

REPUBLIC OF KENYA



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ELEVENTH PARLIAMENT-THIRD SESSION

THE MEDIATION COMMITTEE ON THE FERTILIZER AND ANIMAL FOODSTUFFS ACT (NATIONAL ASSEMBLY BILL NO. 36 OF 2013)

REPORT ON THE FERTILIZER AND ANIMAL FOODSTUFFS AMMENDMENT (NATIONAL ASSEMBLY BILL NO. 36 OF 2013)

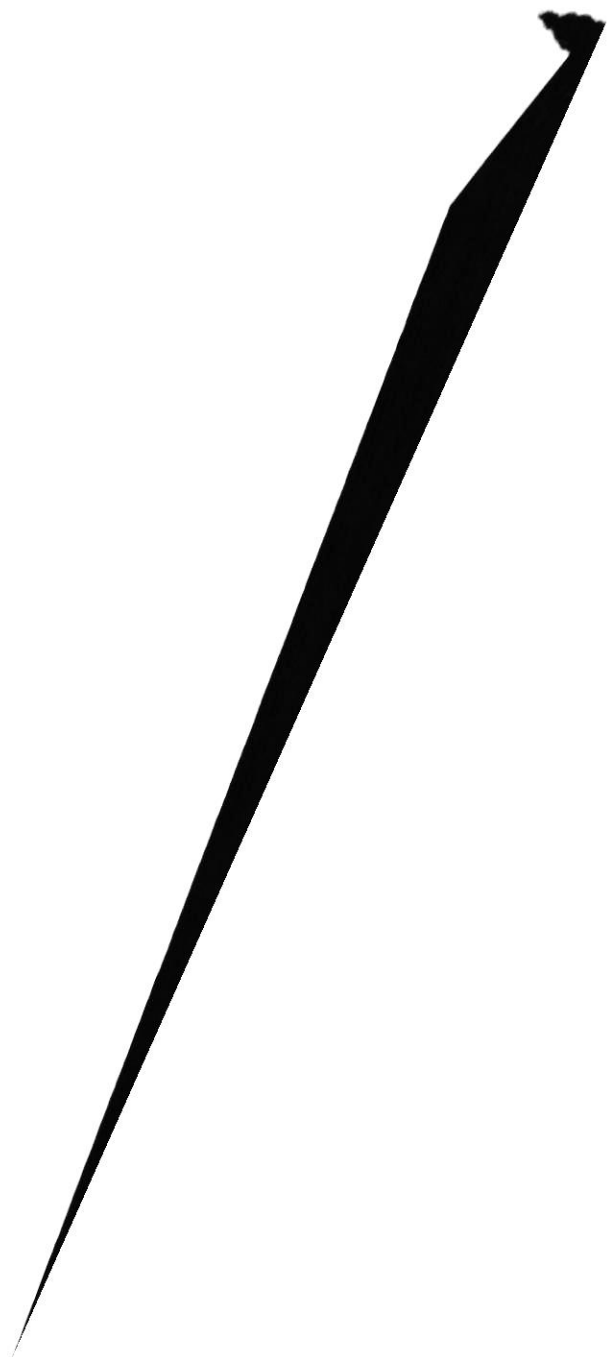
JULY 2015

*Paper laid  
By Hon Benjamin Washiali - Chair of the Fertilizer & Animal Foodstuffs Committee  
Bill, 2013  
on wed 19/7/15  
WH*



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REPUBLIC OF KENYA



PARLIAMENT OF KENYA

ELEVENTH PARLIAMENT-THIRD SESSION

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THE MEDIATION COMMITTEE ON THE FERTILIZER AND ANIMAL  
FOODSTUFFS ACT (NATIONAL ASSEMBLY BILL NO. 36 OF 2013)

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REPORT ON THE FERTILIZER AND ANIMAL FOODSTUFFS AMMENDMENT  
(NATIONAL ASSEMBLY BILL NO. 36 OF 2013)

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JOINT CLERKS' CHAMBERS  
PARLIAMENT BUILDINGS  
NAIROBI

JULY 2015

*Paper laid*  
*By Hon Benjamin*  
*Washali - Chair*  
*Mediation Commi*  
*the Fertilizer &*  
*Foodstuffs CA*  
*Bill, 2013*  
*on wed 19/*



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AGENT/STOCKIST SUMMARY 2010

REGION	NO AGENTS	NO OF STOCKISTS
Simlows	156	350
T/Nzoia/Pokot	40	186
Eldoret	41	348
Bungoma	39	37
Kakamega	29	43
Kisii	22	305
Nakuru	55	450
Kericho	18	303
<b>TOTAL</b>	<b>400</b>	<b>2022</b>

This list of agents and stockists is as at end of 2010.

