Bill for Introduction into the County Assembly of Vihiga—

The Vihiga County Co-operative Enterprises Development Fund Bill 2019 1
THE VIHIGA COUNTY CO-OPERATIVE ENTERPRISES DEVELOPMENT FUND BILL, 2019

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THE VIHIGA COUNTY CO-OPERATIVE ENTERPRISES DEVELOPMENT FUND BILL, 2019

A Bill for

AN ACT of the County Assembly of Vihiga to make provision for establishment of an Enterprises Development Fund for the Co-operatives Sector to provide low-interest loans to co-operative societies that seek to promote the welfare and economic development of the residents of the county and for connected purposes

PART I—PRELIMINARY

Short title

1 The Act shall be cited as the Vihiga County Co-operative Enterprises Development Fund Act, 2019

Interpretation

2 In this Act, unless the context otherwise requires—

"Affirmative action’ includes any measure designed to overcome or ameliorate an inequity or systematic denial or infringement of a right or fundamental freedom,

"Appropriation” means funds appropriated by the county assembly for purposes of the fund,

"Board” means a Board of management appointed as per these provisions of this Act to undertake functions as provided for in this Act,

"Constitution” means the constitution of Kenya, 2010

"Co-operative Enterprises Development Fund’ is a Fund established under this Act to be utilized as provided for within this Act,

"Co-operative Societies’ are those co-operatives registered under the Co-operative Societies’ Act Cap 490,

"County Co-operative Forum” means Congregation of representative of all co-operative societies in the County

"County Assembly Member” means a member elected or nominated in accordance with article 177(1) of the constitution

"County Assembly” means county assembly established under Article 176 of the constitution,

"County Chief Officer” means a county chief officer appointed under section 45 of the county government Act 2012,
“County Executive Committee Member” means a county executive committee member appointed under Section 35 of the County Governments Act 2012.

“County Gazette” means a county gazette published by the authority of the county government or a supplement of such gazette.

“County Government” means the county government provided for under article 176 of the constitution.

“County Public Office” means an office in the county public service or an office in a public body but does not include any office specifically exempted by the constitution from the powers of the county government.

“County public Officer” means any person appointed by the county government and holding or acting in any public county office whether paid, unpaid, or on contractual, or permanent terms but does not include a person engaged on a part-time basis in a county public body paid at an hourly or daily rate.

“County Public Service” means the collectivity of all individuals performing functions within any department of the county government or its agency, but does not include the governor, deputy governor, members of the county executive committee, and members of the county assembly.

“Effective Date” means the date this Act will come into force.

“Financial Year” means the period of 12 months ending on the thirtieth day of the month of June.

“Fund” means Vihiga county co-operative enterprises development fund established under this Act.

“Fund Manager” means any person appointed by the County Executive Committee Member under section 12.

“Guarantee” means any absolute or conditional promise, commitment, or undertaking by the county government or any other person to partially or completely repay or grant any loan to the county government or any other person.

“Loan” includes any form of borrowing, lending, or deferred payment in respect of money from a public fund which may be used or is required to be used for payment or repayment.

“Loan Security” means any attachment, guarantee or surety requested by the fund to ensure that the loan given out is fully repaid plus the accumulated interest thereof within the stipulated period of time.
“Manager” means a Person appointed as per the provisions of this Act to undertake all administrative functions of Vihiga County Co-operative Enterprises Development Fund,

“Marginalized Community” means a community that, because of its relatively small population or any other reason has been unable to fully participate in the integrated social and economic life of Vihiga County,

“Marginalized Group” means a group of people who, because of laws or practices before, on, or after the effective date of this Act were or are disadvantaged by discrimination on one or more of the grounds in article 27(4) of the constitution,

“Person” means any natural or juristic person including an organ of the county government,

“Publish” means the publication of a general notice in the gazette,

“The Public” when used in relation to this Act means—
(a) a resident of Vihiga County
(b) the rate payers of Vihiga County,

