

SPECIAL ISSUE

Busia County Gazette Supplement Act. 20 (Act No. 01)



REPUBLIC OF KENYA

**BUSIA COUNTY GAZETTE
SUPPLEMENT**

ACTS, 2015

NAIROBI, 11th August, 2015

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No. 6 of 2015

Date of assent: 27th July, 2015

Date of commencement: See Section one

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THE BUSIA COUNTY EMERGENCY FUND ACT, 2015

2015

AN ACT of the County Assembly of Busia 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

Short title and citation

1. 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.

Interpretation and definitions

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

“Busia County Emergency Fund” means the Fund established under section 6 pursuant to and in accordance with section 110 of the Public Finance Management Act;

“Committee” means the Committee responsible for disaster management in the county established under the county law relating to disaster management;

“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, organizing, co-ordinating 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 thereof;

“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 threat of disaster;

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

Objective of the Act

3. 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.

Guiding Principles

4. 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 National Government and the County Government 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) there shall be openness, accountability and prudence in the use and management of public resources in the County.

PART II—BUSIA COUNTY EMERGENCY FUND**County Government to take measures for emergencies**

5. (1) In accordance with the provisions of the county law governing disaster management, 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.

Establishment of the Fund

6. 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").

Sources of the Fund

7. 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 law governing disaster management;
- (c) grants made by the national government or other county governments for disasters and emergencies in the County; and
- (d) all monies from any other source as may be lawfully made or donated to the Fund.

PART III—ADMINISTRATION OF THE FUND

Urgent and unforeseen expenditures

8. (1) Where he/she considers it appropriate to do so, or, where the Directorate or the Committee so requests, the Executive Member may authorise a withdrawal from the Fund, 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) Any withdrawal or payment under this section shall be in accordance with and adhere to the provisions of 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 fourteen days after the date when the County Assembly next first sits.

Use of the Fund

9. (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—

- (i) disaster management; and
- (ii) emergency responses and relief.

No payment for event that is not urgent and unforeseen

10. (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.

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- (3) The Executive Member may only authorize payment from
- (a) if he 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.

Urgent and unforeseen events

11. (1) For the purposes of this Act, there is an urgent and unforeseen event for expenditure if the County Executive Committee member for finance, guided by regulations and relevant laws, establishes that—

- (a) payment not budgeted for cannot be delayed until a later financial year without harming the general public interest;
- (b) payment is meant to alleviate the damage, loss, hardship or suffering which may be caused directly by the event; and
- (c) the damage caused by the event is on a small scale limited to the county.

(2) For the purposes of subsection (1), the unforeseen event is one which—

- (a) threatens damage to human life or welfare; or
- (b) threatens damage to the environment.”

Payment not to exceed 2% of revenue

12. Any money paid out of the Fund pursuant to and in accordance with section 9 in any one year shall not exceed 2% of the total County Government revenues as shown in the County Government’s audited financial statements for the immediately preceding financial year.

PART IV—FINANCIAL PROVISIONS

Separate account in respect of the Fund

13. 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;

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- (b) subject to this Act and in accordance with the approved criteria, administer and manage the Fund.

Records in respect of the Fund

14. (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 proper record of such payment regarding—

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

Chief Officer to be the accounting officer

15. The County Executive Committee member for finance shall administer the Fund but may delegate that power to the chief officer responsible for Finance.

PART V—MISCELLANEOUS PROVISIONS

Regulations

16. (1) The Executive Member may make such regulations, not inconsistent with this Act, as may be necessary and appropriate for the better carrying out of the provisions of this Act.

(2) Regulations made under this Act shall not take effect without first being approved by the County Assembly.