



REPUBLIC OF KENYA

THARAKA NITHI COUNTY GAZETTE SUPPLEMENT

BILLS, 2017

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**THE THARAKA NITHI COUNTY E-WASTE MANAGEMENT BILL,
2017**

A Bill For

**AN ACT of the County Assembly of Tharaka Nithi to give effect to
Section 2 (g) of Part 2 of the Fourth Schedule to the Constitution; to
establish the institutional framework for the management of E-
Waste and for connected purposes**

ENACTED by County Assembly of Tharaka Nithi as follows –

PART I – PRELIMINARY

Short Title

1. This Act may be cited as the Tharaka Nithi County E-Waste Management Act, 2017.

Interpretation

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

“assistant director” means the assistant director appointed under section 4;

“electrical and electronic equipment” means equipment which is dependent on electric currents or electromagnetic fields in order to operate and equipment for the generation, transfer and measurement of such currents and fields;

“executive member” means the County Executive Committee Member responsible for matters relating to waste management;

“e – waste” means discarded electrical and electronic equipment which is capable of being hazardous to the environment;

“e – waste management establishment” includes the collection, transportation, storage, trade in, processing, disposal or other dealing in e – waste;

“fund” means the Tharaka Nithi County E – Waste Management Fund established under section 19;

“unit” means County E – Waste Management Unit established under section 4.

Object of the Act

28. The object of this Act is to –

- (a) establish the institutional framework necessary for the purposes of ensuring an efficient e – waste management system in the County;
- (b) promote an environmentally friendly County that reduces health risks associated with a polluted environment; and
- (c) encourage citizens to take responsibility for their environment.

PART II – ESTABLISHMENT OF THE COUNTY E – WASTE MANAGEMENT UNIT

Establishment of the County E – waste Management Unit

4. (1) There is the established the County E – waste Management Unit which shall comprise of -

- (a) the Chief Officer in the department responsible for matters relating to environment who shall be the chairperson;
- (b) the Chief officer in the department responsible for matters relating to commerce and industrialization;
- (c) the Chief officer in the department responsible for matters relating to health; and
- (d) such other number of members as may be appointed by the executive member.

(2) The unit shall be headed by an assistant director who shall be appointed by the County Public Service Board through a competitive process.

Functions of the unit

5. The Unit shall -

- (a) recommend the County e-waste management policy framework;
- (b) implement e-waste management plans;
- (c) ensure that e-waste is collected, stored, transported, recycled, reused or disposed of in an environmentally sound manner;
- (d) promote safety standards in relation to e-waste; I promote public awareness on the importance of efficient e-waste management;
- (f) to ensure a coordinated, efficient, effective and consultative approach in the management of e-waste;
- (g) foster understanding of the importance of efficient e-waste management to the conservation, protection and proper use of the environment; and
- (h) perform any other functions assigned to the Assistant Director under this Act.

Qualifications for appointment of the assistant director

6. (1) A person shall be appointed as an assistant director if that person —

- (a) is a Kenyan citizen;
- (b) is a holder of a degree from a university recognized in Kenya;
- (c) has at least ten years work experience, in a relevant field; and
- (d) meets the requirements of Chapter Six of the Constitution.

Term of office

7. (1) The assistant director shall hold office for a period not exceeding three years renewable for one further term.

(2) The terms and conditions of service of the assistant director shall be as specified in the instrument of appointment but shall be eligible for re-appointment.

Vacancy of office

8. The office of the assistant director of e-waste management shall become vacant if the assistant director –

- (a) become insolvent;
- (b) becomes of unsound mind;
- (c) is convicted of an offence and is sentenced to imprisonment without the option of a fine;
- (d) resigns by written notice to the County Public Service Board; or is removed from the office by the County Public Service Board if there are sufficient reasons in the opinion of the County Public Service Board for doing so;

Responsibilities of the assistant director

9. (1) The assistant director shall –

- (a) be responsible to the executive member for the day-to-day management of the affairs of the secretaries;
- (b) be the accounting officer;
- (c) head of the secretariat;
- (d) custodian of all records of the Unit;

He is responsible for—

- (i) executing decisions of the Unit;
- (ii) assignment of duties and supervision of all employees of the Unit;
- (iii) facilitating, coordinating and ensuring execution of the Units mandate;
- (iv) ensuring staff compliance with public ethics and national values; and
- (f) perform any other functions assigned to it under this Act.

