Bill for Introduction into the Kericho County Assembly—

The Kericho County Crop Agricultural Bill, 2014 ......................................................... 1
THE KERICHO COUNTY CROP AGRICULTURAL BILL, 2014

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THE KERICHO COUNTY CROP AGRICULTURAL BILL, 2014

A Bill for

AN ACT of the County Assembly of Kericho to establish an efficient legal and institutional framework for development and regulation of crop agriculture and for connected and incidental purposes

ENACTED by the County Assembly of Kericho as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Kericho Crop Agriculture Act, 2014 and shall come into operation twenty one days after signing into law by the Governor.

2. (1) The overriding object of this Act is to provide a comprehensive, harmonized, efficient and effective legal and regulatory framework for development and regulation of crop agriculture in Kericho County.

(2) All County Government agencies, public servants and bodies charged with development and regulation of crop agriculture shall at all times have due regard to, and observe, the overriding objective of this Act as set out in subsection (1).

(3) Whenever there is a conflict between this Act and any other written law, having a bearing on achievement of the overriding objective of this Act, the provisions of this Act shall prevail.

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

Agriculture' includes—

(a) Sugar, tea, coffee, pyrethrum, maize, potato, fruit, vegetable, flower, seed farming and other crop;

(b) dairy farming, bee keeping, breeding and keeping of livestock;

(c) Conservation and keeping of game animals, game birds, and aquatic animals;
(d) Game ranching and game cropping;
(e) The use of the land for grazing, market gardening, or for nursery grounds
(f) Agro-forestry, and
(g) Use of land for the production, transformation and trade of crop and livestock products.

‘Agricultural land’ means land that is used for agricultural purposes, and includes any land which by any written law is zoned, registered or otherwise designated as agricultural land.

‘Member of the Executive Committee’ means the Member of the Executive Committee for the time being responsible matters relating to crops agriculture.

‘Crop Agriculture’ includes all activities relating to or connected with crop farming, husbandry, trade or marketing.

‘Authority’ means the County Crop Development Authority established under section 4 of this Act.

‘Crops’ means any plant that is grown in significant quantities to be harvested as food, as livestock fodder, fuel, or for any other economic purpose.

‘Effective date’ means the date upon the expiry of twenty one days after signing of this statute into law by the Governor of Kericho County.

‘Financial year’ means the period of twelve months ending on the thirtieth June in every calendar year or such other period as may be prescribed.

‘Government securities’ means the securities charged on the revenue of the Government or guaranteed fully as regards principal and interest by the Government.

‘Licensee’ means any person who is issued by a license under the provisions of this Act or regulations.

‘Person’ includes a company, corporate body (whether incorporated by or under statute or statutory authority), association, fund, natural person, partnership and a registered scheme.

‘Prescribed’ means prescribed under this Act.
‘Regulations’ means regulations made under this Act.

PART II — THE COUNTY CROPS DEVELOPMENT AUTHORITY

4. There is established the County Crops Development Authority which shall be a body corporate with capacity to sue and to be sued, to own and dispose property.

5. There is established the Board of the Authority which shall consist of—

(a) a Chairperson appointed by the Member of Executive Committee;

(b) the Chief Officer in the County Department for the time being responsible for crops agriculture or his representative;

(c) the Chief officer in the County Department for the time being responsible for finance or his representative;

(d) a Chief Executive Officer appointed under section 12 who shall also be the Secretary of the Board; and

(e) Six other members appointed by the Member of the Executive Committee;

6. Subject to this Act, the functions of the Authority shall be to:—

(a) develop and establish an efficient institutional framework for development and regulation of crop agriculture;

(b) develop an efficient, effective, harmonized and market-friendly policies and, regulations for crop agriculture;

(c) develop crop-specific regulatory frameworks in respect of such crops as the Member of the Executive may from time to time declare to be strategic to Kericho County’s economy;

(d) review regulations, permits, licenses and other administrative or bureaucratic requirements governing crop agriculture with a view to ensuring achievement of the overriding objective of this
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Act;

(e) advise the Member of the Executive Committee, county government agencies and public officers on any matter having a bearing on regulation of crop agriculture or achievement of the overriding objective of this Act; and

(f) organize, facilitate or undertake such activities or projects as may be necessary and or incidental to the foregoing.

