

REPUBLIC OF KENYA
COUNTY GOVERNMENT OF NAIROBI CITY



NAIROBI CITY COUNTY ASSEMBLY

FIRST SESSION

REPORT OF THE
SECTORAL COMMITTEE ON TRANSPORT AND PUBLIC WORKS ON THE
CONSIDERATION OF THE WARD DEVELOPMENT FUNDBILL, 2013.

CLERK'S CHAMBERS
NAIROBI CITY COUNTY ASSEMBLY
CITY HALL BUILDINGS
NAIROBI

JANUARY, 2014

PREFACE

Hon. Speaker, Sir,

The Sectoral Committee on Transport and Public Works was constituted pursuant to the provisions of Standing Order No. 191 of the Nairobi County Assembly and has executed its mandate in accordance with the provisions of the said Standing Order 191(5), which mandates the Committee to, inter alia;

- (i) study and review all County legislation referred to it;***
- (ii) make reports and recommendations to the County Assembly as often as possible, including recommendation of proposed legislation.***

Hon. Speaker,

The Committee, according to Schedule II of the Standing Orders, examines the following subjects:

- i. County Transport including County Roads, Street lighting, traffic and parking, public road transport and ferries and harbors, excluding the regulation of International and National Shipping and matters related thereto.
- ii. County Public Works and Services including storm water management systems in built-up areas.

Hon. Speaker, Sir,

The following are the Members of the Committee:

The Hon. Diana Kapeen, MCA - (**Chairperson**)
The Hon. Martin Waweru Gichuhi, MCA - (**Vice Chairperson**)
The Hon. Ken Oduru, MCA
The Hon. Shadrack Juma, MCA
The Hon. Maurice Gari Otieno, MCA
The Hon. Clarence K Munga, MCA
The Hon. Kennedy Ngondi, MCA
The Hon. Osman Adow Ibrahim, MCA
The Hon. Irungu Samuel, MCA
The Hon. Kenneth Irungu, MCA
The Hon. Chege Mwaura, MCA
The Hon. Amina Mohammed, MCA
The Hon. William Abuka, MCA
The Hon. Tabitha Ndigirigi, MCA
The Hon. Maxwell Ochar, MCA
The Hon. Mark Ndungu, MCA

Hon. Speaker, Sir,

The Ward Development Fund Bill, 2013, underwent the First Reading on Wednesday, 27th November, 2013 and was effectively committed to the Committee on Transport and Public Works, as provided for under Standing order 121(1).

Pursuant to Article 118(b) and Standing Order 121(3) which require public participation and involvement in the legislative and other business of the County Assembly and its Committees, a notification was placed in the mainstream print media on 14th November, 2013, informing the public that the Committee was considering amendments to the

Nairobi City County Wards Development Fund Bill, 2013, and inviting them to submit any representations they might have on the proposed amendments.

Hon. Speaker, Sir,

The Committee held a total of seven meetings. A number of the meetings were held with key stakeholders during the scrutiny of the Bills. Some of the stakeholders included;

- i) Department of Transport and Public Works, Nairobi City County
- ii) Department of Finance, Nairobi City County

The Committee received written memoranda from the County Executive Committee Member in charge of the Department of Transport and Public Works, Nairobi City County, of P.O. Box 30075-00100 – 00100, Nairobi.

During its consideration of the Bill with stakeholders from the executive, Members were informed that the funds set aside for development of the Wards was still available and there was need to spend it within the remaining months on earmarked priority projects. Members also learnt that there was an extra Ksh 2 billion which was expected from the National Government for earmarked road projects in the County.

The Committee was informed that if the County did not implement projects targeted for the financial year, then they risk being challenged on their funds absorption capacity and the electorate will question the County Government's performance. It was agreed that members ensure proper utilization of the allocated funds for the Bill.

The Committee resolved that a meeting be held on 3rd February 2014 during which it will receive the Executive's report on the establishment of the Ward Development Fund disbursement structures and the disbursement program.