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ANNEX VIII

MINUTES OF THE COMMITTEE'S SITTINGS

MINUTES OF THE ONE HUNDRED AND FORTY SEVENTH SITTING OF THE DEPARTMENTAL COMMITTEE ON AGRICULTURE, LIVESTOCK AND COOPERATIVES HELD AT MBEGU PLAZA, KENYA SEED COMPANY HEADQUARTERS, KITALE ON FRIDAY, 6<sup>TH</sup> MAY, 2011, AT 16:30 PM

PRESENT

Hon. John Mututho, MP - Chairperson  
Hon. Lucas Chepkitony, MP - Vice Chairperson  
Hon. John D. Pesa, MP.

APOLOGIES

Hon. (Dr.) Victor Kioko Munyaka, MP  
Hon. (Dr.) Erastus Mureithi, MBS, HSC, MP  
Hon. Benson Mbai, MP  
Hon. Mohammud Sirat, MP  
Hon. Benjamin Washiali, MP  
Hon. Fredrick Outa, MP  
Hon. (Dr.) Robert O. Monda, MP  
Hon. Evans Akula, MP

IN ATTENDANCE

KENYA NATIONAL ASSEMBLY

Paul K. Ngetich - Senior Research Officer  
Evans Oanda - Third Clerk Assistant  
Charles Ondigi - Assistant Hansard Editor

KENYA SEED COMPANY

Andrew Mullei - Chairman  
Justina Sitt - Director  
Jedidah Gachanja - Director  
Johnson Irungu - Rep PS Ministry of Agriculture  
W A Kisiero - Director  
Kamau Mwaura - Rep PS Treasury  
Willy Bett - Managing Director  
Alfred Busolo - Deputy Managing Director  
Lenard Menya Ong'onge - Finance Manager  
Hosea Sirma - Chief Officer in Basic Seed  
Andrew Ngeno - Processing/ Eng. Manager  
Francis Ndambuki - Research and Development Manager  
Eunice Ombachi - Ag. Operations Manager  
Beatrice Anyabu - Ag. CDO  
Esther Bii - COP  
Sammy Chepsiror - Chief Public Relations  
Michael Rotich - Senior Administration Officer  
Rose Cauri - representing Company Secretary

MIN.NO. 118/2011: PRELIMINARY

The meeting started with a word of prayer.

MIN.NO. 119/2011: SHORTAGE OF SEEDS (MAIZE)

Papers laid:

- I. Minutes of the board meeting that ratified the decision to decrease seed production dated 14<sup>th</sup>, March, 2008
- II. A management paper bearing a decision to decrease production
- III. Minutes of the marketing and production planning Committee dated 23<sup>rd</sup>, January, 2008 that endorsed the management paper to reduce production
- IV. KSC Financial Statements for the years ending 30/06/2008, 30/06/2010, 30/06/2006
- V. A breakdown of the gross margin analysis of producing a kg of maize seeds for the years 2002 to 2011

The Committee sought to know from the Kenya Seed Company the causes of seed shortage (maize) in the country especially the 6 series and what is being done to address the crisis.

Kenya Seed Company informed the Committee that:

- i. Indeed there is shortage of maize seed for planting in this season especially the 6 series
- ii. This is due to a Board meeting held on 14<sup>th</sup>, March, 2008 that ratified the management paper that called for reduction in seed production.
- iii. This management paper was done to cater for the decreasing demand of the carryover seeds in the year 2007.
- iv. Some members of the management were discontented with the decision but since they had to adhere to the principle of consensus, the majority took the day.
- v. Subsequently, production was stopped in the year 2008.
- vi. There was drought in the year 2009 that affected the production of seeds coupled with the low production price of Khs. 41 offered to farmers for production.
- vii. By January 2010, there were neither carryover stocks nor production from farmers.
- viii. As far as the Kenya Seed Company (KSC) was concerned, there was a demand of 17.5 million kgs of seeds in the year 2011 out of which KSC had supplied 16.5 million Kgs as at 6<sup>th</sup>, May 2011.
- ix. Remedial measures that have been taken to address the seed crisis include doubling the production acreage to 10,000 acres; encouraging farmers to produce by offering better production prices of Khs. 52 up from Khs. 41; and construction of a water dam at Godown farm for basic seed production during the drought season among others.
- x. By October 2011, the amount of 614 variety in the stores should be 14 million Kgs against a demand of 8 million Kgs.