7. (1) In the discharge of its functions, the Authority shall have all powers necessary or incidental to achievement of the overriding objective of this Act.

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

(a) make rules, regulations and orders for the development and regulation of crops.

(b) ensure or enforce compliance with policies, rules, regulations or orders prescribed under this Act;

(c) ensure or enforce compliance with policies, rules, regulations or orders made under any other Act relating to crop agriculture;

(d) employ on such terms and conditions as it considers fit such persons as may from time to time be necessary for discharging its functions and, with the approval of the Member of the Executive Committee, to pay such remuneration, allowances and other benefits to such employees as may be reasonable in the circumstances; and

(e) establish such committees, departments or agencies for the better carrying out of its functions under this Act as it may deem fit.

3) The Authority shall establish offices in all sub-counties in Kericho County.

8. (1) The Board shall be responsible for the management of the affairs of the Authority.

2) A person shall not be appointed as a member or the secretary of the Board, otherwise than as an ex-officio member, unless the person-
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(a) is of irreproachable integrity and moral standing;

(b) has been recommended for prosecution by any state organ for any crime punishable by imprisonment for more than 6 months;

(c) holds a degree from a recognized university in agriculture, agricultural economics, agronomy, economics, law, finance, management, administration or other relevant field; and

(d) has at least ten years working experience with demonstrable achievements in the relevant field.

9. (1) Members of the Board other than ex officio members shall hold office for a term of five years and shall be eligible for re-appointment for only one further term of five years.

(2) Members of the Board shall be appointed in a manner that ensures the expiry dates of their respective terms of office fall at different times.

10. Members of the Board shall be paid such remuneration, fees, or allowances as the Member of the Executive Committee may from time to time prescribe.

11. A member of the Board shall vacate office and the office shall become vacant—

(a) Three days after the date on which the member gives notice to the Member of the Executive Committee of the member’s intention to resign;

(b) if the member takes up becomes a member of Parliament, County Assembly or statutory commission established by any other written law;

(c) if the member ceases to be a citizen of Kenya or ordinarily resident in Kenya;

(d) on the date the member begins to serve a sentence of imprisonment imposed in Kenya or in any other country;

(e) if the member has been adjudged or otherwise declared insolvent or bankrupt and has not been or discharged;
(f) upon being charged or convicted of an offence relating to corruption, economic crime, fraud or dishonesty; or

(g) if, being an ex-officio member, the member ceases to hold their primary office.

12. (1) The Board of the Authority shall meet at least four times in a year for the transaction of its business, and such meetings shall be held at such places and times and on such days as the Board may determine.

(2) The chairman shall preside at all meetings of the Board at which he is present, and in case of his temporary absence the vice chairman shall preside, but in the absence of both the chairman and vice chairman, members present and constituting a quorum shall elect a chairman for that meeting from their number.

(3) The quorum of the Board shall be five members.

(4) The decisions of the Board shall be decided by a simple majority of votes, and the chairman of the meeting shall have an original and a casting vote in the event of a tie.

(5) Minutes of each meeting in proper form shall be kept in the minute book, after they have been confirmed by the Board and signed by the chairman at a subsequent meeting of the Board.

(6) The deliberations and minutes of meetings the Board shall be confidential.

(7) The acts of the Board shall not be affected by any vacancy in the membership thereof, nor by the fact that it is afterwards discovered that there was some defect in the appointment or qualifications of a person purporting to be a member of the Board.

