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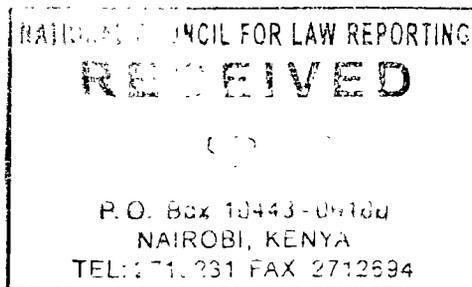
KENYA GAZETTE SUPPLEMENT

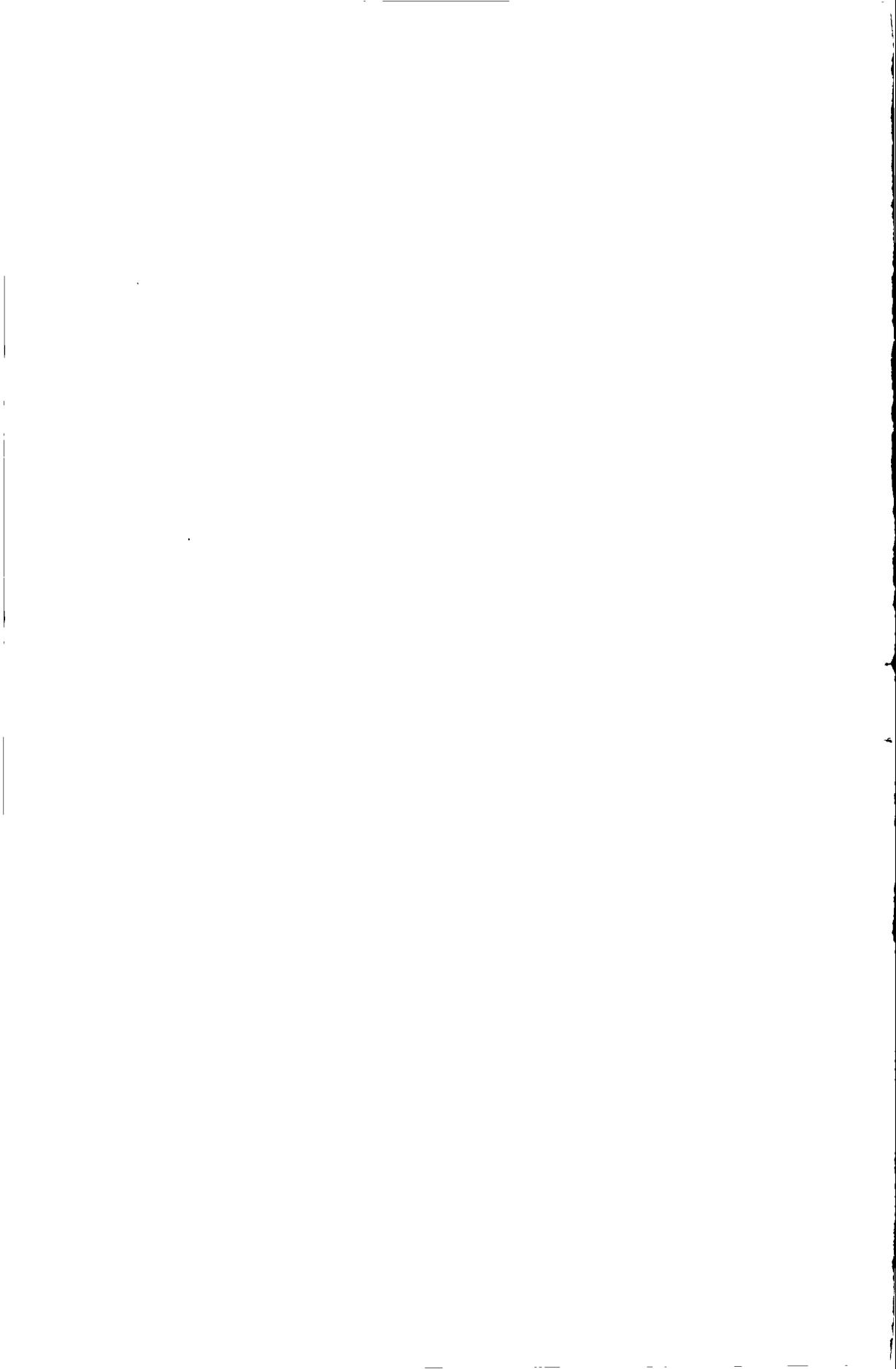
ACTS, 2015

NAIROBI, 18th December, 2015

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**THE NATIONAL GOVERNMENT
CONSTITUENCIES DEVELOPMENT FUND ACT**

No. 30 of 2015

Date of Assent: 15th December, 2015

Date of Commencement: Section 57 upon publication.

