Bill for Introduction into the Nyeri County Assembly—

The Nyeri County Enterprise Development Fund (Amendment) Bill, 2018 ............1
THE NYERI COUNTY ENTERPRISE DEVELOPMENT FUND (AMENDMENT) BILL, 2018

A Bill for

AN ACT of the County Assembly of Nyeri to amend the Nyeri County Enterprise Development Fund Act, 2017

ENACTED by the County Assembly of Nyeri, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Nyeri County Enterprise Development Fund (Amendment) Act, 2018 and shall come into operation on such date as the County Executive Member for the time being responsible for Trade may by notice in the Gazette, appoint.

2. The Long Title of the Principal Act is amended by deleting the expressions “establishment and administration of the Fund; provide for the promotion and development of Micro and Small Enterprises, Co-operative Societies registered under the Co-operative Societies Act and Enterprise Groups registered under the Ministry of Labour, Social Security and Services or any other lawful registration body; to provide for the establishment of the Nyeri County Enterprise Development Fund Board, to provide for the access and utilization of the Fund and for connected purposes” and replacing therefor with the following new expression “establishment, administration, governance, access and utilization of the Nyeri County Enterprise Development Fund and for connected purposes.”

3. Section 2 of the Principal Act is amended by inserting the following new definition in proper alphabetical sequence—


4. Section 7 of the principal Act is amended—

(a) by deleting the entire subsection (b);

(b) in subsection (d) by deleting the word “entrepreneurs” and substituting therefor the word “beneficiaries”; and
(c) in subsection (i) by deleting the word “Provide” and substituting therefor the word “Promote”.

5. The principal Act is amended in section 8—

(a) by deleting subsection (e);
(b) by inserting the following new subsection immediately after subsection (d)—
   (da) ensure that a security given is in the name of the County Government of Nyeri;
   (db) charge and hold securities with respect to the Fund;

6. The principal Act is amended in section 9 by introducing a new paragraph immediately after the section as follows—

Appointment of a financial institution

9A. The County Executive Member may, for the purposes of administering loan applications, appoint a financial institution to administer the Fund on behalf of the County Government on such terms and conditions as may be agreed upon by the County Executive Member, in consultation with the County Executive Member for the time being responsible for Trade and the financial institution.

7. Section 11 of the principal Act is amended—

(a) in subsection 2(b) by deleting the words “hold, charge or dispose of” appearing immediately after the word “acquire”; and
(b) in subsection 3(o) by inserting the expression “for the time being responsible for trade” immediately after the word “Member”.

8. Section 12 of the principal Act is amended—

(a) in subsection 1(d) by deleting the expression “two persons of the opposite gender nominated” and substituting therefor the expression “one person from”;

Amendment of section 8 of No. 1 of 2017
Amendment to section 9 of No. 1 of 2017
Amendment of section 11 of No. 1 of 2017
Amendment of section 12 of No. 1 of 2017
(b) by deleting subsections 1(e) and 1(f);

(c) by deleting the expression “nominated by the most” in subsection 1(g) and replacing therefor the expression “from a registered”;

(d) by deleting the expression “nominated by the most” in subsection 1(h) and replacing therefor the expression “from a registered”;

(e) by inserting a new subsection immediately after subsection (h) as follows –

(i) one person from a registered co-operative society operating within the County, appointed by the County Executive Member responsible for Trade.

(f) by inserting a new subsection immediately after subsection 3 as follows—

3A. The County Executive Committee Member for the time being responsible for trade shall appoint a non-executive Chairperson of the Board from individuals appointed under paragraphs (d), (e), (f) or (g).

(f) by deleting the whole of subsection 4 and substituting therefor the following –

4. The Board Members shall, at their first sitting appoint from amongst themselves a non-executive Vice-Chairperson of the Board, who shall be of the opposite gender from the Chairperson.

9. Section 13 of the principal Act is amended—

(a) in subsection 1 by deleting the word “eligible” and replacing therefor the word “qualified” and by inserting the expression “of the Board” immediately after the word “member”;

(b) by inserting a new subsection immediately after subsection 1 as follows—
1A. A person shall be eligible for appointment as the Chairperson of the Board if the individual—

(a) is a member of the Board;
(b) holds a minimum of diploma in Business related field from a recognized institution of higher learning in Kenya; and
(c) has operated a registered enterprise in Nyeri County for 5 years.

(c) by deleting the expression “A person shall not be appointed to the Board if the person” in subsection 2 and substituting therefor the following expression “A person shall not qualify to be a Member of the Board if the person”; and

(d) by deleting the expression “not less than” in subsection 2(a) and substituting therefor the words “exceeding”.