(8) The acts of the Board shall not be affected by any vacancy in the membership thereof, nor by the fact that it is afterwards discovered that there was some defect in the appointment or qualifications of a person purporting to be a member of the Board.

(9) The Board shall decide on the procedures of its own meetings.

(10) Subject to this Act, the provisions contained in
13. (1) The Chief Executive Officer of the Authority—

(a) Shall be an *ex officio* member of the Board with no right to vote at any meeting of the Board; and

(b) Shall be the secretary to the Board.

(2) Subject to this Act, the Board shall appoint the Chief Executive Officer through competitive recruitment, on such terms and conditions as the Board may fix.

(3) The Chief Executive Officer shall, subject to the direction of the Board, supervise and manage the Authority’s staff, activities, funds and property, and shall be responsible for the day to day management of the programmes and activities of the Authority.

PART III—SPECIAL PROVISIONS RELATING TO THE AUTHORITY

14. A member of the Board or an employee of the Authority or any person acting on behalf of the Authority in discharging duties or functions provided by the Act shall not be liable to any civil action or other proceedings for damages on account of or in respect of any act or omission committed or omitted in good faith.

15. The funds of the Authority shall consist of—

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

(b) monies that the Authority may lawfully obtain by way of donations, gifts or grants.

16. (1) Monies not immediately required by the Authority may be invested in such manner as the Authority may determine.

(2) The Board may invest any of the funds of the Authority in securities in which for the time being trustees may by law invest trust funds, or in any other Government securities which the Treasury may, from time to time, approve for that purpose.

(3) The Board may, subject to the approval of the Member of the Executive Committee, place on deposit with
such reputable bank or banks as it may determine, any monies not immediately required for the purposes of the Authority.

17. (1) The Authority shall charge to its revenue account all charges which, in the normal conduct of business, are regarded as proper to be charged to revenue account and, in so doing, shall make proper provision in each financial year for—

(a) the depreciation or diminution in value of its assets; and

(b) the payment of interest on and all other charges and expenses incurred in connection with its activities.

(2) In charging to its revenue account all charges which in the normal conduct of business are regarded as proper to be charged to revenue account as provided in subsection (1), the Authority may, in each financial year, make provision for—

(a) meeting in whole or in part increases in the cost of replacing assets to an extent approved by the Member of the Executive Committee;

(b) making payments to an insurance Fund established by the Authority to meet, wholly or in part, the institution’s liabilities; and

(c) making payments to a pension Fund to meet, wholly or in part, superannuation liabilities of the Authority.

18. (1) The Authority shall keep proper in respect of all its activities, funds and property, including such particular accounts and records as the Member of the Executive Committee may direct.

(2) As soon as possible after the end of each financial year, the Authority shall prepare and submit to the Member of the Executive Committee a statement of accounts in respect of that financial year or in respect of such other period as the Member of the Executive Committee may direct.

19. The financial year of the Authority shall be the period of twelve months ending on the thirtieth June.
each year or such other period as may be prescribed.

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

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

(a) the payment of the salaries, allowances and other charges in respect of the staff of the Authority;

(b) the payment of pensions, gratuities and other charges in respect of the staff of the Authority;

(c) the proper maintenance of the buildings and grounds of the Authority;

(d) the maintenance, repair and replacement of the equipment and other property of the Authority; and

(e) The creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other matter as the Board may consider appropriate.

(3) The annual estimates of the Authority shall be approved by the Board before the commencement of the financial year to which they relate and shall be submitted to the Member of the Executive Committee for approval.

(4) The Board shall not increase the annual estimates without the consent of the Member of the Executive Committee.

21. (1) The Board shall cause to be kept all proper books, and records of accounts of the income, expenditure and assets of the Authority.

(2) Within a period of four months from the end of each financial year, the Board shall submit to the Auditor-General or to an auditor appointed under this section, the accounts of the Authority together with—

(a) a statement of the income and expenditure of the Authority during that year; and
(b) A balance sheet of the Authority on the last day of that year.

