SPECIAL ISSUE

Siaya County Gazette Supplement No. 3 (Bills No. 2)

REPUBLIC OF KENYA

SIAYA COUNTY GAZETTE SUPPLEMENT

BILLS, 2017

NAIROBI, 21st March, 2017

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THE SIAYA COUNTY CO-OPERATIVE DEVELOPMENT FUND LOAN BILL, 2017

A Bill for

AN ACT of the County Assembly of Siaya to establish a Development Fund for the co-operative organizations in Siaya County by providing affordable loans to co-operative organizations that seek to promote the welfare and economic wellbeing of the people of Siaya County and for connected purposes

ENACTED by the County Assembly of Siaya as follows —

1. This Act may be cited as the Siaya County Co-operative Development Fund Act, 2017 and shall come to operation on the date of Assent by the Governor.

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

   “Applicant” means the Co-operative organizations operating in Siaya County.

   “Committee” means the co-operative development fund committee established under section 7 of this Act.

   “Governor” means the Governor of Siaya County.

   “Loanee” means a co-operative organizations whose loan request has been approved and granted; under this Act.

   “Executive Committee Member ” means the member of the Executive Committee responsible for the Co-operative sub-Sector.

   “Prescribed” means prescribed by the Member of the Executive Committee 

"Unit" means the Co-operative Development Fund Unit established under section 13.

"Co-operative Organization” means a registered Co-operative society Registered under chapter 490 of the laws of Kenya.

3. There is hereby established a Fund to be known as the Co-operative Development Fund.

4. The objective and the purpose of the Fund shall be —
(a) To provide funds to be used for granting low interest loans to cooperative institutions with a view to scaling up their lending activities, value addition amongst other activities as may be prescribed.

(b) To provide funds to support, revive and initiate cooperative sub-sector institutions in areas that can have immediate impact to household economy.

(c) To attract and facilitate investments in co-operative institutions that have linkages to micro, small and medium enterprises that benefit the youth.

(d) Provide financial support to cooperative sub-sector institutions that support strategic and high return interventions that directly and indirectly have the potential to trigger growth and sector wide impact.

(e) To attract and facilitate investments in cooperative institutions that have linkages to low-income persons, community based organizations and special interest groups.

(f) Provide funds to cooperative institutions to facilitate marketing of products and services both in the domestic and the international market.

(g) For the attainment of the above objectives, the Committee may do acts and things that are permissible under this Act by doing all such other things as are incidental or consequential to the economic enhancement of the interests of co-operative organizations provided such act is approved by the County Executive Committee Member in charge of co-operative sub-sector.

5. In the exercise of the powers conferred under this Act, the committee shall be guided by the objects and principles of devolved governments as set out in Articles 174 and 175 of the Constitution of Kenya 2010 incorporating the following principles—

(a) public participation and financial inclusiveness;
(b) development partners linkages and participation;
(c) local ownership and sustainability.

6. (1) There shall be credited to the Fund—

Guiding Principles of Operating the Fund.
(a) sums of money which may from time to time be appropriated by the County Assembly for that purpose;

(b) sums which represent the repayment of the capital and interest of any loan granted from the Fund;

(c) income from any investment made by the fund;

(d) any sums of money borrowed by the Fund with the approval of the County Assembly; and

(e) any gifts, donations, grants and endowments made to the Fund.

(2) There shall be paid out of the Fund any expenditure approved by the Committee incurred in connection with the administration of the Fund.

7. (1) There shall be established a committee to be known as the Co-operative Development Committee.

   (2) The Committee shall—

   (a) be body corporate With perpetual succession

   (b) have a common seal;

   (c) have power to acquire, own, possess and dispose of property and to enter into contracts.