Other Sections: 19th February, 2016

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**THE NATIONAL GOVERNMENT
CONSTITUENCIES DEVELOPMENT FUND ACT,
2015**

**AN ACT of Parliament to provide for the establishment
of the National Government Constituencies
Development Fund and for connected purposes**

ENACTED by Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the National Government Constituencies Development Fund Act, 2015 and shall come into force, as follows:

Short title and commencement.

- (a) section 57, upon publication of the Act; and
- (b) all other sections, on the 19th February, 2016.

2. In this Act, unless the context otherwise requires,—

Interpretation.

“bank account of the Fund” means the National Government Constituencies Development Fund account maintained in accordance with section 13;

“Board” means the National Government Constituencies Development Fund Board established under section 14;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to national economic policy and planning and development;

“Chairperson” means the Chairperson of the Board appointed under section 15 (3);

“chief executive officer” means the chief executive officer of the Board appointed under section 20;

“community” means residents of a particular geographical area or region defined as a constituency, ward, location, sub location or village and having common interests;

“constituency” means one of the constituencies into which Kenya is divided under Article 89 of the Constitution;

““Constituency Committee” means a National Government Constituency Development Fund Committee established under section 43 (1);

“Constituency account” means the account maintained for every constituency in accordance with section 12;

“Fund” means the National Government Constituencies Development Fund established under section 4 (1);

“National Assembly Committee” means the National Assembly Select Committee established in accordance with section 50;

“Officer of the Board” means an officer of the Board appointed under section 22;

“project” means an eligible development project as described in the Act;

“project management committee” means a committee or board of persons elected or nominated to implement a project or manage an institution, including a committee existing prior to the establishment of the Fund and which is assuming the responsibility of implementing a project funded under the Act;

“revenue” has the meaning assigned to it under the Commission on Revenue Allocation Act, 2011;

No. 16 of 2011.

“sub-project” means a complete unit or part of a project that can be put to use towards the achievement of the project objectives;

“ward” means a ward administered by an assistant county commissioner under the National Government Co-ordination Act, 2013;

No. 1 of 2013

“youth” means a person who has attained the age of eighteen years but has not attained the age of thirty-five years.

3. The objects of this Act are to—

Objects of the Act.

- (a) provide for the establishment and administration of the Fund;
- (b) recognise the constituency as a platform for identification, performance and implementation of national government functions;
- (c) facilitate the performance and implementation of national government functions in all parts of the Republic pursuant to Article 6(3) of the Constitution;

- (d) provide for the participation of the people in the determination and implementation of identified national government development projects at the constituency level pursuant to Article 10(2)(a) of the Constitution;
- (e) promote the national values of human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized pursuant to Article 10 (2) (b) of the Constitution;
- (f) provide for the sustainable development of all parts of the Republic pursuant to Article 10 (2) (d) of the Constitution;
- (g) provide a legislative and policy framework pursuant to Article 21 (2) of the Constitution for the progressive realisation of the economic and social rights guaranteed under Article 43 of the Constitution;
- (h) provide mechanisms for the National Assembly to exercise oversight over the performance of specified national government functions at the constituency level as provided for under Article 95 of the Constitution;
- (i) provide for a public finance system that promotes an equitable society and in particular expenditure that promotes equitable development of the country by making special provisions for marginalized groups and areas pursuant to Article 201 (b) (iii) of the Constitution;
- (j) authorize withdrawal of money from the Consolidated Fund as provided under Article 206 (2) (c) of the Constitution;
- (k) provide for mechanisms for supplementing infrastructure development at the constituency level in matters falling within the functions of the national government at that level in accordance with the Constitution.
- (l) provide a framework for citizens led development to assist the national government in planning and prioritizing the use of its resources;

- (m) create a harmonious relationship between citizens and the national government and its officers in local development;
- (n) provide a platform for citizens participation in service delivery; and
- (o) build local accountability and transparency in the use of resources.

**PART II—ESTABLISHMENT OF THE
NATIONAL GOVERNMENT CONSTITUENCIES
DEVELOPMENT FUND**

4. (1) There is established a fund to be known as the National Government Constituencies Development Fund which shall—

Establishment of the Fund.

