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THE BUSIA COUNTY STATE OFFICERS' REVOLVING FUND BILL, 2014

A Bill for

AN ACT of the County Assembly to establish a mechanism for the mobilization and management of a revolving fund to provide concessionary terms for loans and other financial support to cater for the welfare of State officers in the service of the County Executive and for connected and related matters.

ENACTED by the County Assembly of Busia as follows—

PART I—PRELIMINARY

1. Short title and date of Commencement.

This Act may be cited as the Busia County State Officers' Revolving Fund Act, 2015, and shall come into force as the Member of the Executive Committee responsible for finance, with the concurrence of the Governor, may appoint and publish in the Gazette.

2. Interpretations.

In this Act, unless the context otherwise requires—

“County ” means Busia County;

“County Assembly” means Busia County Assembly;

“County Government” means the County Government of Busia;

“County Executive” means the County Executive of the Busia County Government;

“Executive Member” means Member of the County Executive Committee responsible for Finance in the County;

“State Officer” means a state officer as defined in Article 260 of the Constitution;

“Public Officer” means a public officer as defined in Article 260 of the Constitution;

“Constitution” means the Constitution of Kenya, 2010.

3. Application of the Act.

(1) This Act shall apply to ^{public officer} ~~State officers~~ in the service of the County Government.

(2) The Act shall apply to the ~~State and~~ Public Officers at different times as may be resolved by the County Executive Committee and published in the County Gazette after consultation with the Salaries and Remuneration Commission.

4. Objectives and Purpose.

The objective and purpose of this Act is to—

- (a) create a revolving fund through which State and public officers in the employment of the County Government may access loans and other financial assistance on concessionary terms;
- (b) establish a mechanism to mobilize resources for the purposes of establishing and maintaining a stable revolving fund for the purposes of this Act;
- (c) establish a mechanism through which the revolving fund may be created, maintained and managed;
- (d) Create a sound mechanism for the transparent and accountable administration of the fund; and
- (e) Establish criteria and rules for access to the Fund and repayment thereof.

PART II—STATE OFFICERS' REVOLVING FUND

5. Establishment of the Fund.

(1) There is hereby established a fund to be known as the Busia County State and Public Officers' Revolving Fund which shall be managed and administered by the Board.

(2) The object and the purpose of the Fund shall be to mobilise resources and create a pool of funds that State officers in the service of the County Government, other than those in the County Assembly Service, may access loans and other financial assistance on preferential and concessionary terms.

(3) For avoidance of doubt interest charged in respect of any loan or financial facility extended to a State officer shall not exceed 3% (three per centum) per annum.

6. Sources of the Fund.

(1) There shall be credited to the Fund—

- (a) such money or monies as may, from time to time, be voted to the Fund by the County Assembly. Provided that such money or monies voted by the County Assembly shall not exceed 3% (three

per centum) of the total annual budget voted for the County Executive;

- (b) sums or repayment made to the Fund in respect of loans or financial support facilities extended or granted to applicants by the Board;
- (c) such other money or monies as may be granted or extended to the County in respect of the Fund;
- (d) income from any investment made by the Board;
- (e) any sums of money borrowed by the Board with the consent of the Member of the County Executive Committee; and
- (f) any gifts, donations, grants and endowments made to the Fund.

(2) Notwithstanding the generality of subsection (1) the County Government may, in accordance with section 6 (3) of the County Government's Act enter into an arrangement with any person with regard to the funding of any work, service or function for which this Fund may be applicable.

7. Fund account.

(1) Monies received for the purposes of the Fund shall be paid into the County Revenue Fund and only withdrawn therefrom in accordance with the provisions of this Act and the Public Finance Management Act.

(2) A special account shall be opened and maintained by the County Treasury in respect of monies appropriated by the County Assembly for the purposes of this Act.

8. Use of the Fund.

(1) There shall be paid out of the Fund only such expenditure as will have been approved by the Board and incurred in connection with the administration of the Fund.

(2) The use of the Fund for the purpose of advancing a loan or extension of other financial facility to a State or other public officer shall be limited to acquisition of—

- (a) Residential housing;
- (b) Motor vehicle.

PART III—ADMINISTRATION OF THE FUND

9. Establishment of the Board.

(1) The Fund shall be administered by a board called Busia County State Officers' Revolving Fund Board (herein after called the 'Board') which shall consist of—

- (a) the chairperson;
- (b) the Chief Officer in the County Department for Finance;
- (c) the Chief Officer in the County Department of Public Service; and
- (d) three other persons;

(2) The Executive Committee Member shall nominate the Chairperson and the other members of the Board except the members in subsection 1 (b) and (c).

(3) The members of the Board shall be appointed in writing by the Governor.

