

REPUBLIC OF KENYA



PARLIAMENT

THE SENATE

ELEVENTH PARLIAMENT



*Paper laid by  
the Chairperson,  
Sessional Committee  
on delegated  
legislation on  
30/4/2015  
Dud.*



THE SESSIONAL COMMITTEE ON DELEGATED LEGISLATION

AND

THE STANDING COMMITTEE ON FINANCE, COMMERCE AND BUDGET

A REPORT ON THE PUBLIC FINANCE MANAGEMENT (EQUALIZATION FUND) GUIDELINES, 2015

Clerk's Chambers,  
First Floor,  
Parliament Buildings,  
NAIROBI.

APRIL, 2015

*① Hon Speaker  
You may approve  
for tabling.  
29/4/15*

*② Approved  
30/4/15*

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## ABBREVIATIONS

CRA	Commission on Revenue Allocation
COG	Council of Governors
PIN	Parliamentary Initiatives Network
PFM	Public Finance Management
SEN	Senator
TISA	The Institute of Social Accountability

## **PREFACE**

### **Establishment of the Committee on Delegated Legislation**

The Sessional Committee on Delegated Legislation is established pursuant to the Senate Standing Order 214 which states:

- 1) There shall be a select Committee to be known as the Committee on Delegated Legislation.
- 2) Whenever a statutory instrument is submitted to the Senate pursuant to the Constitution, any law or these Standing Orders, the statutory instrument shall, unless a contrary intention appears in the relevant legislation, be laid before the Senate by the Chair of the Senate Committee on Delegated Legislation and thereafter stand referred to the Committee.
- 3) The Committee shall consider in respect of any statutory instrument whether the statutory instrument:-
  - a) is in accord with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written law;
  - b) infringes on fundamental rights and freedoms of the public;
  - c) contains a matter which in the opinion of the Committee should more properly be dealt with in an Act of Parliament;
  - d) directly or indirectly bars the jurisdiction of the courts;
  - e) gives retrospective effect to any of the provisions in respect of which the Constitution or the Act does not expressly give any such power;
  - f) involves expenditure from the Consolidated Fund or other public revenues;
  - g) is defective in its drafting or for any reason, the form or purport of the statutory instrument calls for any elucidation;
  - h) appears to make some unusual or unexpected use of the powers conferred by the Constitution or the Act pursuant to which it is made;

- i) appears to have had unjustifiable delay in its publication or laying before Parliament;
- j) makes rights, liberties or obligations unduly dependent upon non-reviewable decisions;
- k) makes rights, liberties or obligations unduly dependent insufficiently defined administrative powers;
- l) inappropriately delegates legislative powers;
- m) imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation;
- n) appears for any reason to infringe on the rule of law;
- o) inadequately subjects the exercise of legislative power to Parliamentary scrutiny; and
- p) accords to any other reason that the Committee considers fit to examine.

(4) If the Committee-

- a) resolves that the statutory instrument, be acceded to, the Clerk shall convey that resolution to the relevant state department or the authority that published the statutory instrument;
- b) does not accede to the statutory instrument, or part of a statutory instrument, the Committee may recommend to the Senate that the Senate resolves that all or any part of the statutory instrument, as the case may be, be annulled.

(5) If the Senate-

- a) fails to agree to the recommendation of the Committee under paragraph (4)(b), the statutory instrument shall be deemed to have been approved by Parliament;
- b) resolves to annul a statutory, or part of a statutory instrument, the resolution shall, within seven days of the passage of the resolution, be referred to the National Assembly for concurrence.

## **Membership of the Committee on Delegated Legislation**

The Membership of the Committee is as follows:

1. Sen. Stephen Sang - Chairperson
2. Sen. Judith Sijeny - Vice-Chairperson
3. Sen. (Dr.) Boni Khalwale - Member
4. Sen. Emma Mbura - Member
5. Sen. Daniel Karaba - Member
6. Sen. Liza Chelule - Member
7. Sen. Godliver Omondi - Member
8. Sen. Joy Gwendu - Member
9. Sen. Boy Juma Boy - Member

## **Establishment of the Standing Committee on Finance, Commerce and Budget**

The Standing Committee on Finance, Commerce and Budget is established pursuant to the provisions of the Senate Standing Order 206 (1) and is mandated, under the Second Schedule to the Standing Orders to investigate, inquire into and report on all matters relating to coordination, control and monitoring of the county budgets and to-

- a) Discuss and review the estimates of County Governments and make recommendations to the Senate;
- b) Examine the Budget Policy Statement presented to the Senate;
- c) Examine and report on the Budget allocated to constitutional Commissions and independent offices;
- d) Examine Bills related to the county

## **Membership of the Committee on Finance, Commerce and Budget**

The Membership of the Committee is as follows:

1. Sen. Billow Kerrow - Chairperson
2. Sen. Peter Ole Mositet - Vice-Chairperson

- |     |                                    |   |        |
|-----|------------------------------------|---|--------|
| 3.  | Sen. G. G. Kariuki, EGH            | - | Member |
| 4.  | Sen. Moses Wetang'ula, EGH         | - | Member |
| 5.  | Sen. Beatrice Elachi, CBS          | - | Member |
| 6.  | Sen. Mutahi Kagwe, EGH             | - | Member |
| 7.  | Sen. (Prof.) Anyang' Nyong'o, EGH- |   | Member |
| 8.  | Sen. (Dr.) Zipporah Kittony        | - | Member |
| 9.  | Sen. (Dr.) Boni Khalwale           | - | Member |
| 10. | Sen. James Mungai                  | - | Member |
| 11. | Sen. Catherine Mukite Nabwala      | - | Member |
| 12. | Sen. (Prof.) John Lonyangapuo, CBS |   | Member |
| 13. | Sen. Paul Njoroge Ben              | - | Member |
| 14. | Sen. (Dr.) Wilfred Machage, MGH-   |   | Member |
| 15. | Sen. ( Dr.) Agnes Zani             | - | Member |

### **Acknowledgement**

The Committee wishes to thank the Offices of the Speaker and the Clerk of the Senate for the support extended to it. The Committee also expresses its gratitude to stakeholders and members of the public who made submissions, both orally and in writing.

**Mr. Speaker Sir,**

It is my pleasant duty, pursuant to Section 17 of the Statutory Instruments Act, 2014 and Standing Order 214, to present the Report of the Sessional Committee on Delegated Legislation and the Standing Committee on Finance Commerce and Budget on the Public Finance Management (Equalization Fund) Guidelines, 2015

Signed.....

Date..... 29<sup>th</sup> April 2015

**SEN. STEPHEN SANG,**

**CO-CHAIRPERSON**

**SESSIONAL COMMITTEE ON DELEGATED LEGISLATION.**

Signed.....

Date..... 29<sup>th</sup> April 2015

**SEN. BILLOW KERROW,**

**CO-CHAIRPERSON**

**STANDING COMMITTEE ON FINANCE, COMMERCE AND BUDGET.**

## **EXECUTIVE SUMMARY**

The published Public Finance Management (Equalization Fund) Guidelines, 2015 were submitted to the Senate through the Office of the Clerk by a letter dated 18<sup>th</sup> March, 2015. Pursuant to section 205(6) of the Act, the Senate is required to make a resolution on the Regulations within fifteen sitting days of the submission to the Senate of the Regulations, failing which the Houses would be deemed to have approved the Regulations.

The Sessional Committee on Delegated Legislation, on 19<sup>th</sup> March, 2015, sought the approval of the Speaker to hold a joint sitting with the Standing Committee on Finance, Commerce and Budget to consider the Regulations along with the Public Finance Management (National Government) Regulations, 2015; the Public Finance Management (County Government) Regulations, 2015 and the Legal Notice for the Declaration of the National Government Entities (State Organs) earlier submitted to the Senate.

The Joint Committee considered the Public Finance Management (Equalization Fund) Guidelines during its meeting held on 26<sup>th</sup> March 2015. The Committee raised concerns on various provisions of the Guidelines. The Committee resolved to invite stakeholders including the County Assemblies Forum, Council of Governors, Commission on Revenue Allocation and the Controller of Budget to a meeting on Tuesday, 31<sup>st</sup> March, 2015 to give their views on the Regulations. Pursuant to Article 118(1) (b) of the Constitution and

Standing Order 214, the Committee invited submissions from members of the public on the above Regulations via an advertisement on the Daily Nation Newspaper and the Standard on Friday, 27<sup>th</sup> March, 2015 (see annex). The Committee received both oral and written submissions on the Regulations during its meeting with the members of public held on Wednesday 1<sup>st</sup> April, 2015 in the Main Chamber, First Floor, County Hall Building, Nairobi.

The Committee invited the Cabinet Secretary, National Treasury, Mr. Henry Rotich to its meeting held on 2<sup>nd</sup> April, 2015, to discuss the concerns raised on the Guidelines. It was agreed that Mr. Rotich would look into the issues raised by the Committee.

## **CHAPTER ONE            INTRODUCTION**

The Public Finance Management (Equalization Fund) Guidelines, 2015 were submitted to the Senate by a letter dated 18<sup>th</sup> March 2015. Pursuant to Standing Order 206 (1), the Committee, on 19<sup>th</sup> March, 2015, sought the approval of the Speaker to hold a joint sitting with the Standing Committee on Finance, Commerce and Budget to consider the Regulations along with the Public Finance Management (National Government) Regulations, 2015; the Public Finance Management (County Government) Regulations, 2015 and the Legal Notice for the Declaration of the National Government Entities (State Organs) earlier submitted to the Senate by the National Treasury.

### **The Public Finance Management (Equalization Fund) Guidelines, 2015**

The purpose of these Regulations is to:

- i. specify the sources, object and purpose of the Fund;
- ii. provide guidance in the administration and management of the Fund;
- iii. establish an Equalization Fund Board to advise the Cabinet Secretary on the proper and effective performance of the Fund; and
- iv. provide for the withdrawals from the Fund; and
- v. provide for the winding up of the Fund.

The Joint sitting of the Committees considered the Public Finance Management (Equalization Fund) Guidelines during its meeting held on 26<sup>th</sup> March 2015. The

Committee raised concerns on various provisions of the Guidelines. Pursuant to Article 118(1) (b) of the Constitution and Standing Order 214, the Committee invited submissions from members of the public on the above Regulations via an advertisement on the Daily Nation Newspaper and the Standard on Friday, 27<sup>th</sup> March, 2015 (see annex). The Committee received both oral and written submissions on the Regulations during its meeting with the members of public held on Wednesday 1<sup>st</sup> April, 2015 in the Main Chamber, First Floor, County Hall Building, Nairobi.

The Committee invited the Cabinet Secretary, National Treasury, Mr. Henry Rotich to its meeting held on 2<sup>nd</sup> April, 2015 to discuss the concerns raised on the Guidelines. It was agreed that Mr. Rotich would look into the issues raised by the Committee.

## **CHAPTER TWO SUBMISSIONS FROM STAKEHOLDERS AND MEMBERS OF THE PUBLIC**

The Committee received submissions from the following institutions:-

1. The Commission on Revenue Allocation (CRA)
2. The Council of Governors (COG)
3. The Parliamentary Initiatives Network (PIN)
4. The Institute of Social Accountability (TISA)

### **The Commission on Revenue Allocation (CRA)**

The Commission on Revenue Allocation (CRA) is an independent Commission set up under Article 215 of the Constitution of Kenya 2010. Its core mandate is to recommend the basis for equitable sharing of revenues raised nationally between the national and the county governments, and among the county governments. The CRA gave its submissions during a meeting with the Joint Committee held on 31<sup>st</sup> March, 2015.

### **The Council of Governors (COG)**

The Council of Governors is composed of the Governors of the forty-seven counties and its main functions are the promotion of visionary leadership; sharing of best practices and; offering a collective voice on policy issues; promoting inter – county consultations; encouraging and initiating information sharing on the performance of County Governments with regard to the execution of their functions; collective consultation on matters of interest to County Governments. Basically, through the Council, Governors

identify priority issues and deal collectively with matters of public policy and governance at the County and the National levels. The COG gave its submissions through a letter dated 27<sup>th</sup> April, 2015.

### **The Parliamentary Initiatives Network (PIN)**

The Parliamentary Initiatives Network (PIN) is a forum for non-state actors in Kenya with a programmatic interest in Parliament. PIN consists of eighteen organizations including professional associations, think tanks, research institutions and civil society organizations that focus on affecting Parliamentary business from a technical perspective. PIN supports the legislature in reviewing policies and drafting legislation. It also provides support and research in the areas of oversight, legislation and representation as well as developing tools to assist Parliament monitor implementation of its decisions and laws. To this end, the Network supports enactment and implementation of enabling policy incidental to the realization of its objectives. PIN presented oral submissions on the Regulations during the Public Hearings held on 1<sup>st</sup> April, 2015.

