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OF THE COLONY AND PROTECTORATE OF KENYA

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GOVERNMENT NOTICE No. 1055

The Governor in Council has approved of the introduction of the following Bill into Legislative Council.

A. W. PURVIS,
Clerk of the Legislative Council.

ARRANGEMENT OF SECTIONS

SECTION

- 1—Short title.
2—Interpretation.

SECTION

- 3—Power to adapt enactments.
4—Supplementary powers as to orders.

A BILL ENTITLED

AN ORDINANCE TO MAKE PROVISION FOR THE DISCHARGE OF THE STATUTORY FUNCTIONS OF EX-OFFICIO MEMBERS OF THE EXECUTIVE COUNCIL OF THE COLONY CONSEQUENT UPON ANY REDISTRIBUTION OF THE RESPONSIBILITIES OF SUCH MEMBERS OR UPON ANY ALTERATION OF THE STYLE OR TITLE OF ANY SUCH MEMBER

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited as the Ex-Officio Members of Executive Council (Transfer of Functions) Ordinance, 1953. Short title.
2. In this Ordinance the expression "Member" means an Ex-Officio Member of the Executive Council of the Colony. Interpretation.
3. (1) Where in any Ordinance or in any part or provision of any Ordinance reference is made to any particular Member and, at any time after the commencement of the Ordinance, a transfer of or change in all or any of the subjects, matters or departments for which such Member is responsible occurs or the style or title of such Member is altered, it shall be lawful for the Governor, by order, to declare that any such reference as aforesaid shall be construed as a reference to such Member as may be specified in the order, or, where reference is made to different Members in different parts or provisions of the Ordinance, to declare that any one or more of such references shall be construed as a reference to such Member, and that any other of such references shall be construed as a reference to such other Member, as may be specified in the order. Power to adapt enactments.
- (2) Where an order is made under this Ordinance, the Ordinance in relation to which the order is made shall thereafter be read and construed in all respects as if the same were amended in conformity with the terms of the order; and where such Ordinance contains a definition of the expression "Member" or "the Member" which is inconsistent with the terms of the order, the definition shall, to the extent of such inconsistency, cease to have effect.
4. (1) Where an order purports to be made under this Ordinance it shall be taken by all courts to be conclusive evidence that such a transfer or change as aforesaid has occurred or, as the case may be, that such a variation as aforesaid has been made. Supplementary powers as to orders.

(2) An order made under this Ordinance in relation to any other Ordinance may be expressed to have effect retrospectively from any date specified therein, not being a date prior to the commencement of such other Ordinance or prior to such transfer, change or alteration as aforesaid, and, if so expressed shall have effect accordingly.

(3) An order made under this Ordinance may be varied or revoked by a subsequent order thereunder made in like manner and subject to the like conditions.

(4) No provision in any Ordinance passed before the commencement of this Ordinance shall be construed as limiting the powers conferred by this Ordinance.

(5) No order made under this Ordinance shall contain any provision which is in any respect inconsistent with or repugnant to any Instructions which have been, or may hereafter be, passed by Her Majesty under the Royal Sign Manual and Signet to the Governor, and any such order shall, to the extent of any such inconsistency or repugnancy, be void and of no effect.

MEMORANDUM OF OBJECTS AND REASONS

The necessity for this Bill arises from the recent transfer of functions as between Ex-Officio Members of the Executive Council and the alteration of the titles of certain Members.

These changes are effected by amendment of the Royal Instructions but legislation in the Colony is necessary to deal with those Ordinances of the Colony which confer powers or impose duties upon particular Members, as, for example, the Police Ordinance, 1948, which defines "Member" as the Member for Law and Order.

Clause 3 of this Bill will therefore enable the Governor to adapt any enactment in which a particular Member is referred to where it is necessary to make such adaptation by reason of the transfer of the Member's functions to another Member or by reason of an alteration of the Member's title.

Clause 4 makes supplementary provision in regard to orders made by the Governor under clause 3.

No additional expenditure of public moneys will be incurred if the provisions of this Bill become law.