## 1.0 INTRODUCTION

### 1.1 Establishment of the Committee

The Mediation Committee on the Fertilizer and Animal Food Stuff Amendment Act 2013 was constituted by the Speaker of the National Assembly pursuant to Standing Order 149 (2) and the Speaker of the Senate pursuant to Senate Standing Orders No. 154 (2) on 4<sup>th</sup> May, 2015, and 14<sup>th</sup> July, 2015, respectively.

Committee Membership:-

Hon. Benjamin Washiali, M.P.	- Chairperson
Sen. Henry Tiole Ndiema, M.P.	- Vice Chairperson
Sen. Kiraitu Murungi, M.P.	- Member
Hon. Adan Mohamed Noor, M.P.	- Member
Sen. Peter Korinko Mositet, M.P.	- Member
Hon. Chrisantus Wamalwa, M.P.	- Member

### 1.2 The Mandate of the Mediation Committee

The Mediation Committee derives its mandate from the provisions of Articles 112 and 113 of the Constitution, Standing Order 149 of the National Assembly and Standing Order 154 of the Senate which outlines the functions of the Committee as follows:-

- *To consider Bills where the Houses do not agree on all or any of the amendments made by either Houses;*
- *To consider Bills where either House rejects a Motion that a Bill which originated in the other House be read a Second or Third time; and*
- *To attempt to develop a version of the Bill that both Houses will pass.*

The Committee was established to develop an agreed version of the Fertilizer and Animal Food Stuff Amendment Act 2013 (National Assembly Bill No. 36 of 2013) that would be presented to both Houses for approval as provided for under National Assembly Standing Order No. 149 (6) and Senate Standing Order 155 (3).

The specific clauses of the Bill that were in contention were Clause 3

### 1.3 Committee Sittings

The Committee held its first sitting on 29<sup>th</sup> July, 2015 and elected Hon. Benjamin Washiali, M.P. and Sen. Henry Tiole Ndiema, M.P as Chairperson and Vice Chairperson, respectively. The Committee thereafter deliberated on Clause 3 of the Fertilizer and Animal Food Stuff Amendment Act 2013 (National Assembly Bill No. 36 of 2013) which was in contention.

### 1.4 Committee Resolutions

The Committee deliberated on clause 3 and unanimously agreed on a version of the bill to be presented to the both Houses for approval.

### 1.5 Acknowledgment

The Committee thanks the Offices of the Speakers and the Clerks of the National Assembly and the Senate for the necessary support extended to it in the execution of its mandate.

The Chairperson thanks all the Members of the Committee for their sacrifice, commitment and selflessness to the cause of the mediation process until common ground was arrived at.

#### Mr. Speaker Sir,

It is my pleasant duty, pursuant to Standing Order 155 (1), to present a report of the Mediation Committee on the Fertilizer and Animal Food Stuff Amendment Act 2013 (National Assembly Bill No. 36 of 2013) for consideration by the House.

SIGNED.....

**HON. BENJAMIN WASHIALI, M.P.**  
CHAIRPERSON

SIGNED: .....

**SEN. HENRY TIOLE NDIEMA, MP**  
VICE CHAIRPERSON

DATE.....

30<sup>th</sup> July, 2015

**MEDIATION COMMITTEE ON THE FERTILIZER AND ANIMAL FOODSTUFF AMMENDMNET ACT 2013 (NATIONAL ASSEMBLY BILL NO. 36 OF 2013)**

**2.0 BACKGROUND**

The Fertilizer and Animal Food Stuff Amendment Act 2013 (National Assembly Bill No. 36 of 2013) was published in the Kenya Gazette Supplement No. 50 of 1<sup>st</sup> November, 2013 as a Bill originating in the National Assembly. The Bill underwent the First and Second readings and subjected to public participation as required by the Constitution and National Assembly Standing Orders and was passed on 19<sup>th</sup> June, 2014 and then referred to the Senate for consideration pursuant to National Assembly Standing Order No. 142.

The Senate subjected the Bill to a First and Second readings and public participation as required by the Constitution and Senate Standing Orders and was passed on 17<sup>th</sup> February, 2015 with amendments and referred back to the National Assembly.

The National Assembly, during its House sitting of 29<sup>th</sup> April, 2015 considered the proposed amendments by the Senate and by a resolution rejected the Senate's amendments on Clause 3 of the Bill. Consequently, and pursuant to National Assembly Standing Order No. 149 and Senate Standing Order No. 154, the Bill, and specifically Clause 3 of the Bill, was referred to a Mediation Committee with the sole objective of developing a version of the Bill that would be presented to both Houses for approval.

**3.0 CONSIDERATION OF THE ON THE FERTILIZER AND ANIMAL FOODSTUFF AMMENDMNET ACT 2013 (NATIONAL ASSEMBLY BILL NO. 36 OF 2013)**

The Committee also unanimously agreed and adopted the inclusion of the Director of Veterinary Services as a Board Member of the Fertilizer and Animal Foodstuffs Board of Kenya.