- (a) be a national government fund consisting of monies of an amount of not less than 2.5% (two and half per centum) of all the national government's share of revenue as divided by the annual Division of Revenue Act enacted pursuant to Article 218 of the Constitution ;
- (b) comprise of any monies accruing to or received by the Board from any other source; and
- (c) be administered by the Board.

(2) All monies allocated under this Act shall be considered as funds allocated to constituencies pursuant to Article 206(2)(c) of the Constitution to be administered in accordance with the provisions of this Act.

(3) The monies appropriated to the Fund in any financial year under subsection (1)(a) shall not be less than the amount appropriated to the Fund in the preceding financial year unless as otherwise allowed by this Act.

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

Disbursement from the Fund

(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.

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.

Allocation of funds.

(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 some funds remain unspent.

7. (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.

Funds to be retained in the Fund.

(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.

8. (1) A portion of the Fund, equivalent to five per centum (hereinafter referred to as the "Emergency Reserve") shall remain unallocated and shall be available for emergencies that may occur within the Constituency.

Emergency Reserve.

(2) The Constituency Committee shall determine the allocation of the emergency reserve in accordance with the Act.

(3) "Emergency" shall be construed to mean an urgent, unforeseen need for expenditure for which it is in the opinion of the committee that it cannot be delayed until the next financial year without harming the public interest of the constituents.

9. The project management committee shall set aside a sum not exceeding five per centum of the total allocation for the project to cater for the administration expenses of the project.

Administration expenses.

10. The sums set aside under sections 8 and 9 shall be properly accounted for and proper books of accounts shall be kept and returns made to the Constituency Committee for that constituency on how the sum has been used.

Books of accounts to be kept.

11. All funds received under this Act shall be audited and reported upon by the Auditor-General.

Audit.

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.

Constituency 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.

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

Bank Account of the
Fund.

(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 any two of the other three signatories.

**PART III—ESTABLISHMENT OF THE
NATIONAL GOVERNMENT CONSTITUENCIES
DEVELOPMENT FUND BOARD**

14. (1) There is established a Board to be known as the National Government Constituencies Development Fund Board.

Establishment of the Board

(2) The Board shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) borrowing money or making investments; and
- (d) doing or performing all other acts or things for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.

15. (1) The Fund shall be administered by a Board of Directors which shall consist of—

Composition of the Board

- (a) the principal secretary in the Ministry for the time being responsible for matters relating to national economic policy and planning or a designated alternate, not being below the level of Director of Planning;
- (b) the principal secretary in the Ministry for the time being responsible for matters relating to finance or a designated alternate not being below the level of Deputy Director of Budget;
- (c) the Attorney-General or a designated alternate not being below the level of Senior State Counsel;
- (d) the principal secretary in the Ministry responsible for matters relating to education or a designated alternate not being below the level of Director;

- (e) seven other persons, three of whom shall be of the opposite gender and at least one shall be a person with disability, qualified in matters relating to finance, accounting, engineering, economics, community development, public affairs, project management, education, security or law appointed by the Cabinet Secretary with the approval of the National Assembly ; and
- (f) the chief executive officer who shall be an *ex officio* member without a right to vote.

(2) In nominating or approving the appointment of a person as a member of the Board under sub-section (1), the Cabinet Secretary and the National Assembly shall take into account gender equity and the regional diversities of the people of Kenya.

(3) The Cabinet Secretary shall appoint the chairperson of the Board from amongst the five persons appointed in accordance with paragraph (c) of subsection (1).

(4) The names and curriculum vitae of the persons nominated to be appointed as members of the Board pursuant to paragraph (c) of subsection (1) shall, before appointments are made, be submitted to the National Assembly for approval.

16. 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;

Functions of the
Board

- (f) encourage best practices in the implementation of projects;
- (g) administer the funds and assets of the Board in such manner and 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
- (h) perform such other duties as the Board may deem necessary from time to time for the proper management of the Fund.

17. The Board shall have all the powers necessary for the proper performance of its functions under this Act, and in particular, but without prejudice to the generality of the foregoing, the Board shall have power to—

Powers of the Board

- (a) receive gifts, donations, grants or other moneys and equipment and make legitimate disbursements therefrom;
- (b) receive and discuss annual reports and returns from the constituencies; and
- (c) enter into association with such other persons, bodies or organisations within or outside Kenya as the Board may consider appropriate in furtherance of the objects of this Act.

18. (1) The conduct and regulation of the business and affairs of the Board shall be as set out in the Second Schedule.

Conduct of the business and affairs of the Board

(2) Except as provided in the Second Schedule, the Board may regulate its own procedure.

