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**THE THARAKA NITHI RESCUE SERVICES BILL,
2016**

A Bill for

AN ACT of the County Assembly of Tharaka Nithi to provide for fire and rescue services, to establish a Fire and Rescue Services Authority and its functions, to provide for education and training on fire and rescue services, to provide for the supply of water and for other connected purposes

ENACTED by the County Assembly of Tharaka Nithi as follows—

PART I— PRELIMINARY

1. This Act may be cited as the Tharaka Nithi Fire and Rescue Services Act, 2016. Short title.

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

“authority” means the County Fire and Rescue Services Authority established under section 3 of this Act;

“constitution” means the Constitution of Kenya 2010;

“emergency” means an event that is likely to cause either of the following possible outcomes;

Death, serious injury and/or illness of one or more people within the County;

Serious harm to the environment including, but not limited to plants and animals;

“executive committee member” means the County Executive Committee Member, responsible for matters relating to fire and rescue services;

“equipment” means a vehicle, or any other apparatus intended to be used by the Authority in the course of its operations as founding within this Act.

**PART II –ESTABLISHMENT, FUNCTIONS AND
POWERS OF THE FIRE AND RESCUE SERVICES
AUTHORITY**

3. (1) There is hereby established the County Fire and Rescue Services Authority. Establishment of the Authority

(2) the Authority is a body corporate having a

perpetual succession with a common seal and shall, in its corporate name, be capable of—

- (a) Suing and being sued;
- (b) Borrowing and lending money within the framework of public finance;
- (c) Taking, purchasing or otherwise acquiring, holding, charging and disposing of property; and,
- (d) Doing or performing all those other things or acts as may be necessary in furtherance of its functions and objectives under this Act or any other written law.

4. (1) The functions of the Authority include to—

Functions of the
Authority.

- (a) Extinguish any fire(s) as informed and called upon to;
- (b) Organise and secure the provision for training for its personnel;
- (c) Protect life and property during a fire emergency within the County;
- (d) Secure the provision of personnel, services and equipment necessary for undertaking its operations both efficiently and effectively;
- (e) Offer rescue services, in conjunction with other relevant authorities, to people during fire emergencies, road traffic accidents within the County;
- (f) Promote fire safety within the County;
- (g) Avail and publicise information relating to steps to be taken in relation to the following-
 - (i) Fire;
 - (ii) death; or,
 - (iii) Injuries from fire.
- (h) Advise the County Government officers, agencies and departments on fire prevention measures and strategies that would restrict destruction of property and buildings by fire;
- (i) Partner with learning institutions within the County in order to train the learners and members of staff

on safety from incidents of fire as well as rescue measures;

- (j) Partner with learning institutions in order to train volunteer fire rescuers;
- (k) Perform such other functions as may be considered incidental to the foregoing functions or as may be provided for under any other written law.

5. (1) The Authority shall have the power to avail the services of any of its employee(s) and/ or equipment to any person for any purpose that appears appropriate to the Authority.

Powers of the Authority.

(2) The purposes contemplated under subsection (1) above could either be within or outside the County.

6. (1) A firefighter duly authorised under this Act, may take any action they consider necessary—

Powers of a firefighter during an emergency.

- (a) Whenever they reasonably believe that a fire has broken out or is about to break out, for purposes of extinguishing or preventing the fire or protecting life and/ or property;
- (b) Whenever they are informed, or reasonably believe that a road traffic accident has occurred and there is need for them to conduct a rescue or protect the victims against serious harm;
- (c) Whenever they reasonably believe that an emergency of any kind has occurred or is about to occur and there is need for them to discharge any function of the Authority as conferred under this Act or any other written law.

(2) without prejudice to the generality of subsection (1) above, a person so authorised may—

- (a) Enter any premises or place, with use of force if necessary, without the consent of the owner of such premises or place;
- (b) Move or break into a vehicle without the consent of its owner;
- (c) Close a road in consultation with other road authorities;

- (d) Control traffic in consultation with other lawful authorities; or,
- (e) Restrict the access of person(s) and animals into affected premises and/or places.

(3) any person who, without reasonable excuse, obstructs or interferes with a person duly authorised under this section, commits an offence and shall, on conviction, be liable to an imprisonment for a term not exceeding four months or to a fine not exceeding Kenya Shillings one hundred thousand, or to both.