The justification for the inclusion of the Director of Veterinary Services in the Board was to provide technical advice and guidance in matters Animal food stuff.

The Committee further agreed that the Attorney General be excluded as a Board Member of the Fertilizer and Animal Food stuff Board of Kenya. The justification for this is that the Attorney General is the overall chief Advisor to the Government; therefore whenever legal advice is required he can be consulted without necessarily being a member of the board. The Committee



was also of the view that the board should be comprised of persons who can offer technical advice in regards to matters of fertilizers and animal foodstuffs, and the Attorney-General would not be in a position to offer the technical advice.

#### **4.0 RESOLUTIONS OF THE MEDIATION COMMITTEE**

The Mediation Committee identified the proposed new Clause 3 sub- Clause 2(c) as being contentious and agreed on the following mediated version:

##### **New Clause 3, sub-Clause 2(c) – mediated version**

Membership (1) The Board shall consist of the following persons  
of the appointed by the Cabinet Secretary -  
Board

- (a) the Chairperson competitively sourced and appointed by the Cabinet Secretary;
- (b) the Principal Secretary in the Ministry for the time being responsible for Agriculture or his designated alternate not being below the level of Deputy Secretary;
- (c) the Principal Secretary in the Ministry for the time being responsible for livestock or a designated alternate not being below the level of Deputy Secretary;
- (d) the Principal Secretary in the Ministry for the time being responsible for finance

- (e) two persons of either gender representing prescribed farmers associations competitively nominated and one person of either gender from the Fertilizers Association of Kenya;
- (f) one person nominated by the Council of Governors;
- (g) the Director of Veterinary Services;
- (h) one person representing research institutions in the agriculture sector competitively sourced and appointed by the Cabinet Secretary;
- (i) the Chief Executive Officer who shall be an ex-officio member and Secretary to the Board

**ANNEXES:**

1. Minutes of the Mediation Committee
2. The agreed Version of the Bill

MINUTES OF THE MEDIATION COMMITTEE BETWEEN NATIONAL ASSEMBLY AND SENATE ON THE FERTILIZER AND ANIMAL FOODSTUFFS (AMMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO.36 OF 2013)

Present

1. Hon. Benjamin Washiali, M.P -Chairman
2. Sen. Kiraitu Murungi, M.P
3. Hon. Adan M. Nooru, M.P MBS
4. Sen. Henry Ndiema, M.P
5. Hon. Chrisantus Wamalwa, M.P

In Attendance:

Kenya National Assembly Secretariat

1. Ms. Angeline Naserian - Third Clerk Assistant
2. Ms. Christine Odhiambo-Legal Counsel

Senate Secretariat

1. Crispus Njogu - Third Clerk Assistant
2. Elizabeth Muhia - Principal Legal Counsel

MIN. 001/2015: PRELIMINARIES

The meeting was called to order at 10.20am and prayer was said by Sen. Kiraitu Murungi, M.P.. Members Adopted the day's agenda as presented in the notice of meeting.

MIN. NO. 002/2015: ELECTION OF CHAIRPERSON AND VICE CHAIRPERSON

The Committee elected Hon. Benjamin Washiali, M.P to Chair the Meeting, because the bill originated from the National Assembly and the substantive Chair of the Agriculture, Livestock and Fisheries Committee was not present at that moment.

The Committee also elected Sen. Henry Ndiema, M.P to be the Vice-Chair of the Committee.

MIN. 003/2015: CONSIDERATION OF THE SENATE AMENDMENTS TO THE FERTILIZER AND ANIMAL FOODSTUFFS AMENDMENT BILL, NATIONAL ASSEMBLY BILL, 36/2013

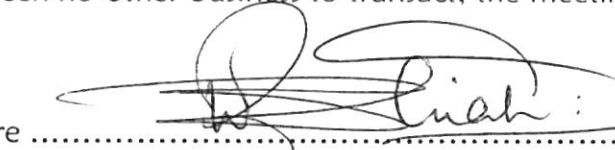
CLAUSE 3

Inserting the following new paragraph after paragraph (f) Director Veterinary Services

- The Committee unanimously agreed and adopted the inclusion of the Principal Secretary in the Ministry for the time being responsible for Livestock as a Board Member.
- The Committee also unanimously agreed and adopted the inclusion of the Director of Veterinary Services as a Board Member of the Fertilizer and Animal Foodstuffs Board of Kenya.
- The justification for the inclusion of the Director of Veterinary Services in the Board was to provide technical advice and guidance in matters Animal food stuff.
- The Committee further agreed that the Attorney General be excluded as a Board Member of the Fertilizer and Animal Food stuff Board of Kenya. The justification for this is that the Attorney General is the overall chief Advisor to the Government; therefore whenever legal advice is required he can be consulted without necessarily being a member of the board. The Committee was also of the view that the board should be comprised of persons who can offer technical advice in regards to matters of fertilizers and animal foodstuffs, and the Attorney-General would not be in a position to offer the technical advice.

