REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2021

NAIROBI, 23rd February, 2021

CONTENT

Bill for Introduction into the National Assembly—

The National Government Constituencies Development Fund (Amendment) Bill, 2021  139
A Bill for

AN ACT of Parliament to amend the National Government Constituencies Development Fund Act, 2015

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the National Government Constituencies Development Fund (Amendment) Act, 2021.

2. The National Government Constituencies Development Fund Act, (hereinafter referred to as the “principal Act”) is amended in section 5 by inserting the word “operations” immediately after the words “through the constituency” appearing in subsection (3).

3. Section 6 of the principal Act is amended in subsection (3) by deleting the words “Fund and credited to the account of the constituency from which the funds were withdrawn” appearing immediately after the words “returned to the” and substituting therefor the words “constituency operations account”.

4. Section 7 of the principal Act is amended by deleting subsection (1) and substituting therefor the following new subsection—

“(1) All receipts, savings and accruals to the Fund and the balance of the Fund at the end of each financial year shall be retained in the Fund, and applied in accordance with this Act.”

5. Section 12 of the principal Act is amended by—

(a) deleting subsection (1) and substituting therefor the following new subsections—

“(1) For the purpose of disbursement of funds under this Act, each constituency shall open and maintain a constituency bank operations account at any commercial bank, approved by the National Treasury.”
“(1A) Each constituency shall maintain only one operations bank account, to be styled as 
"[Name of constituency] Operations Account".

“(1B) Each constituency shall operate one deposit bank account for purposes of holding third party monies.”

(b) deleting subsection (2) and substituting therefor the following new subsection—

“(2) At least three signatories shall be required for every cheque or instrument for actual payment or withdrawal of funds from the constituency operations account and the constituency deposit account.”

(c) inserting the following new subsections after the new subsection (2)—

“(2A) The signing instructions for the constituency operations account shall be such that there shall be at least one signature of an officer seconded by the Board for that purpose and, at least one signature of a member of the constituency Committee, and the signature of the sub-county accountant in charge of the Fund.”

“(2B) The signing instructions for the constituency deposit account shall be such that there shall be at least one signature of an officer seconded by the Board for that purposes and, at least one signature of a member of the constituency Committee who shall not be a signatory to the constituency operations account and the signature of the sub-county accountant in charge of the Fund.”

6. Section 13 of the principal Act is amended in subsection (3) by deleting the words “and/or instruments intended for actual release of money from the fund, plus any two” and substituting therefor the words “or instruments intended for actual release of money from the Fund and at least one”.

Amendment of section 13 of No. 30 of 2015.
7. The principal Act is amended by deleting section 16 and substituting therefor the following new section—

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16. The Board shall—

(a) consider and approve or reject project proposals submitted by constituencies and, where a project proposal is approved, release funds to that constituency;

(b) ensure timely and efficient disbursement of funds to every constituency;

(c) ensure efficient management of the Fund;

(d) co-ordinate and oversee the implementation of constituency projects;

(e) consider complaints or other matters which arise in the implementation of the Act;

(f) promote best practices in the implementation of constituency projects;

(g) administer, control, and, supervise the assets of the Board in such manner as best promotes the purpose for which the Board is established; and

(h) perform such other duties as may be performed by the Board under this Act for the proper management of the Fund.
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8. Section 19 of the principal Act is amended by inserting the following new sub section immediately after sub section (6)—

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(7) Despite sub section (1) and (2), a member of the Board may be removed from office in accordance with the procedure prescribed in the Second Schedule.
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9. Section 28 of the principal Act is amended by deleting subsection (1) and substituting therefor the following new subsection—

"(1) Every constituency shall within three months of the official release of the budget ceilings for the constituencies or such other time as may be determined by the Board, submit a list of the proposed constituency projects to the Board."

10. The principal Act is amended by deleting section 32 and substituting therefor the following new section—

"32. The constituency Committee shall determine the quantum of installments for disbursement to projects within the constituency, taking into account, the disbursement received and, the projects requirements."

11. The principal Act is amended by inserting the following new section immediately after section 32—

"32A. The constituency Committee shall within forty-five days of allocating funds under section 32, inform the Board of such allocation."

12. Section 36 of the principal Act is amended in subsection (1) by inserting the words “government registered private practitioners procured in accordance with the Public Procurement and Asset Disposal Act, 2015” immediately after the words “department of Government”.

