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THE MANDERA COUNTY PLANT HEALTH BILL, 2014

A Bill for

AN ACT of the County Assembly of Mandera to provide for the prevention and control of pests affecting plants and for connected purpose

ENACTED by the County Assembly of Mandera as follows—

1. This Act may be cited as the Mandera County Plant Health Act, 2014.

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

   “causal pathogen” means any virus, fungus, bacteria or other organism, in whatever stage of existence such organism may be;

   “plant” includes food crops, cash crops, fruit crops, horticultural crops, animal feeds etc;

   “county executive” means the county executive member responsible for matters relating to agriculture;

   “disease” means any abnormal condition of plants communicable or believed to be communicable by the transfer of causative agent or by the propagation of the affected plant which the county executive member may, by order, declare to be a disease for the purposes of this Bill;

   “disinfect” includes “disinfest;

   “farm unit” means a single tract of land, or a number of separate tracts held under the same or different tenures, operated as a single unit utilizing, in whole or in part, common facilities, equipments and storage for agricultural purposes;

   “grower” means any person who operates a farm unit by planting, managing, maintaining and harvesting of plants and includes any servant or agent of such a person;

   “inspector” means a plant health inspector appointed under section (3);

   “KEPHIS” means Kenya Plant Health inspectorate service.
“pest” means any of the following descriptions of pests which the Minister may, by order, declare to be a pest for the purposes of this Bill, that is to say—

(a) any animal or vegetable organism inimical to the growth or existence of living plants or injurious to plant products; and

(b) any other agent capable of producing a communicable disease of plants;

“plant” means any member of the vegetable kingdom, whether living or dead, and includes any part of a plant whether severed from the plant or not;

“regulated disease” means any disease designated as being regulated by this Bill or the regulations;

“vegetable organism” means any vegetable organism, in whatever stage of existence such organism may be;

“vehicle” includes any motor vehicle, railway vehicle, aircraft or carriage; and

“vessel” includes any ship, a boat any every other kind of vessel used in navigation either on the sea or inland waters.

“Weed” any plan that grows in area where it is not desired.

**PART II—ADMINISTRATION**

3. (1) The county Service Board may designate a qualified person to be a plant health inspector.

(2) An inspector or officer may at any reasonable time—

(a) enter any place or premises where he believes on reasonable grounds that plants are growing or are being stored;

(b) stop and enter any vehicle or conveyance that he believes on reasonable grounds may contain plants or plant produce, for the purpose of inspecting the place, premises, vehicle or conveyance and any plant growing, stored or contained inside;

(c) open any container(s), bag(s), store(s), bus, lorry, car, donkeycart or package found therein or
examine anything found inside that he believes on reasonable grounds contains any vegetable matter;

(d) take a sample of any vegetable matter situated in the place, premises, vehicle, farm, plot or conveyance for the purpose of ascertaining the existence of any regulated disease or causal pathogen; and

(e) require any person to produce for inspection or for the purpose of obtaining copies or extracts any books, shipping bills, bills of lading, proof of disinfection, invoices or other documents or papers concerning any matter relevant to the administration of this Bill or other law.

(2) The owner or person in charge of a place entered by an inspector under this section, and any person found in that place, shall—

(a) give the inspector all reasonable assistance to enable the inspector to carry out any action authorized under this Bill;

(b) furnish the inspector with any record or information he or she may reasonably require to carry out any action authorized under this Bill; and

(3) Where the inspector has reason to believe, based on the report of an inspector, that any plant or other matter constitutes a hazard for reason that it is or could be infected with a regulated disease or causal pathogen or was planted in contravention of this Bill or the regulations, the inspector may, in writing and subject to such terms and conditions as may be specified in the order—

(a) issue an order to confiscate the plant or plant produce;

(b) order its destruction in accordance with the regulations; or

(c) order the clean-up and disinfection of any farm unit or premises in accordance with the regulations.

4. (1) The inspector may recommend compensation to be paid out of public funds to any person whose plants or plant produce are destroyed pursuant to this Bill.
(2) For the purpose of ascertaining the compensation payable under subsection (1), the value of the plant, seed or part of a seed or plant in each case be taken to be its estimated value if harvested and marketed under normal conditions in an average year after deducting the estimated cost of such harvesting and marketing to the owner, and the inspector, may if the inspector deems fit, require such value to be ascertained by its officers or by arbitration.

(3) The inspector may, if the inspector deems fit, withhold compensation if, in relation to the plant or the seed, plant or any part of a seed, the owner or the person having charge of it has, in the opinion of the inspector, done anything in contravention of, or failed to do anything in compliance with, any order under this Bill.

5. (1) The county executive member after consultation with the inspector and county public service board may, on such terms and conditions as the county executive member may specify, appoint any person as inspector or county officer for purposes of this Bill.

(2) For purposes of subsection (1), the county executive member may, by regulations, prescribe the qualifications for different categories of inspectors and county officers.

6. A person who obstructs or hinders or knowingly make any false or misleading statements either orally or in writing to an inspector or county officer engaged in carrying out his duties or functions under this Bill or the regulations, commits an offence.

