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CONTENT

Bill for Introduction into the County Assembly of Tharaka Nithi—	PAGE
The Tharaka Nithi County Horticulture Development Bill, 2017	1



**THARAKA NITHI COUNTY HORTICULTURE DEVELOPMENT
BILL, 2017**

ARRANGEMENTS OF CLAUSES

PART I—PRELIMINARY

1—Short title and commencement

2—Interpretation

3—Object and purpose of the Act

**PART II —ESTABLISHMENT AND ADMINISTRATION OF THE
THARAKA NITHI COUNTY HORTICULTURAL
DEVELOPMENT FUND**

4—Establishment and objectives of the Fund

5—Objectives of the Fund

6— Application of the Fund

7— Establishment of Board of Trustees of the Fund

8— Composition of the Board of Trustees

9— Functions of the Board of Trustees

10— Incentives to farmers

11— Powers of the Board of Trustees

12— Delegation by the Board of Trustees

13— Conduct business and affairs of the Board

14— Chief Executive officer

PART III—MISCELLANEOUS

15— Funds to be retained in the Fund

16— Community-based projects to be give priority

17— Submission of Projects

18— Project implementation

19— Project payments and ownership of property

20— Annual Report

21— Audit

22— Salaries and allowances

23— Power to make regulations

24— Offences

**THARAKA NITHI COUNTY HORTICULTURE DEVELOPMENT
BILL, 2017**

A Bill for

AN ACT of the County Assembly of Tharaka Nithi to provide for the growth and development of the horticultural sector, enhance production improve quality, value addition, and marketing; to establish the County Horticultural Development Fund to finance the sector and for connected purposes

ENACTED by the County Assembly of Tharaka Nithi as follows—

PART I—PRELIMINARY

Short title and commencement

1. This Act may be cited as the Tharaka Nithi County Horticultural Development Act, 2017 and shall come into operation on such date as the County Executive Committee Member may, by notice in the Gazette, appoint.

Interpretation

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

“horticulture” means farming in fruits, vegetables, flowers and ornamental plants or shrubs;

“Board of Trustees” means the Board of the County Horticultural Development Fund Board of Trustees established under section 5

“County Executive Committee Member” means the Member of the Executive Committee responsible for matters relating to horticulture;

“eligible borrower” means an individual or enterprise in horticultural sector to which credit facility may be provided by the Fund or a lending institution and includes—

- (a) micro, small or medium enterprise;
- (b) cooperative society;
- (c) a youth entrepreneur; and
- (d) a woman entrepreneur;

“Fund” means the Tharaka Nithi County Horticultural Development Fund established under section ;

“financial year” means a period of twelve consecutive months from 1st July to 30th June.

Object and purpose of the Act

3. (1) The object and purpose of this Act is to provide a legal framework to facilitate the growth and development of horticulture in the County and in particular to—

- (i) establish the County Horticultural Development Fund to finance the horticultural development initiatives;
- (ii) promote of the production, processing, marketing, and distribution of horticultural products in suitable areas of the county;
- (iii) reduce duplication and overlap of functions among institutions involved in the regulation of horticulture;
- (iv) promote competitiveness in the horticultural sector and to develop diversified crop and animal products and market outlets; and
- (v) attract and promote private investment in horticulture.

PART II — ESTABLISHMENT AND ADMINISTRATION OF THE THARAKA NITHI COUNTY HORTICULTURAL DEVELOPMENT FUND

Establishment of the Fund

4. (1) There is established a Fund to be known as the Tharaka Nithi County Horticultural Development Fund.

(2) The Fund shall consist of—

- (a) funds appropriated by assembly for purposes for which the Fund is established.
- (b) monies paid as license fees, commission, export or import agency fees and fees that may accrue to or vest in the Fund in the course of exercise of its functions assigned under this Act;
- (c) gifts, donations, grants and endowments made to the Fund from any lawful source;
- (d) income from any investment made by the Fund and
- (e) monies from any other lawful source approved by the Trustees.