13. Section 43 of the principal Act is amended by—

(a) deleting the word “sixty” appearing in subsection (6) and substituting therefor the words “one hundred and twenty”;

(b) deleting the word “thirty” appearing in subsection (10) and substituting therefor the words “one hundred and twenty”; and

(c) deleting subsection (12).

14. Section 46 of the principal Act is amended in subsection (1) by inserting the words “or legally procured
government registered private practitioners” immediately after the words “Government departments”.

15. The principal Act is amended by inserting the following new section immediately after section 48—

> “48A. Despite section 48, a Constituency Committee may, with the approval of the Board, allocate additional funds to cater for education bursary schemes and education days.”

16. Section 56 of the principal Act is amended in subsection (4) by deleting the words “reconsider the Board’s decision and determine the matter” and substituting therefor the words “direct the Board in collaboration with the Office of the Attorney General to commence arbitration”.

17. The Second Schedule to the principal Act is amended by inserting the following new section immediately after section 2—

> 2A. (1) A member other than an ex-officio member may resign from office at any time, by notice in writing to the Cabinet Secretary, with a copy to the Board.

> (2) The Cabinet Secretary may upon the recommendation of the Board, remove a member from office, if the member—

(a) has been absent from three consecutive meetings of the Board without the permission of the Chairperson;

(b) is convicted of a criminal offence and sentenced to imprisonment for a period exceeding six months without the option of a fine;

(c) is incapacitated by prolonged physical or mental illness for a period exceeding six months; or
(d) is otherwise unable or unfit to discharge the functions of a member of the Board.

(3) The Chairperson shall be removed from office only in accordance with sub paragraph (1).
MEMORANDUM OF OBJECTS AND REASONS

Statement of Objects and Reasons for the Bill

The principal objective of this Bill is to amend the National Government Constituencies Development Fund Act, 2015 to provide for the opening and operating of constituency accounts in order to facilitate third party transactions. The proposed amendment shall facilitate timely and efficient disbursement of funds to constituencies and establish structures for the efficient and prudent management of the Fund.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

This Bill does not delegate any legislative powers and does not contain provisions that limit any fundamental rights and freedoms.

Statement on whether the Bill concerns county governments

This Bill does not concern county governments in terms of Articles 110(1) (a) of the Constitution.

Statement on whether the Bill is a money Bill within the meaning of Article 114 of the Constitution

This enactment of this Bill shall occasion additional expenditure of public funds.

Dated the 16th February, 2021.

WAFULA WAMUNYINYI,
Member of Parliament.
Section 5 of No. 30 of 2015 which it is proposed to amend—

5. (1) Each and every disbursement from the Fund shall be approved and recorded in the minutes of the Board.

(2) All disbursements from the Fund shall be for specific projects as submitted by the constituencies in accordance with the procedures outlined in this Act.

(3) All disbursements shall be made through the constituency bank accounts maintained for every constituency in accordance with section 12 of this Act.

(4) Notwithstanding subsection (3), payments for a joint project or a joint procurement, may be made directly to a supplier or to an account established for the purpose with due approval of the Board.

(5) The record of the amounts received by each constituency and the record of expenditure of amounts so received shall be submitted to the Board within thirty days after the close of the relevant financial year together with a copy of the relevant bank statements and no disbursements for the succeeding financial year shall be made into the accounts until the said records are duly received.

(6) The Board shall set out general conditions and requirements for release of funds, to ensure efficient and effective management of resources.

(7) The Board may impose reasonable requirements, including restrictions, on a particular constituency and such restrictions or requirements shall be reported together with the monthly returns to be submitted to the Cabinet Secretary in accordance with this Act.

Section 6 of No. 30 of 2015 which it is proposed to amend—

6. (1) The Cabinet Secretary shall, with the approval of the relevant Committee of the National Assembly, allocate funds for every constituency in each financial year in accordance with section 34.

(2) Once funds are allocated for a particular project, they shall remain allocated for that project and may only be re-allocated for any other purpose during the financial year with the approval of the Board.
(3) If for any reason a particular project is cancelled or discontinued during the financial year, funds allocated for such a project shall be returned to the Fund and credited to the account of the constituency from which the funds were withdrawn.

