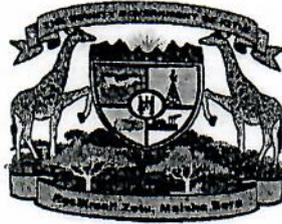


COUNTY GOVERNMENT OF KITUI



THE COUNTY ASSEMBLY

SECOND ASSEMBLY – (SECOND SESSION)

COMMITTEE ON BUDGET AND APPROPRIATIONS

**REPORT ON CONSIDERATION OF H.E. THE GOVERNOR'S
MEMORANDUM ON THE KITUI COUNTY EMERGENCY FUND BILL,
2018 (COUNTY ASSEMBLY BILL NO. 2 OF 2018)**

**CLERK OF ASSEMBLY CHAMBERS
P. O BOX 694-90200
KITUI**

JULY, 2018

Table of Contents

ABBREVIATIONS.....	iii
ANNEXURES.....	iv
1.0 PREFACE.....	1
2.0 COMPOSITION OF THE COMMITTEE.....	1
3.0 COMMITTEE MANDATE.....	2
4.0 LEGAL FRAME WORK.....	2
5.0 BACKGROUND	3
6.0 ACKNOWLEDGEMENT	4
7.0 REVIEW AND CONSIDERATION OF THE MEMORANDUM ON THE KITUI COUNTY EMERGENCY FUND BILL, 2018 (C/A BILL NO. 2, 2018.....	5
8.0 COMMITTEE RECOMMENDATIONS ON THE MEMORANDUM.....	10
9.0 CONCLUSION	11

ABBREVIATIONS

B&A	Budget and Appropriations
C/A	County Assembly
CECM	County Executive Committee Member
KCE	Kitui County Emergency
PFMA	Public Finance Management Act
CGA	County Government Act

ANNEXURES

- Annex I - Signed list of member
- Annex II - Minutes adopting the report
- Annex III - Governor's Memorandum

1.0 PREFACE

Mr. Speaker,

On behalf of the Members of the Budget and Appropriations Committee, I hereby wish to present to this Honorable House, the Committee's Report on consideration of H.E. The Governor's Memorandum on the Kitui County Emergency Fund Bill, 2018 (County Assembly (C/A) Bill No. 2 of 2018), as submitted to the Assembly on 29th May, 2018.

The Public Finance Management Act (PFMA), 2012, is the national legislation applicable in management of all public finances as envisaged by Article 224 of Chapter twelve of the Constitution on public finances.

The County Governments' Emergency Fund which may be established and administered by a County Executive Committee Member (CECM) is contemplated in Section 110 of the (PFMA), 2012. In preparation of this report therefore, the Committee in addition to other references will majorly rely on this Act and the County Assembly Standing Orders.

2.0 COMPOSITION OF THE COMMITTEE.

Mr. Speaker,

The Budget and Appropriations committee as currently constituted comprises of the following Members;

- | | |
|----------------------------|------------------|
| 1. Hon. Boniface K. Kilaa | Chairperson |
| 2. Hon. Baridi F. D. Mbevo | Vice Chairperson |
| 3. Hon. Esther K. Ndile | Member |
| 4. Hon. Mary K. Philip | " |
| 5. Hon. Philip M. Nguli | " |

- | | |
|-----------------------------|---|
| 6. Hon. Annastacia Mutunga | ” |
| 7. Hon. Nicholas N. Mwalali | ” |
| 8. Hon. Mary P. Ndumbu | ” |
| 9. Hon. James M. Munuve | ” |

3.0 COMMITTEE MANDATE

Mr. Speaker,

Standing Order 186 (3) outlines the roles of the Committee on Budget and Appropriations as to inter alia:-

- i. Investigate, inquire into and report on all matters related to coordination, control and monitoring of the county budget.*
- ii. Discuss and review the estimates and make recommendations to the Assembly.*
- iii. examine the County Budget Policy Statement presented to the County Assembly;*
- iv. examine Bills related to the County budget, including Appropriations Bills;*

4.0 LEGAL FRAME WORK

The KCE Fund Bill, 2018 (C/A Bill NO. 2, 2018) is meant to create an emergency fund in execution of the constitutional function of disaster management bestowed upon Counties under Part two of the Fourth Schedule of the Constitution.