10. Section 14 of the principal Act is amended in subsection 1 by deleting the whole of paragraph (b) and inserting the word “and” immediately after the word “charges” in paragraph (a).

11. Section 15 of the principal Act is amended by deleting the word “shall” and substituting therefor the word “may” appearing immediately after the expression “three years and”.

12. Section 17 of the principal Act is amended by deleting paragraph (d) and substituting therefor the following—

(d) term comes to an end: or

13. Section 18 of the principal Act is amended by deleting the expression “(g) and (h)” and inserting the word “and” between the word “(e)” and “(f)”.

14. Section 19 of the principal Act is amended in subsection 3(c) by deleting the expression “entrepreneurs within the County” and substituting therefor the expression “beneficiaries of the Fund”.

Amendment of section 14 of No. 1 of 2017
Amendment of section 15 of No. 1 of 2017
Amendment of section 17 of No. 1 of 2017
Amendment of section 18 of No. 1 of 2017
Amendment of section 19 of No. 1 of 2017
16. Section 20 of the principal Act is amended by inserting a new paragraph after subsection 1(c) as follows—

(d) satisfies any other criteria that the Board may from time to time, in consultation with the County Executive Member for Trade, determine.

15. Section 21 of the principal Act is amended in subsection 4 by deleting the unit “7” and substituting therefor the unit “21”.

17. Section 24 of the principal Act is amended by deleting the section and substituting therefor the following—

**Loan Security**

24. The County Executive Member shall prescribe the acceptable forms of security and may charge and hold securities relating to the Fund.

18. Section 27 of the principal Act is amended—

(a) by inserting a new paragraph after subsection (d) as follows—

(e) Capacity building costs for the beneficiaries of the Fund.

(b) by deleting the expression “ten percent” and substituting therefor the expression “three percent”.

19. Section 30 of the principal Act is amended—

(a) in subsection (1), (2) and (3) by inserting the expression “within 14 days” immediately after the last words in each subsection;

(b) in subsection (1) by inserting the expression “within 14 days’ immediately after the word “decision”;

(c) by inserting a new paragraph after subsection (6) as follows—

(7) The County Executive Member for the time being Responsible for Trade may reverse or modify the Boards decision, in accordance with subsection (3),
if—

(a) the Board failed to follow required procedures in making its decisions; or

(b) the Board’s decision was contrary to the Act or the regulations; or

(c) there was no factual basis for the Board’s decision; or

(d) based on a review of the record, it is apparent that the Board committed a manifest error in its assessment of facts, or abused its powers in making its decisions.

20. Section 33 of the principal Act is amended in subsection (c) by deleting the expression “five hundred thousand shillings” and substituting therefor the expression “one million shillings”.

21. Section 37 of the principal Act is amended by deleting the expression “or that person’s spouse” appearing immediately after the word “person”.

22. The principal Act is amended in the First Schedule—

(a) in paragraph 1 by deleting the expression “meet at least four meetings and a” and substituting therefor the word “hold” and by inserting the word “meetings” immediately after the words “eight”.

(b) In paragraph 2 by deleting the expression “Chairpersons and” and inserting therefor the expression “from the Chairperson” immediately after the word “gender”.

Amendment of section 33 of No. 1 of 2017

Amendment of section 33 of No. 1 of 2017

Amendment of the First Schedule to No.4 of 2006.
The Long Title of Act No.1 of 2017, which it is proposed to amend—

AN ACT of the County Assembly of Nyeri to provide a legal and institutional framework for the establishment and administration of the Fund; provide for the promotion and development of Micro and Small Enterprises, Co-operative Societies registered under the Co-operative Societies Act and Enterprise Groups registered under the Ministry of Labour, Social Security and Services or any other lawful registration body; to provide for the establishment of the Nyeri County Enterprise Development Fund Board, to provide for the access and utilization of the Fund and for connected purposes.

Section 2 of Act No.1 of 2017, which it is proposed to amend—

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

"Auditor General" has the meaning assigned to it under section 2 of the Public Audit Act, 2015;

"Board" means the Nyeri County Enterprise Development Fund Board established under section 11 of this Act;

"Cooperative" means cooperative societies registered under cooperative societies Act;

"County” means the County of Nyeri;

"County Executive Member” means the Nyeri County Executive Committee Member for the time being responsible for Finance;

"Enterprise Development” means an activity that assists in establishing, expanding, accelerating the improvement, sustainability and ultimately financial independence of the business. The act of investing time and capital in helping people establish, expand or improve businesses;

"Financial year” means the period of twelve months ending on the thirtieth June each year.