7. (1) The Executive Committee member may, upon consultations with the appropriate persons and bodies, publish a notice in the Gazette, to confer upon the Authority, any other functions relating rescue services for fire and road traffic accident emergencies conferred upon the Authority under this Act.

Power of the
Authority to deal
with other
emergencies.

(2) A notice made pursuant to subsection (1) above may require or authorise the Authority to—

- (a) Secure the provision of personnel, services as well as equipment;
- (b) Make arrangements to ensure that reasonable steps are taken in order to limit or prevent loss of life and/or damage to property resulting from the performance of the function;
- (c) Make arrangements for obtaining information needed for discharging the function;
- (d) Secure relevant training for personnel;
- (e) Make arrangements for dealing with calls for help;

Make arrangements for dealing with calls for summoning personnel.

PART III—MANAGEMENT OF THE AUTHORITY

8. (1) The overall management of the Authority shall be vested in a Board of Directors.

Overall
Management of the
Board

(2) The Board shall appoint a chief executive officer and such other number of employees as may be necessary for the efficient and effective operation of the Authority.

9. (1) There is established a Board of Directors of the Authority which shall, subject to this Act, be responsible for determining the policy and control of the Authority's operations.

(2) In exercising its powers and performing its functions under this Act, the Board shall act in accordance with any general or special directives issued, in writing, by the Executive Committee member.

10. (1) The Board shall consist of the following members-

Composition of the Board.

- (a) A non-executive chairperson appointed by the Governor owing to their proven managerial experience;
- (b) The Chief Officer responsible for matters relating to fire and rescue services or their representative appointed in writing;
- (c) Chief Officer responsible for matters relating to finance or their representative appointed in writing;
- (d) Two persons of opposite gender appointed by the executive committee member who work in the area of fire and rescue services;
- (e) Two persons nominated by an association of private sector players and appointed by the executive committee member to represent the interests of the private sector in the county;
- (f) One person nominated by an association of persons with interests in the fire and rescue services and appointed by the executive committee member;

The chief executive officer of the Authority who shall be an *ex-officio* member appointed under section 13 of this Act.

11. (1) The Board shall be responsible for determining the policy and control of the Authority's operations.

Functions of the Board

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

- (a) Source and receive funding for the activities of the Authority;

- (b) Put in place a viable and sustainable long-term operational plan for the Authority
- (c) Secure continuing improvement of performance for the Authority;
- (d) Play oversight role for the Authority's management;
- (e) Ensure that the Authority's financial needs are addressed.

12. (1) The Board shall have all powers necessary for the performance of its functions under this Act.

Powers of the Board.

(2) Without prejudice to the generality of the foregoing, the Board shall have power to—

- (a) administer the assets and funds of the Authority in such manner and for such purposes as shall promote the best interests of the Authority;
- (b) receive grants, donations or other moneys on behalf of the Authority and make disbursements therefrom;
- (c) enter into association with such other institutions, persons, bodies or organizations within or outside the County as it may consider appropriate in furtherance of the purposes and objectives of the Authority;
- (d) impose fees and charges from time to time, for the use of any services provided by the Authority;
- (e) open such bank accounts for the Authority's funds as may be necessary;
- (f) delegate any of its functions to a lawful body created under this Act or any other written law;
- (g) undertake any other activity necessary for the fulfillment of any of its functions.

13. (1) There shall be a chief executive officer of the Authority.

Chief Executive Officer

(2) The chief executive officer shall be appointed through a competitive process by the County Public Service Board.

(3) The Chief Executive Officer shall be responsible

for—

- (a) the day-to-day management of the affairs of the Authority;
- (b) Organisation and management of the staff of the Authority;
- (c) Implementation of the decisions of the Board;
- (d) Any other incidental function that may be assigned by the Board.

(4) A person shall not be qualified to be appointed as the chief executive officer of the Authority unless the person-

- (a) is a Kenyan citizen; and,
- (b) holds at least a first degree from a recognised university;
- (c) has at least five years' experience in management of public affairs or in matters related to the functions of the Authority;
- (d) meets the requirements of leadership and integrity as set out in chapter six of the Constitution; and
- (e) has reasonable relevant experience in matters relating to public administration.

14. (1) The members of the Board shall be competitively recruited and appointed from amongst persons who—

Qualifications of members of the Board.

- (a) have at least a university degree in a relevant discipline;
- (b) based on merit; and,
- (c) satisfy the requirements of chapter six of the Constitution.
- (d) A person shall not be appointed chairperson of the Authority unless they have at least ten years' experience in a senior management position.