(3) Where any issues of policy arise in the course of the performance of its functions under this Act, the Board shall refer the issue to the Cabinet Secretary.

(4) The Board may, in the discharge of its functions under this Act, make official or impromptu visits to projects at such times, as it may deem appropriate.

19. (1) A member of the Board may be removed from office on any one or more of the following grounds—

Removal of a member of the Board

- (a) serious violation of the Constitution or any other law;

- (b) gross misconduct, whether in performance of the member's or office holder's functions or otherwise;
- (c) physical or mental incapacity to perform the functions of office;
- (d) incompetence;
- (e) bankruptcy ; or
- (f) engaging in active politics.

(2) A person desiring the removal of a member of the Board under subsection (1) may present a petition to the National Assembly Committee setting out the alleged facts constituting that ground.

(3) A member sought to be removed under subsection (1) shall be given a fair hearing before a decision is made by the National Assembly Committee.

(4) The National Assembly Committee shall, upon receiving a petition under subsection (2), consider the petition and may recommend that the member be suspended pending the outcome of the complaint.

(5) The National Assembly Committee shall consider the petition and if it is satisfied that it discloses a ground under subsection (1), it shall make a determination that the member be removed from office and the member shall stand removed from office upon the making of that determination

(6) A vacancy arising as a result of the removal of a member under subsection (5) shall be filled in the manner set out in section 15 within thirty days of the occurrence of the vacancy.

20. (1) There shall be a chief executive officer of the Board who shall be recruited by the Board through a competitive process and recommendations made to the Cabinet Secretary for appointment, with the approval of the National Assembly.

Chief executive
officer of the Board

(2) No person shall be appointed under this section unless such person—

- (a) has a degree in finance, accounting, engineering, economics, community development, law or a related field from a recognized university;

- (b) has at least ten years' working experience in the relevant field; and
- (c) has served in a senior management position for a minimum period of five years.

(3) The chief executive officer shall subject to the directions of the Board, be responsible for the day to day management of the affairs and staff of the Board.

(4) The chief executive officer shall serve for a period of three years renewable once.

21. (1) There shall be a secretary to the Board who shall be appointed by the Board.

Appointment of
secretary to the
Board

(2) 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.

(3) In the performance of the duties under this Act, the Secretary shall be responsible to the chief executive officer.

(4) The Board may in the absence of the secretary appoint any member of the Board or staff of the Board to temporarily perform the functions of the secretary under subsection (2) subject to such conditions or restrictions as the Board may determine.

22. (1) The Board shall appoint such officers and other staff as are necessary for the proper management of the Fund and discharge of its functions under this Act, upon such terms and conditions of service as it may determine.

Staff of the Board

(2) The officer of the Board for each constituency shall administratively report to the Constituency Committee.

(3) The Constituency committee shall participate in the annual appraisal of the officer of the Board seconded to the constituency based on criteria developed by the Board.

(4) The principal management structure of the Board shall be established or varied by the Board with the approval of the Cabinet Secretary.

23. (1) The expenditure for running the Board and related purposes shall be set aside at the beginning of the financial year and not more than five per centum of the total allocation to the Fund in the financial year may be used for this purpose, the annual budget of which shall be approved by the Cabinet Secretary with the concurrence of the National Assembly Committee.

Finances of the Board.

(2) The personal emoluments of Government officers working or involved in the management of the Fund shall be provided for under the recurrent expenditure of Government but any other emoluments or payments to such officers from the Fund shall be determined by the Cabinet Secretary in consultation with the Salaries and Remuneration Commission.

PART IV—NATURE OF PROJECTS

24. A Project under this Act shall-

Projects to be in respect of national government functions.

- (a) only be in respect of works and services falling within the functions of the national government under the Constitution; and
- (b) be community based in order to ensure that the benefits are available to a widespread cross-section of the inhabitants of a particular area

25. (1) Any funding under this Act shall be for a complete project or a defined phase of a project and may include the acquisition of land and buildings.

Funding of projects.

(2) All projects shall be projects as defined under this Act and may include costs related to studies, planning and design or other technical input for the project but shall not include recurrent costs of a facility.

(3) Funds provided under this Act shall not be used for the purpose of supporting political bodies or political activities or for supporting religious bodies or religious activities.

(4) Notwithstanding the provisions of subsection (3), the Constituency Committee may identify a religious body or organization as an appropriate specialized agency for purposes of section 8 with regard to emergency support.

(5) Constituency Committee office project shall be considered as a development project for purposes of the Act and may include appropriate furniture and equipment for the office.

