

THE CONTINGENCIES FUND AND COUNTY EMERGENCY FUNDS ACT, 2011

ARRANGEMENT OF SECTIONS

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AN ACT of Parliament to provide for the effective operation of the Contingencies Fund and County Emergency Funds established by County Governments, and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I — PRELIMINARY PROVISIONS

- Short title. **1.**(1) This Act may be cited as the Contingencies Fund and County Emergency Funds Act 2011.

 (2) The provisions of this Act relating to County Governments shall come into operation after the first elections held under the Constitution.
- Object of this Act. **2.** The object of this Act is to ensure that the Contingencies Fund, and the County Emergency Funds established by County Governments, are managed and operated by the National Government and the County Governments respectively as contemplated by Article 208(2) of the Constitution.
- Interpretation. **3.**(1) In this Act, unless the context otherwise requires—

 “Appropriation Act” means an Act of Parliament that provides for provision of money to pay for the supply of

public services;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to finance;

“Contingencies Fund” means the Contingencies Fund established by Article 208(1) of the Constitution;

“County Government” means a County Government as established under Article 176 of the Constitution;

“Emergency Fund”, in relation to a County Government, means a Fund established under section 8;

“County Secretary” means the member of the County Executive Committee appointed under Article 179(2)(b) of the Constitution, who is responsible for matters relating to finance in the respective County;

“financial year” has the meaning given in Article 260 of the Constitution;

“National Government” means the Government of the Republic of Kenya;

“the regulations” means regulations made under this Act.

(2) Until after the first elections under the Constitution, references in this Act to “Cabinet Secretary” shall be construed to mean “Minister”.

PART II — CONTINGENCIES FUND

Source of
Contingencies
Fund.

4. The Contingencies Fund shall consist of such money as may, from time to time, be appropriated for the Fund by an Appropriation Act.

Responsibilities of
Treasury in
relation the

5.(1) The Treasury shall be responsible for administering the Contingencies Fund.

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Contingencies
Fund.

(2) The Treasury shall keep the Contingencies Fund in a separate account and shall—

- (a) pay into that account all money appropriated for the Fund by an Appropriation Act; and
- (b) pay from the fund without undue delay all advances made under section 6.

Power of Cabinet
Secretary to make
payments from
Contingencies
Fund.

6.(1) Subject to section 7, the Cabinet Secretary may, with the approval of the Cabinet, make payments from the Contingencies Fund if satisfied that an urgent and unforeseen need for expenditure has arisen for which there is no specific legislative authority.

(2) For the purposes of subsection (1)—

- (a) there is an urgent need for expenditure if, in the opinion of the Cabinet Secretary, it cannot be delayed until a later financial year without harming the general public interest; and
- (b) there is an unforeseen need for expenditure if it has not been provided for in an Appropriation Act for the current financial year.

(3) Subject to subsection (2), the Cabinet Secretary shall, through the regulations, prescribe suitable criteria for the purposes of subsection (1):

Provided that regulations made under this subsection shall not take effect before they are approved by the National Assembly.

Capital of
Contingencies
Fund.

7. The permanent capital of the Contingencies Fund shall not exceed ten billion shillings.

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Cabinet Secretary
to seek
Parliament's
approval for
payments made
from
Contingencies
Fund.

8.(1) Within two months after a payment from the Contingencies Fund is made under section 6, the Cabinet Secretary shall submit to Parliament a detailed report in respect of the payment setting out the information specified in section 9(2) and seek the approval of Parliament for the payment.

(2) If Parliament does not sit during the period referred to in subsection (1), or is not sitting at the end of that period and the Cabinet Secretary has not sought the approval of Parliament before end of that period, the Cabinet Secretary shall seek the approval of the payment within two weeks after Parliament next sits.

(3) As soon as practicable after the National Assembly has approved the payment, the Cabinet Secretary shall arrange for an appropriation Bill to be introduced into the National Assembly for the appropriation of the money paid and for the replenishment of the Contingencies Fund to the extent of the amount of the payment.

Reporting
responsibilities of
Treasury with
respect of
Contingencies
Fund.

9.(1) Within three months after the end of each financial year, the Treasury shall prepare and submit to the Auditor-General financial statements for that year in respect of the Contingencies Fund.

(2) The Treasury shall include the following information in the financial statements submitted under subsection (1) —

- (a) the date and amount of each payment made from that Fund;
- (b) the person to whom the payment was made;
- (c) the purpose for which the payment was made;
- (d) if the person to whom the payment has been made has spent the money for that purpose, a statement to that effect;
- (e) if the person to whom the payment has been made has

not yet spent the money for that purpose, a statement specifying the reasons for not having done so;

- (f) a statement indicating how the payment conforms to section 7.

**PART III — COUNTY GOVERNMENT
EMERGENCY FUNDS**

County Government Executive Committee may establish County Government Emergency Fund.