### **The Institute for Social Accountability (TISA)**

The Institute for Social Accountability (TISA) is a civil organisation committed towards the achievement of sound policy and good governance in local development, to uplift livelihoods of especially the poor and marginalized in Kenya. TISA has been operational since March 2008, and is a locally registered Trust that has engaged with various relevant state and non-state actors in the quest to promote effective local governance in Kenya.

TISA presented oral submissions on the Regulations during the Public Hearings held on 1<sup>st</sup> April, 2015.

## **2.1 Submissions from the Commission on Revenue Allocation (CRA)**

The Commission on Revenue Allocation proposed the following amendments:

1. **Guideline 4.1** be amended by replacing (f) and (g) with the following:

*f) the Chairperson of the Commission on Revenue Allocation or his or her representative;*

*g) the Attorney General or his or her representative; and*

**Rationale:** There are too many Principal Secretaries on the Board and the CRA and Office of the Attorney General are not represented.

2. **Guideline 4.4(d)** be deleted

**Rationale:** This provision infringes the mandate of CRA as per Article 216(4) of the Constitution of Kenya.

3. **Guideline 4.6** be amended to provide that the expenses of the Board shall not exceed *two (2)* percent of the annual voted provision.

**Rationale:** The Equalization Fund is approximately 3 Billion. 10% of this amount is very high for administrative purposes.

## **2.2 Submissions from the Council of Governors (COG)**

The Council of Governors raised the following concerns:

1. Article 204 (3) (b) stipulates that ‘The national government may use the Equalization Fund-

(a) only to the extent that the expenditure of those funds has been approved in an Appropriation Bill enacted by Parliament; and

(b) either directly, or indirectly through conditional grants to counties in which marginalized communities exist’.

The Equalization Fund aims to benefit marginalized areas at the county level.

**Proposal:** In light of the above, the Council proposed that the Fund should go directly to counties, and should be managed by counties. Further, the proceeds of the Fund should not be distributed by a Board at the national level, as this is unconstitutional.

2. A close analysis of the functions of the Board reveals that the authority of County Governments is being undermined as they are seen to be equivalent to State Departments. This is the reason why some of the functions include: reviewing proposed work plans and reviewing and proposing annual estimates. The COG maintained that the County Governments are legitimate governments capable of appropriating their own funds. It is therefore unconstitutional to propose that a County Government’s powers are subject to a national board.

The COG made the following recommendations:

- a) That the National Treasury subjects the guidelines to further stakeholder consultations;
- b) That the Fund be managed directly by the County Governments; and

- c) That the CRA determines criteria for beneficiary counties and the amount sharable.

### **2.3 Submissions from the Parliamentary Initiatives Network (PIN)**

PIN gave the following proposals:

#### **1. Part IV**

The composition of the Board should be restructured to include County government representation. There should also be more deliberate focus on the plan on how to administer the fund. As per the current state of the guidelines, money may be dispersed to projects without a clear focus on the strategy or objectives to be met and this will ultimately leave the question of marginalization unresolved.

2. **Guideline 4(2) (b)** be amended to read "... the Board shall liaise with county structures in the marginalized areas for the proper and efficient discharge of its functions".
3. **Guideline 4(1) (h) be amended** to have the four members be drawn from the Commission on Revenue Allocation, County Assemblies Forum, Council of Governors and the Private sector.
4. That the Fund shouldn't be spread too thin and should be based on a reasonable number of projects with an actual impact. Projects under the Fund should be funded entirely under the fund, and not partially from other sources.

**Rationale:** This will ensure that the projects do not stall midway and the objectives of the fund are actually met.

## 2.4 Submissions from The Institute for Social Accountability (TISA)

TISA gave the following submissions:

### 1. Guideline 4.1 be amended to consist of the following:

- Cabinet Secretary Treasury (Chair)
- Cabinet Secretary Devolution
- Cabinet Secretary Service Ministries on a rotating basis
- A representative of the Commission on Revenue Allocation
- A representative of the Council of Governors
- Two representatives from among the Chair persons of the County Budget Economic Forum of the targeted counties. (On rotating basis of two years)

**Rationale:** The board should be lean and should be served by a lean secretariat. The Board members should be no more than seven and should provide for independent commissions, county representation (intergovernmental relations) and public participation.

### 2. Guideline 4.4 be amended by inserting the following new sub-clauses:

*(h) In administration of the fund the Board shall ensure it does not undermine the autonomy of county governments, duplicate the administrative efforts of the national and county governments and respects article 6(2).*

*(i) The Board shall ensure transparency, accountability and public participation in its operations*

3. **Guideline 4.6** be amended to provide that the administration of the fund should not exceed 3% of the annual allocation and that the Board should sit a maximum of 6 times per year.

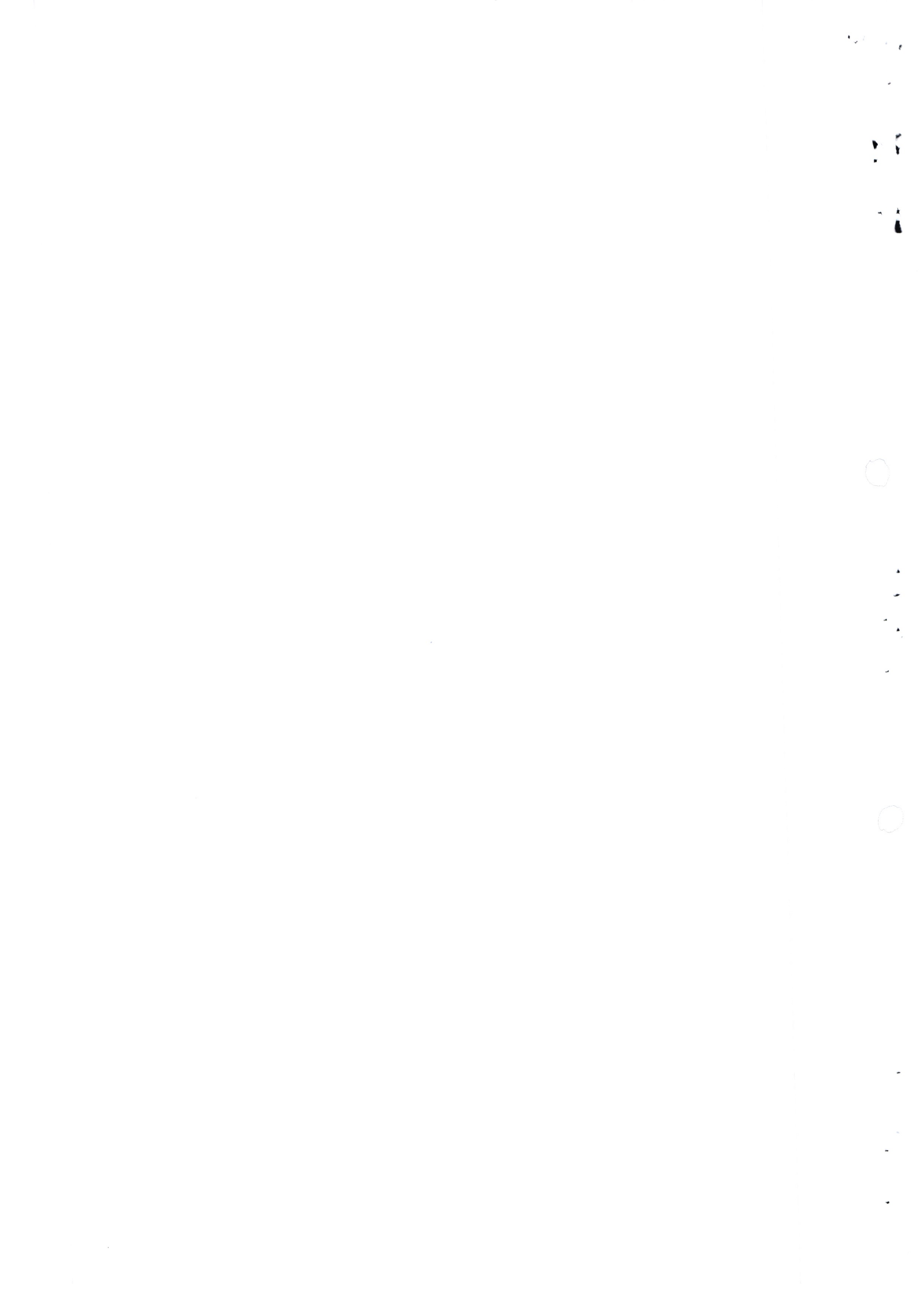
### **CHAPTER THREE COMMITTEE OBSERVATIONS**

- ❖ It was observed that the expenses of the Board at 10 percent of the annual voted provision was too high and it would be necessary to cap at a percentage not more than 5% of the approved Fund in any financial year.
- ❖ The Committee noted that the Composition of the Equalization Fund Advisory Board is largely made up of Principal Secretaries and it risks not addressing the concerns and intent of the Fund. It further noted that there was need to review the membership of the Board and ensure there is county representation.
- ❖ The Committee was informed by the Cabinet Secretary during its meeting held on 2<sup>nd</sup> April 2015, that there were no balances to the Fund since there were no Regulations or Guidelines so far in place to fully operationalize the Fund. The Cabinet Secretary agreed to confirm the status relating to the exact balance due to the Fund.
- ❖ The Committee noted that the Regulations provided for the procedure in administration of the Fund but with no mention of a requirement for the officer administering the fund to make in-year reports to the Senate to ensure effective oversight.
- ❖ The Committee also observed that there were also pockets of marginalised areas within counties that are not classified as marginalised counties and that there was need to have a set percentage within a determined formula to address concerns of such areas.

## CHAPTER FOUR COMMITTEE RECOMMENDATIONS

The Committee upon deliberations recommends the following amendments:

1. THAT guideline 4.1 be amended by-
  - (a) deleting paragraph (b);
  - (b) deleting paragraph (g); and
  - (c) deleting paragraph (h) and substituting therefor the following new paragraph-
    - (h) two persons of either gender appointed by the Council of County Governors.
2. THAT guideline 4.3 be amended by deleting the words “under paragraph 4.1(g)” appearing immediately after the words “to the Board” and substituting therefor the words “by the Council of County Governors”
3. THAT guideline 4.4 be amended in paragraph (f), by inserting the words “the Senate” immediately after the words “copies to”.
4. THAT guideline 4.6 be amended by deleting the words “ten (10)” appearing immediately after the words “shall not exceed” and substituting therefor the words “three”



# APPENDICES



# THE KENYA GAZETTE

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THE CONSTITUTION OF KENYA  
THE PUBLIC FINANCE MANAGEMENT ACT  
(No. 18 of 2012)

PART I—PRELIMINARY

- 1.1 Title—Guidelines on the administration of the Equalization Fund established under Article 204 of the Constitution.
- 1.2 Authorization—These Guidelines are issued under section 12 (2) (k) of the Public Finance Management Act, 2012, which empowers the Cabinet Secretary for finance to issue guidelines to national government entities with respect to financial matters and monitoring their implementation and compliance.
- 1.3 Definitions—Terms used in these Guidelines are as defined in the Constitution and the Public Finance Management Act, 2012, except otherwise specified. Other terms used in these Guidelines shall be taken to have the meaning assigned to them hereunder:
- 1.3.1 “Accounting Standards Board” has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012;
- 1.3.2 “Board” means the Equalization Fund Advisory Board established under paragraph 4.1 of these Guidelines;
- 1.3.3 “Cabinet Secretary” has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012;
- 1.3.4 “Financial year” has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012;
- 1.3.5 “Fund” means the Equalization Fund established under Article 204 of the Constitution;
- 1.3.6 “Marginalized area” means an area identified under policy determined by the Commission on Revenue Allocation in accordance with Article 216 (4) of the Constitution.
- 1.3.7 “officer administering the Fund” means a person nominated by the Principal Secretary responsible for finance and designated by the Cabinet Secretary as the administrator of the Fund;
- 1.3.8 “revenue” has the meaning assigned to it under the Commission on Revenue Allocation Act, 2012; and
- 1.3.9 “unutilized balance” means—
- 1.3.9.1 any amounts not withdrawn from the Fund at the end of financial year; and

- 1.3.9.2 any amount withdrawn from the Fund for purposes of provision of basic services under an Appropriations Act and not expended at the end of financial year.

PART II—STATEMENT OF POLICY

- 2.1 Purpose
- The purpose of these Guidelines is:
- (i) to specify the sources, object and purpose of the Fund;
  - (ii) to provide guidance on the administration and management of the Fund;
  - (iii) to establish an Equalization Fund Board to advise the Cabinet Secretary on the proper and effective performance of the Fund;
  - (iv) to provide for the withdrawals from the Fund; and
  - (v) provide for the winding up of the Fund.
- 2.2 Capital

The capital of the Fund shall be one half percent of all the revenue collected by the national government as appropriated by Parliament in each financial year.