(6) Notwithstanding the provisions of subsection (2), up to a maximum of six per centum of the total annual allocation for the constituency may be used for administration, recurrent expenses of vehicles, equipment and machinery and such use shall be listed in the Third Schedule as a project.

(7) Projects may include the acquisition of vehicles, machinery and other equipment for the constituency.

(8) Sports activities shall be considered as development projects for purposes of this Act but shall exclude cash awards provided that the allocation to such activities does not exceed two per centum of the total allocation of the constituency in that financial year.

(9) Monitoring and evaluation of ongoing projects and capacity building of various operatives may be considered as a development project provided that not more than three per centum shall be allocated for this purpose.

(10) Environmental activities may be considered as development projects for purposes of this Act provided that the allocation to such activities does not exceed two per centum of the total allocation of the constituency in that financial year.

(11) Each of the projects shall be listed in the Third Schedule including the emergency item under section 8 and, where applicable, the activities under subsections (5), (6), (7), (8), (9) and (10) of this section.

26. (1) Constituencies with unspent funds at the end of the financial year shall submit new proposals to the Board for approval in accordance with section 31 of this Act.

Unspent funds and
joint projects

(2) Constituencies may pool resources for joint projects provided that the decision for such joint projects shall first be approved by the Constituency Committees of each of the participating constituencies and shall be reflected on the projects listed for each of the participating constituencies.

(3) Where constituencies have joint projects, the respective Constituency Committees shall co-ordinate the projects.

PART V—IDENTIFICATION AND SUBMISSION OF CONSTITUENCY PROJECT PROPOSALS

27. (1) The chairperson of the Constituency Committee shall, within the first year of the commencement of a new Parliament and at least once every two years thereafter, convene open forum public meetings in every ward in the constituency to deliberate on development matters in the ward and in the constituency.

Identification and
submission of
projects.

(2) The Constituency Committee shall deliberate on project proposals from all the wards in the constituency and any other projects which the Constituency Committee considers beneficial to the constituency, including joint projects with other constituencies, consider the national development plans and policies and the constituency strategic development plan, and identify a list of priority projects, both immediate and long term, out of which the list of projects to be submitted in accordance with the Act shall be drawn from.

(3) The list of proposed constituency based projects to be covered under this Act shall be submitted by Constituency Committee to the Board.

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.

Submission
deadline.

(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.

29. (1) The list of projects shall be submitted on a Constituency Projects Submission Form set out in the Third Schedule to this Act accompanied by minutes of the Constituency Committee approving the projects.

Submission form.

(2) All projects proposed for every constituency shall be listed in the Form together with the cost estimates, amounts allocated and amounts disbursed to such projects.

30. For every project listed in the Constituency Projects Submission Form, there shall be attached a Project Description Form as set out in the Fourth Schedule.

Projects description
Form

31. (1) The list of projects received by the Board pursuant to section 27 shall be tabled for review at a meeting of the Board.

Approval of
Projects

(2) The Board shall scrutinize and approve for funding those project proposals that are consistent with the Act.

(3) Where the Board does not approve a proposal submitted to it under this section, it shall refer the matter to the Constituency Committee giving reasons as to why it has declined the proposal

32. 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.

Discretion of
Constituency
Committee

33. The projects listed for each constituency shall be numbered by the Board and the serial numbers of all projects in a constituency shall bear the number of the constituency as delineated by the Independent Electoral and Boundaries Commission in order to ensure that a project retains the same serial number every year until its completion.

List to be serialised

34. (1) The budget ceiling for each constituency shall be—

Basis for budget
ceiling

- (a) three quarters of the amount specified in section 4(1) divided equally among all constituencies; and
- (b) an amount equal to a quarter of the amount specified in section 4(1) divided by the national poverty index multiplied by the constituency poverty index

(2) The chairperson of the National Assembly Committee shall table in the National Assembly a schedule showing the ceiling for each constituency, which shall be determined in accordance with subsection (1).

35. (1) The types of projects submitted for funding under this Act shall comply with the provisions of this Act.

Criteria for projects

(2) It shall be the responsibility of the Constituency Committee to ensure that the list of projects submitted for funding comply with the provisions of the Act and their total cost does not exceed the allowable ceiling for the particular constituency or is not below that ceiling.

(3) If the list of projects submitted for funding is in contravention of subsection (2) the same shall be referred back to the Constituency Committee for amendment and re-submission.

(4) Whenever the amount for projects in a constituency is less than the allowable ceiling for reasons of projects being rejected in accordance with subsection (3), or for whatever reason, the shortfall shall be indicated as unallocated amount against that particular constituency on the list to be forwarded to the Cabinet Secretary.