“Ward” means an electoral unit in a constituency delimited in accordance with Article 89 of the Constitution of Kenya, 2010,

“Ward Representative” means a county assembly member representing a particular ward,

“Writing” includes printing, photography, lithography, type writing, braille or any means or reproducing words in a visible form,

“Youth” means a collectivity of individuals who—
(a) have attained the age of 18 years, but
(b) have not attained the age of 35 years

PART II—ESTABLISHMENT OF VIHIGA COUNTY CO-OPERATIVE ENTERPRISES DEVELOPMENT FUND

Establishment of the Fund

3 (1) There is hereby established a fund to be known as Vihiga County Co-operative Enterprises Development Fund

(2) The fund shall be a body corporate with perpetual succession and a common seal, and shall have powers to acquire own, possess, and dispose of property, and to sue and be sued in its own name
Objects of the Fund

4  (1) To provide funds to be used for granting low-interest loans to co-operative societies with a view to upscaling their lending activities, value addition, promote entrepreneurship, and enhance productivity

(2) To provide funds to support, revive, and initiate co-operative societies in potential areas that can have positive impact to a household’s economy

(3) To facilitate investment in co-operative societies that have economic linkages to micro, small and medium size enterprises that benefit the youth and women

(4) To provide financial support to co-operative societies that engage in strategic and high-return interventions which directly and indirectly have the potential to higher growth in the sector

(5) To facilitate investment in co-operative societies that have economic linkages to low-income persons, community-based organizations, youth and women groups that accept to transform into co-operative societies

(6) To provide funds to co-operative societies to facilitate marketing of products and services both in the domestic and international markets

Establishment of the Board

5  (1) There is established a Board to be known as “Vihiga County Co-operative enterprises development Fund Board”

(2) The Board shall be responsible to the County Executive Committee Member for the time being responsible for co-operatives

Composition of the Board

6  The board shall consist of the following—

(a) the Chief officer for the time being responsible for co-operatives who will also be the Secretary to the Board

(b) the Chief Officer for the time being responsible for Finance

(c) County Commissioner of Co-operatives

(d) five persons elected from the Co-operative Movement during the County Co-operative Forum and at least one representative per Sub County, through a competitive and transparent recruitment process

(e) the five persons in (e) above shall elect a chairperson from among themselves at their first meeting

(f) Fund Manager as an ex-officio member
Qualification and vetting to be appointed a member of the Board

7 A person shall be qualified for appointment as a Board member under this Act if that person—

(a) Diploma/Post-Secondary school qualification recognized in Kenya

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

(c) meets the requirements of leadership and integrity as provided for in chapter 6 of the constitution of Kenya 2010,

(d) all shortlisted persons shall undergo a prescribed vetting process

Term of Office of Board Member

8 The chairman and members of the Board appointed under section 6 (e) shall serve for a term of three years and may be re-appointed to a single similar term

Vacation of Office of Board Member

9 The Office of a Board member appointed under section 6 (e) shall become vacant if the member—

(a) is adjudged bankrupt,

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

(c) is convicted of an offense involving fraud or dishonesty

(d) resigns in writing addressed to the Chairman of the Board,

(e) is removed from office by the Board for—

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

(ii) absent without permission (or) acceptable cause for three consecutive Board meetings

(iii) failing to declare his/her interest in a matter under consideration by the Board

(f) in the event of death

Functions of the Board

10 The functions of the Board shall be—

(a) to formulate and implement policy guidelines of the Fund,
(b) to oversee the projects financed from the Fund,
(c) to receive, analyze, and approve loan applications,
(d) to authorize disbursement of monies from the Fund,
(e) to design forms and other documents to be used in the administration of the Fund,
(f) to develop the organizational structure of the Fund
(g) to advice the relevant county executive committee member on the administration of the Fund,
(h) to initiate and approve standards, guidelines and procedures for funding project proposals,
(i) to do everything that is lawful for the better and efficient management of the Fund