(4) Unspent funds shall be allocated to any eligible project and such project may be new or ongoing at the end of the financial year.

(5) For the avoidance of doubt, a return as set out in the First Schedule shall be made for the current financial year and every previous financial year on which.

Section 7 of No. 30 of 2015 which it is proposed to amend—

8. (1) All receipts, savings and accruals to the Fund and the balance of the Fund at the end of each financial year shall be returned to the Fund and applied in accordance with section 6(5) of this Act.

(2) All funds allocated to a constituency shall be cumulative and shall be carried forward from one financial year to the next, including funds returned into the accounts in accordance with section 6(3) or funds which are not utilized for whatever reasons.

Section 12 of No. 30 of 2015 which it is proposed to amend—

12. (1) For the purpose of disbursement of funds under this Act there shall be opened and maintained a constituency account for every constituency at any commercial bank, approved by the National Treasury into which all funds shall be kept and such an account shall be known by the name of the constituency for which it is opened and each constituency shall maintain only one account.

(2) At least three signatories shall be required for every cheque or instrument for actual payment or withdrawal of funds from a constituency account and the signing instructions shall be such that there shall be at least one signature of an officer seconded by the Board and at least two signatures of two members of the Constituency Committee.

(3) The Fund account manager shall hold the authority to incur expenditure of the funds at the constituency account.
(4) Funds from the constituency account shall only be withdrawn as disbursements for a particular project in accordance with the provisions of section 5 of the Act.

(5) Every payment or instruction for payment out of the constituency fund account shall be strictly in accordance to the minutes of a resolution of a meeting of the Constituency Committee.

(6) All receipts, savings and accruals to the constituency account and the balances thereof at the end of each financial year shall be returned to the Constituency Account.

(7) All unutilized funds shall remain in the constituency account and no investment elsewhere shall be permitted, provided that funds meant for a project that is cancelled or discontinued shall be returned to the Constituency Account in accordance with section 6 of this Act.

(8) All unutilized funds of the Project Management Committee shall be returned to the constituency account.

(9) Any accruing revenues, interest and liabilities from any constituency account shall be declared to the Board together with the annual returns.

Section 13 of No. 30 of 2015 which it is proposed to amend—

13. (1) A bank account of the Fund shall be opened and maintained at the Central Bank of Kenya.

(2) The signatories to the account of the Fund maintained in accordance with subsection (1), shall be the chief executive officer and three other persons appointed by the Board from amongst its members.

(3) The signing instructions shall be such that the signature of the chief executive officer shall be mandatory on all payment cheques and/or instruments intended for actual release of money from the fund, plus and two of the other three signatories.
Section 16 of No. 30 of 2015 which it is proposed to amend—

18. (1) The functions of the Board shall be to—
(a) ensure timely and efficient disbursement of funds to every constituency;
(b) ensure efficient management of the Fund;
(c) consider project proposals submitted from various constituencies in accordance with the Act, approve for funding those projects proposals that are consistent with this Act and send funds to the respective constituency fund account of the approved projects;
(d) co-ordinate the implementation of projects at the inter-constituency level;
(e) receive and address complaints that may arise from the implementation of the Act;
(f) encourage best practices in the implementation of projects;
(g) administer the funds and assets of the Board in such manner and
(h) for such purpose as shall promote the best interest of the Board in accordance with the Act to ensure efficient management of the Fund; and
(i) perform such other duties as the Board may deem necessary from time to time for the proper management of the Fund.

Section 28 of No. 30 of 2015 which it is proposed to amend—

28. (1) The list of the proposed constituency projects shall be submitted to the Board before the end of the month of February in each year or such other month as may be determined by the Cabinet Secretary in order to ensure timely inclusion of the projects in the annual Government budget of a particular financial year.

(2) Where the Constituency Committee fails to submit the list of constituency-based projects to the Board within the stipulated time in subsection (1), the list shall be deemed to have been submitted to the Board upon the lapse of the stipulated time.
Section 32 of No. 30 of 2015 which it is proposed to amend—

32. (1) The allocation of funds to various projects in each constituency is the responsibility of the Constituency Committee to be exercised at its own discretion within the provisions of this Act.

Section 36 of No. 30 of 2015 which it is proposed to amend—

36. (1) Projects under this Act shall be implemented by the project management committee appointed in accordance with the regulations made under section 57, with the assistance of the relevant department of Government and all payments through cheques or otherwise shall be processed and effected in accordance with government regulations for the time being in force.