PART VI—IMPLEMENTATION OF PROJECTS

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.

Project management committee to implement.

(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.

37. All works and services relating to projects under this Act shall be procured in accordance with the provisions of the Public Procurement and Disposal Act, 2005.

Procurement of services and works. Cap. 412A.

38. The officer of the Board in every constituency shall compile and maintain a record showing all receipts, disbursements and actual expenditures on a monthly basis in respect of every project and sub-project under this Act and shall—

Record of receipts and disbursement.

- (a) table such record at a meeting of the Constituency Committee in every month; and
- (b) submit a summary of the record for the year to the Constituency Committee not later than thirty days after the end of every financial year.

39. (1) An accurate record of all disbursements made for projects to every constituency shall be kept and updated every month by the Board.

Records of disbursement to be kept.

(2) The disbursement of funds to the constituency fund account shall be effected at the beginning of the first quarter of each financial year with an initial amount equivalent to twenty-five per centum of the annual allocation for the constituency and thereafter the constituency fund account shall be replenished in three equal instalments at the beginning of the second, third and fourth quarters of the financial year.

(3) The Chairperson of the Board shall submit an annual report on the activities, operations and expenditure under the Act.

(4) At the end of every financial year the Board shall submit separate accounts of the constituencies and the Board to the Auditor-General.

40. The Board shall ensure that the list of projects forwarded to it by each constituency is, upon approval, funded in accordance with the Act.

Project funding

41. (1) Projects initiated by a community shall be eligible for support under this Act provided that such projects shall be submitted with the other projects in conformity with the requirements of this Act.

Community initiative to be eligible

(2) Pursuant to subsection (1), a community shall, maintain an elected committee to represent the interests of that community during and after the implementation of the project and such a committee shall conform to the requirements of this Act.

42. The Board shall ensure that no duplication of projects occur particularly where it is prudent to combine efforts on projects designed to benefit a large section of a community which traverses two or more Constituencies.

Duplication of projects to be avoided

PART VII—THE NATIONAL GOVERNMENT CONSTITUENCY DEVELOPMENT FUND COMMITTEES

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

National Government Constituency Development Fund Committee.

- (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 persons 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 gazettelement 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 practises;
- (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.

44. (1) A person may present a petition to the Board for the dissolution of a Constituency Committee setting out the alleged facts constituting any one or more of the following grounds for dissolution—

- (a) serious violation of the Constitution or any other law including a contravention of Chapter Six;
- (b) gross misconduct, whether in performance of the member's or office holder's functions or otherwise;
- (c) incompetence;

(d) bankruptcy; or

(e) any other cause as may be deemed justifiable.

(2) On receiving a petition under subsection (1), the Board may suspend the Constituency Committee pending the outcome of the complaint.

(3) The Board shall, consider the petition, hear all or part of the members of the committee and where it is satisfied that the petition discloses sufficient ground for dissolution, dissolve the Constituency Committee.

(4) Vacancies arising as a result of the removal of all the members of the Constituency Committee under subsection (3) shall be filled in the manner set out in section 43 and minutes of the meeting shall indicate the fact of the removal or appointment of members.

45. (1) The Constituency Committee may engage such staff as may be necessary for execution of its functions including persons with knowledge in information and communications technology, construction and basic accounting.

Staff of the
Constituency
Committee.

(2) Staff employed under subsection (1) shall assist the Constituency Committee in project monitoring, evaluation, co-ordination and proper keeping of records and such staff shall be remunerated from the funds allocated for administration and recurrent expenses of the Constituency Committee.

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.

Cost estimates to be
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.

47. A project or any part thereof which involves personal awards to any person whether in cash or in kind, shall be excluded from the list of projects submitted in accordance with section 27 of the Act.

Projects involving
personal awards to
be excluded

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

Social security programmes etc to be considered as development projects

49. For the purposes of this Act, the Board may consider part funding of a project financed from sources other than the Fund so long as the other financiers or donors of that project have no objection and provided that the part funding for the project availed pursuant to this Act shall go to a defined unit or any part thereof or phase of the project in order to ensure that the particular portion defined in the allocation is completed with the funds allocated under this Act.

Counter-part funding to be permitted

PART VIII—NATIONAL ASSEMBLY SELECT COMMITTEE

50. (1) The National Assembly shall, in accordance with its Standing Orders, establish a Select Committee on the National Government Constituencies Development Fund consisting of a chairperson and not more than eighteen other members of the National Assembly.