PART III—SOURCES, OBJECTS AND PURPOSE OF THE FUND

- 3.1 Sources of the Fund
- The Fund shall consist of:
- (a) one half of all revenue collected by the national government each year calculated on the basis of the most recent audited accounts of revenue received, as approved by the National Assembly;
  - (b) income generated from proceeds of the Fund; and
  - (c) the cumulative amount of revenue from previous years not spent.
- 3.2 Object and purpose of the Fund
- The object and purpose of the Fund is to provide basic services including water, roads, health facilities and electricity to the marginalized areas to the extent necessary to bring the quality of those services to the level generally enjoyed by the rest of the nation, so far as possible in an equitable, efficient and transparent manner.

PART IV—MANAGEMENT OF THE FUND

- 4.1 Establishment of the Board
- There is established unincorporated board to be known as the Equalization Fund Advisory Board which shall consist of:
- (a) the Principal Secretary for the time being responsible for matters relating to finance who shall be the chairperson;

- (b) one Principal Secretary for the time being responsible for matters relating to Devolution and Planning or his or her representative;
- (c) the Principal Secretary for the time being responsible for matters relating to water or his or her representative;
- (d) the Principal Secretary for the time being responsible for matters relating to roads or his or her representative;
- (e) the Principal Secretary for the time being responsible for matters relating to health or his or her representative;
- (f) the Principal Secretary for the time being responsible for matters relating to energy or his or her representative;
- (g) the Principal Secretary for the time being responsible for matters relating to national coordination or his or her representative; and
- (h) four other members of either gender appointed by the Cabinet Secretary from outside the Public Service.

#### 4.2 Co-option of other members:

- (a) The Board may, from time to time, co-opt other members as it may deem necessary for the proper and efficient discharge of the functions of the Board.
- (b) The Advisory Board may establish committees in marginalized areas to assist it in the identification of projects to be funded from the Fund and such committees shall be under the control of the Advisory Board.

#### 4.3 Qualification requirements of members

A person shall not be nominated and appointed to the Board under paragraph 4.1(g) unless that person:

- (a) is a citizen of Kenya;
- (b) holds a degree from a university recognized in Kenya;
- (c) meets the requirements of Chapter Six of the Constitution; and
- (d) has at least five years' experience in matters relating to the provisions of basic services.

#### 4.4 Functions of the Board

The functions of the Board shall be to advise the Cabinet Secretary on the proper and effective performance of the Fund and in particular, the Board shall:

- (a) propose and advise the Cabinet Secretary on the allocation of funds among the various basic services in the marginalized areas in accordance with Articles 204 of the Constitution;
- (b) review the performance of the Fund and make recommendations to improve on the operations of the Fund to the Cabinet Secretary;
- (c) review the proposed work plans under paragraph 5 to be financed by the Fund.
- (d) propose and advise on distribution of resources from the Fund to the various marginalized areas;
- (e) review and propose annual estimates of expenditure to be funded from the Fund;
- (f) review the consolidated quarterly reports prepared by the administrator of the fund on the implementation of the work plans and submit them to the Cabinet Secretary with copies to the Commission on Revenue Allocation and the Controller of Budget; and
- (g) perform any other functions that may be assigned by the Cabinet Secretary, from time to time.

#### 4.5 Establishment of committees

The Board may establish committees consisting of its members to deal with such matters as the Board may specify.

#### 4.6 Expenses of the Board

The expenses of the Board shall be met out of funds provided by Parliament for that purpose and shall not exceed ten (10) percent of the annual voted provision.

#### 4.7 Secretary to the Board

The officer administering the Fund shall be the Secretary to the Board.

#### 4.8 Responsibilities of the Secretary

The Secretary shall be responsible for arranging the business of the Board's meetings, keeping records of the proceedings of the Board, and shall perform such other duties as the Board may direct.

#### 4.9 Secretary to be responsible to the Board

In performance of duties under these Guidelines, the Secretary shall be responsible to the Board.

#### 4.10 Absence of the Secretary

The Board may, in absence of the Secretary, appoint any member of the Board or staff of the National Treasury to temporarily perform the functions of the Secretary under paragraph 4.8.

#### 4.11 Conduct of the affairs of the Board

The conduct and regulation of the business and affairs of the Board shall be provided for in the Schedule.

### PART V—PREPARATION AND SUBMISSION OF WORKPLANS

#### 5.1 Preparation and submission of work plans

The relevant State Department shall prepare a work plan in respect of a financial year and in preparing this work plan they shall ensure that the work plan:

- (a) contains information on the financial and non-financial performance of the Fund; and
- (b) is in a form that complies with the standards prescribed and published by the Accounting Standards Board from time to time.

#### 5.2 Quarterly financial statements

The relevant State Departments shall prepare quarterly financial statements to officer administering the Fund.

#### 5.3 Approval of reports

The work plans/projects/quarterly reports shall be prepared and approved by the respective State Department before submission to the Fund.

### PART VI—WITHDRAWALS FROM THE FUND

6.1 Where a withdrawal from the Fund is authorized under an Act of Parliament that approves the appropriation of money, the National Treasury shall make a requisition for the withdrawal and submit it to the Controller of Budget for authorization.

6.2 The authorization by the Controller of Budget of a withdrawal from the Fund, together with written instructions from the National Treasury requesting for the withdrawal, shall be sufficient authority for the Central Bank of Kenya to pay amounts from the Equalization Fund Account in accordance with the authorization and instructions given.

6.3 All withdrawals made from the Fund under paragraph 6.1 shall be deposited into the respective spending agencies account.

### PART VII—ADMINISTRATION OF THE FUND

#### 7.1 The officer administering the Fund shall:

- (a) open a separate account at the Central Bank of Kenya into which all monies raised under paragraph 3.1 of this guidelines shall be paid into;
- (b) operate and maintain the bank account in (a) in the manner as prescribed by the National Treasury from time to time;
- (c) consult with the Cabinet Secretary and the Board on matters relating to the administration of the Fund;

- (d) cause to be kept proper books of accounts and other books and records in relation to the Fund, of all activities and undertakings financed from the Fund;
- (e) prepare, sign and submit to the Auditor-General, in respect of each financial year and within three months after the end thereof, a statement of accounts relating to the Fund with a copy to the Controller of Budget and the statements shall be prepared in a manner prescribed by the Accounting Standards Board;
- (f) furnish additional information as the officer considers to be proper and sufficient for the purpose of examination and audit by the Auditor-General in accordance with the provisions of the Public Audit Act, 2003;
- (g) consolidate the quarterly reports received from State Departments under paragraph 5.3 and submit a consolidated quarterly report to the Board;
- (h) In executing subparagraph (g), the administrator of the Fund, may with the approval of the Board, undertake monitoring and evaluation of projects implemented through funding from the Equalization Fund;
- (i) prepare a quarterly report on the receipts into issues and withdrawals from the Fund and submit it to the Cabinet Secretary for gazettelement before or on the 21<sup>st</sup> day of every fourth month of the financial year.

#### PART VIII – WINDING UP OF THE FUND

- 8.0 At the winding up of the Fund, the cash balances shall be transferred to the National Exchequer Account while other assets of the Fund shall be transferred to the State Department responsible for matters relating to finance.

#### SCHEDULE

##### CONDUCT OF THE BUSINESS AND AFFAIRS OF THE BOARD

###### 1. Tenure of Office.

Members of the Board appointed under these Guidelines shall, subject to the provisions of this Schedule, hold office for a term of three years, on such terms and conditions as may be specified in the instrument of appointment but shall be eligible for re-appointment for a further term of three years.

###### 2. Vacation of office

A Member of the Board, other than *ex officio* member, may—

- (a) at any time resign from office by notice in writing to the Cabinet Secretary;
- (b) be removed from office by the Cabinet Secretary, if the member—
  - (i) has been absent from three consecutive meetings of the Board without permission from the chairperson;
  - (ii) is adjudged bankrupt or enters into a composition scheme or arrangement with his creditors;
  - (iii) is convicted of an offence involving dishonesty or fraud;
  - (iv) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months;
  - (v) is incapacitated by prolonged physical or mental illness; or
  - (vi) is otherwise unable or unfit to discharge his functions.

###### 3. Meetings of the Board

- (1) The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of the next meeting.
- (2) Unless three quarters of the total members of the Board otherwise agree, at least fourteen days written notice of every meeting of the Board shall be given to every member of the Board.
- (3) The quorum for the conduct of the business of the Board shall be five members excluding the Secretary, of whom the majority of shall be from amongst the non *ex officio* members.

- (4) The chairperson shall preside at every meeting of the Board at which he or she is present but in his or her absence, the members present shall elect one of their number who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson.

- (5) Unless a unanimous decision is reached a decision on any matter before the Board shall be reached by consensus.

- (6) Subject to subparagraph (3), no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.

- (7) Subject to the provisions of this Schedule, the Board may determine its own procedure and the procedure for any committee of the Board and for the attendance of any other persons at its meetings and may make standing orders in respect thereof.

#### 4. Disclosure of Interest

- (1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Board and is present at a meeting of the Board at which the contract, proposed contract or other matter is the subject of consideration, he shall, at the meeting and as soon as practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter:

Provided that if the majority of the members present are of the opinion that the experience or expertise of that member is vital to the deliberations of the meeting, the Board may permit the member to participate in the deliberations subject to such restrictions as it may impose.

- (2) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

#### 5. Minutes

The Board shall cause minutes of all proceedings of meetings of the Board to be entered in books for that purpose.

#### EXPLANATORY MEMORANDUM TO THE PUBLIC FINANCE MANAGEMENT (EQUALIZATION FUND) GUIDELINES, 2015

##### PART I

- 1. Name of the Statutory Instrument: Public Finance Management (Equalization Fund) Regulations, 2015.

Name of the Parent Act: Public Finance Management Act, 2012

Enacted Pursuant to: Section 205 of the Public Finance Management Act, 2012

Name of the Ministry/ Department: The National Treasury

##### PART II

- 2. The Purpose of Public Finance Management (Equalization Fund) Regulations, 2015.

The purpose of these Regulations is to:

- (i) specify the sources, object and purpose of the Fund;
- (ii) provide guidance on the administration and management of the Fund;
- (iii) establish an Equalization Fund Board to advise the Cabinet Secretary on the proper and effective performance of the Fund;
- (iv) provide for the withdrawals from the Fund; and
- (v) provide for the winding up of the Fund.

#### 3. The Legislative Context

The Constitution under Article 204 establishes the Equalization Fund whose resources shall be applied to marginalized areas as identified through the Marginalization Policy determined by the Commission on Revenue Allocation and approved by Parliament.

The provisions of the Constitution are further expounded in the Public Finance Management Act, 2012. This Act gives powers to the Cabinet Secretary responsible for matters relating to finance to

make further regulations on any matter therein. It is this context that the "The Public Finance Management (Equalization Fund) Regulations, 2015" are made to operationalize the Equalization Fund established under Article 204 of the Constitution by providing a mechanism for use of this Fund directly by the national government or indirectly through conditional or unconditional transfers to marginalized counties as identified by the Marginalization Policy determined by the Commission on Revenue Allocation in accordance with Article 216(4) of the Constitution. In addition, the Regulations are made to provide the management structure of the Fund which is clearly linked with Ministries, State Departments and Agencies as well as marginalized counties.

#### 4. Policy Background

The Constitution assigned the duty to decide on the policy for implementation of the Equalization Fund to the National Government under Article 204 of the Constitution. Further, the Constitution provides that the national government may use the Fund either directly or indirectly through conditional or unconditional grants to marginalized counties. In addition, the Public Finance Management Act, 2012 has assigned the duty to administer the Equalization Fund to the Cabinet Secretary responsible for matters relating to finance.

Accordingly, the National Government has decided that the Equalization Fund shall need a robust management structure to ensure the Fund's objectives are achieved through a transparent and accountable mechanism. The management structure has been provided for the Regulations. In addition, the Fund may be used directly by the national government, where the functions fall under the national government or under intergovernmental agreements between the marginalized counties and the national government. Alternatively, the Fund may be used as conditional grants to marginalized counties, which have been identified through the marginalization policy determined by the Commission on Revenue Allocation in line with Article 216 (4) of the Constitution, and where the functions are assigned to county governments under Schedule Four of the Constitution.

The Marginalization policy determined by the Commission on Revenue Allocation in line with Article 216(4) of the Constitution, identified fourteen counties to benefit from the Fund namely: Turkana, Mandera, Wajir, Marsabit, Samburu, West Pokot, Tana River, Narok, Kisumu, Garissa, Kilifi, Taita Taveta, Isiolo, and Lamu.

#### 5. Public Consultations

Extensive consultations were done while preparing the Public Finance Management (Equalization Fund) Regulations, 2015 with key stakeholders and their input taken into account before finalization of these Regulations. Some of the key stakeholders consulted are Commission on the Implementation of the Constitution, Commission on Revenue Allocation, Controller of Budget, Accounting Officers of national and county governments, County Executive Committee Members of Finance, Senate, Members of Parliament as well as international experts in public finance management such as the International Monetary Fund and the World Bank among others.