7. Except as provided by this Bill, a person who removes from quarantine anything seized and detained pursuant to this Bill or the regulations, commits an offence.

8. The county agricultural officer, on the report of an inspector or officer setting out a reasonable belief of the existence of any disease in any area defined in a report to the inspector, may by order prohibit or restrict the transportation or importation either by road, air, water, or animal back into or from or the movement in that area of any plant or plant produce or other matter that in the officer's opinion is likely to result in the spread of that disease.
9. (1) Where evidence is produced that a seed has been planted on the farm unit operated by a grower, the grower shall be deemed to have planted the seed or permitted it to be planted.

(2) Where plants are identified by seed certification number tags, the person identified by the seed certification number tags shall be deemed to be the grower of the plants.

(3) If the grower or the person responsible for the planting, management, maintenance or harvest of a plant cannot be identified by an inspector, the inspector shall quarantine that plant for a period of up to two weeks.

(4) If, after every reasonable attempt, the inspector is unable, within the quarantine period, to find the grower or person responsible for the plant, the plant shall be deemed to constitute a hazard and the inspector may issue an order accordingly.

10. A person who knowingly introduces any pest or disease into any cultivated land or land commits an offence and liable upon conviction to a fine not exceeding two million shillings or to an imprisonment term not exceeding six years or both.

11. The county executive member may make rules for the purpose of preventing and controlling attacks by or the spread of pests or diseases, and, in particular and without prejudice to the generality of the foregoing power, as to all or any of the following matters—

(a) control and restrict or inspect any imported plants or seeds materials before its allowed into the County in accordance this Bill or any other written law be investigated for safety at the National Laboratories;

(b) the disinfection, treatment, destruction and disposal of any unhealthy plant, or of any plant appearing to be infected with any pest or disease, or of anything whatever, whether of a nature similar to a plant or not, likely to infect any plant with any pest or disease;

(c) the payment and recovery of fees for any disinfection or treatment carried out by any inspector, or for any services rendered by any
inspector in connection with any such disinfection or treatment;

(d) the prohibition, restriction and regulation of the removal or transport of any such plant, seed or seed material or thing as aforesaid;

(e) the control and destruction of any plant which has been declared to be a pest or weed under this Bill;

(f) the prohibition, restriction or regulation of the cultivation and harvesting, either in the whole of the county or in any specified area, of any plant or weeds, where, in the opinion of the executive member, any pest or disease cannot otherwise be readily or adequately controlled or eradicated;

(g) the reporting of the occurrence of any pest or disease specified in the rules, and the collection and transmission of specimens of any pest or diseased plant;

(h) the methods of planting, cleaning, cultivating and harvesting to be adopted, and the precautions and measures to be taken by any person for the purpose of preventing or controlling attacks by, or the spread of, any pest or disease, or for the purpose of giving effect to any rules made under this Bill;

(i) the issue and revocation of licenses for, and the inspection of, nurseries and supplier, stockiest, Retailer of farm inputs stores in which plants or seeds materials are sold or grown for the purposes of sale, and the imposition of fees for such licenses, and the regulation of the sale or removal of plant or seedlings or seed material, whether grown in nurseries or not;

(j) the disinfection, fumigation and treatment of any building, vehicle, aircraft or vessel suspected of being or having been used for the storage or conveyance of anything likely to infect any plant with any pest or disease;

(k) the measures to be taken, including provision for the requisitioning on payment of chemicals, appliances, labour and other means, to secure the
eradication of diseases and pests; the quarantine of infected areas;

(l) the prohibition, restriction and regulation of the tapping of plants of any description;

(m) the imposition and provision of fines for any inspection, disinfection or treatment carried out in compliance with, or under any power conferred by, any order made under this Bill;

(n) Importation of chemicals not allowed by KEPHIS in accordance with the relevant laws;

(o) Importation of chemicals not inspected by the Inspector in accordance with this Bill or any other law.

12. (1) A person who contravenes any provision of this Bill commits an offence and is liable to a fine not exceeding five hundred thousand shillings or to an imprisonment term of three years or both, and on subsequent conviction to a fine not exceeding one million shillings or to an imprisonment term of five years or both.

(2) Where the contravention of this Bill or rules under this Bill, is a continuous offence, the offender is guilty of a separate offence for each day the contravention or violation continues.

(3) Proceedings with respect to an offence under this Bill or the regulations may be instituted at any time within one year after the time when the subject matter of the proceedings arose.

13. No action or proceeding may be commenced against the county executive member, the inspector, inspector or an agent of the officer county agricultural officer, for any act done in good faith in the performance or intended performance of a responsibility or in the exercise or intended exercise of an authorized action under this Bill, or for any neglect or default in the performance of a responsibility or the exercise of an authorized action in good faith.

14. The county executive may make regulations for the better functioning of this Bill.
MEMORANDUM OF OBJECTS AND REASONS

A Bill for an Act of the County Assembly to provide for the prevention and control of pests affecting plants and for connected purpose.

ABDINOOR DAKANE RAFAT,
Chairman, Agriculture and Irrigation Committee.