Remuneration of the Board

11 The board shall not be salaried but entitled to allowances as per Salaries and Remuneration Commission (SRC)

PART III—CAPITALIZATION AND ADMINISTRATION OF THE FUND

Sources of the Funds

12 There shall be paid into the Fund—
(a) all monies appropriated by the County Assembly from the County Revenue Fund
(b) all monies paid in the Fund by way of repayment of the capital paid out of the Fund
(c) Interest from loans disbursed by the Fund
(d) all fees and other charges required to be paid to the Fund under this Act
(e) money borrowed by the Fund with approval of the County Assembly
(f) any gifts, donations, grants, endowments made to the Fund
(g) such contributions made by co-operative societies
(h) all other monies and dues that may lawfully become payable to the Fund
Bank Account for the Fund

13 In the absence of a Financial Institution to manage the Fund and in synchrony with (14) below—

(a) the Board shall open a bank account in consultation with the County Executive Committee Member for the time being responsible for Co-operatives and the County Executive Committee Member for the Department of Finance

(b) Bank Signatories

(c) the Chief Officer Finance will determine the number and designations of the signatories of the bank account in line with the PFMA Act (2012)

Fund Manager

14 The County Executive ‘Committee Member for Finance in consultation with the County Executive Committee Member for the time being responsible for Co-operatives will appoint a Financial Institution to administer the fund pursuant to the provisions of the Public Finance Management Act-2012. In the execution of the duties of the office the Fund Manager shall report to the Board

Fund Expenditure

15 (1) There shall be paid from the Fund—

(a) Loans to qualifying co-operative societies,

(b) Operational expenses incurred in the administration of the Fund,

(c) Monies as are necessary for the Board to carry out its mandate under this Act

(2) The expenses incurred in paragraphs (b) and (c) of subsection 1 shall not exceed 10% of the Funds capitalization from time to time

(3) The provision of any law or regulations relating to the management of public funds shall apply to the management of the Fund

Disbursements from the Fund

16 The Board shall lend to the co-operative societies directly or as the Board may determine

Application for a Loan

17 (1) A co-operative society wishing to be considered for the grant of a loan shall make an application to the Fund in a prescribed form
(2) The Fund shall grant loans to qualifying co-operative societies on such terms and conditions as the Board may prescribe, including—

(a) applicable interest rate
(b) form and manner of disbursement
(c) form, manner and frequency of repayment
(d) such other terms and conditions as may be prescribed by the Fund

(3) Any un-paid loan, including interest thereon, shall be recoverable by the Fund as a civil debt from the co-operative society in accordance with the relevant laws in Kenya

PART IV—REPORTS AND AUDITS OF THE FUND

Annual Estimates

18 (1) The Board shall prepare or cause to be prepared estimates of the revenue and expenditure of the Fund for that financial year at least three Months before the commencement of each financial year

(2) The financial estimates referred to in sub-section (1) shall be,

(3) Itemize every activity that the Board intends to undertake in respect of the Fund in the coming financial year under a separate vote head

(4) Upon approval of the estimates by the County Assembly, all monies appropriated for the purposes of the Fund shall be paid into the Fund account established under this Act

Financial Statements

19 (1) The Board shall cause to be kept such books of accounts and other records in relation thereto of all its undertakings funds, activities, and property as the County Executive member responsible for co-operatives may from time to time approve and shall within a period of three months after the end of the financial year, cause to be prepared, signed, and forwarded to the Auditor General

(2) Financial statements of the Fund, and such other statement of accounts as the county executive committee members for Finance may approve

Audit of the Fund

20 (1) The accounts of the Fund shall be examined, audited and reported upon annually by the Auditor-General in accordance with Public Audit Act
(3) The County Treasury shall submit to the Auditor-General all books of accounts of the Fund together with all vouchers in support thereof. The Auditor General shall be entitled to require from any member, officer, employee of the Fund such information and explanation as he may deem necessary for the performance of his duties as Auditor-General.

(4) The expenses incurred in and incidental to the auditing of the accounts of the Fund shall be met by the Fund.