   (3) The Committee shall consist of—

   (a) the County Chief Officer in the County department for the time being responsible for matters relating to co-operative development or a representative appointed in writing;

   (b) the County Chief Officer in the County department for the time being responsible for Finance and Economic Planning or a representative appointed in writing;

   (c) the Head of legal services in the county or a representative appointed in writing;

   (d) four persons from the Co-operative movement, one of whom shall be the Chairperson of the Committee, who shall be appointed by the County Executive Committee Member through a competitive and transparent recruitment.
process with approval of the County Assembly, provided that the four shall be appointed considering Gender balance, Regional representation and other requirement on appointments as per the law.

(e) the Director appointed under section 14, who shall be an ex-officio and the secretary to the Committee.

(4) The person under subsection (1) (e) shall hold office for a term of three years renewable for one further term.

(3) A person shall qualify for appointment under subsection (3) (e) if that person—

(a) holds a relevant degree from a university recognized in Kenya;

(b) has at least three years professional experience in the relevant field;

(c) meets the requirements of leadership & integrity as provided for in Chapter 6 of the Constitution or relevant national legislation.

8. The member of the Committee shall be paid such allowances as the Member of the Executive Committee shall determine in consultation with the County Public Service Board and the Salaries and Remuneration Commission.

9. (1) The office of a member of the Committee appointed under section 7 (1) (d) shall become vacant if the member—

(a) is adjudged bankrupt;

(b) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;

(c) is convicted of an offence involving fraud and dishonesty;

(d) is absent, without reasonable cause, from three consecutive meeting of the Committee;

(e) resign in writing and addressed to the Member of
the Executive Committee;

(f) is removed from office by the Executive Committee Member—

(i) Being unable to perform the functions of his/her office by reason of mental or physical infirmity; or

(ii) Failing to declare his/her interest in any matter being considered or to be considered by the Committee; or

(iii) Any other sufficient reason as may be prescribed.

(g) Dies.

10. The functions of the Committee are to—

(a) formulate policy guidelines on co-operative sector funding;

(b) ensure that all projects/programmes funded under this Act are consistent with the county's priorities specified in the relevant policy documents;

(c) approve proposals submitted to it by the unit under this Act;

(d) authorize allocations from the fund;

(e) formulate or approve standards, guidelines and procedures for funding proposals under this Act.

(f) approve the organizational structure of the unit;

(g) provide oversight in the utilization of the Fund; and

(h) perform any other function as may be conferred on it by this Act or any other written law.

11. (1) The Committee may establish such sub-committee as it may consider necessary for the better performance of its functions and the exercise of its powers under this Act.

(2) The Committee may co-opt in to 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 Committee may, by resolution either generally
or in any particular case delegate to any sub-committee or to any member, officer, employee or agent of the Committee, the exercise of any of the Powers or the performance of any of the functions of the Committee under this Act or under any other written law.

12. (1) Subject to subsection (2), the business and affairs of the Committee Shall be conducted in accordance with the First Schedule.

(2) Except as provided in the schedule, the Committee may regulate its own procedure.

13. There is established, within the County department responsible for matters relating to Co-operative sector, a unit to be known as the Co-operative Development Fund Unit.

14. (1) This unit Shall consist of—

(a) a Director; and

(b) such staff as the Committee may consider necessary for the performance of the functions of unit under this Act.

(2) The Committee shall appoint the director and the staff of unit through a Competitively recruitment process and appointed on such terms and conditions as shall be determined by the county public service board.

(3) A Person shall be qualified for appointment as the Director of the unit if such person—

(a) holds a relevant degree from university recognized in Kenya.

(b) has at least three years professional experience in the relevant field

(4) The appointment of the Director under subsection (1) shall be by notice in the county Gazette for a term of five years and shall be eligible for reappointment for one further term.

15. (1) The office of the director shall become vacant if the member—

(a) is adjudged bankrupt;

(b) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six
months;

(c) resigns in writing addressed to the committee;

(d) is removed from the office by the committee for—

(i) being unable to perform the functions of his office by reason of mental or physical infirmity; or

(ii) failing to declare his interest in any matter being considered by the unit or the committee; or

(iii) failing to perform his duties in accordance with the terms and conditions of appointment

(e) Dies.