Different stakeholders had different views especially on the mode of implementation of the Equalization Fund. Some held the view that the fund should be implemented directly by the national government through State Departments while others proposed that it be implemented indirectly through conditional grants to marginalized counties. The National Government therefore made a deliberate choice to stick to the Constitutional provisions that the Fund can either be used directly by the National Government or as a conditional allocation to the marginalized counties. This will give flexibility to the Fund to ensure maximum impact in terms of bringing the services of the marginalized counties closer to those enjoyed by other areas.

#### 6. Guidance

The National Treasury will sensitize stakeholders including Parliament, accounting officers of national and county governments and the general public, on the process of accessing

the Equalization Fund resources, the accountability mechanism, the monitoring and evaluation mechanism and the need to ensure regular reporting to both the Parliament and relevant County Assemblies.

#### 7. Impact Assessment

An impact assessment has not been prepared for this statutory instrument. (Expected impact is, however, implied in the Marginalization Policy determined by the Commission on Revenue Allocation)

#### 8. Review of the Marginalized Counties.

The National Treasury shall monitor the application of the Equalization Fund resources. This will be done through quarterly reports sent by the relevant accounting officer of the national government. In addition, the Fund Secretariat at the National Treasury will also carry out regular monitoring and evaluation of the specific projects funded through the Equalization Fund.

It is important to note that the marginalization policy determined by the Commission on Revenue Allocation and approved by Parliament shall be in force for a maximum period of three years from the operationalization of these Regulations. In this respect, a review thereof will be done by the Commission on Revenue Allocation for in line with Article 216 (4) of the Constitution.

#### 9. National Treasury Contact Person

The contact person at the National Treasury is Henry Rotich, Cabinet Secretary, or Dr. Kamau Thugge, EBS, Principal Secretary.

Made on the 11th March, 2015.

HENRY ROTICH,  
*Cabinet Secretary for the National Treasury.*

GAZETTE NOTICE No. 1712

#### THE BASIC EDUCATION ACT

(No. 14 of 2013)

#### THE NATIONAL COUNCIL FOR NOMADIC EDUCATION IN KENYA (NACONEK)

#### APPOINTMENT

IN EXERCISE of the powers conferred by section 2 of the Sixth Schedule of the Basic Education Act, 2013, the Cabinet Secretary for Education, Science and Technology appoints —

CHRISTOPHER GALGALO AII

to be the chairperson of the National Council for Nomadic Education in Kenya for a term of four (4) years; and

Beth Kalanda,  
Catherine Wangjala,  
Gertrude M. Wanje,  
Gilbert Kimutai arap Bor,  
Ishad A. Ibrahim,  
Fr. Linus Eka,  
Lucy Chepkurui Loboo,  
Nesphory Nyange,  
Timina Dryad Elini,  
Belto R. Kipsang (Dr.),  
Kamau Thugge (Dr.),  
Mwanamaka A. Mabuku (Ms.).

to be members of the National Council for Nomadic Education in Kenya (NACONEK) for a term of three (3) years with effect from 23rd February, 2015.

Dated the 11th March, 2015.

JACOB T. KAIMENYI,  
*Cabinet Secretary for Education, Science and Technology.*

## REPUBLIC OF KENYA



## ELEVENTH PARLIAMENT THE SENATE

In the matter of consideration of the following:

The Public Finance Management (National Government) Regulations, 2015;  
The Public Finance Management (County Government) Regulations, 2015;  
Legal Notice 4 Declaration of the National Government Entities (State Organs); and  
The Public Finance Management (Equalization Fund) Guidelines, 2015.

### Article 118 of the Constitution

#### PUBLIC HEARINGS/ RECEIPT OF MEMORANDA

Following the submission of the above listed Regulations by the National Treasury to the Senate on 16<sup>th</sup> March, 2015, the Regulations stood committed to the Sessional Committee on Delegated Legislation for consideration.

Pursuant to the provisions of Article 118 (1) (b) and Standing Order 214 of the Senate Standing Orders, the Sessional Committee on Delegated Legislation now invites interested members of the public to submit any representations that they may have on the Regulations. The representations may be made orally or by submission of written memoranda in the following manner:

- Public Hearings shall be held on **Wednesday, 1<sup>st</sup> April, 2015 from 9:00 a.m. to 1:00 p.m. at the Old Chamber, First Floor, County Hall, Nairobi**; or
- Written Memoranda may be forwarded to the **Clerk of the Senate, P.O. Box 41842-00100, Nairobi**, hand-delivered to the **Office of the Clerk, First Floor, Main Parliament Buildings, Nairobi** or emailed to **[csenate@parliament.go.ke](mailto:csenate@parliament.go.ke)**, to be received **at or before Wednesday, 1<sup>st</sup> April, 2015**

The PFM Regulations, 2015 may be found on the Parliament website at <http://www.parliament.go.ke/senate>.

**J. M. NYEGENYE, CBS,  
CLERK OF THE SENATE.**

## KENYA MEDICAL RESEARCH INSTITUTE



In Search Of Better Health

### VACANCY ANNOUNCEMENTS

The Kenya Medical Research Institute (KEMRI) is a State Corporation established in Kenya in 1979 through the Science and Technology (Repealed) Act, Cap 250 of the Laws of Kenya and as currently established and duly accredited to continue to operate as such under the Science Technology and Innovation Act, 2013 as the national body responsible for carrying out research in health in Kenya. KEMRI's vision is "to be a leading centre of excellence in research for human health" and its mission is "to improve human health and quality of life through research, capacity building, innovation and service delivery".

KEMRI seeks to recruit dynamic, innovative and experienced persons to fill the following positions:-

- |  |                |
|--|----------------|
| 1. CHIEF FINANCE OFFICER (GRANTS) - JOB GROUP MR/14                                    | (1 POSITION)   |
| 2. RESEARCH SCIENTIST (NON COMMUNICABLE DISEASES) - JOB GROUPS MR/12/13                | (2 POSITIONS)  |
| 3. CHIEF LEGAL OFFICER - JOB GROUP MR/14   | (1 POSITION)   |
| 4. CHIEF INTERNAL AUDITOR- JOB GROUP MR/14   | (1 POSITION)   |
| 5. INTERNAL AUDITOR - JOB GROUP MR/9   | 3 POSITIONS)   |
| 6. GRAPHIC DESIGNER - JOB GROUP MR/9   | (1 POSITION)   |
| 7. RESEARCH OFFICER (DENTAL) - JOB GROUP MR/11   | (1 POSITION)   |
| 8. SUPPLIES OFFICER 1 - JOB GROUP MR/10  | (2 POSITIONS)  |
| 9. (CHIEF/PRINCIPAL RESEARCH OFFICER (RESEARCH REGULATION/ETHICS) - JOB GROUP MR/13/14 | (1 POSITION)   |
| 10. SENIOR RESEARCH OFFICER (RESEARCH REGULATION) - JOB GROUP MR/12                    | (3 POSITIONS)  |
| 11. RESEARCH SCIENTIST - JOB GROUP MR/9/11   | (10 POSITIONS) |
| 12. RESEARCH OFFICER (MENTAL HEALTH) - JOB GROUP MR/11                                 | (2 POSITIONS)  |
| 13. RESEARCH SCIENTIST (PARASITOLOGY)- JOB GROUP MR/11/13                              | (2 POSITIONS)  |
| 14. RESEARCH SCIENTIST (MICROBIOLOGY)- JOB GROUP MR/9/11                               | (2 POSITIONS)  |
| 15. CLINICAL OFFICER - JOB GROUP MR/8/9  | (2 POSITIONS)  |
| 16. ASSISTANT RESEARCH OFFICER (PATHOLOGY) - JOB GROUP MR/10                           | (1 POSITION)   |
| 17. MONITORING AND EVALUATION OFFICER II, JOB GROUP MR/9                               | (2 POSITIONS)  |
| 18. ENGINEERING TECHNOLOGIST - JOB GROUP MR/7/8  | (2 POSITIONS)  |
| 19. LABORATORY TECHNOLOGIST - JOB GROUP MR/7/8   | (4 POSITIONS)  |
| 20. ACCOUNTS ASSISTANT/ACCOUNTANT III/II - JOB GROUP MR/ 7/8/9                         | (3 POSITIONS)  |

For more details on the above positions log on to KEMRI Website [www.kemri.org](http://www.kemri.org)  
Interested candidates should send six (6) copies of their applications enclosing a detailed CV, copies of certified certificates, professional qualifications, email address, a day time telephone contact and the details and contact information for three referees to the following address, not later than **10<sup>th</sup> of April, 2015**.

The Director,  
Kenya Medical Research Institute,  
P.O. Box 54840-00200, NAIROBI, (Attn: Head of Human Resources)

Please write the Vacancy Number and Position applied for on the envelope and in the subject line of the Application letter. Applications must be sent through the address in the advert.

**Only shortlisted candidates will be contacted.**  
KEMRI is an equal opportunity employer.

**MINUTES OF THE 1<sup>ST</sup> JOINT SITTING OF THE SENATE SESSIONAL COMMITTEE ON DELEGATED LEGISLATION AND THE STANDING COMMITTEE ON FINANCE, COMMERCE AND BUDGET ON TUESDAY, 24<sup>TH</sup> MARCH, 2015 AT 7.30AM IN LE CHATEAU, INTERCONTINENTAL HOTEL**

**PRESENT**

**SESSIONAL COMMITTEE ON DELEGATED LEGISLATION**

1. Sen. Stephen Sang - Chairperson
2. Sen. (Dr.) Boni Khalwale
3. Sen. Daniel Karaba
4. Sen. Godliver Omondi
5. Sen. Joy Gwendu

**STANDING COMMITTEE ON FINANCE COMMERCE AND BUDGET**

1. Sen. Billow Kerrow - Chairperson
2. Sen. Peter Mositot - Vice- Chairperson
3. Sen. G.G. Kariuki
4. Sen. Moses Wetangula
5. Sen (Dr.) Wilfred Machage
6. Sen. Mutula Kilonzo Junior
7. Sen. Catherine Mukiite
8. Sen. James Mungai
9. Sen. Beatrice Elachi

**ABSENT WITH APOLOGY**

**SESSIONAL COMMITTEE ON DELEGATED LEGISLATION**

1. Sen. Judith Sijeny - Vice-Chairperson
2. Sen. Boy Juma Boy
3. Sen. Liza Chelule
4. Sen. Emma Mbura

## **STANDING COMMITTEE ON FINANCE COMMERCE AND BUDGET**

1. Sen. Agnes Zani
2. Sen. Zipporah Kittony
3. Sen. Paul Njoroge Ben
4. Sen. Boni Khalwale
5. Sen. Wilfred Machage
6. Sen. Beatrice Elachi
7. Sen. John Lonyangapuo

### **IN ATTENDANCE**

1. Mrs. Phyllis Makau
2. Mr. Njenga Njuguna
3. Ms. Eunice Gichangi
4. Mr. Johnson Okello
5. Mr. Martin Masinde
6. Mr. Gichohi Mwaniki
7. Ms. Emmy Chepkwony
8. Mr. Peter Mulesi
9. Ms. Carol Kirorei
10. Mr. Said Osman
11. Mr. Chelang'a Maiyo
12. Ms. Ann Ng'ang'a

### **SENATE**

- Director, Parliamentary Budget Office
- Director, Committee Services
- Director, Legal Services
- Deputy Director, Legal Services
- Senior Parliamentary Budget Officer
- Senior Parliamentary Budget Officer
- Senior Clerk Assistant
- Clerk Assistant
- Clerk Assistant
- Research Officer
- Research Officer
- Intern

### **MIN. NO. 29/2015**

### **- PRELIMINARIES**

The Chairperson called the meeting to order at 8.40 a.m. followed by a word of prayer. He then led in a self-introductory session and invited the Chairperson, Standing Committee on Finance, Commerce and Budget gave his opening remarks.

### **MIN. NO. 30/2015**

### **- ADOPTION OF THE AGENDA**

The agenda of the sitting was adopted as presented having been proposed by Sen. Sang and seconded by Sen. Kerrow.

Remarks by Ms. Eunice Gichangi

Ms. Gichangi informed the meeting that by a letter dated 13<sup>th</sup> March 2015, the Principal Secretary, National Treasury forwarded to both the Clerk of the National Assembly and the Clerk of the Senate the following draft Regulations:

1. The Public Finance Management (National Government) Regulations, 2015
2. The Public Finance Management (County Government) Regulations, 2015
3. A Legal Notice for Declaration of the National Government Entities (State Organs)

The drafts were submitted pursuant to section 205 of the Public Finance Management Act No. 18 of 2012 (PFM) which provides the “*If a House of Parliament does not make a resolution either approving or rejecting any regulations within fifteen sitting days after submission to it for approval, the House shall be deemed to have approved those regulations*”

She then defined a sitting day under standing order 2(1) to mean “*any day on which the senate sits.*” and presented a proposed programme for the consideration of the Regulations. The Joint Committee resolved the following:

- 1. To hold Public Hearings on the draft Regulations on Wednesday, 1<sup>st</sup> April, 2015, and have the Regulations uploaded on the Senate website.***
- 2. To invite the County Assemblies Forum (CAF), the Council of Governors (COG) and the Commission on Revenue Allocation (CRA) to give their submissions on the Regulations on Tuesday, 31<sup>st</sup> March, 2015.***
- 3. To give a status/interim report to the House on Thursday, 26<sup>th</sup> March, 2015 informing the House of the meeting and the timelines agreed at the meeting.***

Remarks by Mrs. Phyllis Makau

She informed the meeting that the purpose of the Regulations was to make it easier to implement the PFM Act 2012. The Act is one of the revolutionary laws concerning public finances both at the county and the national level. It provides for raising of resources, allocation of funds, accounting for funds and inter-relations of various institutions.