"Fund” means the Nyeri County Enterprise Development Fund established under Section 6(1) of this Act;

"Fund Administrator” means a person appointed to administer the Fund by the County Executive Member in accordance with Section 116 of the Public Finance Management Act 2012;

"Group” means an enterprise group registered under the Ministry of Labour, Social Security and Services or any other lawful registration body.

"Micro Enterprises” means a firm, trade, service, industry or a
business activity whose annual turnover does not exceed Kenya Shillings five hundred thousand;

“Small Enterprises” means a firm, trade, service, industry or a business activity whose annual turnover ranges between Kenya shillings five hundred thousand and five million shillings;

Section 7 of Act No.1 of 2017, which it is proposed to amend—

2. The objectives of the Fund are to—

(a) Provide affordable loans to applicants stipulated under section 20 operating in Nyeri county;
(b) provide institutional capacity building for Cooperative Societies engaged in enterprise development;
(c) support capacity building of the beneficiaries;
(d) provide training, mentorship and provision of business development services to entrepreneurs;
(e) promote enterprise development in Nyeri County;
(f) support micro and small enterprises to develop linkages with large enterprises
(g) promote marketing of products and services for the enterprises;
(h) support technology acquisition, adoption and utilization by Micro and small enterprises and Cooperatives Societies; and
(i) Provide gainful employment through enterprise development.

Section 8 of Act No.1 of 2017, which it is proposed to amend—

3. The County Executive Member for Finance shall—

(a) Designate a person responsible for administering the Fund;
(b) Provide regulations for the administration and management of the Fund;
(c) May wind up the Fund with the approval of the County
Assembly;

(d) Accept, in consultation with the Central Bank of Kenya, all money payable under the loan in any currency that the County Executive Member finds appropriate;

(e) Agree at any time, in consultation with the Board to the variation of any security given in respect to the loan.

Section 9 of Act No.1 of 2017, which it is proposed to amend—

4. The balances of the Fund at the close of every financial year in the Fund account shall be maintained in the Fund for the purposes for which the Fund was established.

5. The County Executive Member may, for the purposes of administering loan applications, appoint a financial institution to administer the Fund on behalf of the County Government on such terms and conditions as may be agreed upon by the County Executive Member, in consultation with the County Executive Member for the time being responsible for Trade and the financial institution.

Section 11 of Act No. 1 of 2017, which it is proposed to amend—

6. The Board shall be capable in its corporate name to—

(a) sue and be sued;

(b) take, purchase or otherwise acquire, hold, charge or dispose of movable and immovable property; and

(c) do or perform all other things or acts that may be lawfully done or performed by a body corporate for the proper discharge of its functions under this Act.

Section 12 of Act No. 1 of 2017, which it is proposed to amend—

7. The Board shall consist of-

(a) the Fund Administrator who shall also be the Secretary to the Board and shall provide Secretariat services to the Board;

(b) the Chief Officer for the time being responsible for Trade or his representative;

(c) the Director for the time being responsible for Trade or his/her representative;

(d) two persons of the opposite gender nominated by the Chamber of Commerce, appointed by the County Executive Committee Member responsible for Trade;

(e) one person nominated by the Jua-kali umbrella organization from
the county, appointed by the County Executive Committee Member responsible for Trade;

(f) one person nominated by the most representative association of women engaged in micro and small enterprises, appointed by the County Executive Committee Member responsible for Trade;

(g) one person nominated by the most representative association of youth engaged in micro and small enterprises, appointed by the County Executive Committee Member responsible for Trade;

(h) one person nominated by the most representative association of persons living with disability engaged in micro and small enterprises appointed by the County Executive Committee Member responsible for Trade;

(2) The County Executive Member for the time being responsible for Trade shall in the appointment of members ensure compliance with the two thirds gender principle.

(3) The County Executive Committee Member for the time being responsible for Trade shall prescribe the procedure for nomination.

(4) The Members shall appoint a non-executive Chairperson and Vice-Chairperson of the opposite gender from amongst themselves during their first meeting.

Section 13 of Act No. 1 of 2017, which it is proposed to amend—

8. (1) A person shall be eligible for appointment as a member if such a person meets the following criteria-

(a) is a Kenyan citizen;

(b) holds a minimum of a diploma from a recognized institution in Kenya;

(c) has operated a business which is a micro and small enterprise in the County for a period of three years;

(d) Satisfies the requirements of Chapter Six of the Constitution.

(2) A person shall not be appointed to the Board if the person—

(a) has been convicted of a criminal offence and imprisoned for a term not less than six months;

(b) is a member of a governing body of a political party;

(c) has previously been removed from public office for contravention of the provisions of the Constitution or any other written law;

(d) is an un-discharged bankrupt; and
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(e) Violates the Constitution or any other written law.