16. (1) The functions of the unit are to—

(a) administer the Fund;

(b) provide technical, financial and legal expertise to the beneficiaries of the Fund;

(2) in the performance of its functions under subsection (1), the unit shall—

(a) conduct civic education to promote the awareness and understanding of the Fund amongst stakeholders.

(b) provide capacity building to, and advise co-operative organizations to ensure the effective use of funds borrowed under this Act;

(c) develop frame work that will ensure an open, transparent and efficient use of funds borrowed under this Act;

(d) conduct research and gap analysis to ensure continuous performance improvement of the Fund;

(e) assist co-operative organizations, where the unit considers it necessary, to design, identify, select, prioritize, appraise, evaluate and negotiate investment opportunities that will result in maximum benefits;
(f) Maintain a record of all Funds documentation;

(g) Assist members of the Executive committee in formulating guidelines and standard documentation required under this Act.

(h) Carry out such other function as may be conferred on it by the members of the executive committee under this Act.

(3) The unit shall prepare financial accounts and an inventory of any monies allocated to it, any financial support received by it and any fees received by it from a private party or project or company as the case may be under this Act.

17. (1) A Co-operative organization wishing to be considered for the grant of a loan shall make an application to the Unit in a prescribed form.

(2) A Co-operative Organization that has been awarded a loan will be issued with a Loan Identification Account Number by the Unit.

(3) An official of a Co-operative organizations who—

(a) in filling a loan application form, knowingly makes any false statement, whether orally or in Writing relating to any matter affecting his request for a loan or

(b) being required under paragraph (a) to answer any questions, furnish any information or particulars or produce any document or paper, neglects to do so without reasonable cause; or

(c) is granted a loan based on false information.

Shall be guilty of an offence and in the case of paragraphs (a) and (b) be liable to a fine of not less than Kenya shillings Fifty thousand or to imprisonment for a term of not more than six months and in the case of paragraph (c) to a fine not exceeding Kenya shillings One hundred or a term of Imprisonment not exceeding three years.

18. (1) The Unit may—

(a) accept or reject any application for a loan;

(b) grant a loan to a Co-operative organization and in
so granting impose conditions, demand security and require repayment in installments at such times and within such periods as the Unit deems fit, provided that and subject to the provisions of this section the Unit may upon the request by an applicant to whom a loan has been granted at any time vary—

(i) the condition subject to which the loan was made;

(ii) any security given in relation to the loan; or

(iii) any of the terms of repayment of the loan.

(2) The grant of a loan by the unit shall be preceded with due compliance of the conditions by the applicant and no loan shall be advanced or released to an applicant until the applicant shall have complied with all the Conditions set by the unit.

(3) Where a cooperative organization fails to comply with the conditions set by the Unit, the application shall be rejected forthwith.

(4) Where in granting a loan the unit considers it prudent to request for a guarantor to guarantee any loan granted to the cooperative institution in case of any default by a cooperative institution in the repayment of the loan, any guarantor who has guaranteed any such loan shall automatically and fully be liable to pay to the unit all or any loan together with interest accrued and outstanding owed to the unit by the loanee as shall be notified to the guarantor by the unit.

(5) Where a guarantor who has been notified by the unit under sub-section (4) fails or refuses to pay such loan together with any interest accrued thereon, the guarantor shall be guilty of an offence and liable to criminal prosecution or civil proceedings or both in accordance with the provisions of this act.

19. On the last day of each financial year the Unit shall send to all loanees an annual return form showing the status of the loan provided that during the subsistence of the loan; the loanee may request the Unit to provide to such a loanee a statement or other particulars pertaining to the loan and the Unit shall supply the information without
20. A loanee shall repay the borrowed sums and interest on such terms and conditions as may be prescribed.