(4) A person appointed as a chairperson or member of the Board shall hold office and serve for a term of three years renewable once.

10. Qualifications.

A person shall be qualified for appointment as the chairperson or as a member of the Board if that person—

- (a) is a citizen of Kenya and ordinarily resident or carrying on business in the County;
- (b) possesses a bachelor's degree from a university recognized in Kenya;
- (c) has a working experience of not less than 5 (five) years;
- (d) is not a State officer; and
- (e) satisfies the provisions of Chapter Six of the Constitution.

11. Secretary to the Board.

The Secretary to the County Public Service Board shall be the Secretary to the Board and shall keep the minutes of the meetings of the Board.

12. Functions of the Board.

The Board shall—

- (a) in accordance with the provisions of this Act and the regulations made hereunder, on behalf of the County Government administer and manage the Fund;
- (b) establish mechanisms for mobilization of resources to increase the Fund capital;
- (c) propose to the Executive Committee Member on the available profitable investment opportunities on surplus funds;

- (d) consult and collaborate with the County Public Service Board and the Salaries and Remuneration Commission to ensure that all its decisions made under this Act conform to the guidelines or directives issued by the County Public Service Board and the Salaries and Remuneration Commission;
- (e) establish a criteria to be met by applicants to access the Fund by way of loans or other financial support;
- (f) determine the modes and methods of repayment of the loans granted or other financial assistance extended;
- (g) receive, process and approve or otherwise applications for loans or other financial facilities from and by applicants;
- (h) prepare and maintain accurate records of loan applications, approvals and repayments;
- (i) set up and implement procedures for loan recoveries and defaults;
- (j) in the event of default by a loanee or debtor to initiate appropriate recovery proceedings; and
- (k) perform such other functions, with the approval of the Executive Committee Member as may be necessary or appropriate for the better carrying out of the provisions of this Act.

13. Conduct of business of the board.

The procedure for the conduct of the business of the Board shall be in accordance with such a procedure as may be prescribed.

PART IV—PROCEDURE FOR EXTENSION OF LOAN FACILITIES

14. Application for a loan or other financial facility.

A State officer wishing to access the Fund by way of loan or other financial facility or support shall—

- (a) make an application in writing to the Board;
- (b) furnish the Board with such evidence as the Board may require; and
- (c) furnish the Board with such guarantees or other security.

15. Consequence of false information.

(1) Any person who, for the purpose of accessing a loan or other financial support under this Act makes any false statement or gives any misleading statement to the Board in the application under Section 12 shall be—

(a) guilty of an offence and be liable, upon conviction to a fine not exceeding Kshs. 500,000 (five hundred thousand) or to imprisonment for a term not exceeding 2 (two) years or to both such a fine and term of imprisonment.

(b) barred from accessing any such loan or loan facility.

(2) The Board may recall any loan granted to or financial facility or support extended to applicant on the basis of any false or misleading information or statement and such loan or facility shall become immediately recoverable as a summary debt.

16. Consideration of the application.

(1) The application under section 12 shall be received by the Secretary to the Board who shall open a register of applications and enter therein—

(a) details of the application received;

(b) the date of receipt of the application; and

(c) such other details as may be prescribed.

(2) Within one month of receipt of the application, the Secretary shall cause the Board to meet and consider the application or applications.

17. Decision of the Board.

At the meeting for consideration of the application or applications the Board may—

(a) accept or reject an application for a loan or financial facility or support;

(b) grant the application upon such conditions as to security, mode and time of payment as it may consider appropriate in the circumstances; and

(c) notify the applicant in writing of its decision.

18. Furnishing of guarantees.

(1) In addition to any other condition for the grant of a loan or extension of financial facility or support, the Board may require the applicant to furnish the Board with such guarantee as may be appropriate as security for repayment of the loan.

(2) Where a guarantee has been given in accordance with sub section (1), the guarantor shall be deemed to be a principal debtor in respect thereof in the event of default.

19. Acceptance of the loan facility by applicant.

(1) An applicant whose application has been granted under section 17 shall signify his or her acceptance of the loan or facility as soon as possible but in any event not later than fourteen days after service of the notice of the decision and section 17 (c).

(2) Any applicant who fails to signify his or her acceptance of the terms and conditions of the loan facility within the term herein stated shall be deemed to have rejected the offer and the offer shall stand withdrawn.

20. Loan repayment and recovery

(1) Upon grant of a loan or extension of other financial facility or support the Board shall recover the loan or facility advanced or extended in such instalments paid periodically as may be stated in the loan or lending conditions.

(2) In determining the amount of the instalments to be paid by the loanee to recover the loan or the facility extended, the Board shall ensure that the total deductions in respect of such instalments do not exceed two thirds of the loanee's basic salary.