(3) The accounts of the Authority shall be audited and reported by the Auditor-General.

PART IV— PROVISIONS ON THE CULTIVATION OF SUGARCANE

22. (1) The Authority shall have power to register all sugar cane out growers in the County directly or through agents.

(2) A person shall not grow sugar cane for the purpose of sale to sugar manufacturers, for the manufacture of sugar unless he has been registered by the Authority.

(3) It shall be an offence for any sugar manufacturer to procure or buy sugar cane from a sugar cane grower, who is not registered by the Authority.

(4) The registration of outgrower farmers under this Act shall be done free of charge.

23. (1) The Authority shall approve varieties of sugar cane to be grown for commercial purposes in Kericho County.

(2) It shall be an offence for any person to grow any sugar cane variety for commercial purposes which has not been approved by Authority.

24. (1) A person shall not import, breed or modify (by genetic engineering) sugar cane or seed (fuzz), cuttings and seedlings without the permission of the Authority.

(2) Any person who contravenes this section shall on conviction be liable to a fine not exceeding ten million shillings or to an imprisonment for a term not exceeding two years or to both such a fine and imprisonment and such plant material shall be destroyed by the Authority at the cost of the defendant.

25. A miller and an outgrower farmers shall enter into Sugarcane Growing and Supply Contracts in such format as prescribed by the Authority

26. (1) All outgrower’s farmers in Kericho County shall supply all their cane to a miller situated in Kericho County.
(2) Subject to this Act if a miller is closed for maintenance or is unable to buy sugarcane from contracted outgrowers farmers for sufficient reasons, such sugarcane shall with the consent of the miller, be sold to other registered millers operating in the County or another County.

(3) A miller not situated in Kericho County shall not construct or operate a cane weighbridge in the County, or harvest sugarcane without the written permission of the Authority.

(4) Any person who contravenes this section shall on conviction be liable to a fine not exceeding ten million shillings or to an imprisonment for a term not exceeding two years or to both such a fine and imprisonment and such plant material shall be destroyed by the Authority at the cost of the defendant.

27. (1) Subject to this Act, the Authority shall undertake zoning of sugarcane growing areas in the County and shall issue licenses to millers based on the zoning.

(2) A miller shall not operate outside its designated zone.

(3) Any person who contravenes this section shall on conviction be liable to a fine not exceeding forty million shillings or to an imprisonment for a term not exceeding five years or to both such a fine and imprisonment and such plant material shall be destroyed by the Authority at the cost of the defendant.

28: The Authority shall subject to the approval of the Member of the Executive Committee make rules and regulations for better farming husbandry of sugar cane.

PART V—REGISTRATION, LICENSING AND INSPECTION

29. (1) The Authority shall, on application, issue licence to sugar manufacturers and small scale sugar plants operators upon such terms and conditions as the Authority think fit.

(2) Where the Authority, refuses to issue such a licence on any grounds which may appear to the Authority to be sufficient the Authority shall inform the applicant the
reasons for refusal.

(3) A person shall not manufacture sugar for sale in Kericho County without a licence issued by the Authority.

(4) The Authority may if the terms and conditions of licence have not been complied with, cancel, vary, or suspend any, licence issued under this section.

(5) Any person aggrieved by the decision of the Authority pursuant to this section may within sixty days after the date of decision appeal to the Governor.

30. (1) All licences granted under the provisions of this Act shall be—

(a) in the prescribed form set out in the Regulations to the Act;

(b) valid for a specified period and

(c) issued subject to payment of a prescribed fee.

(2) All registrations under the provisions.

31. (1) A sugar inspector or any, person duly, authorized in writing in of that behalf by, the Authority may, at all reasonable times and upon production of relevant authority, enter upon any buildings, premises, warehouses or land occupied by, any person whose activity or activities relate to sugar industry under the provisions of this Act, and make such inspection and inquiries as he thinks fit and proper in the implementation of this Act.