Section 14 of Act No. 1 of 2017, which it is proposed to amend—

9. The Board shall have the power to—
   (a) levy interest and other charges;
   (b) charge and register all securities; and
   (c) invoke necessary mechanisms in the event of default.

(2) The Board shall consult the County Executive Member in exercising the powers in subsection 14(1).

(3) The County Executive Member may make regulations for the realization of the powers granted in Section 14(1).

Section 15 of Act No. 1 of 2017, which it is proposed to amend—

10. A member of the Board, except the ex-officio members, shall hold office for a period of three years and shall be eligible for re-appointment for one further term of three years.

Section 17 of Act No. 1 of 2017, which it is proposed to amend—

11. A person shall cease to be a member of the Board if such person—
   (a) resigns in writing, to the County Executive Member for the time being responsible for Trade;
   (b) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
   (c) is declared bankrupt;
   (d) is unable to perform the functions of his or her office by reason of mental or physical incapacity; or
   (e) Dies.

Section 20 of Act No. 1 of 2017, which it is proposed to amend—

12. A person is eligible for a loan under this Act, if the person—
   (a) is a resident of Nyeri County;
   (b) Has a lawfully registered enterprise group with a viable business plan approved by the Board or a micro and small enterprise operating in the County for a period not less than 12 months; and;
   (c) a lawfully registered society with a majority of its membership and operations in Nyeri County;
Section 21 of Act No. 1 of 2017, which it is proposed to amend—

9. (1) A person who qualifies for Funding under Section 20 may apply for a loan to the Board in the prescribed form and in accordance with the prescribed conditions.

(2) The County Executive Member responsible for Trade shall, in consultation with the Board prescribe the limits of amounts that can be disbursed as a loan to an applicant.

(3) The Board may, on receiving the applications made under subsection (1) above—

(a) approve the loan application;
(b) reject the loan application; or
(c) defer the application.

(4) Notwithstanding subsection (3)(b) and (c), the Board shall within 7 days of the rejection or deferment give to the applicant written reasons for the said rejection or deferment.

Section 22 of Act No. 1 of 2017, which it is proposed to amend—

10. The Board shall, in consultation with the County Executive Member set the annual interest rates applicable, and publish them in the Kenya gazette.

Section 27 of Act No. 1 of 2017, which it is proposed to amend—

11. (1) There shall be paid from the Fund—

(a) loans to qualifying applicants;
(b) establishment costs for the Fund;
(c) operational expenses incurred in the administration of the Fund, including the remuneration of members and staff of the Board; and
(d) monies as are necessary for the Board to carry out its mandate under this Act.

Provided that the expenses are approved by the Board and not more than ten per cent of the total monies consisting of the Fund are utilized for the administration of the Fund in (b), (c) and (d) above and for the funding of the activities of the Fund.

Section 30 of Act No. 1 of 2017, which it is proposed to amend—

12. (1) A person aggrieved by a decision made pursuant to the provisions of this Act may in writing request the Board to review its
decision.

(2) If a party is still aggrieved after pursing the option under subsection (1) above, the party may appeal the decision to the County Executive Member for the time being responsible for Trade.

(3) The County Executive Member for the time being responsible for Trade may confirm, reverse or modify the decision appealed against, and give such directions to the Board as may be necessary to give effect to the member's decision.

(4) The Board shall comply with any direction given under subsection (3).

(5) Nothing in this Section shall be construed to bar any aggrieved person from seeking any other legal redress.

(6) Notwithstanding the provisions of sub-section (5), such an aggrieved person shall exhaust available administrative action before seeking judicial or arbitrative redress.

Section 33 of Act No. 1 of 2017, which it is proposed to amend—

13. (1) Any person who—

(a) misappropriates any Funds or assets from the Fund; or

(b) assists or causes any person to apply the Funds in a manner that is not prescribed in this Act; or

(c) provides false information to another in order to access the Fund; shall be guilty of an offence under this Act and shall be liable, upon conviction, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

Section 33 of Act No. 1 of 2017, which it is proposed to amend—

14. (1) If any person is present at a meeting of the Fund at which any matter is the subject of consideration and in which matter that person or that person's spouse is directly or indirectly interested in a private capacity, that person shall as soon as is practicable after the commencement of the meeting declare such interest and shall not, unless the Fund otherwise directs, take part in any consideration or discussion of, or vote on any question connected to such matter.

(2) The disclosure of interest shall be recorded in the minutes of the meeting at which it is made.