She noted that a major problem was that the Constitution of Kenya 2010 shifted the power of the past from the Executive to the Legislature. There is an attempt to try and muzzle the Legislature's role.

#### Remarks by Mr. Martin Masinde

Mr. Masinde took members through the salient issues of the PFM Regulations. He informed the meeting that the development of the PFM Regulations was guided by the following considerations:

- Financial autonomy of National and County Governments.
- The Public Finance Management Act, 2012.
- International practices; and
- The need to separate the PFM Regulations for national and county governments to capture the unique needs of each level of government.

The Regulations have taken into account the views of Commission on Revenue Allocation, Commission on the Implementation of the Constitution, AO, Council of Governors, CEC, civil society and the public.

He summarized the provisions of the various parts of the Regulations as follows:

1. **Part 1:** provides for the citation, interpretation; application of the regulations and object and purpose of the Regulations and includes provisions that require officers to be conversant with PFM regulations as well as openness, accountability and public participation; In addition, it provides for the financial management forms and manuals, application of secure signatures; and restricted use green and brown ink as well as use of indelible ink.
2. **Part 2:** provides for the corporate governance; establishment of PFM Standing Committee and its roles; the Presidential Warrant, the National Treasury Warrant, the Governors warrant and County Treasury warrant. Also provides for the responsibilities of accounting officers and delegation by accounting officers as well as the designation of Authority to Incur Expenditure by accounting officer.
3. **Part 3:** provides on issues of corporate governance establishment of PFM Standing Committee and its roles. The presidential warrant, national treasury warrant, governors warrant and county treasury warrant.

4. **Part 4:** expounds on the fiscal responsibilities provided in the Constitution and the PFM Act 2012. BPS, macro-economic framework and the contents of the fiscal framework and its revision.
5. **Part 5:** provides for the general rules relating to budget execution; accounting officer to exercise budgetary control measures, accounting officers to request cash on the basis of an approved quarterly cash disbursement schedule;
6. **Part 6:** provides for the classification of Government Revenue, the format of estimates of revenue, the basic principles in deciding whether the sums shall be applied as Appropriation-In- Aid (AIA), the main forms of receipt in development estimates; Also provides for receipt of goods and unauthorized spending
7. **Part 7:** provides for the definition of terms, gifts, donations and sponsorships;
8. **Part 8:** provides for the composition of the Consolidated Fund and process of receipts into the Fund and criteria for approval.
9. **Part 9:** provides for the accounting period including charging expenditure to year of accounts; recording and reporting of financial transactions; clearance and suspense accounts and the payments to beneficiaries residing outside Kenya;
10. **Part 10:** provides for Consolidated Fund Services; excess vote, power of accounting officer to object to some payments; recovery, disallowance and adjustments of payments, re-vote of budget etc.
11. **Part 11:** provides for the responsibility for monitoring, evaluation and reporting, requirements for appropriation accounts to be accompanied by footnotes; and special national and county government public funds and state or county corporations additional reporting requirements.
12. **Part 12:** provides that Responsibility for asset management shall be vested with accounting officers;
13. **Part 13:** provides for the mandate of internal auditors and the requirement for internal auditors to comply with professional standards;
14. **Part 14:** provides the guiding principles for national and county government borrowing; policy frameworks on public debt management;
15. **Part 15:** provides for criteria for establishment of public funds, management and winding up of a national public fund or a county government public fund;

16. **Part 16:** provides the definitions, declaration of national government entities and classification of state corporations as well as for county governments;
17. **Part 17:** provides further guidance on the matters relating to the Intergovernmental Budget and Economic Council established under Section 187 of the Public Finance Management Act, 2012. The part also provides for the recovery plan and assumption of executive responsibilities of the county.
18. **Part 18:** provides for the gazettelement of financial, accounting, and reporting formats
19. **Additional fiscal rules:**
  - i. Personnel Emoluments shall not exceed 35% of the total revenues of both levels of Governments;
  - ii. The approved expenditures of a county assembly shall not exceed seven per cent of the total revenues of the county government or twice the personnel emoluments of that county assembly, whichever is lower”

He concluded by stating that the proposed Public Finance Management (National and County Governments) Regulations, 2014 would provide a sufficient level of economic, fiscal and financial detail and adequate time for the legislatures at the National and County Governments to perform their oversight role in an effective manner.

Remarks by Mr. Gichohi Mwaniki

Mr. Gichohi Mwaniki took the Members through the proposed amendments to the Regulations as follows:

**MIN. NO. 32/2015**


**-DATE OF NEXT MEETING**

The next meeting would be on Tuesday, 31<sup>st</sup> March, 2015.

**MIN. NO. 33/2015**

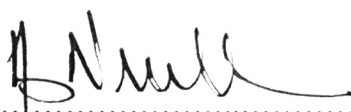
**-ADJOURNMENT**

There being no other business, the meeting was adjourned at fifteen minutes to twelve o'clock.

SIGNED: FOR 

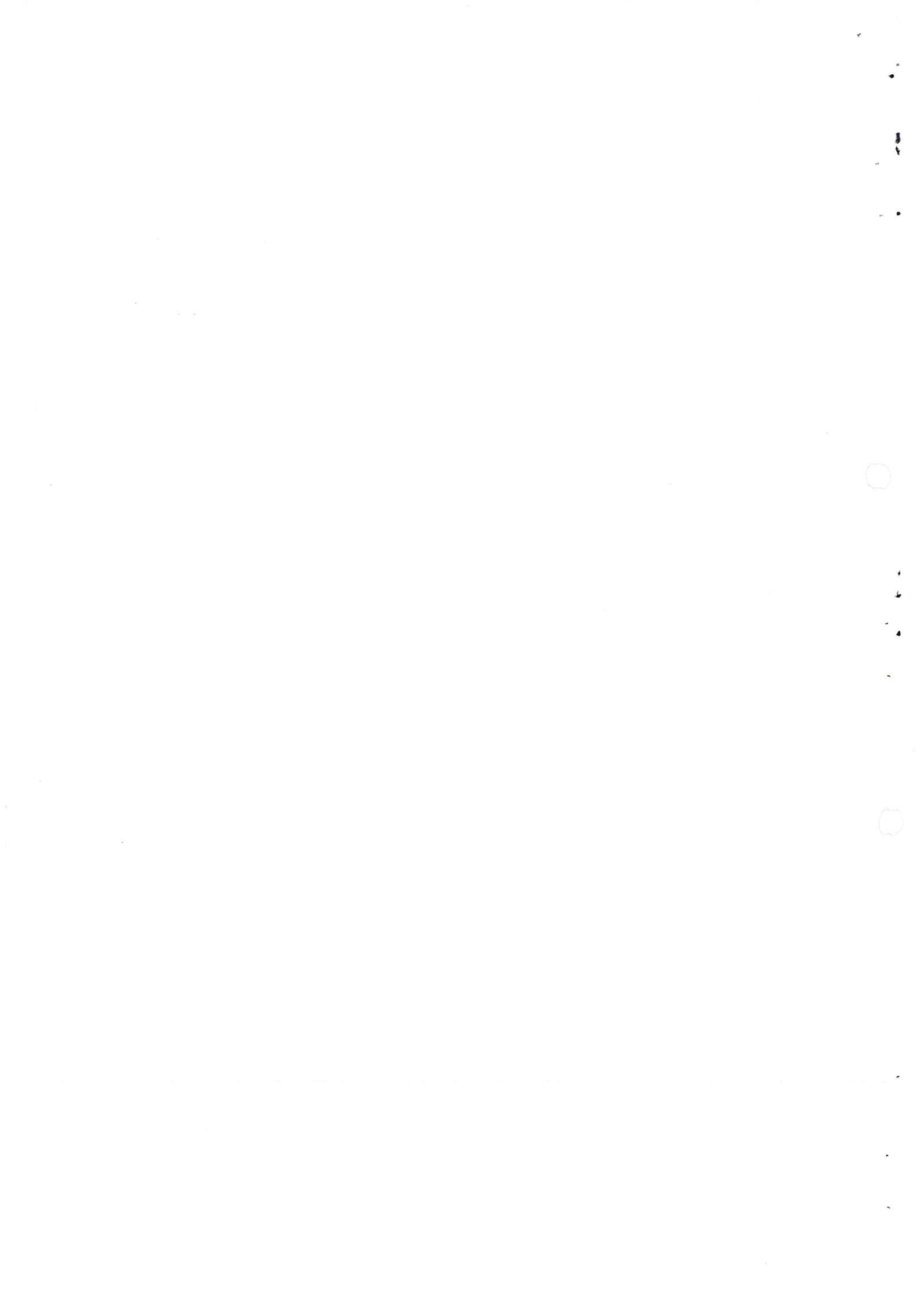
CHAIRPERSON – SEN. STEPHEN SANG

DATE: 28. 4. 2015

SIGNED: 

CHAIRPERSON – SEN. BILLOW KERROW

DATE: 28. 4. 2015



**MINUTES OF THE 2<sup>ND</sup> JOINT SITTING OF THE SENATE SESSIONAL COMMITTEE ON DELEGATED LEGISLATION AND THE STANDING COMMITTEE ON FINANCE, COMMERCE AND BUDGET ON THURSDAY, 26<sup>TH</sup> MARCH, 2015 AT 12.00 P.M. IN THE OLD CHAMBER, 1<sup>ST</sup> FLOOR, COUNTY HALL BUILDING**

**PRESENT**

**SESSIONAL COMMITTEE ON DELEGATED LEGISLATION**

1. Sen. Stephen Sang - Chairperson
2. Sen. Boy Juma Boy
3. Sen. (Dr.) Boni Khalwale
4. Sen. Daniel Karaba
5. Sen. Liza Chelule

**STANDING COMMITTEE ON FINANCE COMMERCE AND BUDGET**

1. Sen. Billow Kerrow - Chairperson
2. Sen. Peter Mositet - Vice-Chairperson
3. Sen. Moses Wetangula
4. Sen. (Dr.) Wilfred Machage
5. Sen. Mutula Kilonzo Junior
6. Sen. Beatrice Elachi
7. Sen. (Prof.) John Lonyangapuo
8. Sen. Ben Njoroge

**ABSENT WITH APOLOGY**

**SESSIONAL COMMITTEE ON DELEGATED LEGISLATION**

1. Sen. Judith Sijeny - Vice-Chairperson
2. Sen. Godliver Omondi
3. Sen. Joy Gwendu
4. Sen. Emma Mbura

## **STANDING COMMITTEE ON FINANCE COMMERCE AND BUDGET**

1. Sen. Catherine Mukiite
2. Sen. Zipporah Kittony
3. Sen. James Mungai
4. Sen. Boni Khalwale
5. Sen. Wilfed Machage
6. Sen. Agnes Zani
7. Sen. G.G Kariuki
8. Sen. Peter Anyang' Nyong'o

### **IN ATTENDANCE**

1. Mr. Peter Mulesi
2. Ms. Carol Kirorei
3. Mr. Chelang'a Maiyo
4. Mr. Gorod Abdirahim
5. Mr. Chacha
6. Ms. Ann Ng'ang'a

### **SENATE**

- Clerk Assistant
- Clerk Assistant
- Research Officer
- Parliamentary Budget Officer
- Parliamentary Budget Officer
- Intern

### **MIN. NO. 34/2015**

### **- PRELIMINARIES**

The Chairperson called the meeting to order at 10.30 a.m. followed by a word of prayer.

### **MIN. NO. 35/2015**

### **- ADOPTION OF THE AGENDA**

The agenda of the sitting was adopted as presented having been proposed by Sen. Elachi and seconded by Sen. Karaba.

### **MIN. NO.36/2015**

### **-CONSIDERATION OF THE PUBLIC FINANCE MANAGEMENT (EQUALIZATION FUND) GUIDELINES, 2015**

Sen. Mositet took Members through a brief prepared by the Budget Office as follows:

1. Article 204 of the Constitution provides for the establishment of an Equalization Fund into which shall be paid one half (0.5 ) percent of all the revenues collected by the

national government each year on the basis of the most recent audited accounts of revenue received and approved.