Nairobi,
24th June, 1953.

E. N. GRIFFITH-JONES,
Acting Attorney General.

GOVERNMENT NOTICE No. 1056

The Governor in Council has approved of the introduction of the following Bill into Legislative Council.

A. W. PURVIS,
Clerk of the Legislative Council.

**A BILL ENTITLED
AN ORDINANCE TO AMEND THE LAND AND
AGRICULTURAL BANK ORDINANCE**

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited as the Land and Agricultural Bank (Amendment) Ordinance, 1953, and shall be read and construed as one with the Land and Agricultural Bank Ordinance, hereinafter referred to as the principal Ordinance. Short title
Cap. 181.
2. Section 20 of the principal Ordinance is amended by inserting, immediately after paragraph (d) thereof, the following new paragraph— Amendment of
section 20 of
the principal
Ordinance.
- (e) to make such advances as are authorized by sections 30 and 30A of this Ordinance. 10
3. Section 23 of the principal Ordinance is amended by substituting for the words "under sub-section 1 (a)", appearing in sub-section (2) thereof, the words "under paragraph (a) or (b) of sub-section (1)". Amendment of
section 23 of
the principal
Ordinance.
4. Section 28 of the principal Ordinance is amended in the following respects— Amendment of
section 28 of
the principal
Ordinance.
- (a) by deleting the words "or under the Agricultural Advances Ordinance," appearing in sub-section (2) thereof, and the marginal note "Cap. 183" to that sub-section; 15
- (b) by substituting for the words "three thousand five hundred pounds", appearing in sub-section (3) thereof, the words "five thousand pounds". 20
5. The principal Ordinance is amended by adding thereto, immediately after section 30 thereof, the following new section— Addition of
new section 30A
to the principal
Ordinance.
- 30A. (1) Notwithstanding anything in this Ordinance contained, the Bank may, at any time advance money to a farmer— Advances on
unsurveyed
land.
- (a) to whom the Governor has, in exercise of the powers conferred by the Crown Lands Ordinance, agreed to grant or lease land for use for agricultural purposes; 30
- (b) who has contracted to purchase or otherwise acquire, from any person, land for use for agricultural purposes. 35
- (2) Any such advance shall be made for the purpose of enabling the farmer to discharge any stand premium or purchase-money, or balance thereof, as the case may be, due from him under or in respect of such grant, lease, purchase or other acquisition as aforesaid or for the purpose of enabling him to effect any of the purposes specified in paragraphs (a), (b), (c), (d) or (g) of section 21 of this Ordinance. 40
- (3) An advance may be made by the Bank in pursuance of the powers conferred by this section notwithstanding that the land in respect of which the advance is made has not been surveyed or that such a map or plan of the land as the Registrar is bound to accept for the purpose of registering any dealing with the land is not, for the time being registered or available for registration. 45

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(4) Upon making any such advance the Bank may require the execution of such documents as will ensure—

- (a) that the advance will, immediately upon the issue or completion of such grant, lease, purchase or other acquisition as aforesaid, become secured as a first charge upon the land in favour of the Bank;
- (b) that pending the creation of such first charge, no mortgage of the land which would or might rank in priority thereto shall be created;
- (c) that the Government will indemnify the Bank against all losses, costs or expenses which may be sustained or incurred by the Bank in respect of the advance.

(5) The Member of the Executive Council for the time being responsible for Finance may execute on behalf of the Government any document necessary for indemnifying the Bank in pursuance of paragraph (c) of sub-section (4) of this section.

Amendment of section 31 of the principal Ordinance.

6. Section 31 of the principal Ordinance is amended by substituting for the words "five thousand pounds", where those words twice appear in sub-section (3) thereof, the words "seven thousand five hundred pounds".

Amendment of section 48 of the principal Ordinance.

7. Section 48 of the principal Ordinance is amended by deleting sub-section (2) thereof.

Amendment of section 49 of the principal Ordinance.