Section 110 and 111 of PFM act, 2012 provides for the establishment of a county government emergency fund and administration of the same by the CECM for Finance.

This Fund is established to cater for urgent and unforeseen need for which there is no legislative authority and shall be administered in accordance with the operational guidelines made under regulations approved by the Parliament and Law relating to disaster Management.

5.0 BACKGROUND

Mr. Speaker,

The House approved the KCE Fund Bill on 16th May, 2018 during the morning sitting after which it was forwarded to the Governor on 16th May, 2018 for assent. Her Excellency the Governor within the stipulated 14 days period provided for under Standing Order No. 134(2)(b), referred back the bill to the County Assembly with a memorandum expressing her reservations on Clauses 5 (1), 6(1) and 8 of the Bill.

The Hon Speaker communicated the Governor's reservations to the House on Tuesday 5th June, 2018 during the afternoon sitting and thereafter, the Memorandum stood committed to the Committee on Budget and Appropriations for consideration and tabling of a report.

To enable the Committee consider and make recommendations to this Memorandum, the Committee held sittings at Mwingi Summer Springs Hotel on 11th July, 2018.

The Committee keenly scrutinized the Governor's memorandum on the aforementioned clauses in accordance with the provisions of the PFMAL, 2012. This committee will therefore be making recommendations on the same for consideration by the House.

6.0 ACKNOWLEDGEMENT

Mr. Speaker,

Allow me to appreciate the Office of the Speaker of the Assembly and that of the Clerk of Assembly for the logistical support rendered in this exercise. This Committee also extends her gratitude to the County Executive Committee Member for Finance who found time amid her tight schedule to attend the committee hearings and give insight on the Governor's memorandum.

I also extend my gratitude to the able members of this Committee who worked tirelessly and demonstrated passion to work in completing this report within the short time. I acknowledge the staff of assembly serving the Committee who also contributed significantly in providing technical advice and compiling of this report.

It is therefore my pleasant duty and privilege, on behalf of the Committee on Budget and Appropriations to table this Report and recommend it for adoption by this House.



.....

Hon. Boniface K. Kasina

Chairman, Budget & Appropriations Committee

May, 2018

**7.0 REVIEW AND CONSIDERATION OF THE MEMORANDUM ON THE
KITUI COUNTY EMERGENCY FUND BILL, 2018 (C/A BILL NO. 2,
2018.**

Mr. Speaker,

The Committee considered the Memorandum whereby the Governor had expressed her reservations on Clauses 5(1), 6(1) and 8 of the Bill.

The committee made the following observations:-

i. Clauses 5(1)- officer responsible for administering the fund

The Committee noted that the Memorandum seeks to delete the words “*in accordance with a framework and criteria approved by the County Assembly*” appearing on the 2nd and 3rd line of the paragraph. The rationale advanced for this was that this criteria and framework is already provided for in the Bill.

Committee’s opinion

On this issue, the Committee holds the opinion that:

1. The criteria and framework allegedly provided for in the Bill is insufficient, vague, and a blank cheque for the mal- administration of the fund. It is the CEC Member who’ll be determining what amounts to an emergency in her opinion and this is open to misuse as every occurrence could easily be as an emergency.
2. Section 111 of the PFMA clearly provides for administration of the fund in accordance with a criteria and framework approved by the County Assembly. Further Section 6(f) of the PFMA stipulates that

the PFMA shall prevail in case of any inconsistency between it and any other legislation on establishment and management of public funds. Hence the requirement for a framework and criteria prevails as it is clearly provided for in Section 111 of the PFMA.

3. During public participation on the Bill, members of the public emphasized on the need for a comprehensive framework to govern the fund to ensure transparency and prudence in administration of the fund.
4. The alleged criteria and framework can be interpreted as a threshold that must first be met before an occurrence is treated as an emergency but not a framework governing the specifics on addressing emergencies.
5. The Bill as drafted allows for spending of public funds in advance before reporting, opening it to abuse if there is no specific criteria and framework that, amongst others:
 - i) defines and categorizes specific acts that amount to emergencies and details on how the different emergencies are to be addressed;
 - ii) defines what amounts to events that threaten damage to human life or welfare;
 - iii) defines what amounts to events that threaten damage to environment;
 - iv) determines who the money should be paid to and in what manner;

- v) sets obligations of the person to whom the money is paid and penalties and or fines for persons who contravene the conditions set;
- vi) outlines what should happen in case there are multi-institutional responses to emergencies;
- vii) Noting the vastness of Kitui County, guides the flow of information especially for far flung areas and interior areas, from when and where an emergency occurs, creates an obligation to address that emergency within a set timeline, and provides for recourse should the CEC Member fail to act.
- viii) fills any gaps currently existing in the current law as drafted.