2. The Fund is to be utilized to provide basic services such as water, roads, health facilities and electricity to marginalized areas for a period of 20 years after the effective date.
3. Parliament may enact laws for further fixed years subject to more than half of all Members of the National Assembly and more than half of all the County Delegation in the Senate supporting such legislation.
4. Total allocation to the Fund in the current financial year of 2014/15 stands at Kshs. 3.4 billion. With regards to the financial years 2012/13 and 2013/14, the Printed Estimates reflect allocation of Kshs. 3.0 billion and Kshs. 3.4 billion, respectively. Further, Kshs. 6 billion is proposed to be allocated in the next fiscal year of 2015/16.
5. The Constitution provides that the Commission on Revenue Allocation shall be consulted and its recommendations considered before parliament passes any Bill appropriating money out of the Equalization Fund. To that end, the Commission prepared a policy on Marginalization and identified 14 counties which include the following: Turkana, Mandera, Wajir, Marsabit, Samburu, Narok, Tana River, West Pokot, Kwale, Garissa, Kilifi, Taita Taveta, Isiolo and Lamu
6. The PFM Act of 2012 mandates the National Treasury to administer the Fund in accordance with Article 204 of The Constitution. Consequently, the National Treasury published guidelines on the same on 13<sup>th</sup> March 2015 whose purpose is to specify the sources, object and purpose of the fund; administration and management of the fund; establishment of the Equalization Fund Board; withdrawal; and winding up of the Fund.
7. According to the National Treasury, the Regulations are based on key stakeholders' engagement where their input has been taken into account during the finalization of the guidelines.

The meeting was informed that the Standing Committee on Finance, Commerce and Budget had previously considered the Guidelines and had suggested the following changes be taken into consideration:

- 1) **Guideline 3 (b):** The Regulations proposed that the equalization fund shall also consist of income generated from the fund; The Committee observed that the Regulations should clearly detail if the sources of income for the Fund would be earned from interest or

trading in securities. The Committee noted that proceeds from trading of the fund capital should support the sustaining of resources in the fund rather than in service provision.

- 2) **Guideline 5 (g):** The Committee noted that the draft Regulations proposed that an unincorporated board should manage the fund. The Committee was of the opinion that it was not necessary to establish a Board to manage the fund and Treasury should instead be responsible for this.

The regulations also provide that, as part of establishing the Board the Cabinet Secretary shall appoint 5 other persons from outside of the Public Service. The Committee noted that the qualifications and criteria for appointment are not set out and no provision has been made for vetting or approval by a Committee of the Senate. The Committee also noted that there was no stipulation for application of the 1/3 gender rule in the establishment of the Board;

- 3) **Guideline 6 (3):** The Regulations provide for the expenses of the Board, which shall not exceed 10% of the annual voted provision. The Committee was concerned with this provision when weighed against the finite resources for the equalization fund. The Committee recommended that if the Board was deemed as critical to the effective management of the fund, funding for it should possibly be from outside the kitty of the fund. The Committee further recommended that should funding for the Board remain within the ambit of the fund, allocation for expenses of the Board should not be calculated as a percentage of the total amount of the fund.
- 4) **Guideline 13:** The Committee noted that the draft Regulations provide for the procedure in administration of the Fund but with no mention of a requirement for the officer (s) administering the fund to make in-year reports to the senate to ensure effective oversight. The Committee resolved that this should be included as a mandatory provision in the regulations to safeguard against misuse of the Fund;
- 5) The Committee noted that the secretary to the Board is the Officer administering the fund but with no clear definition of what the duties of the officer administering the Fund shall be as Guideline 8 only provides for his duties as secretary.
- 6) The Committee also resolved that all decisions of the Board should be in writing and made publicly available.

Members raised the following concerns:

1. That the expenses of the Board shall be met out of funds provided by Parliament for that purpose and shall not exceed 10% of the annual voted provision. Members recommended that the percentage be reduced to 5%;
2. That the input and recommendations of the Standing Committee on Finance Commerce and Budget were not incorporated into the Regulations;
3. In view of the Constitutional provision that any unspent equalization fund shall remain in the Fund for use in subsequent years, the National Treasury should ascertain total amount of equalization fund allocated in each financial year and the status thereof.
4. The Guidelines should elaborate a clear role play between the envisaged Board and the various State Departments in term of clear reporting and fiscal responsibilities on the utilization of the Fund.

*The Committee resolved to invite the Cabinet Secretary, National Treasury to a meeting on Thursday, 2<sup>nd</sup> April, 2015 to discuss the concerns raised on the Guidelines.*

**MIN. NO.37/2015**

**- DATE OF NEXT MEETING**

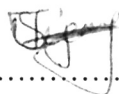
The next meeting would be held in Tuesday, 31<sup>st</sup> March, 2015

**MIN. NO.38/2015**

**- ADJOURNMENT**

There being no other business, the meeting was adjourned at 11.45a.m.

**SIGNED:**


FOI  


**CHAIRPERSON – SEN. STEPHEN SANG**

**DATE:**

28.4.2015

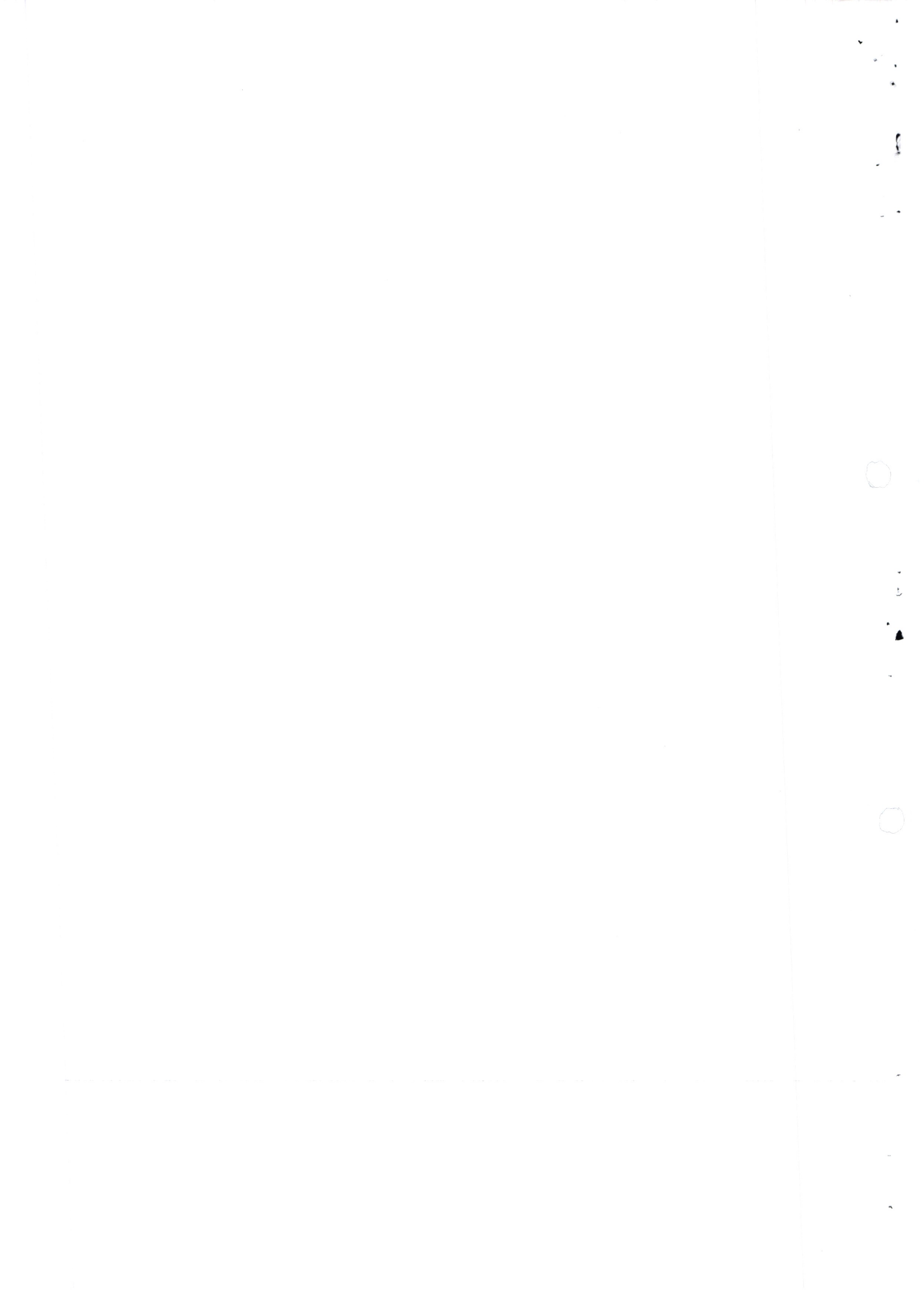
**SIGNED:**



**CHAIRPERSON – SEN. BILLOW KERROW**

**DATE:**

28.4.2015



**MINUTES OF THE 3<sup>RD</sup> JOINT SITTING OF THE SENATE SESSIONAL COMMITTEE ON DELEGATED LEGISLATION AND THE STANDING COMMITTEE ON FINANCE, COMMERCE AND BUDGET ON TUESDAY, 31<sup>ST</sup> MARCH, 2015 AT 12.00 P.M. IN THE OLD CHAMBER, 1<sup>ST</sup> FLOOR, COUNTY HALL BUILDING**

**PRESENT**

**SESSIONAL COMMITTEE ON DELEGATED LEGISLATION**

1. Sen. Stephen Sang - Chairperson
2. Sen. Boy Juma Boy
3. Sen. Godliver Omondi
4. Sen. Joy Gwendu
5. Sen. Liza Chelule

**STANDING COMMITTEE ON FINANCE COMMERCE AND BUDGET**

1. Sen. Billow Kerrow - Chairperson
2. Sen. Moses Wetangula
3. Sen. (Dr.) Wilfred Machage
4. Sen. Mutula Kilonzo Junior
5. Sen. Beatrice Elachi
6. Sen. Zipporah Kittony
7. Sen. Mutahi Kagwe

**ABSENT WITH APOLOGY**

**SESSIONAL COMMITTEE ON DELEGATED LEGISLATION**

1. Sen. Judith Sijeny - Vice-Chairperson
2. Sen. Daniel Karaba
3. Sen. (Dr.) Boni Khalwale
4. Sen. Emma Mbura

**STANDING COMMITTEE ON FINANCE COMMERCE AND BUDGET**

1. Sen. (Dr.) Boni Khalwale
2. Sen. Peter Mositet
3. Sen. G.G. Kariuki
4. Sen. Ben Njoroge

5. Sen. ( Dr) Agnes Zani
6. Sen. Boni Khalwale
7. Sen. Catherine Mukiite
8. Sen.G.G.Kariuki
9. Sen. John Lonyangapuo

### **IN ATTENDANCE**

- |                          |                              |
|--------------------------|------------------------------|
| 1. Mr. Micah Cheserem    | - Chairperson, CRA           |
| 2. Ms. Fatuma Abdikadir  | - Vice- Chairperson, CRA     |
| 3. Mr. George Ooko       | - CEO, CRA                   |
| 4. Ms. Rose Osoro        | - Commissioner, CRA          |
| 5. Ms. Sheila Yieke      | - Director Legal, CRA        |
| 6. Hon. (Dr.) Nuh Nassir | - Chairperson, CAF           |
| 7. Hon. Stephen Ngelu    | - Speaker, Makueni           |
| 8. Hon. Antony Macharia  | - Deputy Speaker, Kiambu     |
| 9. Mr. Michael Ngala     | - Clerk, Taita Taveta        |
| 10. Mr. Patrick Wakine   | - Clerk, Migori              |
| 11. Mr. J.K. Ariithi     | - Clerk, Meru                |
| 12. Ms. Roselyn Mungai   | - CEO, CAF                   |
| 13. Ms. Maureen Korir    | - Legislative Assistant, CAF |

### **IN ATTENDANCE**

1. Ms. Josephine Kusinyi
2. Mr. Peter Mulesi
3. Ms. Carol Kirorei
4. Ms. Gloria Wawira
5. Mr. Chelang'a Maiyo
6. Mr. Gorod Abdirahim
7. Mr. Chacha
8. Ms. Ann Ng'ang'a

### **SENATE**

- Legal Counsel
- Clerk Assistant
- Clerk Assistant
- Clerk Assistant
- Research Officer
- Parliamentary Budget Officer
- Parliamentary Budget Officer
- Intern

### **MIN. NO. 39/2015**

### **- PRELIMINARIES**

Sen. Kerrow called the meeting to order at 12.35 p.m. followed by a word of prayer. He then led in a self-introductory session. He informed those present that the purpose of the meeting was to receive the views of the Commission on Revenue Allocation (CRA) and the County Assemblies

Forum (CAF) on the PFM Regulations, 2015 that would inform the Committee's proposed amendments.

**MIN. NO. 40/2015**

**- ADOPTION OF THE AGENDA**

The agenda of the sitting was adopted as presented having been proposed by Sen. Kilonzo Junior and seconded by Sen. Boy.