MIN 181/2015: ADJOURNMENT

There been no other business to transact, the meeting was adjourned at 12:10 p.m.

Signature ..... 

HON. BENJAMIN WASHIALI M.P.

(Chairman)

Date..... 30<sup>th</sup> JULY, 2015 .....



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REPUBLIC OF KENYA

PARLIAMENT

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NATIONAL ASSEMBLY BILLS  
*(Bill No. 36 of 2013)*

**THE FERTILIZER AND ANIMAL FOODSTUFFS  
(AMENDMENT) BILL, 2013**

(A Bill published in the Kenya Gazette Supplement No.150 of 2013 and passed by the National Assembly, with amendments, on June 19, 2014)

N.A./B/No. 36/2014

**THE FERTILIZERS AND ANIMAL FOODSTUFFS  
(AMENDMENT) BILL, 2013**

A Bill for

**AN ACT of Parliament to amend the Fertilizers  
and Animal Foodstuffs Act**

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Fertilizers and Animal  
Foodstuffs (Amendment) Act, 2014.

Short title

2. The Fertilizers and Animal Foodstuffs Act, in this  
Act referred to as the “principal Act”, is amended in section  
2 by -

Amendment of  
section 2 of Cap 345.

- (a) deleting the definition of the word “the Director”;  
and
- (b) inserting the following words in their proper  
alphabetical sequence—

“Board” means the Fertilizer Board of Kenya  
established by section 2A;

“Cabinet Secretary” means the Cabinet  
Secretary for the time being in-charge of matters  
relating to agriculture;

3. The principal Act is amended by inserting the  
following new sections immediately after section 2—

Insertion of new  
section 2A into Cap  
345.

Establishment of the  
Board

**2A.** (1) There is established a body to  
be known as the Fertilizer Board of Kenya.

(2) The Board shall be a body corporate  
with perpetual succession and a common  
seal and shall, in its corporate name, be  
capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) borrowing money or making investments;
- (d) charging fees for services rendered by it and requesting for securities for such fees; and
- (e) doing or performing all other acts or things for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.

Functions of the Board.

**2B.** The functions of the Board shall be to—

- (a) advise the Cabinet Secretary on matters relating to fertilizers and to advise on the relative priorities to be given to the implementation of specific measures;
- (b) facilitate the development and establishment of fertilizer manufacturing factories in Kenya;
- (c) encourage and empower Kenyans to invest and establish local fertilizer production plants;
- (d) manage the importation and distribution of fertilizer;
- (e) ensure that there are adequate retail outlets in all counties where farmers can access fertilizers;



- (f) facilitate the provision of fertilizers to farmers in a timely manner;
- (g) collaborate with agricultural research institutions, universities and other stakeholders in the development of suitable fertilizers for improvement of crop productivity in the country;
- (h) advise the relevant authorities on the development of policies related to the manufacture and distribution of fertilizer;
- (i) advise county governments on the purchase of fertilizers; and
- (j) advise the Cabinet Secretary on any matters relating to or incidental to fertilizers and animal foodstuffs.

Membership of the Board.

2C. (1) The Board shall consist of the following persons appointed by the Cabinet Secretary -

- (a) the Chairperson competitively sourced and appointed by the Cabinet Secretary;
- (b) the Principal Secretary in the Ministry for the time being responsible for Agriculture or his designated alternate not being below the level of Deputy Secretary;
- (c) the Principal Secretary in the Ministry for the time being responsible for finance
- (d) two persons of either gender representing prescribed farmers

associations competitively nominated and one person of either gender from the Fertilizers Association of Kenya;

(e) two persons of either gender representing county governments competitively and transparently appointed by the Council of County Governors established under the Intergovernmental Relations Act, 2012.

No.17 of 2012

(f) the Attorney-General or his representative;

(g) the Chief Executive Officer who shall be an ex-officio member and Secretary to the Board

(2) No person shall be appointed under subsection (1) (a) unless such person is a holder of a degree in a relevant discipline with not less than five years professional experience.

(3) Subject to this Act, all acts and things done in the name of, or on behalf of, the Board, by the Board or with the authority of the Board shall be deemed to have been done by the Board.

Conduct of business and affairs of the Board.