(2) Any person who obstructs a sugar inspector or any other person authorized on that behalf in the exercise of the power conferred upon him by this section or who neglects or refuses to produce to the inspector any goods, book or record which the inspector may request to be produced for his inspection shall be guilty of an offence and shall on conviction be liable to a fine not exceeding ten million shillings or to an imprisonment for a term not exceeding two years or to both such a fine and imprisonment and such plant material shall be destroyed by the Authority at the cost of the defendant.

PART VI—CROP—SPECIFIC REGULATIONS

32. The Authority shall make crop-specific legal or regulatory frameworks in respect of such other crops as the Member of the Executive Committee may from time to
time declare to be strategic to County’s economy.

33. (1) The Authority may with the written approval of the Member of the Executive Committee impose such levy or levies on and for the development of such crops as may be prescribed.

(2) Subject to this Act, levies charged under subsection (1) shall be payable into the Agricultural Levy Fund established under section 34 of this Act.

PART VII—AGRICULTURAL LEVY FUND

34. There is established the Agricultural Levy Fund which shall be managed by the Authority.

35. Subject to this Act, the Fund shall be charged on such persons and at such rates and in such manner as the Authority may, prescribe.

36. The Fund shall comprise—

(a) levies imposed on crops under section 33 of this Act;

(b) monies appropriated by the County Assembly;

(c) any monies that the Authority may lawfully obtain by way of donations, gifts or grants.

37. (1) Monies in the Fund shall be applied to development of crop agriculture.

(2) Subject to this Act, the Authority shall in consultation with the Member of the Executive Committee make regulations for the utilization of the Fund.

38. (3) If a person fails to pay any amount payable by him by way of the levy on or before the date prescribed, a sum equal to five per cent of the amount shall be added to the amount due for each month or part thereof during which its remains unpaid.

(4) Any amounts of money which are outstanding on the date prescribed by the notice issued under this section shall be a civil debt recoverable summarily by the Authority.

PART VIII—GENERAL PROVISIONS

39. The Authority may on its own motion or upon complaint by any person:—
(a) warn any person or entity against contravening this Act or any other Act relating to crop agriculture;

(b) notify any person or entity in writing on any acts or omissions which, in its opinion, constitute contravention of this Act or any other Act relating to crop agriculture;

(c) require any person or entity to remedy any contravention of this Act or any other Act relating to crop agriculture within such period as the Authority may specify in the notice;

(d) Where a contravention provided for under subsection (1) continues for fifteen days after notification or any other correspondence from the Authority, the person contravening the relevant Act shall be liable to a fine of five hundred thousand shillings;

(e) The fine levied under subsection 2 above shall be a civil debt to the Authority and recoverable summarily;

(f) Any licensee aggrieved by a decision of the Authority under this section may appeal to the Tribunal within fourteen days of communication of the decision.

(2) Nothing done under this section shall affect a person's liability for an offence under this Act.

40. The Authority shall submit to the Member of the Executive Committee an annual report on the working of this Act during the preceding calendar year on or before the month of April.

41. Except as otherwise provided in this Act, a decision made by the Authority under this Act shall be final.

42. Where there is a conflict or inconsistency between the provisions of this Act and the provisions of any other law relating to crop agriculture, this Act shall prevail.
SCHEDULE

PROVISIONS ON THE CONDUCT OF THE BUSINESS AND AFFAIRS OF THE BOARD OF THE AUTHORITY

1. (1) The Board of the Authority shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(2) Notwithstanding subparagraph (1), the chairperson may, and upon requisition in writing by at least five members shall, convene a special meeting of the Board of the Authority at any time for the transaction of the business of the Board.

(3) Unless three quarters of the total members of the Board of the Authority otherwise agree, at least fourteen days’ written notice of every meeting of the Board shall be given to every member of the Board.

(4) The quorum for the conduct of the business of the Board of the Authority shall be one half of the members including the chairperson or the person presiding.