**MIN. NO.41/2015**

**- MEETING WITH THE COMMISSION ON  
REVENUE ALLOCATION (CRA) AND  
COUNTY ASSEMBLIES FORUM (CAF)**

Mr. Cheserem from CRA gave the following proposed amendments to the Public finance Management (Equalization Fund) Guidelines, 2015:

1. **Clause 4.1** on the Membership to the Board be amended to consist of the Permanent Secretary, Devolution as the Chairperson, 4 Governors nominated by the Council of Governors, the P.S. Education, P.S. Water, P.S. Finance, Chairperson CRA, Attorney General or appointee and two members appointed by the Cabinet Secretary from outside public service.
2. **Clause 4.4 (d)** on the functions of the Board contradicts Art. 216(4) of the Constitution which provides that "*The Commission shall determine, publish and regularly review a policy in which it sets out the criteria by which to identify the marginalized areas for purposes of Article 204 (2)*"
3. **Explanatory memorandum** Part II note 8 be reviewed with respect to the marginalized counties and note 2 be deleted as it contradicts Art. 216 (4) of the Constitution.

He requested for more time to give more submissions on the Regulations.

Dr. Nuh from CAF also requested for more time to give their submissions as the Regulations were received the previous week. He noted that the CAF was unaware of the Equalization Fund Guidelines 2015 and requested for time to scrutinize the Regulations.

*It was agreed that written submissions on the PFM Regulations be submitted by close of business on Wednesday 8<sup>th</sup> April, 2015 as the Committee was pressed for time.*

**MIN. NO.42/2015**

**- ANY OTHER BUSINESS**

**1. Closure of county assemblies**

Concern was raised by CAF on the risk of closure of county assemblies, with reference to the imminent closure of the County Assembly of Taita Taveta due to lack of funds. The meeting was

informed the meeting that at a retreat of the Finance Committee held in Naivasha, the CRA and the Controller of Budget had been directed to release funds to the county assemblies.

Mr. Cheserem assured the meeting that the CRA was in the process of taking proactive measures to ensure that the county assemblies do not close down.

**MIN. NO.43/2015**

**- DATE OF NEXT MEETING**

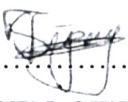
The next meeting would be held in Wednesday, 1<sup>st</sup> April, 2015

**MIN. NO.44/2015**

**- ADJOURNMENT**

There being no other business, the meeting was adjourned at 13.25p.m.

**SIGNED:**

100  


.....  
**CHAIRPERSON – SEN. STEPHEN SANG**

**DATE:**

28.4.2015

**SIGNED:**



.....  
**CHAIRPERSON –SEN. BILLOW KERROW**

**DATE:**

28.4.2015

**MINUTES OF THE 4<sup>TH</sup> JOINT SITTING OF THE SENATE SESSIONAL COMMITTEE ON DELEGATED LEGISLATION AND THE STANDING COMMITTEE ON FINANCE, COMMERCE AND BUDGET ON WEDNESDAY, 1<sup>ST</sup> APRIL, 2015 AT 9.00A.M IN THE OLD CHAMBER, 1<sup>ST</sup> FLOOR, COUNTY HALL BUILDING**

**PRESENT**

**SESSIONAL COMMITTEE ON DELEGATED LEGISLATION**

1. Sen. Stephen Sang - Chairperson
2. Sen. Judith Sijeny - Vice- Chairperson
3. Sen. Liza Chelule
4. Sen. Boy Juma Boy

**STANDING COMMITTEE ON FINANCE COMMERCE AND BUDGET**

1. Sen. Billow Kerrow - Chairperson
2. Sen. Mutahi Kagwe
3. Sen. Zipporah Kittony
4. Sen. Beatrice Elachi
5. Sen. G.G. Kariuki
6. Sen. Ben Njoroge

**ABSENT WITH APOLOGY**

**SESSIONAL COMMITTEE ON DELEGATED LEGISLATION**

1. Sen. (Dr.) Boni Khalwale
2. Sen. Daniel Karaba
3. Sen. Godliver Omondi
4. Sen. Joy Gwendo
5. Sen. Emma Mbura

**STANDING COMMITTEE ON FINANCE COMMERCE AND BUDGET**

1. Sen. Wilfred Machage
2. Sen. (Dr) Agnes Zani
3. Sen. (Prof) John Lonyangapuo

4. Sen. Peter Anyang' Nyong'o
5. Sen. James Mungai
6. Sen. Peter Mositet
7. Sen. Catherine Mikiite
8. Sen. Moses Wetangula
9. Sen. Boni Khalwale
10. Sen. Mutula Kilonzo (jnr.)

**IN ATTENDANCE**

1. Ms. Rosemary Irungu
2. Mr. Mbindyo Kimanthi
3. Ms. Jackline Kagure
4. Mr. James Gachiri
5. Mr. Jason Mulesi

**THE PUBLIC**

- The Institute of Social Accountability (TISA)
- Parliamentary Initiatives Network (PIN)
- PIN
- Legal Officer, Chase Bank
- Accountant, ICPAK

**IN ATTENDANCE**

1. Ms. Josephine Kusinyi
2. Ms. Brenda Ogembo
3. Ms. Beatrice Kapei
4. Mr. Gorod Abdirahim
5. Mr. Peter Mulesi
6. Ms. Carol Kirorei
7. Ann Ng'ang'a

**SENATE**

- Legal Counsel
- Clerk Assistant
- Legal Counsel
- Parliamentary Budget Officer
- Clerk Assistant
- Clerk Assistant
- Intern

**MIN. NO. 45/2015**

**- PRELIMINARIES**

Sen. Kerrow called the meeting to order at 9.55 a.m. followed by a word of prayer. He welcomed members of the public to the meeting and led in a self-introductory session.

**MIN. NO. 46/2015**

**- ADOPTION OF THE AGENDA**

The agenda of the sitting was adopted as presented having been proposed by Sen. Njoroge and seconded by Sen. Boy Juma Boy

**Submissions from The Institute of Social Accountability (TISA)**

Ms. Irungu began by presenting a Petition on the following grounds:

1. That the invitation to the Public Hearings advertisement was placed on the national newspapers, in an economy where the majority are poor and do not have access to newspapers;
2. That the advertisement was carried in the newspapers on 27<sup>th</sup> March, 2015 calling for submissions on the Regulations on 1<sup>st</sup> April, 2015 giving the public only 4 days to review the bulky Regulations;
3. The Regulations as of 30<sup>th</sup> March, 2015 were not available on the Senate website.

On these grounds she stated that the public hearings should be postponed and give members of the public adequate time of at least 14 days to scrutinize the Regulations.

Sen. Kerrow appreciated the concerns raised and responded by informing the meeting of the following:

1. The Senate had very limited timelines to consider and finalize on the Regulations. Once the Regulations were transmitted to the Senate, the Committee had only 15 sitting days to finalize on them and Report to the House.
2. The Regulations were subjected to public participation by the National Treasury during their development and were available on the Treasury website. The invitation of the Committee to the public by the committee was only to receive submissions.
3. The three Regulations had not been gazetted save for the Equalization Fund Guidelines, 2015.
4. The Senate would look into improving public participation in the future.

Ms. Irungu then gave the following submissions on behalf of The Institute for Social Accountability (TISA):

Submissions on the

1. **Section 130** should be amended to ensure that the framework should be agreeable to both levels of government and developed through consultations in the spirit of Article 6(2).
2. **Section 203(2)** should provide a more comprehensive criteria for the establishment of public funds as provided in Section 24(11) of the PFM Act

3. **Section 204** should provide for the CRA in the establishment and winding down of funds and express provisions for public participation in the funds framework
4. **Section 203** should be amended to provide that “the funds and usage of money through the funds shall be published and publicized.”  
**Subsection 1(a)** be amended to clarify who the cabinet secretary responsible for the national government entity shall be submitting to  
**Subsection 1(d)** that “administration costs” be defined  
**Subsection 1(f)** that “unforeseen and urgent need” be defined

Submissions on the PFM (Equalization Fund) Guidelines, 2015

1. **Section 4.1:** that the Board be lean with no more than 7 members and have representation of independent commissions, counties and public participation.  
Proposed members of the Board: Cabinet Secretary, National Treasury(Chair), C.S. Devolution, C.S. of service ministries on a rotating basis, representative of the CRA, COG and two representatives from among the chairpersons
2. **Section 4.4** be amended to include the following functions:
  - (h) In administration of the fund the Board shall ensure it does not undermine the autonomy of county governments and respects Article 6(2)
  - (i) The Board shall ensure transparency, accountability and public participation in its operations
3. **Section 4.6:** expenses of the Board should not exceed 3%, and the Board should sit a maximum of 6 times per year.

**Submissions from the Parliamentary Initiatives Network (PIN)**

Ms. Jackline informed Members that PIN was a forum consisting of 18 organizations with a programmatic interest in Parliament. She then gave the following submissions:

The Public Finance Management (County Governments) Regulations 2015

1. **Section 6:** the words “subject to national security considerations, the public shall be provided with full access to financial information in a timely manner in a timely manner...” should be expunged as they limit rights that are already clearly defined by the Constitution (Article 35) and are therefore unconstitutional.
2. **Section 6 (1):** the word ‘or’ is replaced with “and”, since the ideas espoused are non-contrasting and ought to apply jointly.

3. **Section 6 (1) (b)** which reads, "...making information available to the media" be amended by inserting the words "with county-wide reach" after media.
4. **Section 7** be amended to read "The County Executive Committee member shall notify the general public through a notice in the gazette or at least two newspapers of county-wide circulation on the venue 'and' manner of submitting written submissions.
5. **Section 7 (3)** be amended to include documents that were submitted to the Assembly and all other relevant government organs therefore the words "...any other published document..." should be deleted, since its meaning is ambiguous.
6. **Section 7 (4)** the term 'responsibility statement' be defined under the interpretation section, to give a uniform understanding of the intended meaning of the term. Further, there should be clarity on which members of the public were consulted, what feedback they gave and how the County Government responded to the feedback given.
7. **Section 25:** the requirement that counties spend no more than 35% of their revenues on wages is not realistic.

**Subsection (g):** delete the words 'if' and 'actual'.

**Subsection (h):** should be refer to (g) above as opposed to (f)

8. **Section 26 (6)** be deleted as there is no rationale for requiring that this ceiling be binding for two years.
9. **Section 26 (7)** be amended to read "The County Treasury shall include a statement in the budget estimates explaining any deviation to the provisions of sub-section 4", which provides that the County Fiscal Strategy Paper once adopted shall serve as the basis of expenditure ceilings specified in the fiscal framework.
10. **Section 197:** the prescription of what constitutes the administration costs should be defined clearly in this section to avoid loss or misappropriation of money the administering body.

**Subsection (e)** should refer to section 116(n) of the PFM Act which provides that funds going to the county should be published and publicized.

11. **Section 198:** procedures be set out in the regulations as opposed to being further delegated to separate guidelines.
12. **Section 209: 1(a)** be amended to the effect that the CBEF shall focus on the County Budget process from formulation to implementation, in line with the PFM Act.

**Subsection 2** be amended to have the Forum meeting at times consistent with the relevant stages of the budget cycle from formulation through implementation, and that the agenda shall be linked to the budget cycle.

**Subsection 5** be amended to read "...The Office of the Governor shall provide secretarial services to the Forum for effective performance of its functions."

Submissions on the PFM Equalization Fund Guidelines, 2015

1. **Part IV:** the composition of the Board be restructured to include county government representation.
2. **Section 4(2) (b)** be amended to read "... the Board shall liaise with county structures in the marginalized areas for the proper and efficient discharge of its functions"
3. **Section 4(1)(h)** that the four members of the Board be drawn from the Commission on Revenue Allocation, County Assemblies Forum, Council of Governors and the Private sector

Submissions on the Declaration of The National Government Entities (State Organs)

Mr. Kimanthi noted that institutions listed as government entities, are currently running County Government functions including:

1. Lake Victoria South Water Service Board
2. Northern Water Services Board
3. Rift Valley Water Services Board
4. Tana Water Services Board
5. Tanathi Water Services Board
6. Coast Development Authority
7. Ewaso Ngiro North Development Authority
8. Ewaso Ngiro South Development Authority
9. Kerio Valley Development Authority
10. Lake Basin Development Authority
11. Tana and Athi Rivers Development Authority

MIN. NO. 48/2015

-DATE OF NEXT MEETING


The next meeting would be on Thursday, 2<sup>nd</sup> April, 2015.

MIN. NO. 49/2015

-ADJOURNMENT

There being no other business, the meeting was adjourned at 11.32 a.m.

SIGNED:

*For*  


.....  
CHAIRPERSON – SEN. STEPHEN SANG

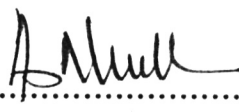
DATE:

*28/04/2015*

SIGNED: .....