(2) There shall be paid out of the Fund any expenditure approved by the Board pursuant to this Act.

(3) The Fund shall be managed by a Board of Trustees established under section 6.

Objective of the Fund

5. The objective of the Fund is to support growth and development in horticulture and enhance productivity in the horticultural sector by—

- (a) providing funding for eligible projects in the horticultural sector;
- (b) facilitating the provision of farm inputs to farmers including fertilizers, seeds, agro-chemicals, animal breeding, animal drugs and feeds, AI services and fishing equipment and supplies;
- (c) facilitating market research, dissemination of market information and strengthening producer organizations;
- (d) funding irrigation infrastructure such as community boreholes, dams, shallow wells and water pans;
- (e) facilitating the development of appropriate storage, bulking and processing facilities in strategic areas with potential for increased horticultural production;
- (f) promote development of value-addition infrastructural facilities including provision of electricity and water in rural areas;
- (g) improve investment climate and efficiency in horticulture business and to promote the export of horticultural products.

Application of the Fund

6 Subject to this Act, the Fund shall be used to support eligible projects aimed at—

- (i) increasing productivity of crops grown within the county;
- (ii) plant and animal disease control;
- (iii) creation and expansion of horticultural products markets;
- (iv) promotion of cooperative societies within the county;
- (v) soil and water conservation; and supporting other horticultural development initiatives.

Establishment of Board of Trustees of the Fund

7. (1) There is established the Tharaka Nithi County Horticultural Development Fund Board of Trustees which shall be a body corporate with perpetual succession and a common seal.

- (2) The Board shall be capable in its corporate name of—
 - (a) suing and being sued;

- (b) talking, purchasing or otherwise acquiring, holding, charging and or disposing of movable and immovable property;
- (c) entering into contract;
- (d) borrowing and lending money; and doing or performing all such other things or acts necessary for the proper performance of its functions under this Act, and which may lawfully be done or performed by a body corporate.

Composition of the Board of Trustees

8. (1) The Board of Trustees shall comprise—

- (a) the County Chief officer in the department for the time being responsible for agriculture;
- (b) the County Chief officer in the department for the time being responsible for finance;
- (c) the Head of legal services in the county; and
- (d) three other persons not being public officers, appointed by the Member of the Executive Committee as follows—
 - (i) one person being a woman horticultural farmer;
 - (ii) one person being a man horticultural farmer; and (iii) one person representing special interests in the county.
- (e) the Chief Executive Officer appointed under section 13 who shall also be the Secretary of the Board; and

(2) The persons appointed under subsection (1) (d) shall hold office for a term of five years renewable for one further term.

(3) A person shall be qualified for appointment under subsection (1)

(d) if that person—

- (a) holds a degree from a university recognized in Kenya;
- (b) has at least five years professional experience in the relevant field; and
- (c) meets the requirements of leadership and integrity as provided for in Chapter 6 of the Constitution or relevant national legislation.

Functions of the Board of Trustees

9. (1) The functions of the Board shall be to—

- (a) provide strategic guidance and oversight of the Fund;