6. To further justify the need for a framework, the Committee consulted with some County Assemblies where it emerged that these County Assemblies had put in place measures to ensure better implementation of the Fund. For instance, Makueni has established a Committee that administers the Fund in consultation with the CEC Member for Treasury. Homa Bay also informed the Committee that they have come up with regulations for administration of the Fund.

The Committee therefore does not accommodate the Governor's concern on this Clause, and maintains that there is a need to come up with a comprehensive framework and criteria to be approved by the County Assembly in compliance with Section 111 of the PFMA.

ii. Clause 6(1)- power of county executive committee member –

The Committee noted that the Memorandum seeks to delete the words *“and shall be in accordance with operational guidelines made under regulations approved by Parliament and the law relating to disaster management.”*

The rationale for this proposal was that there is currently no law relating to disaster management at the national level and inclusion of these words ties the County to a non-existent piece of legislation. Further, once the national law is passed, the County will be automatically required to ensure conformance.

Committee’s opinion

On this issue, the Committee agrees with the Governor’s concern that Parliament has not yet approved law and regulations on disaster management.

Further, research from other County Assemblies including Makueni, Kajiado, Bungoma and Garissa indicates that they have omitted the words in question from their legislation.

The Committee therefore accommodates the Governor’s reservations on this matter, noting that the words proposed to be deleted are still anchored in Section 112(1) of the PFMA.

iii) Clause 8- Accruals

The Committee noted that the Memorandum seeks to delete the words *“subject to the fund balance not exceeding two percent of the revenues as shown in the County’s audited financial statements for the previous financial year”* appearing in that Clause.

The rationale for this proposal was that the requirement that the Fund balance should not exceed 2% can only be tied to funds appropriated by the County Assembly but not donor funds, as donor funds are conditional in nature and tied to specific programmes that the donor specializes in. Therefore requiring the excess amounts to be swept to the County Exchequer Account will not be agreeable in respect to donor funds.

Committee’s opinion

On this matter, the Committee was of the opinion that the Clause as phrased might cap funds to be accessed from donors which will be detrimental to the County.

Further, research from other County Assemblies including Makueni, Kajiado, Bungoma and Garissa indicates that they have omitted the words in question from their legislation.

The Committee therefore accommodates the Governor’s concerns on this Clause.

8.0 COMMITTEE RECOMMENDATIONS ON THE MEMORANDUM

Mr. Speaker,

Based on the above findings, and pursuant to Section 24(5) of the County Government Act, the Committee recommends that the House does pass the Bill a second time with amendments which do not fully accommodate the Governor's concerns as follows:

1) CLAUSE WITHOUT AMENDMENT

Clause 5(1)

The committee was satisfied with the provisions of Clause 5(1) as printed and proposes that this Clause as printed be part of the Bill, that is:

"The County Executive Committee Member shall be responsible for administering the Fund in accordance with a framework and criteria approved by the County Assembly."

2) CLAUSES WITH AMENDMENTS

a) Clause 6(1)

That Clause 6(1) to be amended by deleting the words *"and shall be in accordance with operational guidelines made under regulations approved by Parliament and the law relating to disaster management"* appearing on the 5th, 6th and 7th lines of the paragraph.

b) Clause 8

That Clause 8 to be amended by deleting the words *"subject to the fund balance not exceeding two percent of the revenues as shown in the*

County's audited financial statements for the previous financial year" appearing on the 3rd, 4th and 5th line of the paragraph.

9.0 CONCLUSION

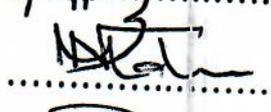
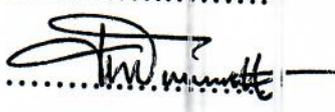
In conclusion, the Committee wishes to draw the attention of the House to the requirements of Section 24(5) of the County Government Act and Standing Order 134(5) which require a two-thirds majority vote to pass a Bill the second time with amendments which do not accommodate the Governor's concerns.