Members proposed that by 30th January 2014 the Committee for the Ward Development Fund should be in place. It was also observed that there was need to devolve money, and the creation of the Fund is one such avenue.

During its meeting on the Bill with the County Executive Committee Member for Transport and Public Works, Mr. Evans Ondieki, the Committee was informed that the Executive was in full support of the Bill and was anticipating its passing into law so as to have the structures to spur development within the County.

He submitted a write-up on amendments to the Bill. Among the amendments were:

- (a) That there should be an equalization fund under clause 14(i)
- (b) That the proposed 5% under clause 4(2a) be increased to 10%

The Committee subsequently agreed on the following as the way forward regarding the Bill and proposed amendments;

- (a) Members agreed that clause 4(2a) be amended so that the words “**ordinary revenue**” be replaced by “**total revenue**”.
- (b) It was agreed that some of the structures required in the Bill would be put in place by the executive by end of January 2014 and Members would proceed with the Bill till it is enacted into law to support the structures that will be set up.
- (c) Projects to be implemented are to be identified for the Bills of Quantities documents to be ready by the time the structures are in place.
- (d) The requested priority projects should be submitted to the Engineer within the next 7 days since the meeting.
- (e) The members were asked to note that the Ward Development fund was not to carter for the submitted priority projects but for a different set of projects that would be identified by the set up structures.

Hon. Speaker,

The need for devolved grassroots development at the Ward level to compliment development initiatives from both the National and County Governments is paramount to entrenching service delivery. The object of this Bill is therefore to provide for the establishment, administration and use of the Ward Development Fund and for connected purposes.

Hon. Speaker, Sir,

In examining the Bill, the Committee noted that some proposed amendments, such as amendments to Clause 2 and 4, are timely as they seek to bolster the fund's resource base and ensure it takes off.

The lack of previous audited accounts for the Nairobi City County Government necessitated amendments to Clause 4. The Committee was of the opinion that the requirement that the fund be drawn from not less than five percent of the "*most recent audited accounts of revenue*" would stagnate its establishment. It was therefore proposed that Clause 4 be amended so the fund can be set up from the readily available "*ordinary revenue collected in the previous year.*"

It was further noted that it is important to ensure amendments are in tune with the spirit of the Fund, which is designed to support Ward-level, grass-root development projects. It was aimed to achieve equitable distribution of development resources across Wards and to control imbalances in development brought about by partisan politics.

To that end, the Committee proposed that the Fund take into cognizance the rights of children, persons with disability, youth, minorities, marginalized and older members of the society as provided for under Article 53, 54, 55, 56, and 57 of the constitution of Kenya (2010). This necessitated proposed amendments to Clause 28, to expand the net on groups legible for support from the fund.

During its deliberations, the Committee also took note of transition issues arising out of the management of the fund through successive terms of the Assembly. It was agreed that Clause 8 be amended, such that the Ward Management Committee serves for a period of three years, as opposed to the four originally proposed. This will allow incoming management teams to benefit from the knowledge and hindsight of the outgoing team in the one year of transition, and to create continuity in the management of the fund and projects.

Other crucial amendments noted by the Committee included deletion of Clause 26, to forestall any potential conflict amongst Wards in terms of allocation. Clause 26 had proposed formulae for disbursement of the fund whose criteria the Committee felt would give rise to conflict amongst Wards. The Committee was of the opinion that all Wards be given equal allocation regardless of their population or other criteria as had been outlined in Clause 26.

Additionally, Members were in agreement that since priorities may differ from Ward to Ward, an amendment be brought to Clause 28 (f) to remove the ceiling on purchase of Motor Vehicles. It was agreed that “*purchasing*” be left out from sub-clause (f), and be considered a Capital Budget to allow Members purchase Cars for development initiatives that call for such.

Amendments to Clause 49 were meant to ensure the Fund does not stagnate due to a lack of quorum. The Committee agreed that the Fund's Management Committee should be able to meet for the first time even before its membership from amongst the Public is elected or it is fully constituted.

Hon. Speaker, Sir,

The Committee is thankful to the Office of the Speaker and the Clerk of the Nairobi City County Assembly for the logistical and technical support accorded to it during its Sitzings in consideration of the Bill.