- (b) implement the policies of the county government on horticultural sector funding;
 - (c) ensure that all projects funded under the Fund are consistent with the counties priorities specified in the relevant policy documents on County horticultural development and financing;
 - (d) authorise allocations from the Fund ;
 - (e) formulate and approve standards, guidelines and procedures for funding under this Act,
 - (f) perform any other function as may be conferred on it by this Act or any other law.
- (2) Without prejudice to subsection (1), the Board —
- (a) shall receive and consider applications for funding from eligible applicants and determine eligible projects;
 - (b) may establish linkages with financial and other institutions for purposes of providing credit guarantee for loans issued to eligible borrowers by such institutions;
 - (c) may conduct farmers' training programs aimed at increasing their knowledge on production technologies and on market potentials and prospects for various types of crops, through farmer training institutions;
 - (d) establish experimental stations and seed farms for the development of varieties suitable to the agro-climatic conditions of the area and markets that will provide greatest value added to scheduled crops;
 - (e) devise and maintain a system for regularly obtaining information on current and future production, prices and movement in trade, to determine and effect a balanced distribution of horticultural products by means of inter-trading or intra-trading among the established wholesale Tharaka Nithi County Horticultural Development Fund Board of Trustees markets;
 - (f) establish and enforce standards in grading, sampling and inspection, tests and analysis, specifications, units of measurement, code of practice and packaging, preservation, conservation and transportation of crops to ensure health and proper trading;
 - (g) ensure secure domestic food supply for the country;
 - (h) formulate policies and guidelines on dealing with other crops;

- (i) promote and advise on strategies for value addition prior to the export of crops from Kenya;
- (j) recommend general industry agreements between farmers and processors of scheduled crops;
- (k) prescribe the minimum period within which farmers are to be paid for crops delivered and penalties for delayed payments; and perform any other relevant function.

Incentives to farmers

10. (1) The County Executive Committee member may, on the advice of the Board, establish institutional linkages to coordinate the provision of credit, farm inputs and marketing.

(2) The Board may, in accordance with rules and regulations made under this Act and subject to any other law, put in place programmes for ensuring the provision of the following incentives and facilities to growers and dealers horticultural products—

- (a) credit assistance including provision of equipment for land preparation and other non-monetary assistance;
- (b) credit guarantee;
- (c) affordable farm-inputs including quality seeds, planting materials and market linkage;
- (d) technical support including research and extension services;
- (e) infrastructural support including physical infrastructure development, financial and market information;
- (f) fertilizer cost-reduction investment projects including private sector involvement in fertilizer importation and distribution, promoting local fertilizer blending and initiating establishment of national or county fertilizer manufacturing plants;
- (g) pest and disease control; and
- (h) post harvest facilities and technologies including storage, processing, distribution and transport facilities.

Powers of the Board of Trustees

11. (1) In the discharge of its functions, the Board of Trustees shall have all powers necessary or incidental to achievement of the objects and purpose of this Act.

(2) Without limiting the generality of subsection (1), the Board of Trustee shall have powers to—

- (a) ensure or enforce compliance with policies, rules, regulations or orders prescribed under this Act;
- (b) employ such persons as may from time to time be necessary for discharging its functions, with the approval of the Member of the Executive Committee and the County Public Service Board;
- (c) enter into partnerships with financial and other institutions; and
- (d) establish such committees or departments for the better carrying out of its functions under this Act as it may deem fit.

(2) The Board of Trustees may establish offices in every sub-county in the County.

Delegation by the Board of Trustees

12.(1) The Board of Trustees may establish such sub-committees and delegate such functions as it may consider necessary for the better performance of its functions and the exercise of its powers under this Act.

(2) The Board of Trustees may co-opt into the membership of a sub-committee established under subsection (1), such persons whose knowledge and skills are found necessary for the performance of the functions of the sub-committee.

(3) The Board of Trustees may, by resolution either generally or in any particular case, delegate to any officer, employee or agent of the Committee, the exercise of any of the powers or the performance of any of the functions of the Board of Trustees under this Act or under any other written law.

Conduct business and affairs of the Board

13. (1) Subject to subsection (2), the business and affairs of the Board of Trustees shall be conducted in accordance with the Schedule.

(2) Except as provided in the Schedule, the Board of Trustees may regulate its own procedure.

Chief Executive officer

14.(1) There shall be a Chief Executive Officer of the Fund who shall be appointed by the County Executive member, on the recommendation of the Board, on such terms and conditions as may be specified in the instrument of appointment.

(2) Despite subsection (1), the appointment of the Chief Executive Officer shall be through a competitive recruitment process.

