Bill for Introduction into the National Assembly—

The Fertilizers and Animal Foodstuffs (Amendment) Bill, 2013............. 1183
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 Bill may be cited as the Fertilizers and Animal Foodstuffs (Amendment) Act, 2013.

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

   (a) by deleting the definition of “the Director”;

   (b) by 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—

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.

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) manage the importation, purchase and distribution of fertilizer;

(d) establish retail outlets in every County at which fertilizers are made available to farmers at subsidized prices;

(e) facilitate the provision of fertilizers to farmers at a subsidized rate and in a timely manner;
(f) collaborate with stakeholders concerned with agriculture in research into fertilizer; and

(g) advice the relevant authorities on the development of policies related to the manufacture and distribution of fertilizer.

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 by such associations in such manner as may be prescribed;

(e) one person competitively nominated by the National Cereals and Produce Board;

(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.

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.

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 of the Board may be 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.

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.

2G. (1) There shall be 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 subparagraph (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.

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

(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.

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

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.

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.

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

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".

5. Section 5 of the principal Act is amended—

(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—

(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 deleting the word "Minister" and substituting therefor with 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)—

(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 with the word “Cabinet Secretary”.

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”.

11. Section 18 of the principal Act is amended by deleting the word “Minister” and substituting therefor with the words “Cabinet Secretary on the recommendation of the Board”.

12. Section 19 of the principal Act is amended by deleting the word “Minister” and substituting therefor with the words “Cabinet Secretary on the recommendation of the Board”.

13. The principal Act is amended by deleting section 20.
MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to amend the Fertilizers and Animal Foodstuffs Act (Cap. 345) to establish a Fertilizer Board which will be charged with the responsibility of establishing and managing fertilizer plants in Kenya, management of the purchase, sale and distribution of fertilizer and farm inputs in a timely manner. The Bill proposes to insert new sections 2A, 2B, 2C, 2D, 2E, 2F, 2G, 2H, 2I, 2J, 2K, 2L, 2M, 2N, 2O, and 2P to provide for the establishment, composition, functions, powers and financial management of the Board.

The Bill is informed by the fact that the National Cereals and Produce Board handles the distribution of fertilizer although this is not part of its core mandates. The situation as it prevails has resulted in delays in delivery of fertilizers to farmers with the attendant consequences of affecting food production in the country.

The Bill also proposes to remove the role played by the Director of Veterinary Services in the regulation of fertilizers under the Act and vest it in the Board.

This Bill does not infringe or limit any fundamental rights or freedoms.

The enactment of this Bill shall occasion additional expenditure of public funds to be provided through the estimates.

Dated the 30th July, 2013.

CHRIS WAMALWA,
Member of Parliament.
Section 2 of Cap 345 which it is proposed to amend—

2. In this Act, except where the context otherwise requires—

"analyst" means any person appointed under section 8 of this Act to be an analyst for the purposes of this Act;

"animal" means cattle, camels, horses, sheep, pigs, goats and poultry, but does not include dogs, cats and other domestic pets, or marine animals;

"animal foodstuff" means -

(a) any—

(i) substance obtained by a process of crushing, gristing or grinding or by the addition to any substance or the removal therefrom of any ingredient; or

(ii) condimental foodstuffs or mineral substance which possesses or is alleged to possess nutritive properties; or

(iii) substance of animal origin,

which is intended or offered for the feeding of livestock, domestic animals or poultry; or

(b) any stock lick or substance which can be and is used as a stock lick, whether or not it possesses medicinal properties,

but does not include straw, chaff, underground hay, silage, cereal in the grain or any substance which has been crushed, gristed or ground for a farmer in accordance with his directions for his own use, unless such substance has been declared by the Minister, by notice in the Gazette, to be an animal foodstuff for the purposes of this Act;

"the Director" means the Director of Veterinary Services;

"fertilizer" means any substance or mixture of substances which is intended or offered for improving or maintaining the growth of plants or the productivity of the soil, but does not include manure, compost, wood ash, gypsum or refuse when sold in its original condition and under the same name, nor does it include organic fertilizers, other than lime;
"inspector" means any person appointed by the Minister under section 8 of this Act to be an inspector for the purposes of this Act;

"sell" includes offer, advertise, keep, expose, transmit, convey, deliver or prepare for sale or exchange, dispose of for any consideration whatsoever, or transmit, convey or deliver in pursuance of a sale, exchange or disposal as aforesaid.