Powers of the assistant director

10. The assistant director shall have all the necessary powers for the execution of its functions under this Act.

Staff of the unit

11. The county public service board shall appoint such number of staff as may be determined by the Board in consultation with the county executive

PART III – REGISTRATION AND LICENSING OF E-WASTE MANAGEMENT MATTERS

E-waste management licensing

12. (1) A person shall not maintain or operate an e-waste management establishment unless the person is registered and licensed in accordance with the provisions of this Act.

(2) A person who contravenes the provisions of subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding two million shillings or to a term of imprisonment for a period not exceeding four years, or to both fine and imprisonment.

Application for a license

13. (1) An application for a license under this Part shall be made, in writing, to the assistant director in the prescribed form and shall be accompanied by the prescribed fee.

(2) The assistant director may -

(a) issue a license, in accordance with this Act;

(b) refuse to issue the license -

(i) where the applicant has not satisfied the conditions for issuance of the license;

(ii) on any ground which may appear to the assistant director to be sufficient and shall inform the applicant, in writing, the reasons for the refusal;

(c) cancel, vary or suspend any license, where the Assistant Director establishes that the licensee has contravened any of the provisions of this Act.

Issuance of licenses

14. (1) The assistant director shall issue licenses to applicants subject to such lawful conditions as the assistant director may determine.

(2) Every license shall specify the premises upon which the business specified in the license may be carried on.

(3) The assistant director, after consultation with the executive Member, shall prescribe the fees payable for the issue of licenses under this Act.

(4) The assistant director shall, at least thirty days before granting a license under this Act, give notice of the proposed grant in the gazette and in such other manner as the assistant director may determine.

(5) The notice referred to in subsection (4) shall -

(a) specify the name or other particulars of the person or class of persons to whom the license is to be granted;

(b) state the purpose for the proposed license and indicate the date such license is proposed to be issued to the successful applicant; and

- (c) invite objections to the proposed grant of license and direct that such objections be lodged with the assistant director, within fourteen days after the date of the notice.

(6) The Assistant Director may after considering the objections, if any, made under this section, grant the license applied for, subject to such terms and conditions as may be specified in the license.

(7) The assistant director shall not refuse to issue a license to an applicant under this Act without a reasonable and justifiable cause.

(8) A license issued under this Act is not transferable.

Register of licenses

15. The assistant director shall ensure that there is kept an up to date register and maintain a license issued pursuant to this part.

Application for renewal of a license

16. (1) An application for the renewal of a license under this Act shall be made to the assistant director not later than the first day of the month of June in which the current license is due to expire.

(2) Every license issued shall remain in force for only one year.

(3) Despite subsection (1), a late application may be made upon payment of a late application fee as may be prescribed by the assistant director.

Conditions of a license

17. (1) A license issued under this Act shall be subject to such conditions as the assistant director may determine and is specified in the license.

(2) The assistant director may, at any time, during the validity of a license—

(a) vary the conditions of the license; or

(b) impose conditions or further conditions on the license.

Revocation, alteration or suspension of license

18. The assistant director may revoke, alter or suspend a license issued under this Act, if –

(a) an offence under this Act or in respect of the licensed activity under any other written law, has been committed by the license holder or any employee of the license holder; or

(b) a condition of the license has been contravened or not complied with.

Surrender a license

19. (1) The holder of a license which is revoked under section 15 shall immediately surrender it to the assistant director.

(2) A license holder may at any time surrender the license to the assistant director and the license shall cease to have effect forthwith.

(3) A person who ceases to operate business of an e-waste which was licensed to operate shall surrender the license for revocation to the assistant director.

Appeals

20. (1) An applicant for or the holder of a license who is aggrieved by a decision of the assistant director on -

- (a) the grant, refusal, renewal, variation or revocation; or
- (b) the conditions imposed on the grant, renewal or variations, of a license, may appeal to the Executive member.

(2) The procedure for an appeal shall be set out in regulations made pursuant to this Act.

Offences

21. A person who -

- (a) burns e-waste without a license;
- (b) interferes with a dumpsite or a landfill of an e-waste;
- (c) interferes with a drainage system with an e-waste material; or
- (d) passes e-waste matter in a public area,

Commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand or to a term of imprisonment for a period not exceeding one year or to both fine and imprisonment.

PART IV – FINANCIAL PROVISIONS

Establishment and management of the County E-Waste Management Fund

22. (1) There is established a Fund to be known as the County E-Waste Management Fund.