(3) A person is qualified for appointment as the Chief Executive

Officer if that person—

- (a) is a citizen of Kenya;
 - (b) holds a degree from a university recognized in Kenya;
 - (c) has at least five years experience in—
 - (i) senior management; or
 - (ii) a profession directly relevant to the functions of the Board;
 - (a) has experience in finance; and
 - (b) meets the requirements of leadership and integrity set out in chapter six of the Constitution.
- (4) The Chief Executive Officer shall, subject to the direction of the Board, be responsible for the—
- (a) implementation of the decisions of the Board;
 - (b) day to day management of the affairs of the Fund;
 - (c) organization and management of the employees; and
 - (d) any other function that may be assigned by the Fund Board.
- (5) The Chief Executive Officer holds office for a term of five years and is eligible for re-appointment for one further term.
- (6) The Chief Executive Officer may be removed from office on the recommendation of the Fund Board on the grounds set out under section.

PART III—MISCELLANEOUS

Funds to be retained in the Fund

15. All receipts, savings and accruals to the Fund and the balance of the Fund at the end of each financial year shall be retained for the purposes for which the Fund is established.

Community- based projects to be give priority.

16. (1) Subject to this Act, the Board shall give priority to community-based projects in order to ensure that the prospective benefits are available to a widespread cross-section of the inhabitants.

(2) Any funding under this Act shall be for a complete project or a defined phase, of a project and may include the acquisition of land and buildings.

(3) All projects shall be projects as defined under this Act and may include costs related to studies, planning and design or other technical

input for the project but shall not include recurrent costs of a facility.

Submission of Projects

17. (1) All project proposals that seek to benefit from the Fund shall be submitted by a potential beneficiary to the Chief Executive Officer in such form and detail as shall be prescribed;

(2) The types of projects submitted for funding under this Act shall comply with the provisions of this Act and in particular, meet the objectives stipulated in Section 4 of this Act.

Project implementation

18. (1) Horticultural officers at the Sub-County, Ward and Village level shall ensure the implementation of all projects funded under this Act as shall be prescribed.

(2) Where a particular project covers several sectors, the Chief Executive Officer shall order the formation of an inter-departmental team at the Sub-County, Ward or village level to coordinate the optimal and efficient implementation of the project as may be prescribed.

(3) The Chief Executive Officer shall monitor the implementation of projects under this Act to ensure compliance with the provisions of this Act.

Project payments and ownership of property

19.(1) All payments for projects to be funded under this Act shall be made through cheques or otherwise shall be processed and effected in accordance with national government regulations for the time being in force.

(2) All fixed and movable assets, including equipment bought under this Act shall be the property of the Fund to be insured in the name of the Fund.

(3) No asset or equipment acquired under this section shall be disposed of without the prior approval of the Board of Trustees.

(4) Any proceeds that may accrue from the disposal of any asset acquired pursuant to subsection (3) shall be credited to the account of the Fund.

Annual Report

20. (1) The Board shall, not later than six months after the end of each financial year, prepare an annual report in respect of that financial year, containing:

- (a) the audited financial statements;
- (b) the report on the operations of the Fund; and
- (c) any other information the Member of the Executive Committee may require.

(2) The annual Report shall be presented to the Member of the Executive Committee who shall table it before the County Assembly within three months after receiving the Report.

Audit

21. The Fund shall be audited and reported upon by the Auditor-General in accordance with the provisions of the Public Audit Act 2012.

Salaries and allowances

22. Board of Trustees shall the Chief Executive Officer and staff of the Fund such salaries and allowances as shall be determined by the County Public Service Board.

Power to make regulations

23. (1) The County Executive Committee member shall make regulations generally for the better carrying out the provisions of this Act.