8. Section 49 of the principal Ordinance is amended by deleting the words "Notice of the extinguishment of any advance shall be published in the Gazette as soon as possible after the date of such extinguishment." which appear therein.

Amendment of section 73 of the principal Ordinance.

9. Section 73 of the principal Ordinance is amended in the following respects—

(a) by substituting for sub-sections (1), (2) and (3), appearing therein, the following new sub-section—

(1) Such fees, costs and expenses shall be charged and payable in respect of advances and applications for advances under the provisions of this Ordinance as the Board may, from time to time, with the consent of the Governor in Council, prescribe by regulations made under this Ordinance and any such regulations may provide for—

- (a) scales of application fees and valuation fees based on the amount of the advance for which application is made;
- (b) reduced scales of application fees and valuation fees where the application is for a short-term advance;
- (c) the basis upon which travelling expenses incurred by any valuation officer employed by the Board in or about any valuation for the purpose of an advance are to be calculated;
- (d) the refund or partial refund of the application fee where an application for an advance is refused;
- (e) the reduction of the application fee where an amount less than applied for is advanced;
- (f) a scale of conveyancing costs and fees for the preparation and completion of mortgages or securities and discharges thereof;
- (g) the time and mode of payment of all such fees, costs and expenses;

(b) by renumbering sub-sections (4) and (5) as sub-sections (2) and (3) thereof.

10. The Second and Third Schedules to the principal Ordinance are hereby repealed:

Repeal of
Second and
Third Schedules
to the principal
Ordinance.

Provided that the Scale of Application Fees and the Scale of Costs and Fees therein respectively contained shall be deemed to be scales prescribed by regulations made by the Board with the consent of the Governor in Council under section 73 of the principal Ordinance as hereby re-enacted until such Scale of Application Fees and Scale of Costs and Fees are replaced by scales so prescribed and except so far as the same are inconsistent with any scales so prescribed.

MEMORANDUM OF OBJECTS AND REASONS

By sub-section (1) of section 28 of the Land and Agricultural Bank Ordinance, the Land and Agricultural Bank of Kenya is precluded from granting a loan under the Ordinance unless there is a properly registered title to the land, and such title cannot, of course, be obtained until the land has been surveyed. It is considered desirable in the interests of development to amend the Ordinance to enable the Bank to grant loans on unsurveyed agricultural land before title deeds are available subject to the Government guaranteeing the loans until they do become available, whereupon the normal security of a first mortgage would take the place of the guarantee. The Member for Lands has agreed that if the Ordinance is so amended properties on which such provisional loans are granted will receive priority for survey directly the survey can be carried out economically.

The amendment set out above is the major amendment contained in this Bill, and is effected by inserting a new section 30A, and by a consequential amendment to section 20 (*clauses 2 and 5*).

The opportunity has also been taken to amend the Ordinance in other respects which experience has shown to be desirable. These amendments are set out briefly below.

(1) Section 23 is amended to provide for payment by the Bank to the Accountant General of interest on funds raised by the Government outside the Colony specifically for the purposes of the Bank. (*Clause 3*.) The existing permanent capital has all been raised in this manner, but there is at present no statutory provision for interest to be paid thereon to the Accountant General.

(2) *Clause 4* amends section 28 in two respects. The first deletes mention of the Agricultural Advances Ordinance in sub-section (2) since advances under that Ordinance have never been made by the Land Bank and the reference is therefore redundant. The second amendment redrafts sub-section (3) of the section so as to increase the amount for which a loan may be granted for the purpose of reducing or discharging an onerous first mortgage from £3,500 to £5,000. The amount of £3,500 was fixed in 1930 and it is considered that the increase in land values since 1930 warrants an increase in the amount of the maximum advance for this purpose.

(3) Similarly *clause 6* amends section 31 of the principal Ordinance so as to increase the maximum loan which may be advanced to £7,500. The present maximum of £5,000 was fixed in 1936.

(4) *Clauses 7 and 8* amend sections 48 and 49 respectively to make it no longer necessary to insert notices in the Gazette concerning temporary loans (on which there is a maximum placed of £500). Normal mortgage loans are not gazetted and it is considered that there will be a saving of time and expense if the same procedure is followed in respect of temporary loans.