(2) The Fund consist of-

- (a) such monies as may be appropriate by the County Assembly, for the purpose of the Unit;
- (b) such monies as may be payable to the Unit pursuant to this Act or any other written law;
- (c) grants, gifts, donations or other endowments given to the Fund; and
- (d) monies from any other source provided or donated or lent to the Fund.

(3) There shall be paid out of the Fund-

- (a) all payments which are lawfully due as provided under this Act;
- (b) The expenses incurred in the administration of the Fund; and
- (c) Any other matter incidental to the matters provided under paragraphs (a) and (b).

(4) The Unit shall ensure that the Fund has adequate staff to enable it carry out the functions assigned to it under this Act.

(5) The staff referred to in subsection (4) shall include the appointment of the Deputy Director who shall be-

- (a) The administrator or the Fund; and
- (b) responsibility for the regulation and licensing of matters relating to e-waste.

Financial year

23. The financial year of the Fund shall be a period of twelve months ending on the thirtieth June in each year.

Annual estimates

24. (1) At least three months before the commencement of each financial year, the Unit shall cause to be prepared estimates of the revenue and expenditure of the Fund for that financial year.

(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 the-

- (a) payment of the salaries, allowances and other charges in respect of the Unit members, staff or agents of the Fund;
- (b) payment of pensions, gratuities and other charges and in respect of benefits which are payable out of the funds of the Fund;
- (c) the maintenance of the buildings and grounds of the Unit;
- (d) reserve funds to meet future or contingent liabilities in relation to retirement benefits, insurance or replacement of buildings or equipment; and
- (e) any other expenditure necessary or required for the purposes of this Act.

(3) The annual estimates shall be approved by the Unit before the commencement of the financial year to which they relate and forwarded to the Executive Committee Member for tabling before the relevant County Assembly Committee.

Accounts and Audit

25. (1) The Unit shall cause to be kept proper books and records of account of its income, expenditure, assets and liabilities.

(2) Within a period of three months after the end of each financial year, the Unit 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 on in accordance with the provisions of Articles 226 and 229 of the Constitution and the law relating to public audit.

Annual Report

26. (1) The Unit shall, at the end of each financial year cause an annual report to be prepared.

(2) Without limiting what may be included in the annual report, the annual report shall include-

- (a) the audited financial report of the Fund;
- (b) description of the activities of the Fund;
- (c) such other statistical information as the Fund may consider appropriate relating to the Fund's functions;
- (d) the impact of the exercise of any of its mandate or functions;
- (e) any impediments to the achievement of the objects and functions of the Fund; and
- (f) such other information as the Executive Committee Member responsible for environment may direct; and any other information relating to its functions that the Unit considers necessary.

(3) The Unit shall submit the annual report to the Governor three months after the end of the year to which such report relates.

(4) The annual report shall be published and publicized in a manner that the Unit may determine.

PART V- MISCELLANEOUS PROVISIONS

Regulations

27. (1) The executive member may, in consultation with the assistant director, make regulations generally for the better carrying out into effect of any provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the regulations may prescribe the—

- (a) forms of applications, notices, licences and other documents for use under this Act;
- (b) fees payable under this Act; and
- (c) such other matters as the Unit considers necessary.

General Penalty

28. A person who contravenes any provision of this Act for which no other penalty is prescribed, commits an offence and is liable, on conviction, to a fine not exceeding one million shilling or to a term of imprisonment not exceeding two years or to both.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to provide a legislative framework for establishment of an institutional framework for the management of e-waste.

The structure of the Bill is as follows-

Part I (clauses 1-3) of the Bill contains preliminary provisions. These include the title of the Bill, interpretation of terms as used in the Bill and object and purpose of the Bill.

Part II (clauses 4-11) of the Bill provides for the County E-waste Management Unit institutional framework, its functions, composition and qualification for appoint of Assistant Director.

Part III (clauses 12-21) contains provisions of general nature including application for e-waste management license and its issuance, application for renewal of license, revocation, alterations, suspension and surrender of license.

Part IV (clause 22-26) contains the financial provisions.

Part V (clause 27-28) provides for miscellaneous provisions. It contains provisions for Regulation and penalties.

The enactment of this Bill shall occasion additional expenditure of public funds which shall be provided through the estimates.

NEVERT NTWIGA,
*Chairperson, Committee on Agriculture, Environment and Natural
Resources.*