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

- (a) guidelines for operating the Fund;
- (b) maximum credit facility to be issued or guaranteed under the Fund;
- (c) criteria for categorization of micro, small and medium enterprises for purposes of this Act;
- (d) extent of the liability of the Fund to a lender in circumstances where the lender fails to comply with this Act;
- (e) variation of the terms and conditions of an agreement where a borrower fails or refuses to comply with this Act;
- (f) credit insurance and reinsurance;
- (g) manner of giving of information to the Fund for the purposes of the making of an agreement;
- (h) audit and examination of accounts of qualifying borrowers;
- (i) circumstances under which a given class of loans may be written off

and the remedies to the lenders thereof; and

(j) such other matters as the Fund considers necessary.

(3) Without prejudice to subsection (1) the nature and scope of the Regulations shall—

- (a) be for the objects and purpose and set out under section 3 of this Act;
- (b) be limited only to the matters set out in this Act; and
- (c) comply to the drafting standards set out under this Act.

Offenses.

24. (1) A person who—

- (a) wilfully applies the proceeds of a loan to any purpose other than the purpose for which the loan was approved; or
- (b) having obtained a loan, wilfully destroys or misappropriates any security given in relation to the guaranteed loan;
- (c) knowingly gives false information; or
- (d) destroys any asset used as a collateral by a financial intermediary,
- (e) commits an offence and is liable on conviction to a fine not exceeding three million shillings or to imprisonment for a term not exceeding two years or to both.

(2) Where an offence under this section is committed by a body corporate, every person who at the time of the commission of the offence was—

- (a) a director, general manager, secretary of the company or other similar officer of the body corporate; or
- (b) purporting to act in any such capacity as provided in paragraph (a), commits that offence.
- (c) Despite subsection (2), it is a defence if a person proves that the offence was committed without their consent or involvement and that they exercised due diligence to prevent the commission of the offence as ought to have been exercised having regard to the nature of their functions in that capacity and to all the circumstances.

MEMORUNDUM OF REASONS AND OBJECTS

The principal object of this Bill is to provide for the growth and development of the horticultural sector, enhance production, improve quality, value addition, and marketing and to establish the County Horticultural Development Fund to finance the horticultural sector. This will enhance horticultural productivity in the county and improve the economic status of farmers in the community.

The structure of the Bill is as follows—

Part I (clause 1-3) of the Bill contains preliminary provisions. These include the title of the proposed Bill, interpretation of terms and the objects. The object of the Bill is to provide a legal framework to facilitate the growth and development of horticulture in the County and in particular to—

- (i) establish the County Horticultural Development Fund to finance the horticultural development initiatives;
- (ii) promote of the production, processing, marketing, and distribution of horticultural products in suitable areas of the county;
- (iii) reduce duplication and overlap of functions among institutions involved in the regulation of horticulture;
- (iv) promote competitiveness in the horticultural sector and to develop diversified crop and animal products and market outlets; and
- (v) attract and promote private investment in horticulture.

Part II (clause 4-14) of the Bill establishes the County Horticultural Development Fund, provides for its administrative framework and prescribes its functions and the powers of the Board of Trustees. The Board shall comprise of key County officials and other appointees to ensure gender issues are mainstreamed. The Fund shall be funded from monies apportioned by the assembly, license fees, gifts donations and grants from any lawful source. The purpose of the Fund shall be to fund the horticultural sector, facilitate the provision of farm inputs, irrigation infrastructure and promotion of value addition. The Fund shall be applied in control of plant diseases, soil and water conservation, market research and generally horticultural development initiatives. The Fund shall be administered by a Board of Trustees comprised of the Chief officers in the relevant departments, non-public officer representatives and the CEO of the Fund.

Part III (clause 15-24) of the Bill contains provisions of a general nature. Among these are provisions requiring that balances in the Fund at the end of the financial year shall be retained for purposes for which the Fund is established. It is also provided that community based projects shall be given priority in funding. This part also gives the Executive Committee member the powers to make subordinate legislation for purposes of giving effect to the Act.

The enactment of this Bill shall occasion additional expenditure of public funds which shall be provided for in the county government of Tharaka Nithi estimates.

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