CHAIRPERSON –SEN. BILLOW KERROW

DATE: .....



*28/4/2015*

**MINUTES OF THE 5<sup>TH</sup> JOINT SITTING OF THE SENATE SESSIONAL COMMITTEE ON DELEGATED LEGISLATION AND THE STANDING COMMITTEE ON FINANCE, COMMERCE AND BUDGET ON THURSDAY, 2<sup>ND</sup> APRIL, 2015 AT 5.30P.M IN COMMITTEE ROOM 5, MAIN PARLIAMENT BUILDING**

**PRESENT**

**SESSIONAL COMMITTEE ON DELEGATED LEGISLATION**

1. Sen. Stephen Sang
2. Sen. Judith Sijeny
3. Sen. Liza Chelule

**STANDING COMMITTEE ON FINANCE COMMERCE AND BUDGET**

1. Sen. Billow Kerrow
2. Sen. Mutahi Kagwe
3. Sen. Zipporah Kittony
4. Sen. Beatrice Elachi
5. Sen. G.G. Kariuki

**ABSENT WITH APOLOGY**

**SESSIONAL COMMITTEE ON DELEGATED LEGISLATION**

1. Sen. (Dr.) Boni Khalwale
2. Sen. Daniel Karaba
3. Sen. Godliver Omondi
4. Sen. Joy Gwendu
5. Sen. Boy Juma Boy
6. Sen. Emma Mbura

**STANDING COMMITTEE ON FINANCE COMMERCE AND BUDGET**

1. Sen. Wilfred Machage
2. Sen. (Dr) Agnes Zani
3. Sen. (Prof) John Lonyangapuo

4. Sen. Peter Anyang' Nyong'o
5. Sen. James Mungai
6. Sen. Peter Mositet
7. Sen. Catherine Mikiite
8. Sen. Moses Wetangula
9. Sen. Boni Khalwale
10. Sen. Mutula Kilonzo (jnr.)

**IN ATTENDANCE**

1. Mr. Henry Rotich
2. Dr. Kamau Thugge
3. Albert Mwenda
4. Geoffrey Malombe

**NATIONAL TREASURY**

- Cabinet Secretary
- Principal Secretary
- National Treasury
- National Treasury

**IN ATTENDANCE**

1. Ms. Josephine Kusinyi
2. Ms. Brenda Ogembo
3. Mr. Peter Mulesi
4. Ms. Carol Kirorei
5. Mr. Victor Bett
6. Ms. Beatrice Kapei
7. Mr. Gorod Abdirahim

**SENATE**

- Legal Counsel
- Clerk Assistant
- Clerk Assistant
- Clerk Assistant
- Clerk Assistant
- Legal Counsel
- Parliamentary Budget Officer

**MIN. NO. 50/2015**

**- PRELIMINARIES**

Sen. Sang called the meeting to order at 5.55 p.m. followed by a word of prayer. He then led in a self-introductory session. He informed the meeting that the purpose of the meeting was to discuss the PFM (Equalization Fund) Guidelines 2015.

**MIN. NO. 51/2015**

**- ADOPTION OF THE AGENDA**

The agenda of the sitting was adopted as presented having been proposed by Sen. Kittony and seconded by Sen. Sijeny

Mr. Rotich informed the meeting of the following:

1. The monies for the Fund, Kshs. 5.4 billion had been deposited in an account opened at the Central Bank of Kenya, where it does not earn interest.
2. The Ministry has put the necessary structures in place and was waiting for the Regulations to come into force.
3. The allocation for the Fund for this financial year is Kshs. 3.4 billion
4. The allocation for the 2015/2016 financial year was at 0.05 of the audited revenue coming to Kshs. 6 billion.
5. Past allocations to the Equalization Fund were not in the accounts because of the Regulations to operationalize the Fund was non-existent.

Members raised concern on the figures of the Fund. *It was agreed that the Cabinet secretary should confirm the status of the Fund and the subsequent allocations pending the operationalization of the Regulations.*

Members subsequently raised the following concerns:

1. **Guideline 4.1:** The size of the Board is too large. The Board be lean and have representation from the counties. Further, concern was raised on the longevity of the Board and whether it was necessary for it to be permanent.  
Members also noted that the same ministries or offices incorporated in the Board were the same ones that created the marginalization.
2. There is no way to implement of functions that belong to the county government without a link in the regulations.

3. **Guideline 6(3):** the expenses of the Board should to be capped at a percentage not more than 5% of the approved fund in a financial year.
4. The Guidelines should include reporting mechanisms requiring the forwarding of performance reports to the Senate.
5. Amend **Guideline 4.3** to replace 4.1(g) with 4.1 (h)

Mr. Rotich agreed to look into the issues raised by Members on the Guidelines.

**MIN. NO. 53/2015**

**-DATE OF NEXT MEETING**


The next meeting would be on notice.

**MIN. NO. 54/2015**

**-ADJOURNMENT**

There being no other business, the meeting was adjourned at 7.10p.m.

**SIGNED:**

FOR  


**CHAIRPERSON – SEN. STEPHEN SANG**

**DATE:**

28/04/2015

**SIGNED:**



**CHAIRPERSON –SEN. BILLOW KERROW**

**DATE:**

28/04/2015

**MINUTES OF THE 6<sup>TH</sup> JOINT SITTING OF THE SENATE SESSIONAL COMMITTEE  
ON DELEGATED LEGISLATION AND THE STANDING COMMITTEE ON  
FINANCE, COMMERCE AND BUDGET HELD ON TUESDAY, 28<sup>TH</sup> APRIL, 2015 AT  
9.00AM IN THE GROUND FLOOR BOARDROOM, COUNTY HALL**

**PRESENT**

**SESSIONAL COMMITTEE ON DELEGATED LEGISLATION**

1. Sen. Stephen Sang
2. Sen. Judith Sijeny
3. Sen. Boy Juma Boy
4. Sen. Daniel Karaba
5. Sen. Dr. Boni Khalwale

**STANDING COMMITTEE ON FINANCE, COMMERCE AND BUDGET**

1. Sen. Billow Kerrow
2. Sen. Peter Mositet
3. Sen. G.G. Kariuki
4. Sen. Catherine Mukiite
5. Sen. (Dr.) Zipporah Kittony
6. Sen. Moses Wetangula
7. Sen. (Dr.) Agnes Zani
8. Sen. Mutula Kilonzo Junior
9. Sen. (Dr.) Wilfred Machage
10. Sen. Ben Njoroge
11. Sen. Mutahi Kagwe
12. Sen. Beatrice Elachi

**ABSENT WITH APOLOGY**

**SESSIONAL COMMITTEE ON DELEGATED LEGISLATION**

1. Sen. Liza Chelule
2. Sen. Emma Mbura
3. Sen. Joy Gwendo
4. Sen. Godliver Omondi

**STANDING COMMITTEE ON FINANCE, COMMERCE AND BUDGET**

1. Sen. (Prof.) Peter Anyang' Nyong'o
2. Sen. (Prof.) John Lonyangapuo
3. Sen. James Mungai

**IN ATTENDANCE**

1. Mr. Gichohi Mwaniki
2. Mr. Gorod Abdirahim
3. Mr. Chelanga Maiyo
4. Ms. Brenda Ogembo
5. Mr. Victor Bett
6. Ms. Carol Kirorei
7. Ms. Ann Ng'ang'a

**SENATE**

- Parliamentary Budget Officer
- Parliamentary Budget Officer
- Research Officer
- Clerk Assistant
- Clerk Assistant
- Clerk Assistant
- Intern

**MIN. NO. 55/2015**

**- PRELIMINARIES**

The Chairman called the meeting to order at 9.30 a.m followed by a word of prayer.

**MIN. NO. 56/2015**

**- ADOPTION OF THE AGENDA**

The agenda of the sitting was adopted as presented having been proposed by Sen. G.G. Kariuki and seconded by Sen. Boy

**MIN. NO. 57/2015**

**-CONFIRMATION OF PREVIOUS MINUTES**

- i. The minutes of the 1<sup>st</sup> joint sitting were confirmed as a true record of the proceedings after being proposed by Sen. Karaba and seconded by Sen. Mukite.
- ii. The minutes of the 2<sup>nd</sup> joint sitting were confirmed as a true record of the proceedings after being proposed by Sen. Kilonzo Jnr and seconded by Sen. Karaba.

- iii. The minutes of the 3<sup>rd</sup> joint sitting were confirmed as a true record of the proceedings after being proposed by Sen. Boy and seconded by Sen. Mutula Junior.
- iv. The minutes of the 4<sup>th</sup> joint sitting were confirmed as a true record of the proceedings after being proposed by Sen. Sijeny and seconded by Sen. Kerrow.
- v. The minutes of the 5<sup>th</sup> joint sitting were confirmed as a true record of the proceedings after being proposed by Sen. Sijeny and seconded by Sen. Kerrow.

**MIN. NO. 58/2015 - CONSIDERATION AND ADOPTION OF THE REPORT ON  
THE PUBLIC FINANCE MANAGEMENT REGULATIONS,  
2015**

Mr. Gichohi informed the meeting that the PFM Regulations, 2015 were initially submitted as drafts and were later published and gazetted. Members raised concern on the extent to which the Regulations before the Committee would have effect on the appointments to various bodies and parastatals. Members were informed that the Regulations do not take effect until approved by a resolution of Parliament as per the section 205 of the PFM Act, 2012.

Ms. Kusinyi then took Members through the proposed amendments to the Regulations as follows:

The Public Finance Management (National Government) Regulations, 2015

1. Regulation 109 be amended to make it mandatory for all public entities to be on IFMIS  
Agreed to
2. Regulation 120(5) be amended to make it mandatory for the Cabinet Secretary to consult the Salaries and Remuneration Commission (SRC) in terms of expenditure in human resources. Agreed to
3. Regulation 122 be amended to make it mandatory for all public entities to be on IPPD  
Agreed to
4. Regulation 130(1) and (2) be amended to state who develops the frameworks governing conditional and unconditional frameworks to county governments. Agreed to
5. Regulation 179 be amended by changing the heading as it is not indicative of the content therein. A part should be introduced giving the functions and responsibilities of the audit committee. Agreed to
6. Regulation 181(1) be amended to state the relevant committee is the SRC. Agreed to

7. Regulation 182 be amended to make it clear that the accounting officer shall provide resources for the activities of the audit committee. Agreed to

8. Regulation 201(1) (d) be amended to define what administrative costs are. Agreed to

The Public Finance Management (County Governments) Regulations, 2015

1. Regulation 4 on the objectives of the Regulations should include the aspect of public participation

Agreed to

2. Regulation 18(3) should have the report of the public finance management committee of the county assembly submitted to the county assembly service board and not to the Speaker in his capacity as Speaker of the assembly.

Agreed to

3. Regulation 20 be deleted and replace with a new clause “The approval of the Controller of Budget to withdraw money from the County Revenue Fund, together with written instructions from the County Treasury which will include instructions by the accounting officer appointed in section 148(4) with respect to resources due to the County Assembly in the form of an addendum, requesting for the withdrawal, is sufficient authority for the approved bank where the County Exchequer Account is held to pay amounts from this account in accordance with the approval and instructions.

Agreed to

4. Regulation 25(1) be deleted. Agreed to

5. Regulation 26 be deleted and replaced with- “Once the County assembly has approved the report referred to in (3) above, the approved report shall stipulate the ceilings of revenue and expenditure which shall be by vote and programme to be used in finalizing the Annual Estimates of Expenditure for all spending agencies of the county government.”

Agreed to

6. Regulation 36 be amended to reflect the Appropriation Bill published. Agreed to.

7. Regulation 37(1) be deleted and replaced with-“the County Assembly may amend the annual estimates by making changes as provided under Section 131 of the Act to the approved report on the County Fiscal Strategy Paper”. Agreed to

8. Regulation 37 be amended by adding a new sub-regulation after 37(2) to state that the Speaker of the county assembly shall submit the approved budget to the CEC Finance and Controller of Budget within 14 days. Agreed to

9. Regulation 38 be deleted as it offends Article 207 of the Constitution. Agreed to

10. Regulation 41(5) be amended by inserting new sub-regulation 5 on reporting. Agreed to

11. Regulation 59 be deleted as it allows appropriations in aid to be spent at source, therefore avoiding scrutiny by the County Assembly. Agreed to

The Declaration of the National Government Entities (State Organs)

Members raised concern on what constitutes a national entity and whether funding of water bodies that perform devolved functions as per Schedule 4 of the Constitution would be constituted as a national entity.

Members adopted the report on the Public Finance Management Regulations, 2015 with amendments.

**MIN. NO. 59/2015**

**-ADJOURNMENT**

There being no other business, the meeting was adjourned at ten minutes to ten o'clock.

**SIGNED:**

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**CHAIRPERSON – SEN. STEPHEN SANG**

**DATE:**

29.04.2015

**SIGNED:**



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**CHAIRPERSON – SEN. BILLOW KERROW**

**DATE:**

29 April 2015