(2) Where a project in a constituency involves the purchase of equipment, such equipment shall remain for the exclusive use of that constituency.

(3) All fixed and movable assets, including equipment bought under this Act for use by the Constituency Committee shall be the property of the Board and shall be insured in the name of the Board.

(4) The property referred to in subsection (3)-

(a) shall bear the name and number of the Constituency as delineated by the Independent Electoral and Boundaries Commission; and

(b) equipment bought for public institutions shall remain in the exclusive use of those institutions.

(5) No asset or equipment acquired under this section shall be disposed of without prior approval of the Board.

(6) Any proceeds that may accrue from the disposal of any asset acquired pursuant to subsection (5) shall be credited to the account of the constituency from whose funds the asset was acquired and such funds shall be reflected and declared as part of the following year's constituency fund for that constituency.
Section 43 of No. 30 of 2015 which it is proposed to amend—

43. (1) There is established a National Government Constituency Development Fund Committee for every constituency.

(2) Each Constituency Committee shall comprise of—

(a) the national government official responsible for co-ordination of national government functions;
(b) two men each nominated in accordance with subsection (3), one of whom shall be a youth at the date of appointment;
(c) two women nominated in accordance with subsection (3), one of whom shall be a youth at the date of appointment;
(d) one person with disability nominated by a registered group representing persons with disabilities in the constituency in accordance with subsection (3);
(e) two persons nominated by the constituency office established under Regulations made pursuant to the Parliamentary Service Act;
(f) the officer of the Board seconded to the Constituency Committee by the Board who shall be an ex officio member without a vote.
(g) one member co-opted by the Board in accordance with Regulations made by the Board.

(3) The seven persons referred to in subsection (2)(b), (c), (d) and (e) shall be selected in such manner and shall have such qualifications as the Board may, by Regulations, prescribe.

(4) The names of the persons selected under subsection (3) shall be submitted by the Board to the National Assembly for approval before appointment and gazettlement by the Board.

(5) The Regulations made under subsection (3) shall be submitted to the National Assembly for approval before publication by the Board.
(6) The first meeting of the Constituency Committee shall be convened within sixty days of the commencement of a new term of Parliament or the date of the holding of a by-election, by the national government official at the constituency or in his or her absence, by an officer of the Board Seconded to the constituency, on such day as may be designated by the Cabinet Secretary.

(7) The quorum of the Constituency Committee shall be one half of the total membership.

(8) The term of office of the members of the Constituency Committee shall be two years and shall be renewable but shall expire upon the appointment of a new Constituency Committee in the manner provided for in the Act, or as may be approved by the Board.

(9) The Fund account manager seconded by the Board to the constituency shall be the custodian of all records and equipment of the constituency during the term of Parliament and during transitions occasioned by general elections or a by-election.

(10) Whenever a vacancy occurs in the Constituency Committee by reason of resignation, incapacitation or demise of a member the vacancy shall be filled from the same category of persons where the vacancy has occurred within a period of thirty days.

(11) The Constituency Committee shall meet at least six times in a year but the committee shall not hold more than twenty-four meetings in the same financial year, including sub-committee meetings.

(12) The Constituency Committee shall, at its discretion, determine the quantum of instalments to various projects in the constituency, taking into account the disbursement received and the requirement of different projects.

(13) A member of the Constituency Committee may be removed from office on any one or more of the following grounds—

(a) lack of integrity;

(b) gross misconduct;
(c) embezzlement of public funds;
(d) bringing the committee into disrepute through unbecoming personal public conduct;
(e) promoting unethical practices;
(f) causing disharmony within the committee;
(g) physical or mental infirmity.

(14) A decision to remove a member under subsection (13) shall be made through a resolution of at least five members of the Committee and the member sought to be removed shall be given a fair hearing before the resolution is made.

(15) A vacancy arising as a result of the removal of a member under subsection (13) shall be filled in the manner set out in subsection (10) and minutes of the meeting shall indicate the fact of the removal or appointment of a member.

Section 46 of No. 30 of 2015 which it is proposed to amend—

46. (1) The Constituency Development Fund Committee may make appropriate consultations with the relevant Government departments to ensure that cost estimates for the projects are realistic.