Establishment of the National Assembly Select Committee

(2) In determining the membership of the National Assembly Committee, the National Assembly shall ensure proportionate representation of the Parliamentary political parties.

(3) The term of office of the members of the National Assembly Committee shall be three years renewable or upon the appointment of a new Committee in a manner provided for in this Act, whichever comes earlier.

(4) The procedures and rules for the operations of the National Assembly Committee shall be governed by the Standing Orders of the National Assembly.

(5) The functions of the National Assembly Committee shall be—

- (a) to oversee the implementation of this Act and in this respect, shall after every two years submit a report to the National Assembly and where necessary, propose any amendments to this Act, in particular, with respect to the quantum of

funds repayable into the Fund in accordance with section 4 of the Act;

- (b) to oversee the policy framework and legislative matters that may arise in relation to the Fund;
- (c) to continually review the framework set out for the efficient delivery of development programmes financed through the Fund;
- (d) to consider and report to the National Assembly, with recommendations, names of persons required to be approved by the National Assembly under this Act; and
- (e) to carry out any other functions relevant to the work of the Fund.

(6) The National Assembly Committee may make reports other than the statutory report stated in sub-section 5 (d) to appraise the National Assembly on various matters relating to the Fund and to seek various approvals as required by the Act.

51. (1) The Board shall, on a quarterly basis, submit a report to the National Assembly Committee detailing—

- (a) a summary of the project proposals received from the constituencies in the preceding month and indicating the approval status of such projects;
- (b) a summary of the status of disbursements of funds to the constituencies for that preceding month;
- (c) a summary of the status of disbursements from the Treasury to the National Account; and
- (d) any restriction imposed on a constituency account in accordance with the Act.

(2) The National Assembly Committee shall consider the reports received from the Board under sub-section (1) and table a report to the National Assembly within 14 days of the receipt of the reports.

52. The existence of another allocation by the national government to a project in the constituency or a neighbouring Constituency shall not be used as a reason to deny either approval or funding of any project consistent with this Act.

Quarterly reports on projects and disbursements.

Allocations under the Act are supplementary.

53. (1) There is established a Constituency Oversight Committee for projects undertaken under this Act.

(2) The Constituency Oversight Committee shall be comprised of the constituency member of the National Assembly and not more than four other members, appointed by the Member of National Assembly for the constituency in consultation with other stakeholders.

(3) The constituency Member of National Assembly shall, in consultation with the Constituency Oversight Committee at least twice in every financial year, and upon giving notice of at least fourteen days, convene public forums for purposes of—

- (a) mobilizing and sensitizing the respective target groups on any matter related to the Fund; and
 - (b) soliciting views, opinions and proposals from the public in regard to the Fund and presenting the views and opinions to the National Assembly;
- (4) The public may in the public forums above—
- (a) make recommendations to the Constituency Committee for the better implementation of projects undertaken under the Act;
 - (b) witness the commissioning of projects and issuance of cheques and other disbursements by the Constituency Committee; and
 - (c) express their views on the implementation of the Fund.

(5) A member of the Constituency Oversight Committee may attend meetings of the Constituency Committee or its sub-committees, to ensure fair distribution of the fund.

PART IX—MISCELLANEOUS PROVISIONS

54. (1) The provisions of this Act shall be complimentary to any other development efforts by the national government or any other agency and nothing in this Act shall be taken or interpreted to mean that an area may be excluded from any other development programmes.

Provisions in the Act are complimentary.

(2) For the avoidance of doubt, normal Government development allocations shall continue alongside the projects funded under this Act.

55. Any person who misappropriates any funds or assets from the Fund, or assists or causes any person to misappropriate or apply the funds otherwise than in the manner provided in this Act, commits an offence and shall, upon conviction, be liable to imprisonment for a term of not less than five years or to a fine of not less than five hundred thousand shillings, or both.

Offences and penalties.

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.

Dispute resolution.

(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 held personally liable for any lawful action taken in his official capacity or for any disputes against the Fund.

PART X—PROVISIONS ON DELEGATED POWERS

57. (1) The Board may make Regulations for better carrying into effect the provisions of this Act.

Regulations.

(2) For the purposes of Article 94 (6) of the Constitution—

- (a) the purpose and objective of the delegation under this section is to enable the Board to make Regulations for better carrying into effect the provisions of this Act;

- (b) the authority of the Board to make Regulations under this Act will be limited to bringing into effect the provisions of this Act and fulfilment of the objectives specified under this section; and
- (c) the principles and standards applicable to the delegated power referred to under sub-section (1) are those found in—
- (i) the Statutory Instruments Act, 2013;
 - (ii) the Interpretation and General Provisions Act;
 - (iii) the general rules of international law as specified under Article 2(5) of the Constitution; and
 - (iv) any treaty and convention ratified by Kenya under Article 2(6) of the Constitution.