**2D.** (1) The conduct and regulation of the business and affairs of the Board shall be as provided in the Schedule.

(2) Except as provided in the Schedule, the Board may regulate its own procedure.

Powers of the Board.

**2E.** (1) The Board shall have all powers necessary for the proper performance of its functions under this Act.

(2) Without prejudice to the generality

of the subsection (1), the Board shall have power to—

- (a) control, supervise and administer the assets of the Board in such manner as best promotes the purpose for which the Board is established;
- (b) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Board;
- (c) receive any grants, gifts, donations or endowments and make legitimate disbursements there from;
- (d) open such banking accounts for the funds as the Board may deem necessary;
- (e) invest any funds of the Board not immediately required for its purposes in the manner provided in section 2P;
- (f) establish such directorates, departments and regional centres of the Board to deal with such specific matters as may be necessary;
- (g) undertake any activity necessary for the fulfillment of any of the functions of the Board.

Remuneration of Board members.

**2F.** The Board shall pay its members such allowances as it may determine upon the advice of the body responsible for matters relating to remuneration.

Chief Executive Officer.

**2G. (1)** There shall be a Chief Executive Officer who shall be appointed by the Board and whose terms and conditions of service shall be determined by the Board in the instrument of appointment or otherwise in writing from time to time upon the advice of

the Salaries and Remuneration Commission.

(2) No person shall be appointed under this section unless such person has-

(a) a university degree from a recognized university in a relevant discipline;

(b) at least five years' post qualification working experience.

(3) The Chief Executive Officer shall—

(a) be the secretary to the Board; and

(b) subject to the directions of the Board be responsible for the day to day management of the affairs and staff of the Board.

Staff of the Board.

**2H.** The Board may appoint such officers and other staff as are necessary for the proper discharge of its functions under this Act, upon such terms and conditions of service as it may determine upon the advice of the Salaries and Remuneration Commission.

Delegation by the Board.

**2I.** The Board may, by resolution either generally or in any particular case, delegate to any committee or to any member, officer, employee or agent of the Board, the exercise of any of the powers or the performance of any of the functions or duties of the Board under this Act or under any other written law.

Protection from personal liability.

**2J.** (1) No act or omission by any member of the Board or by any officer, employee, agent or servant of the Board shall, if the act or omission was done bona-fide for the purposes of executing a function, power or duty under the Act render such member, officer, employee, agent or servant personally liable to any, action, claim or

demand whatsoever.

(2) The provisions of subsection (1) shall not relieve the Board of the liability to pay compensation to any person for any injury to him, his property or to any of his interests caused by the exercise of any power conferred by this Act or by failure, whether wholly or partially, of any works.

Common seal.

**2K.** (1) The common seal of the Board shall be kept in such custody as the Board may direct and shall not be used except on the order of the Board.

(2) The affixing of the common seal of the Board 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 both the Chairperson and the Chief Executive Officer.

(3) Notwithstanding the provisions of subsection (2) the Board shall, in the absence of either the Chairperson or the Chief Executive Officer in a particular matter, nominate one member to authenticate the seal on behalf of either the Chairperson or the Chief Executive Officer.

(4) The common seal of the Board when affixed to a document and duly authenticated shall be judicially and officially noticed and unless and until the contrary is proved, any necessary order or authorization by the Board under this section shall be presumed to have been duly given.

Funds of the Board.

**2L.** (1) The funds of the Board shall comprise of—

- (a) such sums as may be appropriated by Parliament for that purpose;
- (b) grants, gifts or donations that the Board may receive as a result of public and private appeal from local and; international donors or agencies for the purposes of carrying out its functions.
- (c) such fees, monies or assets as may accrue to or vest in the Board in the course of the exercise of its powers or the performance of its functions under this Act or under any written law; and
- (d) all monies from any other lawful source provided for or donated or lent to the Board.

(2) The funds of the Board and its balances at the close of each financial year shall not be paid into the Consolidated Fund, but shall be retained for the purposes for which the Board is established.

Financial year.

**2M.** The financial year of the Board shall be the period of twelve months ending on the thirtieth June in each year.

Annual estimates.

**2N.** (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 Board for that year.

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

- (a) the payment of the allowances and other charges in respect of members

of the Board;

- (b) the payment of salaries, allowances, pensions, gratuities and other charges in respect of staff of the Board;
- (c) the proper maintenance of the buildings and grounds of the Board;
- (d) the maintenance, repair and replacement of the equipment and other property of the Board; 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 deem appropriate.

(3) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary for approval and after the Cabinet Secretary's approval, the Board shall not increase the annual estimates without the consent of the Cabinet Secretary.

Accounts and audit.

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

(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 Board together with-

- (a) a statement of the income and expenditure of the Board during that year; and

(b) a balance sheet of the Board on the last day of that year.

