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*Busia County Gazette Supplement No. 28 (Bills No. 21)*



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# ***BUSIA COUNTY GAZETTE SUPPLEMENT***

**BILLS, 2014**

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**NAIROBI, 17th December, 2014**

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**THE BUSIA COUNTY EMERGENCY FUND BILL, 2014****A Bill for**

**AN ACT of the County Assembly to establish an emergency fund for Busia County to cater for expenditure in respect of urgent and unforeseen events for which there may be no specific legislative authority; to provide a legal and regulatory framework with regard to such expenditure and for matters related and incidental thereto.**

**ENACTED** by the County Assembly of Busia as follows—

**PART I—PRELIMINARY****1. Short title and commencement.**

This Act may be cited as the Busia County Emergency Fund Act, 2015 and shall come into force in accordance with the provisions of Section 25 of the County Governments Act, No. 17 of 2012, upon publication.

**2. Interpretations and definitions.**

In this Act, unless the context otherwise requires—

“Busia County Emergency Fund” means the Fund established under section 5 pursuant to and in accordance with section 110 of the Public Finance Management Act;

“County” means Busia County;

“County Assembly” means Busia County Assembly;

“County Executive Committee” means the executive Committee of the County formed pursuant to Articles 176 and 179 of the Constitution;

“County Government” means the county government of Busia County;

“disaster” means a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or manmade causes, or by accident or negligence which results in substantial loss of life or human suffering or damage to, and destruction of, property, or damage to, or degradation of, environment, and is of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area;

“disaster management” means a continuous and integrated process of planning, organising, coordinating and implementing measures which are necessary or expedient for—

(a) prevention of danger or threat of any disaster;

- (b) mitigation or reduction of risk of any disaster or its severity or consequences;
- (c) capacity-building;
- (d) preparedness to deal with any disaster;
- (e) prompt response to any threatening disaster situation or disaster;
- (f) assessing the severity or magnitude of effects of any disaster;
- (g) evacuation, rescue and relief; rehabilitation; and
- (h) reconstruction;

“disaster preparedness” means a state of readiness to deal with a threatening disaster situation or the effects thereof and includes any activity undertaken in anticipation of a disaster, hazard or other emergency situation in order to reduce any negative impact;

“event” has, for the purposes of this Act, the same meaning as disaster;

“Executive Member” means the county executive committee member responsible for matters relating to finance;

“functions” includes powers and duties;

“hazard” means a natural or manmade phenomenon which may cause physical damage, economic losses, or threaten human life and well-being, if it occurs in an area of human settlement, agricultural or industrial activity;

“mitigation” means measures aimed at reducing the risk, impact or effects of a disaster or threatening disaster situation;

“the Constitution” means the Constitution of Kenya, 2010;

### **3. Objectives of the Act.**

The objective and purposes of this Act is to—

- (a) establish a Fund from which the County may make payments in the event of urgent and unforeseen events in respect of which no specific legislative authority has been given;
- (b) to establish and provide a framework and criteria within and in accordance with which such payments may be made; and
- (c) to provide operational framework in respect of the Fund in accordance with the law relating to Public Finances.

**4. Guiding Principles.**

All persons, institutions and organs applying and or implementing the provisions of this Act shall be guided and governed by the principles that—

- (a) every person in the County has a right to life and a clean and safe environment;
- (b) it is a fundamental responsibility of both the State and the County and their organs and institutions to—
  - (i) avoid and deal with both natural and human-made disasters and emergencies; and
  - (ii) mitigate the impact of the effect thereof; and
- (c) that there shall be openness, accountability and prudence in the use and management of public resources in the County.

**PART II—BUSIA COUNTY EMERGENCY FUND****5. County Government to take Measures for Emergencies.**

(1) In accordance with the provisions of the County Disaster Preparedness and Emergency Management Act, the County Government shall take all such measures as it considers necessary or expedient for the purpose of disaster management in the County.

(2) The County Government shall, in their annual budgets, make provisions for funds for the purposes of carrying out the activities and programmes set out in its Plan.

**6. Establishment of the Fund.**

In accordance with and pursuant to section 110 of the Public Finance Management Act, there is hereby established a fund in the County to be known as Busia County Emergency Fund (hereinafter called “the Fund”).

**7. Sources of the Fund.**

The Fund shall consist of—

- (a) such money or monies as may be appropriated to the Fund by the County Assembly;
- (b) monies or assets as may accrue to the Fund in the course of the application and or implementation of the County Disaster Preparedness and Emergency Management Act;
- (c) grants made by the national government or other county governments for disasters and emergencies in the County; and all

monies from any other source as may be lawfully made or donated to the Fund.

### **PART III - ADMINISTRATION OF THE FUND**

#### **8. Urgent and Unforeseen Expenditure.**

(1) Where he/she considers it appropriate to do so, or, where the Directorate of the Committee established under the County Disaster Preparedness and Emergency Management Act so requests, the Executive Member may authorise a withdrawal from the Fund of such money or monies that may be needed in respect of an urgent and unforeseen expenditure for which there is no specific authorisation by the county Assembly.

(2) The withdrawal and or payment under this section shall be in accordance with and adhere to this Act.

(3) Any payment made under or in accordance with this section shall be approved by the County Assembly within two months from the date of payment.