No. 23 of 2013.

Cap. 2.

(3) Without prejudice to the generality of subsection (1) the Board may make regulations prescribing—

- (a) the manner of selection of, and the qualification of members of the Constituency Committees;
- (b) the procedure for appointment and removal of members of the project management committees;
- (c) the Forms to be used in application for the Fund for various purposes; and
- (d) the eligibility criteria for funding of social security programmes.

PART XI—TRANSITIONAL PROVISIONS

58. (1) In this section—

Transitional provisions.

“commencement day” means the date when this Act comes into operation;

(2) On the commencement day, all the funds, assets and other property both movable and immovable, which immediately before such date were vested in the Constituencies Development Fund Board established under the Constituencies Development Act, 2013, shall by virtue of this subsection, vest in the Board.

No. 30 of 2013.

(3) On the commencement day, all rights, powers and liabilities, whether arising under any written law or

otherwise which immediately before such day were vested in, imposed on or enforceable against the Constituencies Development Fund Board established under the Constituency Development Fund Act, 2013 shall be deemed to be vested, imposed or enforceable against the Board.

No. 30 of 2013.

(4) Any reference in any written law or in any document or instrument to the Constituencies Development Fund Board established under the Constituency Development Fund Act, 2013, shall, on and after the commencement day, be construed to be a reference to the Board.

No. 30 of 2013.

(5) The annual estimates of the Constituencies Development Fund Board established under the Constituency Development Fund Act, 2013, for the financial year in which the commencement day occurs shall be deemed to be the annual estimates of the Board for the remainder of that financial year.

No. 30 of 2013.

(6) The administrative directions made by the Constituencies Development Fund Board established under the Constituency Development Fund Act, 2013, or by the Cabinet Secretary which are in force immediately before the commencement day shall, on and after such day, have force as if they were directions made by the Board or the Cabinet Secretary under this Act.

No. 30 of 2013.

(7) Any person who is an officer or employee of the Constituencies Development Fund Board established under the Constituency Development Fund Act, 2013, immediately before the commencement date of this Act shall be an officer or employee of the Board in the same capacity and on the same terms he or she was serving before the enactment of this Act.

No. 30 of 2013.

(8) The members of the Constituencies Development Fund Board established under the Constituency Development Fund Act, 2013 and the chief executive officer shall continue in office as members of the Board and the chief executive officer respectively until the expiry of their existing terms.

No. 30 of 2013.

(9) The Fund established under section 4 of this Act shall be the successor to the Constituencies Development Fund established by section 4 of the Constituencies Development Fund Act, 2013.

No. 30 of 2013.

SECOND SCHEDULE (s. 18 (1) and (2))
CONDUCT OF THE BUSINESS AND AFFAIRS OF
THE BOARD

Tenure of office

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.

Meetings.

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.

Committees of the Board.

3. (1) The Board shall establish such committees as it may deem appropriate to perform such functions and responsibilities as it may determine.

(2) The Board shall appoint the Chairperson of a committee established under subparagraph (1) from among its members.

(3) The Board may where it deems appropriate, invite any person to attend the deliberations of any of its committees.

(4) All decisions by the committees appointed under subsection (1) shall be ratified by the Board.

Disclosure of interest.

4. (1) A member who has an interest in any contract, or other matter present at a meeting shall at the meeting and as soon as reasonably practicable after the commencement, disclose the fact thereof and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter.

(2) A disclosure of interest made under subparagraph (1) shall be recorded in the minutes of the meeting at which it is made.

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

Contracts and instruments.

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.

Common seal.

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 authorisation by the Board under this section shall be presumed to have been duly given.

Provisions of the Schedule to apply to the conduct of the business of the Constituency Committee.

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.

FOURTH SCHEDULE

(s. 30)

PROJECT DESCRIPTION FORM

Constituency No.

Constituency Name.....County.....

Project Number.....

Project Title.....

Sector.....

Status of projects (tick one)

New.....Extension.....Ongoing.....

Rehabilitation.....

Brief statement on project status at time of submission

.....

.....

.....

Financial year.....1st July.....to 30th June.....

Original Cost estimates, in KSh.dated.....

Amount allocated last financial year.....

Person completing form:

Signature.....

Date.....

Name.....

Position.....