Section 4 of Cap 345 which it is proposed to amend—

4. (1) No person shall import—

(a) any fertilizer or animal foodstuff which contains bone or any other substance derived from an animal carcass; or
(b) bones or any other substance derived from an animal carcass for the purpose of manufacturing any fertilizer or animal foodstuff,

unless he has first submitted to the Director a certificate signed in the country of origin by a person designated by the Minister, certifying that such bone or substance has been effectively and completely sterilized in such manner as may be prescribed and is free from such pathogenic organisms as may be prescribed.

(2) No person shall manufacture or sell any fertilizer or animal foodstuff containing bone or any other substance derived from an animal carcass unless such bone or substance has been sterilized in the prescribed manner.

(3) Any person who contravenes any of the provisions of this section shall be guilty of an offence.

Section 5 of Cap 345 which it is proposed to amend—

5. (1) Any person who, for the purpose of the manufacture or sale of any fertilizer or animal foodstuff, uses any sterilizing plant for the sterilizing of bones or other substances derived from an animal carcass except under and in accordance with the provisions of a licence issued to him in respect of that plant shall be guilty of an offence.

(2) Any person who desires to set up a sterilizing plant as aforesaid shall make application in the form prescribed to the Director, who shall, if he is satisfied that the applicant is a suitable person to engage in the sterilizing of bones and other substances derived from an animal carcass
and that such requirements as may be prescribed in relation thereto are likely to be complied with, issue the applicant with a licence, on payment of the fee prescribed therefor.

(3) A licence under this section shall be in the form prescribed, and shall, subject to renewal, be valid for three years from the date of issue unless cancelled earlier under this Act or under any rules made under this Act.

(4) If the Director is satisfied that a person who has been issued with a licence to sterilize bones and other products of an animal carcass has contravened the requirements prescribed for sterilizing bones and other products of an animal carcass, he may cancel that licence.

Section 6 of Cap 345 which it is proposed to amend—

6. (1) Any person aggrieved by a decision of the Director refusing or cancelling a licence under section 5 of this Act may -

(a) apply to the Director for a written statement of the reasons why the licence was refused or cancelled, as the case may be, and upon receipt of such application the Director shall within fourteen days thereafter or such longer period as may be reasonable in the circumstances furnish such statement;

(b) appeal to the Minister against such decision.

(2) On an appeal under this section the Minister may uphold the decision of the Director or make an order instructing the Director -

(a) to license the applicant; or

(b) to restore the licence under such conditions as the Minister may direct,

and the Director shall comply with such order.

Section 8 of Cap 345 which it is proposed to amend—

8. The Minister may by notice in the Gazette appoint suitably qualified analysts and inspectors for the purposes of Act:
Provided that a person shall not, while holding such appointment, engage in any business connected with the manufacture, sale or distribution of fertilizers or animal foodstuffs.

Section 9 of Cap 345 which it is proposed to amend—

9. (1) An inspector may at all reasonable times and on production, if required, of his authority—

(a) enter and inspect any premises, place or vehicle in which he has reasonable grounds for believing there is any fertilizer, animal foodstuff or sterilizing plant or records pertaining to the importation, manufacture or sale of a fertilizer or animal foodstuff or to the operation of such sterilizing plant;

(b) inspect and if he considers it necessary seize and remove any fertilizer or animal foodstuff and any books, records or documents found in or upon such premises, place or vehicle which pertain to the manufacture, importation, mixing, compounding or sale of fertilizers or animal foodstuffs or to the sterilizing of bones or other products of an animal carcass, and which he has reasonable cause to believe affords evidence of contravention of any of the provisions of this Act or of any rules made thereunder;

(c) take such samples in the manner prescribed of any fertilizers, animal foodstuffs, bones or other products of an animal carcass as he may deem necessary for the purpose of examination or analysis and call upon the occupier of the premises in which the fertilizer, animal foodstuff, bone or other product of an animal carcass lies, to provide him with such reasonable assistance as he may need for so doing.