The Committee therefore urges the Honourable Members to raise the two-thirds majority vote on Clause 5(1) so as to reject the Governor's reservations and pass the clause as originally printed and to agree with the Committee's recommendations by adopting this Report.

The Report was compiled by:

<i>Gladys Kanyaa</i>	<i>Senior Legal Counsel</i>
<i>Charles Nyaga</i>	<i>Senior Fiscal Analyst I</i>
<i>Grace Musombo</i>	<i>First Clerk Assistant</i>
<i>Mercy Mbinya</i>	<i>First Clerk Assistant</i>

SIGNED LIST OF MEMBERS OF THE COMMITTEE ON BUDGET AND APPROPRIATIONS CONFIRMING THE AUTHENTICITY OF THE COMMITTEE REPORT ON CONSIDERATION OF THE MEMORANDUM IN THE KITUI COUNTY EMERGENCY FUND BILL, 2018

- | | | |
|-----------------------------|------------------|---------------------------------------------------------------------------------------|
| 1. Hon. Boniface K. Kilaa | Chairperson |  |
| 2. Hon. Baridi F. D. Mbevo | Vice Chairperson |  |
| 3. Hon. Esther K. Ndile | Member | |
| 4. Hon. Mary K. Philip | " | |
| 5. Hon. Philip M. Nguli | " |  |
| 6. Hon. Annastacia Mutunga | " |  |
| 7. Hon. Nicholas N. Mwalali | " |  |
| 8. Hon. Mary P. Ndumbu | " |  |
| 9. Hon. James M. Munuve | " |  |

COUNTY ASSEMBLY OF KITUI

MINUTES OF THE BUDGET AND APPROPRIATIONS COMMITTEE MEETING HELD ON 11TH JULY 2018 AT 8.00 P.M SUMMER SPRINGS HOTEL-MWINGI.

MEMBERS PRESENT:

1. Hon. Boniface K. Kilaa	Chairperson
2. Hon. Baridi F. D. Mbevo	Vice Chairperson
3. Hon. Esther K. Ndile	Member
4. Hon. Philip M. Nguli	"
5. Hon. Annastacia M. Mutunga	"
6. Hon. Nicholas N. Mwalali	"
7. Hon. Mary P. Ndumbu	"
8. Hon. James M. Munuve	"

ABSENT WITH APOLOGY.

1. Hon. Mary K. Philip	Member
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IN ATTENDANCE:

1) Grace Musombo	procedural clerk
2) Mercy Mbinya	"

AGENDA

- 1) Prayer
- 2) Communication from the chair
- 3) Adoption of committee report on consideration of the Memoranda on kitui county Emergency Fund Bill, 2018.
- 4) Adjournment

MIN (BAC) 062/2018: PRAYER

The meeting started at 8.15 P.M with a prayer.

MIN (BAC) 063/2018: COMMUNICATION FROM THE CHAIR

The Chairperson started by welcoming the Members to the days meeting and thanked them for their punctuality.

**MIN (BAC) 068/2018: ADOPTION OF REPORT ON CONSIDERATION OF
MEMORANDA ON KITUI COUNTY EMERGENCY FUND BILL, 2018.**

The Members deliberated on the draft report and unanimously agreed the report be forwarded to the office of speaker for approval and tabling in the House upon affixing their signatures to affirm their approval, confirmation, accuracy, validity and authenticity of the Report.

MIN (BAC) 069/2018: ADJOURNMENT

There being no other business, the meeting was adjourned at 11:53 PM.



**Mercy Mbinya
For: CLERK OF ASSEMBLY
COUNTY ASSEMBLY OF KITUI**

**CONFIRMED BY: 
(HON. BONIFACE K. KASINA)
CHAIRPERSON, BUDGET AND APPROPRIATIONS COMMITTEE.
COUNTY ASSEMBLY OF KITUI.**

COUNTY GOVERNMENT OF KITUI

29 MAY 2018

Cell Phone 0702615888,
070 615444, 0731717100
Email: governor@kitui.go.ke



Tanathi Water Services Board
Building, Ground Floor
P.O BOX 33 - 90100
KITUI

OFFICE OF THE GOVERNOR

REF: CG/KTI/GOV/CORR/182

Date: 25th May, 2018

Hon. George Ndotto
Speaker
Kitui County Assembly
KITUI

The Speaker
This is in order. It should be communicated to the house soonest
COA
Give comments urgently if you can
30/5

Dear *Mr. Speaker,*

RE: MEMORANDUM ON THE KITUI COUNTY EMERGENCY FUND BILL, 2018

I acknowledge with thanks receipt of the Vellum copy (in triplicate) forwarding the Kitui County Emergency Fund Bill, 2018 as passed by the County Assembly on 17th May, 2018 for my Assent.

