIONS

### Protection from liability

33. (1) No matter or thing done by a member of the County Climate Change Steering Committee, County Climate Change Secretariat, County Climate Change Fund Administrator or Ward Administrator shall, if the matter or thing is done *bona fide* for executing the functions, powers or duties under this Act, render the member, officer, employee, agent or any other person acting on their directions personally liable to any action, claim or demand whatsoever provided that the action was done in accordance with this Act.

(2) Any expenses incurred by any person in any suit or prosecution brought against him or her in any court or tribunal in respect of any act which is done or purported to be done by him or her under the direction of the County Climate Change Steering Committee, County Climate Change Secretariat, County Climate Change Fund Administrator or Ward Administrator shall, if the court or any tribunal holds that such act was done *bona fide*, be paid out of the monies of the Fund.

### Regulations

34. The Executive Committee Member may make regulations generally for the better carrying out of the provisions of this Act.

### Transitional provisions

35. The executive committee member shall ensure that the County Climate Change Steering Committee, the County Climate Change Secretariat and the County Climate Change Fund come into force within three months of the commencement of this Act.

**SCHEDULE**

(s.11)

**PROVISIONS AS TO THE CONDUCT OF THE BUSINESS AND AFFAIRS OF THE COUNTY CLIMATE CHANGE STEERING COMMITTEE**

1. The County Climate Change Steering Committee shall meet once every quarter of each financial year.
2. The Chairperson may at any time when there is urgent business to transact convene a special meeting of the county climate change steering committee.
3. In the absence of the Chairperson, the members present shall elect one of the members present to preside.
4. Unless a unanimous decision is reached, a decision on any matter before the County Climate Change Steering Committee shall be by a majority of the members present, and in the case of an equality of votes the chairperson or person presiding shall have a casting vote.
5. The quorum for the meetings of the County Climate Change Steering Committee shall be five members including the chief officer responsible for climate change.
6. A member who has a direct or indirect interest in a matter being considered or to be considered by the County Climate Change Steering Committee shall, as soon as the relevant facts regarding the matter come to the knowledge of the member, disclose the nature of such interest in writing, and shall not be present during any deliberations on the matter.
7. The Chief Officer responsible for climate change matters and climate change Fund Administrator shall sit in all the sub-committees of the county climate change steering committee.
8. The County Climate Change Steering Committee shall cause the minutes of all the proceedings of its meetings to be recorded and kept by the secretary to the County Climate Change Steering Committee, and shall be signed by the chairperson or the person presiding at the meeting.
9. The County Climate Change Steering Committee may constitute specialized sub-committees provided that the decisions of the sub-committees shall be subject to approval of the County Climate Change Steering Committee.
10. The County Climate Change Steering Committee or the sub-committee thereof may co-opt up to a maximum of two persons with specialized skills or knowledge of the subject matter at their respective

sittings to assist the county climate change steering committee or the sub-committees, as the case may be, in discharging their mandate.

**11.** Save as provided in this Schedule the County Climate Change Steering Committee may regulate its own procedure.