(5) The chairperson shall preside at every meeting of the Board of the Authority at which her or he is present but in his or her absence, the members present shall elect one of their number to preside, who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson.

(6) Unless a unanimous decision is reached, a decision on any matter before the Board of the Authority shall be by a majority of the votes of the members present and voting and in the case of an equality of votes, the chairperson or the person presiding shall have a casting vote.

(7) Subject to such subparagraph (4), no proceedings of the Board of the Authority shall be invalid by reason only of a vacancy among the members thereof.

2. (1) The Board of the Authority may establish such committees as it may consider appropriate to perform such functions and responsibilities as it may determine.

(2) The Board of the Authority shall appoint the chairperson of a committee established under subparagraph
(1) from amongst its own members.

(3) The Board of the Authority may where it considers appropriate, co-opt any person to attend the deliberations of any of its committees.

3. (1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Board of the Authority and is present at a meeting of the Board at which the contract, proposed contract or other matter is the subject of consideration, he or she shall, at the meeting and as soon as reasonably practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter.

(2) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

(3) A member of the Board who contravenes subparagraph (1) commits an offence and is liable to a fine of one hundred thousand shillings, or to imprisonment for a term of six months, or to both.

4. (1) The affixing of the common seal of the Authority shall be authenticated by the signature of the chairperson and the Chief Executive Officer and any document not required by law to be made under seal and all decisions of the Board may be authenticated by the signatures of the chairperson and the Chief Executive Officer:

(2) Provided that the Board shall, in the absence of either the chairperson or the Chief Executive Officer in any particular matter, nominate one member to authenticate the seal on behalf of either the chairperson or the Chief Executive Officer.

5. Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal, may be entered into or executed on behalf of the Board by any person generally or specially authorized by the Board for that purpose.
MEMORANDUM OF OBJECTS AND REASONS

Firstly, this Bill aims at providing a framework implementing Part 2 of the Fourth Schedule to the Constitution on matters related to crop agriculture. The specific county functions related to crop agriculture include providing a comprehensive, harmonized, efficient and effective legal and regulatory framework for development and regulation of crop agriculture in Kericho County.

PART I of the Bill provides for preliminary provisions. The Part outlines the purpose of the Bill, which includes establishing an efficient legal and institutional framework for development and regulation of crop agriculture.

PART II of the Bill provides for the Administration matters. It establishes the Crops Regulatory Authority. The Crops regulatory authority is charged with the development and establishment of an efficient institutional framework for development and regulation of crop agriculture. The Part establishes the Crops Regulatory Authority Board. It outlines the members of the Board, its functions and the terms and conditions.

PART III of the Bill provides for Special Provisions Relating to the Authority. It provides for the protection of members of the Board from personal liability to any civil action or other proceedings for damages on account of or in respect of any act or omission committed or omitted in good faith in the course of their duty. This part also provides for the funds of the authority and how they shall be managed.

PART IV of the Bill provides for Provisions on the Cultivation of Sugar Cane. The matters include power to register cane out growers, authority to prescribe variety of sugar cane to be grown, restriction on breeding, multiplication of sugarcane cuttings seedlings, out grower growing and supply contracts to be approved, selling of cane to registered millers, zoning of sugarcane growing areas and authority to make farming husbandry regulations.

PART V of the Bill deals with Registration, Licensing and Inspection. It provides for the power of the authority to issue licences for manufacturers and small scale plant operators.

PART VI of the Bill provides for Crop-Specific Regulations. It provides for power to make regulations which is to make crop-specific legal or regulatory frameworks in respect of such other crops as the Member of the Executive Committee may from time to time declare to be strategic to County’s economy.
PART VII of the Bill provides for the Agricultural Levy Fund managed by the Authority.

Part VIII of the Bill provides for general provisions.

ANDREW SOI,
Committee on Agriculture, Environment and Natural Resources.