(2) The Constituency Committee shall rank the projects in order of priority and whenever, in the opinion of the Board, the total cost of the projects listed exceed the ceiling for a particular constituency, then the order in which they are listed shall be taken as the order of priority for purposes of allocation of funds, provided that on-going projects shall take precedence over all other projects.

Section 48 of No. 30 of 2015 which it is proposed to amend—

48. The funding of social security programmes, education bursary schemes, mock examinations and continuous assessment tests shall be considered as development projects for the purposes of the Act provided that such projects shall not be allocated more than thirty-five per centum of the total funds allocated for the constituency in any financial year.
Section 56 of No. 30 of 2015 which it is proposed to amend—

56. (1) All complaints and disputes by persons arising due to the administration of this Act shall be forwarded to the Board in the first instance.

(2) Complaints of a criminal nature shall be forwarded by the Board to the relevant government agencies with prosecutorial powers.

(3) Disputes of a civil nature shall be referred to the Board in the first instance and where necessary an arbitration panel whose costs shall be borne by the parties to the dispute, shall be appointed by consensus of the parties to consider and determine the matter before the same is referred to court.

(4) Notwithstanding subsection (3), parties shall be at liberty to jointly appoint an arbitrator of their choice in the event of a dispute but where parties fail to jointly agree on an arbitrator, any of the parties may apply to the Cabinet Secretary to reconsider the Board's decision and determine the matter.

(5) Subject to this Act, no person in the management of the Fund shall be disputes against the Fund held personally liable for any lawful action taken in his official capacity or for any lawful action taken in official capacity.
SECOND SCHEDULE [Section 18(1) and (2).]

CONDUCT OF THE BUSINESS AND AFFAIRS OF THE BOARD

1. The Chairperson or a member of the Board other than ex-officio members shall, subject to the provisions of this Schedule, hold office for a period of three years, on such terms and conditions as may be specified in the instrument of appointment, but shall be eligible for appointment for one further term.

2. (1) The Board shall not meet less than six and not more than eighteen times in the financial year and not more than two months shall elapse between the date of one meeting and the date of the next meeting.

(2) Notwithstanding subparagraph (1), the Chairperson may, and upon requisition in writing by at least five members, convene a special meeting of the Board at any time for the transaction of the business of the Board.

(3) 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.

(4) The quorum for the conduct of the business of the Board shall be five members.

(5) The Chairperson shall when present, preside at every meeting of the Board but the members present shall elect one member to preside whenever the Chairperson is absent, and the person so elected shall have all the powers of the Chairperson with respect to that meeting and the business transacted thereat.

(6) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of the votes of the members present and voting, and in case of an equality of votes, the Chairperson or the person presiding shall have a casting vote.

(7) Subject to subparagraph (4), no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.

(8) Subject to the provisions of this Schedule, the Board may determine its own procedure for any committee of the Board and for the attendance of other persons at its meetings and may make standing orders in respect thereof.
3. The Chairperson or a member of the Board other than ex-officio members shall, subject to the provisions of this Schedule, hold office for a period of three years, on such terms and conditions as may be specified in the instrument of appointment, but shall be eligible for appointment for one further term.

4. The Chairperson or a member of the Board other than ex-officio members shall, subject to the provisions of this Schedule, hold office for a period of three years, on such terms and conditions as may be specified in the instrument of appointment, but shall be eligible for appointment for one further term.

5. Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal may be entered into or executed on behalf of the Board by any person generally or specially authorized by the Board for that purpose

(2) A member of the Board who contravenes subparagraph (1) shall cease to be a member of the Board upon direction of the Cabinet Secretary

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

(2) The affixing of the common seal of the Board shall be authenticated by the signature of the Chairperson, the Chief Executive Officer and one member nominated by the Board and any document not required by law to be made under seal and all decisions of the Board may be authenticated by the signatures of the Chairperson, the Chief Executive Officer and that member nominated by the Board.

(3) The common seal of the Board when affixed to a document and duly authenticated shall be judicially and officially noticed and unless and until the contrary is proved, any necessary order or authorization by the Board under this section shall be presumed to have been duly given.
7. The provisions of this Schedule shall apply to the conduct of the business of the Constituency Committee but only where no specific provisions have been made in this Act, and only in so far as they do not constitute a contradiction or negation of the provisions of the Act.