10.(1) A County Executive Committee may, with the approval of the County Assembly, establish for the County Government an emergency fund under the name “..... County Emergency Fund”.

(2) The purpose of an Emergency Fund is to enable payments to be made in respect of a County when an urgent and unforeseen need for expenditure arises for which there is no specific legislative authority.

What County Government Emergency Fund consists of.

11. A County Government Emergency Fund consists of such money as is from time to time appropriated to that Fund by an appropriation law made by the County Assembly.

County Secretary to be responsible for Government Emergency Fund.

12.(1) The County Secretary is responsible for administering the County Government Emergency Fund for the County Government.

(2) The County Secretary shall establish and maintain a separate account into which all money appropriated to that Fund is to be paid.

Power of County Secretary to make payments from Contingencies Fund.

13.(1) Subject to section 14, the County Secretary may, with the approval of the County Executive Committee, make payments from the County Government’s Emergency Fund only if satisfied there is an urgent and unforeseen need for the expenditure for which there is no authority.

(2) For the purposes of subsection (1)—

- (a) there is an urgent need for expenditure if, in the

opinion of the County Secretary, it cannot be delayed until a later financial year without harming the general public interest of the County; and

- (b) there is an unforeseen need for expenditure if it has not been provided for in an appropriation law made by the County Assembly for the current financial year.

Limitation on power of County Secretary to make payments from Contingencies Fund.

14.The County Secretary shall not make a payment under section 13 if the payment, or the payment and other payments made from the County Government's Emergency Fund during a financial year, would exceed two per cent of the total of the County Government's revenue as shown in that Government's audited financial statements for the previous financial year except for the first year.

County Secretary to seek County Assembly's approval for payments made from Emergency Fund.

15.(1) Within two months after a payment from the County Government's Emergency Fund is made under section 13, the County Secretary shall seek the approval of the County Assembly for the payment.

(2) If the County Assembly does not sit during the period referred to in subsection (1), or is not sitting at the end of that period and the County Secretary has not sought the approval of the County Assembly before end of that period, the County Secretary shall seek the approval for the payment within two weeks after it next sits.

(3) As soon as practicable after the County Assembly has approved the payment, the County Secretary shall arrange for a draft appropriation law to be introduced into the County Assembly for the appropriation of the money paid and for the replenishment of the County Government's Emergency Fund to the extent of the amount of the payment.

Reporting responsibilities of County Treasury with respect of County Government's

16.(1) If an Emergency Fund has been established for a County Government in accordance with section 10, the County Treasury shall, within three months after the end of each financial year, prepare and submit to the Auditor-

Emergency Fund. General financial statements for that year in respect of that Fund.

(2) The County Treasury shall include in those financial statements the following information concerning the County Government's Emergency Fund:

- (a) the date and amount of each payment made from that Fund;
- (b) the person to whom the payment was made;
- (c) the purpose for which the payment was made;
- (d) if the person to whom the payment has been made has spent the money for that purpose, a statement to that effect;
- (e) if the person to whom the payment has been made has not yet spent the money for that purpose, a statement specifying the reasons for not having done so;
- (f) a statement indicating how the payment conforms to section 13.

PART IV – MISCELLANEOUS PROVISIONS

Power of Cabinet Secretary to make regulations for purposes of this Act.

17.(1) The Cabinet Secretary may make regulations, not inconsistent with this Act, for or with respect to any matter that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

- (2) A provision of a regulation may –
 - (a) apply generally or be limited in its application;
 - (b) apply differently according to different factors
 - (c) authorise any matter or thing to be from time;
 - (d) or may do any combination of those things.

(3) Regulations made under subsection (1) shall not take effect unless approved by a resolution passed by each House of Parliament.

(4) Regulations approved under subsection (3) shall take effect on the day after the date on which both Houses of Parliament approve them or, if a later date is specified in the regulations, on that later date.

(5) If a House of Parliament does not make a resolution either approving or rejecting any regulations within fifteen sitting days after their submission to it for approval, the House shall be deemed to have approved the regulations.

Repeal of Civil
Contingencies
Fund Act.

18.(1) The Civil Contingencies Fund Act is repealed.

(2) On the commencement of this Act –

(a) the Civil Contingencies Fund in operation by virtue of section 2(1) of that Act shall cease to exist;

(b) any money held in that Fund shall be paid into the Contingencies Fund established by Article 208 of the Constitution; and

(c) any reference to the Civil Contingencies Fund in a written law shall be read as a reference to the Contingencies Fund established by Article 208 of the Constitution.

I certify that this printed impression is a true copy of the Bill passed by the National Assembly on the 26th August, 2011.

Clerk of the National Assembly.

Presented for assent in accordance with the provisions of the Constitution on the, at the hour of

Attorney-General.