No.12 of 2003

(3) The accounts of the Board shall be audited and reported upon in accordance with the Public Audit Act, 2003.

Investment of funds.

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

4. Section 4 of the principal Act is amended by deleting the words "Director a certificate signed in the country of origin by a person designated by the Minister" and substituting therefor the words "Board a certificate signed in the country of origin by a person designated by the Cabinet Secretary".

Amendment of section 4 of Cap 345

5. Section 5 of the principal Act is amended—

Amendment of section 5 of Cap 345.

- (a) in subsection (2) by deleting the word "Director" and substituting therefor the word "Board";
- (b) in subsection (4) by deleting the word "Director" and substituting therefor the word "Board".

6. Section 6 of the principal Act is amended—

Amendment of section 6 of Cap 345.

- (a) by deleting the word "Director" wherever it occurs in the section and substituting therefor the word "Board";
- (b) by deleting the word "Minister" wherever it occurs in the section and substituting therefor the word "Cabinet Secretary".

7. Section 8 of the principal Act is amended by

Amendment of section 8 of Cap 345.



deleting the word “Minister” and substituting therefor the words “Cabinet Secretary on the recommendation of the Board”.

8. Section 9 of the principal Act is amended by inserting the following new subsection immediately after subsection (5)—

Amendment of  
section 9 of Cap 345.

(6) The right to privacy under Article 31 of the Constitution and the right to property under Article 40 of the Constitution shall be limited as specified under this section for the purposes of facilitating the safety of the public and the ensuring compliance with the provisions of this Act relating to importation, storage, distribution, sale or possession of fertilizers.

9. Section 10 of the principal Act is amended by deleting the word “Minister” where it occurs and substituting therefor the word “Cabinet Secretary”.

Amendment of  
section 10 of Cap  
345.

10. Section 16 of the principal Act is amended by deleting the words “one thousand shillings or to imprisonment for a term not exceeding one month, and for a second or subsequent offence to a fine not exceeding three thousand shillings” and substituting therefor with the words “one hundred thousand shillings or to imprisonment for a term not exceeding one month, and for a second or subsequent offence to a fine not exceeding three hundred thousand shillings”.

Amendment of  
section 16 of Cap  
345.

11. The principal Act is amended in section 18 by —

Amendment of  
section 18 of Cap  
345.

- (a) renumbering the existing provision as subsection (1);
- (b) deleting the word “Minister” and substituting therefor the words “Cabinet Secretary on recommendation of the Board”; and
- (c) inserting the following new subsection

immediately after the new subsection (1) –

(2) The Cabinet Secretary for the time being in charge of the National Treasury shall implement tax policies and where appropriate price policies on imported fertilizers so as to promote local industries.

12. The principal Act is amended in section 19 by deleting –

Amendment of section 19 of Cap 345.

(a) the word “Minister” appearing in subsection (1) and substituting therefor the words “Cabinet Secretary on recommendation of the Board”; and

(b) the words “three thousand shillings” appearing in subsection (2) and substituting therefor the words “one million shillings” and further by deleting the word “three” and substituting therefor the word “six”.

20 13. The principal Act is amended by deleting section

Deletion of section 20 of Cap 345.

*The Fertilizers and Animal Foodstuffs (Amendment) Bill, 2013*

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I certify that this printed impression is a true copy of the Bill passed by the National Assembly on the 19<sup>th</sup> June, 2014



*Clerk of the National Assembly*

Endorsed for presentation to the Senate in accordance with the provisions of Standing Order 142 of the National Assembly Standing Orders.



*Speaker of the National Assembly*

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY  
ELEVENTH PARLIAMENT  
(THIRD SESSION)

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**THE FERTILIZERS AND ANIMAL FOODSTUFFS  
(AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO.36  
OF 2013)**

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**SENATE AMENDMENTS**

*(circulated pursuant to Standing Order 145)*

**THE FERTILIZERS AND ANIMAL FOODSTUFFS (AMENDMENT)**  
**BILL (NATIONAL ASSEMBLY BILL NO. 36 OF 2013)**

**SENATE AMENDMENTS**

**Clause 2**

**That** Clause 2 of the Bill be amended in sub clause (b) in the definition of the word "Board" by deleting the words "Fertilizer Board of Kenya" and substituting therefor the words "Fertilizer and Animal Foodstuffs Board of Kenya".

**Clause 3**

**That** clause 3 of the Bill be amended-

(a) In sub clause (1) of the proposed new section 2A by deleting the words "Fertilizer Board of Kenya" and substituting therefor the words "Fertilizer and Animal Foodstuffs Board of Kenya".