Hon. Speaker, Sir,

On behalf of the Committee, and pursuant to Standing Order 130 (1), it is my pleasant duty to table in the Assembly the Report of the Sectoral Committee on Transport and Public Works on its scrutiny of the Ward Development Fund Bill, 2013.

Thank you.

**COMMITTEE'S CONSIDERATION OF THE WARD DEVELOPMENT
FUND BILL, 2013**

The Committee deliberated on the Bill as follows;

Clause 1	- Agreed to
Clause 2 to 4	- Proposed amendments
Clause 5 to 7	- Agreed to
Clause 8	- Proposed amendment
Clause 9 to 11	- Agreed to
Clause 12	- Proposed amendment
Clause 13 to 25	- Agreed to
Clause 26	- Proposed amendment
Clause 27	- Agreed to
Clause 28	- Proposed amendment
Clause 29 to 30	- Agreed to
Clause 31	- Proposed amendment
Clause 32-33	- Agreed to
Clause 34	- Proposed amendment
Clause 35 to 43	- Agreed to
Clause 44	- Proposed amendment
Clause 45 to 46	- Agreed to
Clause 47	- Proposed amendment
Clause 48	- Agreed to
Clause 49	- Proposed amendments
Title	- Agreed to

**COMMITTEE STAGE AMENDMENTS TO THE
NAIROBI CITY COUNTY WARDS
DEVELOPMENT FUND BILL, 2013**

Article I. NOTICE is given that the Chairperson of the Sectoral Committee on Roads, Public Works and Transport Hon. Diana Kapeen, MCA, intends to move the following amendments to the Nairobi City County Ward Development Bill, 2013, at the Committee Stage—

CLAUSE 2

THAT clause 2 be amended by inserting the following new definition in their proper alphabetical order—

(a) “**Ordinary Revenue**” means
the revenue into the County
Revenue Account from both the
National Government and the
local county collections;

(b) “**Projects**” means the projects
referred to under section 28;

CLAUSE 3

THAT clause 3 be amended by inserting the words
“**further the objectives of the provisions of Article
186 and 207 (2) (a) of the Constitution**” immediately
after the expression “**purpose of this Act is to**”.

CLAUSE 4

THAT clause 4 be amended in sub-clause (3) by deleting the expression “**most recent audited accounts of revenue**” appearing immediately after the expression “**on the basis of**” substituting therefore the expression “**ordinary revenue collected in the previous financial year**”.

CLAUSE 8

THAT clause 8 be amended in sub-clause (4) (b) by deleting the word “**four**” appearing immediately after the word “**term of**” and substituting therefor the expression “**three**”.

CLAUSE 12

THAT clause 12 of the Bill be amended in sub-clause (1) by deleting the word “**section 26**” at the end thereof.

CLAUSE 26

THAT clause 26 of the Bill be deleted

CLAUSE 28

THAT clause 28 be amended by-

- (a) in sub- clause (1) by inserting the following new paragraph immediately after paragraph (b)—

- (c) **Take into cognizance to the rights of children, persons**

with disability, youth, minorities, marginalized and older members of the society as provided for under Article 53, 54, 55, 56 and 57 of the Constitution.

(b) In sub- clause (8) (a) by inserting the words “**social welfare programmes**” immediately after the words “**used for**”.

(c) In sub-clause (8) (f) by deleting the word “**purchasing**” appearing before the word “**running.**”

CLAUSE 31

THAT clause 31 be amended;

(a) In sub- clause (2) by inserting the words “**social welfare programmes**” immediately after the expression “**subsection (1) an**”.

(b) In sub- clause (2) by deleting the words “**twenty five**” and inserting the word “**fifteen**” immediately after the expression “**more than.**”

CLAUSE 34

THAT clause 34 be amended –

(a) In sub-clause (2) (a) by deleting the word “**forty-five**” appearing immediately after the word “**within**” and substituting therefor the expression “**thirty**”.