(4) Where the payment is made when the County Assembly is not in sitting, the Executive Member shall ensure that the approval is sought and obtained as soon as possible but in any event not later than fifteen days after the date when the County Assembly next first sits.

#### **9. Use of the Fund.**

(1) The Fund may only be used by the County Government to meet urgent and unforeseen expenses relating to disasters and emergencies in the County for which there is no specific legislative authority.

(2) Without prejudice to the generality of subsection (1), the Fund may be used by the County Government for—

- (a) disaster preparedness;
- (b) emergency responses and relief;
- (c) disaster mitigation; emergency relief; and
- (d) reconstruction.

#### **10. No Payment for event that is not urgent and unforeseen.**

(1) No money may be withdrawn or paid out of the Fund in respect of an event or occurrence that is not urgent and unforeseen and in respect whereof the County Assembly has already authorised expenditure.

(2) The Executive Member may only authorise payment from Fund

- (a) if he or she is satisfied that there is an urgent and unforeseen need for expenditure for which there is no legislative authority;
- (b) the payment shall be in accordance with operational guidelines made under regulations approved under this Act; and
- (c) the provisions of sections 112, 113 and 114 of the Public Finance Management Act have been adhered to and complied with.

**11. Urgent and unforeseen events.**

(1) An event shall be deemed to be urgent and unforeseen if that event—

- (a) was not and could not reasonably have been anticipated and planned for with a view to avoiding or averting it;
- (b) the event is such that has resulted in or threatens damage to human life, welfare or the environment;
- (c) the resultant damage is or is likely to harm the general public interest;
- (d) there is need to alleviate the damage, loss hardship or suffering that has been or is likely to be directly occasioned;
- (e) the damage caused or likely to be caused by the event is on a small scale and limited to the County or part of the County.

(2) The Executive Member shall, in administering the Fund, adhere to and comply with this Act and may develop and establish other criteria, guidelines and regulations as may be necessary for the purpose.

(3) Any criteria, guidelines and or regulations developed and established under subsection (2) shall not take effect without first being approved by the County Assembly.

**12. Payment not to exceed 25% of Revenue.**

Any money paid out of the Fund pursuant to and in accordance with section 9 in any one year—

- (a) shall not exceed 2% of the total County Government revenues of the County Government's audited accounts for the immediate preceding financial year;
- (b) shall be approved by the County Assembly within two months of the expenditure.

## **PART IV—FINANCIAL PROVISIONS**

### **13. Separate account in respect of the Fund.**

The Executive Member shall—

- (a) establish and maintain a separate account in respect of the Fund into which all money appropriated to the Fund shall be paid;
- (b) subject to this Act and in accordance with the approved criteria, administer and manage the Fund.

### **14. Records in respect of the Fund.**

(1) The Executive Member shall, in making any payment out of the Fund under this Act, ensure that there is kept and maintained by the County Treasury in respect of the Fund—

- (a) a proper record of such payment regarding;
- (b) the date and recipient of the payment; whether the monies paid out of the Fund was used for the purpose for which the payment was made; and
- (c) if it was not so used, the reasons why it was not used.

(2) Within three months after the close of the financial year, the County Treasury shall submit to the Auditor General the records made under subsection (1) for the financial year.

### **15. Chief Officer to be Accounting Officer.**

Subject to this Act and the provisions of the Public Finance Management Act, the Chief Officer shall be the accounting officer in respect of the administration and management of the Fund.

## **PART V—MISCELLANEOUS PROVISIONS**

### **16. Regulations.**

The Executive Member may make regulations issue guidelines as may be necessary and appropriate for the better carrying out of the provisions of this Act.

**MEMORANDUM OF REASONS AND OBJECTS**

This Bill seeks to establish an emergency fund for Busia County to cater for expenditure in respect of urgent and unforeseen events for which there may be no specific legislative authority; to provide a legal and regulatory framework with regard to such emergencies as has been encompassed in its long title.

PART I deals with preliminary provisions of the Bill and includes the objectives that the Bill seeks to achieve.

PART II under section 5, 6 and 7 respectively seek to establish the fund, and further makes provisions for the sources of the Fund.

PART III makes provisions on the administration of the Fund and specifically makes provisions for the usage of the Fund and in particular circumstances under which monies can be withdrawn from the Fund and otherwise.

PART IV deals with provisions relating to finances. Sections 13-15 thereof making provisions for preparation of annual estimates, accounts and audits.

PART V provides for the miscellaneous provisions that deal with powers of the Executive Member in charge of Finance to make regulations for the better carrying out of the objectives of the Act.

Pursuant to Standing Order No. 114 of the Busia County Assembly Standing Orders, at Section 16 of the Bill, the Executive Member is given delegatory powers to make regulations for the proper achievement of the objectives of the Bill but with proper consultation and recommendations from the appropriate bodies and entities.

This Bill concerns the County Government and is under the ambit of County Government functions as outlined at Schedule 4 part 2 of the Constitution of Kenya, 2010 and specifically at paragraph 12 thereof.

The enactment of this Bill shall occasion additional expenditure of public funds which shall be provided for in the County Government of Busia Estimates.

LENARD WANDA OBIMBIRA,  
*County Executive Committee,  
Finance and Economic Planning.*