(b) by deleting the proposed new section 2B and substituting therefor the following proposed new section-

Functions of 2B. The functions of the Board shall be to-  
the Board

(a) regulate the fertilizers and animal foodstuffs industry in Kenya including the production, manufacture, packaging, importation and marketing of fertilizers and animal foodstuffs;

(b) regulate the importation of raw materials for the manufacture of animal foodstuffs;

(c) promote the manufacture of fertilizers and animal foodstuffs in Kenya;

(d) advise the national and county governments on-

(i) the procurement, importation and efficient and timely distribution of subsidized fertilizers and animal foodstuffs;

(ii) establishment of retail outlets of fertilizers and animal foodstuffs in the counties; and

(iii) development of policies related to the manufacture and distribution of fertilizers and

animal foodstuffs;

- (e) inspect and test fertilizers and animal foodstuffs to ensure their quality and safety;
  - (f) license manufacturers, distributors and retailers of fertilizers and animal foodstuffs on the recommendation of the Director of Agriculture and the Director of Veterinary Services;
  - (g) promote, in collaboration with stakeholders in the agriculture industry, research on fertilizers and animal foodstuffs; and
  - (h) ensure that fertilizers and animal foodstuffs imported, manufactured or distributed in Kenya meet the standards of quality and safety as prescribed by law.
- (c) in the proposed new paragraph 2C-
- (i) in sub clause (1) by-
    - (a) inserting the following new paragraph immediately after paragraph (b)
      - (ba) the Principal Secretary in the Ministry for the time being responsible for livestock or a designated alternate not being below the level of Deputy Secretary;
    - (b) deleting paragraph (e)
    - (c) deleting paragraph (f) and substituting therefor the following new paragraph-
      - (f) one person nominated by the Council of Governors;
    - (d) inserting the following new paragraphs after paragraph (f) -
      - (fa) the Director of Veterinary Services;
      - (fb) one person representing research institutions in the agriculture sector competitively sourced and appointed by the Cabinet Secretary;
  - (ii) by inserting the following new sub clauses immediately after sub clause (2)-
    - (2A) The Cabinet Secretary shall ensure that not more than one-third of the persons appointed under subsection (1) are of the same gender.
    - (2B) A person appointed under subsection (1) shall hold office for a period of three years and may be re-appointed for a further non-renewable term of three years.

(d) by inserting the following new clause immediately after clause 2M-

Annual report      2MA. (1) The Chief Executive Officer shall cause to be prepared an annual report setting out the activities of the Board.

(2) The Chief Executive Officer shall submit the report referred to in subsection (1) to the Cabinet Secretary not later than two months after the end of each financial year.

(3) The Cabinet Secretary shall transmit copies of the report to the Senate and the National Assembly within three months after receipt of the Report.

#### **Clause 10**

**That** clause 10 of the Bill be deleted and substituted therefor by the following new clause-

**10.** section 16 of the principal Act is amended by deleting the words "one thousand shillings or to imprisonment for a term not exceeding one month and for a second or subsequent offence to a fine not exceeding three thousand shillings" and substituting therefor the words "five hundred thousand shillings or to imprisonment for a term not exceeding one month, and for a second or subsequent offence to a fine not exceeding one million shillings"



THE SENATE

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**EXCERPT OF THE MEDIATED VERSION OF THE THE  
FERTILIZERS AND ANIMAL FOODSTUFFS  
(AMENDMENT) BILL, 2013 SHOWING THE AGREED-  
UPON VERSIONS OF THE CONTENTIOUS CLAUSES**

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The Mediation Committee identified the proposed Clause 3 sub clause 2(c) as being contentious and agreed on the following version:

**New Clause 2(c) – mediated version**

Membership of the Board.

- 2C.** (1) The Board shall consist of the following persons appointed by the Cabinet Secretary -
- (a) the Chairperson competitively sourced and appointed by the Cabinet Secretary;
  - (b) the Principal Secretary in the Ministry for the time being responsible for Agriculture or his designated alternate not being below the level of Deputy Secretary;
  - (c) the Principal Secretary in the Ministry for the time being responsible for livestock or a designated alternate not being below the level of Deputy Secretary;
  - (d) the Principal Secretary in the Ministry for the time being responsible for



finance

- (e) two persons of either gender representing prescribed farmers associations competitively nominated and one person of either gender from the Fertilizers Association of Kenya;
- (f) one person nominated by the Council of Governors;
- (g) the Director of Veterinary Services;
- (h) one person representing research institutions in the agriculture sector competitively sourced and appointed by the Cabinet Secretary;
- (i) the Chief Executive Officer who shall be an ex-officio member and Secretary to the Board

-----**END**-----