(b) In sub-clause (2) (b) by inserting the word “**sub**”

immediately after the word “**each**”.

- (c) In sub-clause (2) (c) by inserting the word “**sub**” immediately after the word “**from all the**”.

CLAUSE 44

THAT clause 44 be amended in sub-clause (2) by deleting the expression “**the Ward Development**” substituting therefor the expression “**The County Development**”.

CLAUSE 47

THAT clause 47 be amended—

- (a) By deleting the word “**five**” appearing immediately after the expression “**imprisonment for a term of not less than**” and substituting therefor the word “**two**”.
- (b) By deleting the word “**five hundred thousand**” appearing immediately after the expression “**fine of not less than**” and substituting therefor the word “**two hundred thousand**”.

CLAUSE 49

THAT clause 49 of the Bill be amended —

- (a) by deleting sub clause (I) and substituting therefor the following new sub clause—

(I) the initial capital of the Fund

shall consist of:-

(a) the sum of one billion, two hundred and seventy five million shillings appropriated under the vote of the County Department for Public Works during the 2013-2014 financial year; and

(b) the sum of one hundred and twenty seven million shillings appropriated under the vote of the County Department for Education during the 2013-2014 financial year;

(b) in sub-clause (2) by deleting the word “one month” appearing immediately after the word “shall within” and substituting therefor the word “fourteen days”.

(c) by inserting the following new sub clause (3) and (4) immediately after sub clause (2)-

3) notwithstanding sub section (5) of section 4 of this Act, the first meeting of the Ward Development Fund Committees shall be convened within the first

thirty days after coming into
force of this Act;

- 4) notwithstanding paragraph 2
(4) of the First Schedule,
before members
contemplated under section 5
(2)(d) are appointed, the
quorum for the County
Management Fund
Committee shall consist of
members appointed under
sub sections (2) (a), (b), (c)
and (e) of section 5 of the
Act.

**MATRIX OF PROPOSED AMENDMENTS TO THE
WARD DEVELOPMENT FUND BILL AND
JUSTIFICATION**

CLAUSE	PROPOSED AMENDMENT	JUSTIFICATION
2	<p>THAT clause 2 be amended by inserting the following new definition in their proper alphabetical order—</p> <p style="padding-left: 40px;">(c) “Ordinary Revenue” means the revenue into the County Revenue Account from both the National Government and the local county collections;</p> <p style="padding-left: 40px;">(d) “Projects” means the projects referred to under section 28;</p>	To provide for the interpretation of the newly inserted terms, “Ordinary Revenue” and “Projects”
3	THAT clause 3 be amended by inserting the words “further the objectives of the provisions of Article 186 and 207 (2) (a) of the Constitution” immediately after the expression “purpose of this Act is to” .	Provide the Constitutional/legal basis for the setup of the fund and its withdrawal from the Revenue Fund of Nairobi City County Government
4	THAT clause 4 be amended in sub-clause (3) by deleting the expression “most recent audited accounts of revenue” appearing immediately after the expression “on the basis of” substituting therefore the expression “ordinary revenue collected in the previous financial year” .	Forestall potential stagnation of the Fund due to the lack of previously audited accounts for Nairobi City County Government
8	THAT clause 8 be amended in sub-clause (4) (b) by deleting the word “four” appearing immediately after the word	Provide for transition/continuity in the

	"term of" and substituting therefor the expression "three" .	management of the fund, with an overlapping year between successive management teams
12	THAT clause 12 of the Bill be amended in sub-clause (1) by deleting the word "section 26" at the end thereof.	Since Section 26 is proposed to be deleted.
26	THAT clause 26 of the Bill be deleted	To forestall any potential conflict amongst Wards in terms of allocation. The Committee is of the opinion that all Wards be given equal allocation regardless of their population or other criteria as had been outlined in Clause 26.
28	<p>THAT clause 28 be amended by-</p> <p>(d) in sub- clause (1) by inserting the following new paragraph immediately after paragraph (b)—</p> <p style="padding-left: 40px;">(c) Take into cognizance to the rights of children, persons with disability, youth, minorities, marginalized and older members of the society as provided for under Article 53, 54, 55, 56 and 57 of the Constitution.</p> <p>(e) In sub- clause (8) (a) by inserting the words "social welfare programmes" immediately after the words "used for".</p>	Give effect to the provisions of the Constitution of Kenya (2010) on the rights of children, persons with disability, youth, minorities, marginalized and older members of the society.