(3) The members or staff of the Fund shall not transact any business or trade with the Fund.
First Schedule (1) of Act No. 1 of 2017, which it is proposed to amend—

15. The Board shall meet at least four meetings and a maximum of eight for the dispatch of its business in any financial year.

First Schedule (2) of Act No. 1 of 2017, which it is proposed to amend—

16. At the first meeting, the Board shall elect a non-executive Chairperson and vice-chairperson from amongst their number who shall be persons of opposite gender.
MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to amend the Nyeri County Enterprise Development Fund Act, 2017 so as to ensure smooth implementation of the Act.

Clause 1 of the Bill sets out the short title and commencement of the proposed Act.

Clause 2 of the Bill proposes to amend the long title of the Act by reducing repetition and thereby allowing for better clarity as to the objects of the Act.

Clause 3 of the Bill proposes to amend section 2 of the Act by giving the meaning of the term cooperative as used in the Act.

Clause 4 of the Bill proposes to amend the Act by changing the scope of fund target group for training to the beneficiaries only. This clarifies the scope of work for the Board. The amendment also ensures that the fund will focus more on promoting gainful employment through enterprise development rather than providing employment.

Clause 5 of the Bill proposes to amend section 8 to clarify the role of the County Executive Committee Member as stipulated in the PFMA.

Clause 6 of the Bill proposes to a new clause and provide for appointment of a financial institution that could administer the fund in case of lack of capacity.

Clause 7 of the Bill proposes to amend section 11 to redefine the powers of the Board. The power to charge and hold any security is a role of the County Executive Member. The Board should also give quarterly returns to the County executive Member for the time being responsible for Trade who is the appointing authority.

Clause 8 of the Bill proposes to amend section 12 to reduce the number of members of the Board, adhere to the Mwongozo guidelines on appointment of Chairpersons of Boards. The reduction in administration fees necessitated the proposed review. The procedure for nomination will also be prescribed by the County Executive Committee member for the time being responsible Trade. The clause also gives provision for appointment of the non-executive Chairperson by the County Executive Member for the time being responsible for Trade. This will ease administration of the fund as the Chairperson will have executive good will.

Clause 9 of the Bill proposes to amend section 13 to give room for disqualification from the Board if the status of a member changes after appointment to the Board. A member must meet the requirements
throughout their term. Qualifications for a Chairperson have also been provided to give the minimal qualifications for appointment into this position.

Clause 10 of the Bill proposes to amend section 14 by deleting subsection (b) which is a role of the County Executive Member.

Clause 11 of the Bill proposes to amend section 15 by providing re-appointment of a member or non-appointment for a second term.

Clause 12 of the Bill proposes to amend section 17 by deleting a section that had been provided in removal from office and also provide for term coming to an end which makes one automatically cease to be a member of the Board.

Clause 13 of the Bill proposes to amend section 18, to allow for filling of a vacancy in the Board after changes in the membership of the Board.

Clause 14 of the Bill proposes to amend section 19, to allow the fund focus on development of the fund beneficiaries only as opposed to the entrepreneurs in the county.

Clause 15 of the Bill proposes to amend section 20, by inserting a new sub-section to allow the Board make more guidelines on the access and eligibility criteria.

Clause 16 of the Bill proposes to amend section 21 by extending the period in which the Board shall give written communication to the Loan applicants who did not qualify. 7 days was a short period for the Board to have communicated and providing 21 days is a reasonable period.

Clause 17 of the Bill proposes to amend section 24 by removing the provision to vary security when a loan is not fully paid. The securities can only be discharged after the loan is fully paid. The new section provides for the County Executive Committee Member to prescribe securities acceptable and provide for charging and holding of securities.

Clause 18 of the Bill proposes to amend section 27 to provide for the fund to cater for capacity building of the beneficiaries as its one of its mandate. The Clause also reviews the administration costs of the fund to three percent.

Clause 19 of the Bill proposes to amend section by providing timelines for appealing and review of the Board’s decision. To provide the period within which the County Executive Member for the time being responsible for Trade to handle appeals and also conditions in which the Board’s decision may be modified or reversed.
Clause 20 of the Bill proposes to amend section 33 by increasing the penalty for the offences committed under this Act to One Million shillings.

Clause 21 of the Bill proposes to amend section 37 by reviewing when a member of the Board should declare their interest either directly or indirectly and that such disclosure will not be limited to a spouse, but to any other personal relation that might hinder good governance.

Clause 22 of the Bill proposes to amend the First Schedule and align it to the new provisions in regard to conduct and procedures of the Board in addition to providing for the meetings of the Board.

Dated the..., 2018.

DAVID MWANGI KABATHA,
Chairman Trade, Tourism, Culture and Co-operative Development