15. (1) Subject to subsection (3) below, all members of the Board shall be appointed to serve the Authority for a term of three years renewable only once.

Tenure of members of the Board.

(2) A member of the Board seeking to be re-appointed shall only be reconsidered by the appointing authority based on satisfactory performance in their previous term in addition to such person being in compliance with the requirements of section 13 of this Act.

(3) The Chief Executive Officer of the Authority shall be appointed for a term of four years renewable once subject to performance.

(4) Except for the Chief Executive Officer, all other members of the Board shall serve on a part-time basis.

16. (1) Save for subsection (2) below, a member of the Board can be removed from office by the appointing authority for—

Removal of
members of the
Board from office.

- (a) Gross misconduct or behaviour;
- (b) Violation of the provisions of the Constitution or any other written law;
- (c) Incompetence or negligence of duty;
- (d) Chronic absenteeism from Board meetings without reasonable cause;
- (e) Inability to perform the functions of their office due to mental or physical incapacity.

(2) removal of the chief executive officer from office shall require to be done in strict compliance with the Employment Act.

(3) A person shall not be removed from office unless and until the appointing authority affords them due process with sufficient notice regarding the allegations made against them.

17. A member of the Board shall vacate office due out of any of the following reasons—

Vacation of Office

- (a) Death;
- (b) Resignation in writing to the appointing authority;
- (c) Conviction for a criminal offence for a term of not less than six months;
- (d) Being declared bankrupt;

- (e) Inability to perform the functions of their office due to physical or mental infirmity.

18. (1) A vacancy arising in the membership of the Board shall be filled by the appointing authority in the same manner as a new appointment.

Filling a vacancy.

(2) A person appointed to fill a vacancy in the Board shall serve for a full term of three years.

19. (1) The Authority shall, in consultation with the County Public Service Board, engage such number of persons as employees as shall be considered necessary for the efficient and effective discharge of its mandate under the law.

Staff of the Authority

(2) The remuneration of such staff shall be determined by the Authority in consultation with the Salaries and Remuneration Commission.

PART IV—GENERAL PROVISIONS

20. No matter or thing done by a member of the Board or any officer, employee or agent of the Authority shall, if the matter or thing is done in good faith while executing the functions, powers or duties of the Authority, render the member, officer, employee or agent or any person acting on their directions personally liable to any such action, claim or demand whatsoever.

Protection against personal liability

21. The provisions of Section 20 shall not relieve the Fund of the liability to pay compensation or damages to any person for any injury to him, or damage to or loss of his property or to any of his interests caused by the exercise of any power or performance of any duty conferred by this Act or any other written law or by the failure, whether wholly or partially, of such exercise or performance.

Liability of the Authority

22. (1) A document of the Authority required to be under seal may be authenticated by the signature of both the chairperson and the chief executive officer.

Common seal of the Authority.

(2) Any document not required to be under seal as well as all other decisions of the Authority shall be authenticated by the signatures of the chairperson and the chief executive officer.

(3) In the absence of either the chairperson or the chief executive officer or even both of them, the Board shall

nominate any other member(s) of the Board to act on their behalf.

23. Where a person commits an offence under this Act for which no general penalty is prescribed, such a person shall be liable to an imprisonment for a term not exceeding one year or to a fine not exceeding Kenya shillings fifty thousand or to both. General penalty

24. The County Executive Committee Member may make regulations for the better implementation of this Act. Regulations

MEMORANDUM OF OBJECTS AND REASONS

The objective of this Bill is to provide for fire and rescue services, to establish a Fire and Rescue Services Authority and its functions, to provide for education and training on fire and rescue services, to provide for the supply of water and for other connected purposes.

PART I Provides for the short title and interpretation of the bill.

PART II Provides for the establishment of the authority, functions of the authority, powers of the authority, powers of a fire fighter during an emergency and powers of the authority to deal with other emergencies.

PART III Provides for the overall management of the board, board of directors, composition of the board, functions and powers of board.

This part also provides for Chief Executive officer, qualifications of members of the board, tenure of the members of the board, removal of the members of the board from office and vacation of office.

It further provides for the filling a vacancy, the staff of the authority and protection against personal liability

PART IV Provides for liability of the authority, common seal of the authority, General penalties and regulations.

JAPHET NYAGA,
Chairperson, Children's Culture and Social Services Committee.