(5) *Clauses 9 and 10* concern section 73 of the principal Ordinance which deals with fees. The fees at present are set out in Schedules II and III to the Ordinance and therefore cannot be altered without an amending Ordinance passed by Legislative Council. Most of the fees were fixed in 1930 and require to be revised to meet present conditions. In order to save unnecessary delays section 73 has been amended to enable fees to be fixed by regulations made by the Land Bank Board with the concurrence of the Governor in Council (*clause 9*), while *clause 10* provides that the fees set out in the Schedules shall be deemed to be fees fixed by regulations made in accordance with the amended section 73, until they are superseded or varied by regulations made under that section as it will be amended by the Bill.

It must be recognized that advances upon the security of unsurveyed land to which a title is not immediately available will not be as effectively secured as advances upon surveyed land to which there is a registered title. Some expenditure, therefore, of public moneys may be incurred if the provisions of this Bill become law but it is not possible to estimate the amount of such expenditure.

Nairobi,
22nd June, 1953.

E. N. GRIFFITH-JONES,
Acting Attorney General.

GOVERNMENT NOTICE No. 1057

The Governor in Council has approved of the introduction of the following Bill into Legislative Council.

A. W. PURVIS,
Clerk of the Legislative Council.

**A BILL ENTITLED
AN ORDINANCE TO AMEND THE LOCAL GOVERNMENT (COUNTY COUNCILS) ORDINANCE, 1952**

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

Short title.

1. This Ordinance may be cited as the Local Government (County Councils) (Amendment) (No. 2) Ordinance, 1953, and shall be read and construed as one with the Local Government (County Councils) Ordinance, 1952, hereinafter referred to as the principal Ordinance. 5

No. 30 of 1952.

Amendment of section 118 of the principal Ordinance.

2. Section 118 of the principal Ordinance is amended in the following respects—

- (a) by adding at the end of sub-section (1) thereof the words “and shall forward such estimates to the county council”; and 10
- (b) by substituting for the words “A summary of such annual estimates shall be published in the Gazette”, appearing at the commencement of sub-section (3) thereof, the words “The county council shall cause a summary of such annual estimates to be published 15 in the Gazette”.

Amendment of section 129 of the principal Ordinance.

3. Section 129 of the principal Ordinance is amended by inserting immediately after the words “not being”, appearing therein, the words “, except in the case of the first rate imposed by the county council.”.

MEMORANDUM OF OBJECTS AND REASONS

This Bill is designed to amend the Local Government (County Councils) Ordinance, 1952, mainly for the purpose of enabling any county council established after the 31st March in any year to impose a rate in respect of the residue of the financial year; by section 150 of the Ordinance the financial year is the twelve months ending on the 31st December. *Clause 2* of the Bill effects minor amendments to section 118 of the Ordinance so as to make it clear where the responsibility rests for submission of county district council estimates to the county council, and for publication of estimates in the Gazette.

The main amendment referred to above is effected by *clause 3* of the Bill and the necessity for the amendment arises by reason of the fact that the Nairobi, Naivasha and Nakuru District Councils have, in accordance with the principal Ordinance, brought into force schemes of county administration constituting the three County Councils of Nairobi, Naivasha and Nakuru *as from dates early in May* but are obviously unable to comply with section 129 of the principal Ordinance which provides that a rate imposed by a county council shall become due and payable *not later* than the 31st day of March in the financial year for which it is imposed. The amendment contained in *clause 3* will enable them to raise funds by rating during the current year.

If the provisions of this Bill become law, a Government contribution in lieu of rates will be payable in respect of the year 1953 to any county council which imposes a rate for that year. Having regard to the terms of section 140 (1) of the principal Ordinance relating to such contributions it is not possible to estimate the additional expenditure of public moneys which will be thus incurred.

Nairobi,
15th June, 1953.

E. N. GRIFFITH-JONES,
Acting Attorney General.