Annual Report and Publication

21 (1) The Board shall within a period of three months after the end of the financial year, submit to the County Executive Committee Member responsible for co-operatives a report of the operations of the Fund and the Board during such year and the yearly balance sheet and such other statement of accounts as the County Executive Committee Member responsible for co-operatives shall require.

(2) The Board shall, if the County Executive Committee Member responsible for co-operatives so requires, publish the report, balance sheet and statements submitted under sub-section (1) in such a manner as the relevant County Executive Committee Member may specify.

(3) The County Executive Member responsible for co-operatives shall lay before the County Assembly the reports, balance sheet and statements submitted under section (1) within a period of fourteen days of the receipt of the reports and statements or, if the County Assembly is not sitting, within fourteen days of the commencement of its next sitting.

PART V—MISCELLANEOUS PROVISIONS

Offenses

22 (1) A co-operative society which, is granted a loan on the basis of false statements made in the loan application whether orally or in writing relating to any matter affecting a request for a loan (or)

(2) Upon being granted a loan and is required to answer questions furnish any information or particulars or produce any document, or, paper relating to the loan amount and use thereof neglects or fails to do so without reasonable cause commits an offense and is upon conviction liable to a fine not exceeding two hundred thousand Kenyan shillings.

(3) In addition to the fine in sub section (1), a committee member of a co-operative society, employee or agent of a co-operative society shall be liable on conviction to imprisonment for a term not exceeding 18 months.
Regulations

23 Subject to the provisions of the Public Finance Management Act 2012, the County Executive Committee Member responsible for co-operatives shall in consultation with the Board make Regulations for the better carrying out of provisions of this Act

Winding up of the Fund

24 In the event of winding up of the Fund, the cash balances shall be transferred to the account designated by the County Treasury while other assets shall be transferred to the County Government.
MEMORANDUM OF OBJECTS AND REASONS

This Bill provides for the establishment of “The Vihiga County Co-operative Enterprises Development Fund” aimed at improving and stimulating the economy of the county and its residents through upscaling the operations of the co-operative sector.

The Bill is structured as follows:

PART I of the Bill provides for the Preliminary matters including the short title, and the interpretation of words and expressions used in the Bill. This is intended to provide clarity of the terms used during the interpretations and implementations of the Act.

PART II provides for the establishment of the Vihiga County Co-operative Enterprises Development Fund, and its Objects and Purpose. It also provides for Establishment of the Board of management of the Fund. The Part prescribes the composition of the Board to ensure proper management of the Fund. It also stipulates the qualifications of the Board Members, qualifications to be appointed to the Board and prescribes their terms of Office. It also outlines the conditions under which Board Members may be removed from further serving on the Board. It describes the functions and powers of the Board to enable it execute the mandate of the Fund. It also describes the application of the proceeds of the Fund and requires that access to the Fund’s services be available to all viable co-operative societies in Vihiga County.

PART III provides for sources of funds to the Fund including appropriations from the Vihiga County Revenue Fund, donations, gifts, grants and other funds as may lawfully accrue to the Fund. It provides for the opening and management of a separate Fund account in accordance with the provisions of the Public Finance Management Act 2012. The part also provides for the management of the Fund by the Board and appointment of a professional Fund Manager for the day-to-day operations of the Fund. It provides for the manner in which the Expenditure of the Fund shall be incurred, the manner in which the Fund shall be disbursed to qualifying co-operative societies and the manner in which loan applications shall be made by co-operative societies.

PART IV provides for the preparation of the estimates of revenue and publication of the annual report of the Fund, the manner in which the Fund would be closed. It also prescribes for the manner in which the financial statements and audits of the Fund shall be deducted.
PART V describes miscellaneous provisions under the Act that include actions and omissions that constitute offenses. It also provides for the promulgation of Regulations to the Act.

The Act shall occasion additional expenditure to the County. The expenditure shall be appropriated by the County Assembly.

MANOA KAREGA MBOKU,
Chairperson, Committee on Agriculture, Livestock, Fisheries and Co-operatives