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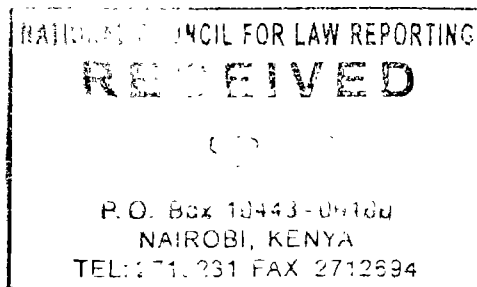
KENYA GAZETTE SUPPLEMENT

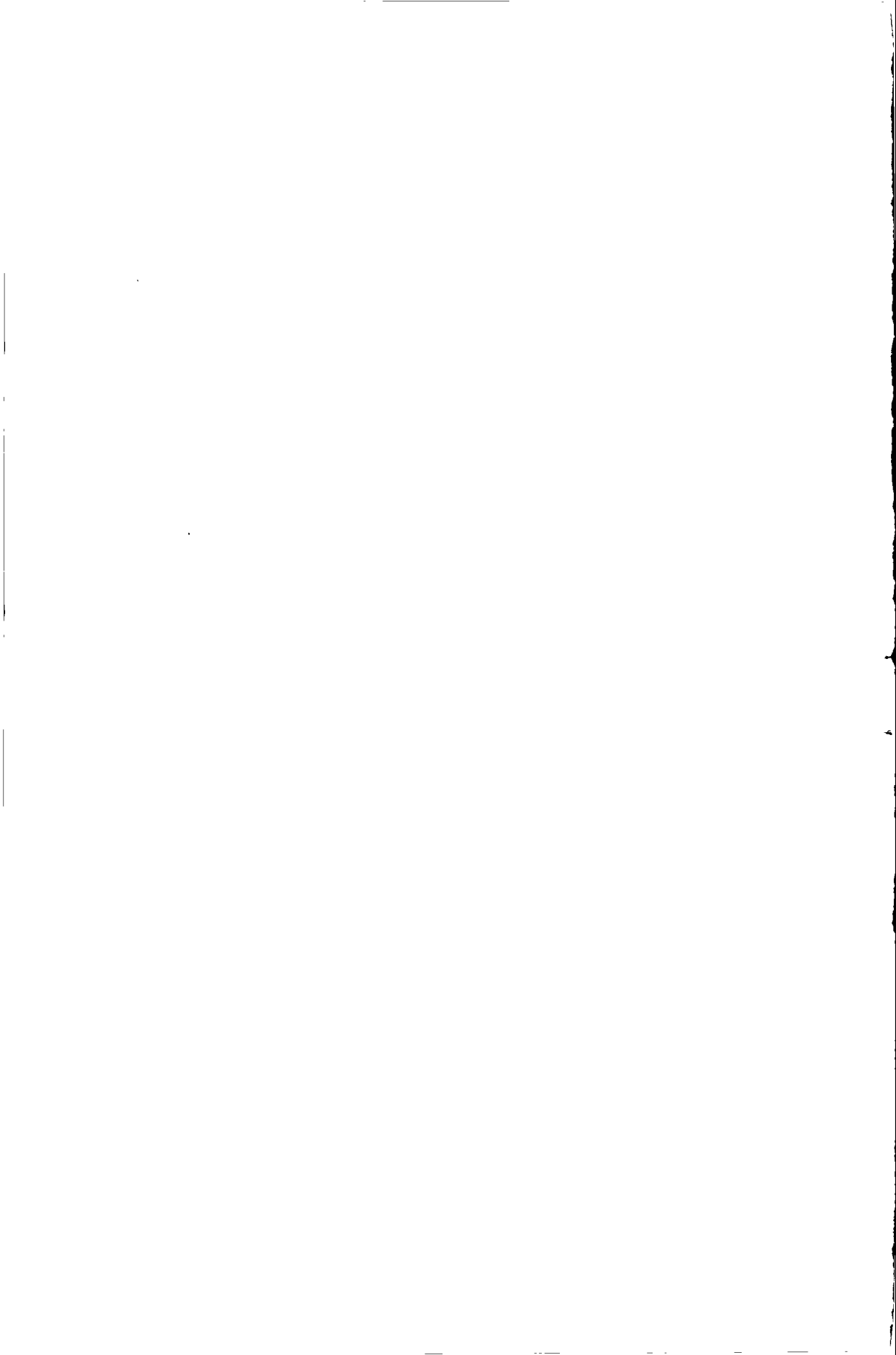
ACTS, 2015

NAIROBI, 18th December, 2015

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1911

**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.