From the onset, I wish to take this opportunity to commend Honourable Members of the County Assembly for facilitating the legislative process that culminated in passing of the above Bill. I have been well informed of the fruitful discussions that took place between the Assembly's Budget & Appropriations Committee and the County Executive Committee Member for County Treasury in regard to various provisions of the Bill. I also wish to take the opportunity to congratulate you for the stewardship and wise counsel you have continued to provide to the Honourable Members while undertaking the legislative duties.

Mr. Speaker, I have gone through the Bill as passed and wish to express my reservations on various sections that will slow down the County Government's ability to access the budgetary allocation and meet its obligations as earlier intended.

1. The first concern is in regard to Section 5(1) of the Bill. The County Assembly resolutions included the requirement for the County Executive Committee Member for finance to administer the Fund in accordance with a framework and criteria approved by the County Assembly.

1/2 page's
space the communication for this afternoon.
31/5/2018

COA
Refer as per note III
31/5/2018

Mr. speaker, this clause is a direct lifting of Section 111(1) of the Public Finance Management Act, 2012. My concern, however, is the fact that the County Executive Committee Member, through this Bill, presented the required framework, which contains the criteria to be used in administering the Fund. The criteria has been given as follows:

- a) That activity to be funded should be urgent and initially unforeseen
- b) That there is no specific legislative authority (there are no appropriated funds by the county Assembly for the activity)
- c) That payment for the activity cannot be delayed to a later financial year without harming the general public interest
- d) That the payment is meant to alleviate damage, loss, hardship or suffering caused directly by an event
- e) That the damage is within the county
- f) That the event threatens damage to human life, welfare or the environment

Furthermore, the Bill requires the County Executive Committee Member for finance to notify the county assembly whenever payments are made out of the Fund within a period of two months after withdrawal of such funds. The Bill also requires provision of sufficient details on all payments made out of the Fund including persons to whom the payment was made, the purpose of the payment, whether the money was used for that purpose and reasons, if the money was not used for the purpose. The Bill is therefore, in my view, adequate, contains the required criteria and has gone beyond the legal expectations to ensure transparency and accountability in use of funds. I therefore propose that the phrase "*in accordance with a framework and criteria approved by the County assembly*" be deleted from Section 5(1) of the Bill.

2. My second concern is in regard to Section 6(1) of the Bill. As you are aware Mr. Speaker, there is, currently, no law relating to disaster management at the national level. By including these words in our county legislation, we would be tying ourselves to a non-existent piece of legislation. We therefore are of the view that the words "*and shall be in accordance with operational guidelines made under regulations approved by parliament and the law relating to disaster management*" be removed from Section 6(1) of the Bill. Once the national law is passed, the County will automatically be required to ensure conformance.

3. Lastly Mr. Speaker, my final concern relates to the proviso in Section 8 on accruals to the Fund. Specifically, requiring the Fund balance not to exceed two percent of the revenues can only be tied to funds appropriated by the County assembly and not donor funds. This is because donor funds are conditional in nature and are always tied to specific programmes that the donor specializes on. In this regard therefore, requiring the excess amounts to be swept to the County Exchequer Account will not be agreeable in respect to donor funds. We therefore propose that you urge the assembly to delete the following words under that section "*subject to the fund balance not exceeding two percent of the revenues as shown in the county's audited financial statements for the previous financial year*"

Mr. Speaker, with these few concerns, I hereby refer the Kitui County Emergency Fund Bill, 2018 back to the County Assembly pursuant to the provisions of Section 24(2)(b) of the County Government Act for consideration and amendment taking into account the views that I have raised. Thereafter Mr. Speaker, you may return the Bill for my assent as envisaged in Section 24(4) of the above Act.

Thank you.

Yours

Sincerely



Clarity Kaluki Ngilu

Governor

KITUI COUNTY