	(f) In sub-clause (8) (f) by deleting the word “purchasing” appearing before the word “running.”	
31	<p>THAT clause 31 be amended;</p> <p>(c) In sub- clause (2) by inserting the words “social welfare programmes” immediately after the expression “subsection (1) an”.</p> <p>(d) In sub- clause (2) by deleting the words “twenty five” and inserting the word “fifteen” immediately after the expression “more than.”</p>	To widen the net on the kinds of welfare programs the fund can be applied to, and in sub-clause 2 to remove ambiguity on the percentage ceiling for the funds meant for welfare programs.
34	<p>THAT clause 34 be amended –</p> <p>(d) In sub-clause (2) (a) by deleting the word “forty-five” appearing immediately after the word “within” and substituting therefor the expression “thirty”.</p> <p>(e) In sub-clause (2) (b) by inserting the word “sub” immediately after the word “each”.</p> <p>(f) In sub-clause (2) (c) by inserting the word “sub” immediately after the word “from all the”.</p>	Reduce the period during which an MCA convenes public meetings to nominate a Chairperson for the fund Committee In sub-clause 2(b) and (c) to cure the omission of the word sub- when referring to sub-wards
44	<p>THAT clause 44 be amended in sub-clause (2) by deleting the expression “the Ward Development” substituting therefor the expression “The County Development”.</p>	

47	<p>THAT clause 47 be amended—</p> <p>(c) By deleting the word “five” appearing immediately after the expression “imprisonment for a term of not less than” and substituting therefor the word “two”.</p> <p>(d) By deleting the word “five hundred thousand” appearing immediately after the expression “fine of not less than” and substituting therefor the word “two hundred thousand”.</p>	<p>Reduce the severity of the penalty for persons who misappropriate any funds or assets from the fund, or assists or causes any person to misappropriate or apply the funds in any other manner not specified in the Act</p>
49	<p>THAT clause 49 of the Bill be amended —</p> <p>(b) by deleting sub clause (1) and substituting therefor the following new sub clause—</p> <p>(1) the initial capital of the Fund shall consist of:-</p> <p>(c) the sum of one billion, two hundred and seventy five million shillings appropriated under the vote of the County Department for Public Works during the 2013-2014 financial year; and</p> <p>(d) the sum of one hundred and twenty seven million shillings appropriated under the vote of the County Department for Education during the 2013-2014</p>	<p>Provide for the specific initial amounts for setting up the Fund from the Departments of Roads and Public Works and Education</p>

	<p>financial year;</p> <p>(d) in sub-clause (2) by deleting the word “one month” appearing immediately after the word “shall within” and substituting therefor the word “fourteen days”.</p> <p>(e) by inserting the following new sub clause (3) and (4) immediately after sub clause (2)-</p> <p>5) notwithstanding sub section (5) of section 4 of this Act, the first meeting of the Ward Development Fund Committees shall be convened within the first thirty days after coming into force of this Act;</p> <p>6) notwithstanding paragraph 2 (4) of the First Schedule, before members contemplated under section 5 (2)(d) are appointed, the quorum for the County Management Fund Committee shall consist of members appointed under sub sections (2) (a), (b), (c) and (e) of section 5 of the Act.</p>	<p>Reduce the period within which the Leader of the Majority ought to bring Supplementary estimates to the Assembly for setting up the Fund should the Act come into force halfway through a Financial Year</p> <p>Ensure the fund takes off with the first meeting of the Management Committee even when not fully constituted pursuant to Section 4 of the Act</p>
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Signed..... Date.....

Hon. Diana Kapeen, MCA

Chairperson, Sectoral Committee on Transport and Public Works