(3) It shall be the responsibility and obligation of the loanee to repay the loan or other financial facility extended in full and in accordance of terms and conditions for the grant of the loan or extension of the facility.

21. Loan facilities to state and public officers on contract or elective terms of employment.

Where the Board is considering an application for a loan or other financial facility or support out of the Fund by a State or public officer on contract terms of employment or whose terms of service are elective for a specified period of time, the Board shall—

- (a) not grant a loan or facility or support on such application the repayment whereof shall exceed the remainder of the term to be served.
- (b) ensure that the loan or any financial facility together with interest thereon are fully recovered and repaid at least 120 days before the expiry of the contract of employment or the elective term whichever may be the case.

(2) If by the end of the contract or elective term the loanee or debtor shall not have fully liquidated his or her liability, any terminal or other dues payable to such loanee or debtor by the County Government shall stand charged to the Board to the extent of the liability and may be recoverable there from by the Board without further notice.

22. Annual returns forms.

The Board shall keep and maintain an accurate record of loan repayments made by or deducted from the loanee or debtor and, on an annual basis render to such loanee or debtor a duly completed Annual Return form on the status of a loanee's loan repayments.

23. The board's right of waiver.

A loan granted by the Board under this Act shall not be waived or written off unless in the case of a loanee's death it has become impossible or unduly difficult to recover the loan on the basis that the expenses to be incurred in its recovery would be far in excess of the amount sought to be recovered.

PART V—FINANCIAL PROVISIONS**24. The financial year of the board.**

The financial year of the Board shall be the period of twelve months commencing on the 1st day of July and ending on the 30th day of June the following year.

25. Books of accounts and audits.

(1) The Board shall cause to be kept and maintained all proper books and records of accounts of the income, expenditure and liability of the Fund and shall not later than three months after the end of each financial year cause to be prepared and submitted to the Auditor-General—

- (a) a balance sheet showing the details of assets and liabilities of the Fund at the end of the financial year;
- (b) a statement of financial activities, income and expenditure for the financial year; and
- (c) other statements of account as may be necessary to fully disclose the undertakings, assets, liabilities and the discharge of the Board and the Fund.

(2) The Board shall submit to the Executive Committee Member for onward transmission to the County Assembly the said records not later than four months after the end of the financial year.

PART VI—MISCELLANEOUS**26. Action in the event of an existing or threatened breach.**

Where, in any case, the Board is of the opinion that there has been or is likely to be any breach of or failure to comply with any condition or

term for the repayment of a loan, the Board may forth with recall the loan and—

- (a) Recover as a summary debt from the person to whom the loan was made, that person's personal representatives or assigns the total amount of the loan that may then be due outstanding and payable together with interest thereon; and
- (b) enforce and realize any security relating to the debt.

27. Officers of the board.

For the purposes of performing its functions under the Act, the Board may request the County Public Service Board and the County Government to appoint and deploy to the Board such number of officers as it may require to carry out its functions.

28. Allowances for the members and police officers deployed to the board.

The Executive Committee Member shall establish the guidelines for the payment of allowances and remunerations for the members of the Board and or officers deployed to work under the Board.

29. Power to make regulations.

Notwithstanding the right of the Board to adopt its own procedure for the conduct of its business, the Executive Committee Member shall make regulations generally for the purpose of enabling the Board to better carry out the provisions of this Act.

MEMORANDUM OF REASONS AND OBJECTS

Under Article 176 of the Constitution of Kenya, there's established for each County a county government. In accordance with Article 235 (1) a county government is responsible for, within a framework of uniform norms and standards prescribed by an Act of parliament among other things the establishing and abolishing offices in its public service and appointing persons to hold or act in those offices.

It's a value and principle of public service that the public service shall render efficient and effective service to the people.

Recognizing that the civil service will not be efficient and effective unless it is itself motivated and in its welfare adequately catered for, the County Government considers that as part of its obligation to have an efficient and dedicated civil service it shall create a conducive environment within which State and public officers shall serve.

Therefore, the County Government proposes in this Bill to establish a mechanism through which it may mobilize resources within the county to cater for the welfare of its State officers especially in the areas of housing and transport.

Accordingly the Bill establishes Busia County State Officers' Revolving Fund into which monies will be paid to create a Fund that may be accessed by the State officers in the Executive organ of the County Government. The Fund shall be used to extend loans and other financial assistance to these officers on concessionary and preferential terms.

It is hoped that through this mechanism the County Government will make it possible for its officers to own their own houses and means of transport and have a conducive environment within which to serve the people of Busia County. In this way, the State and public officers will be motivated and productive and give their best in the service of the people of the County.

Dated 11th December, 2014.

LENARD WANDA OBIMBIRA,
County Executive Committee,
Finance and Economic Planning.