(2) An inspector shall take such steps as are reasonably practicable to afford the owner of the fertilizer, animal foodstuff, sterilizing plant or records, as the case may be, and the occupier of the premises in which they are situated, an opportunity of being present when any inspection under this section is carried out.

(3) Where it is intended to submit for analysis any sample procured under paragraph (c) of subsection (1) of this section, the inspector procuring it shall before or as soon as possible after procuring it inform the owner of the fertilizer, animal foodstuff, bones or other product of an
animal carcass, as the case may be, that he intends to have the sample analysed.

(4) Where a sample has been taken by an inspector for analysis he shall divide it into three parts and cause each part to be marked, sealed and fastened up, and shall send two of the parts to the analyst together with a signed statement that the sample was taken in the prescribed manner, and the third part he shall deliver to the owner or seller as may be prescribed.

(5) In taking samples for analysis under this section the inspector shall follow the procedure prescribed.

Section 10 of Cap 345 which it is proposed to amend—

10. (1) Every inspector shall, on being requested in writing so to do by the purchaser of any animal foodstuff and, upon payment by the purchaser of the fee prescribed together with the cost of procuring the sample, procure a sample of any animal foodstuff and submit it for analysis by an analyst and thereafter forward to the purchaser the analyst's certificate of such analysis:

Provided that the inspector shall not be obliged to comply with such request unless the purchaser—

(i) makes his request within thirty days after the date upon which he took delivery of the annual foodstuff from the vendor thereof; and

(ii) first informs the inspector to whom he makes his request of his name and full postal address; and

(iii) stores the animal foodstuff which he requires to be sampled in such manner as the Minister may prescribe for the storage of animal foodstuffs until a sample has been procured by the inspector.

Section 16 of Cap 345 which it is proposed to amend—

16. Any person who is guilty of an offence under this Act for which no special penalty (other than those referred to in subsection (4) of section 5, and in section 17, of this Act) is prescribed shall be liable, for a first offence, to a fine not exceeding 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 or to
imprisonment for a term not exceeding three months, or to both such fine and such imprisonment.

Section 18 of Cap 345 which it is proposed to amend—

18. The Minister may by notice in the Gazette, subject to such terms and conditions if any as may be specified in such notice, exclude any fertilizer or animal foodstuff, or exempt any person or class of persons, from the operation of all or any of the provisions of this Act.

Section 19 of Cap 345 which it is proposed to amend—

19. (1) The Minister may make rules generally for the better carrying out of the purposes and provisions of this Act and particularly, but without prejudice to the foregoing generality, for prescribing -

(a) standards of composition, efficacy, fineness and purity of fertilizers and animal foodstuffs;

(b) the prohibition of certain substances and the limitation of percentages of certain substances in fertilizers or animal foodstuffs;

(c) records and returns to be kept and furnished by importers, manufacturers and sellers of fertilizers and animal foodstuffs;

(d) requirements as to the proper storage of fertilizers and animal foodstuffs;

(e) the manner in which fertilizers and animal foodstuffs shall be packed and the branding, labelling, marking and sealing of containers thereof, and the manner in which declarations made at the time of sale shall be made and in which fertilizers and animal foodstuffs shall be exposed for sale;

(f) any declaration or warranty which may be required to be made or given in prescribed cases, the effect of any declaration made by the seller of a fertilizer or animal foodstuff, and the existence and effect of any implied or written warranty concerning a fertilizer or animal foodstuff;
(g) the methods whereby bones and other substances derived from an animal carcass shall be sterilized for sale or for manufacture as fertilizers or animal foodstuffs;

(h) the manner in which samples shall be drawn for analysis and in which such samples shall be certified and analysed, and the manner in which their analyses shall be reported;

(i) anything which under this Act is required to be or may be prescribed.

(2) Rules made under this section may provide penalties for their breach not exceeding a fine of three thousand shillings or imprisonment for a term of three months, or both such fine and such imprisonment.

Section 20 of Cap 345 which it is proposed to amend—

20. The Minister may from time to time appoint such committees as he deems desirable, for the purpose of advising him on matters concerning the administration of this Act.