21. (1) if in the opinion of the Unit there has been or is likely to be any breach or failure to comply with any condition or term of repayment respecting a loan the Unit shall forthwith—

(a) recover the loan from the cooperative organization as a civil debt under the Debts (Summary Recovery) Act, Chapter 42 of the Laws of Kenya, the amount of the loan or the amount thereof then remaining unpaid together with interest thereon;

(b) enforce or realize any security relating thereto

(2) The Unit may, in exercise of the powers conferred by sub-section (1), engage the services of private legal practitioners.

22. (1) A co-operative organization that has benefited from a loan grant under this Act shall keep proper books of accounts and records in relation to the funds and shall be open for scrutiny by the Unit.

(2) The beneficiary cooperative organization shall submit the duly audited financial accounts and any other information as may reasonably be Required by the Unit within six months after the end of each financial year.

23. The Fund shall be audited and reported upon by the Auditor-General in accordance with the provision of the Public Audit Act 2013.

24. (1) The Member of the Executive Committee shall in consultation with the Committee make regulations generally for the better carrying out the provisions of this Act, and without prejudice to the foregoing, may make regulations in respect of the following—

(a) the receipt, processing and approval of applications for loans and the granting of loans to applicants.

(b) the preparation and maintenance of loanees records already granted
(c) the withdrawal, recovery and cancellation of loan;

(d) the waiver or exemption from repayment of loans and

(e) the setting up of procedures for dealing with loan defaulters.

(2) The regulations under the Act shall be approved by the County Executive Committee and the County Assembly before they take effect.

24. The County Executive Committee Member may, on the recommendation of the County Executive Committee, amend these Regulations to accord with prevailing circumstances and the amended Regulations shall be subject to approval of the County Assembly before coming into operation.
MEMORANDUM OF REASON AND OBJECTS

This Bill seeks to establish a Development Fund for the co-operative sub-sector in Siaya County by providing low-interest loans to co-operative institutions that seek to promote the welfare and economic uplift of the people of Siaya County and for connected purposes.

Section 3 establishes the Fund as a body corporate with perpetual succession and a common seal, and shall have power to acquire, own, possess and dispose of property, and to contract, and to sue and be sued in its own name.

Section 4 lists the objectives of the Fund as:- to provide funds to be used for granting low-interest loans to co-operative institutions with a view to scaling up their lending activities, value addition amongst other activities as may be prescribed; and to provide funds to support, revive and initiate co-operative sub-sector institutions in areas that can have an immediate impact to household economy; to attract and facilitate investment in cooperative sector institution that have linkages to micro, small and medium enterprises oriented commercial infrastructure that benefit youth enterprises; to attract and facilitate investment in cooperative sector institution that have linkages to low income persons, community-based organizations, and special interest groups; and provide funds to cooperative sector institutions to facilitate marketing of products and services both in the domestic and the international markets.

Section 5 outlines key Elements and Guiding Principles of Operating the Fund

Section 6 provides the Revenue and expenditure of the Fund

Section 7 provides for the establishment of the Cooperative Development Fund Committee. The functions of Committee are to—

1. Formulate policy guidelines on cooperative sub-sector funding;
2. Ensure that all projects funded under this Act are consistent with the counties priorities specified in the relevant policy documents;
3. Approve proposals submitted to it by the Unit under this Act;
4. Authorize allocations from the Fund;
5. Formulate or approve standards, guidelines and procedures for funding proposals under this Co-operative Sector Development Fund Bill, 2017.
6. Approve the organizational structure of the Unit;
7. Provide oversight in the utilization of the Fund; and
8. Perform any other function as may be conferred on it by this Act or any other written law.

Section 13 establishes Cooperative Development Fund Unit. The functions of the Unit are to administer the Fund and provide technical, financial and legal expertise to the beneficiaries of the Fund.

Section 17 provides for the Administration of the Fund.

Section 18 contains conditions for the grant of loan under the Act.

Section 20 provides for loan Repayments

Section 24 provides for the power to make regulations for the use of the Fund. The enactment of this Bill shall occasion additional expenditure of public funds which shall be provided for in the Estimates of the County Government of Siaya.

JACK ODINGA,
Chairperson, Budget and Appropriations Committee.