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THE PUBLIC FINANCE MANAGEMENT ACT (VIHIGA COUNTY EMERGENCY FUND) REGULATIONS, 2023

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THE PUBLIC FINANCE MANAGEMENT ACT

(No. 18 of 2012)

THE PUBLIC FINANCE MANAGEMENT (VIHIGA COUNTY EMERGENCY FUND) REGULATIONS, 2023

IN EXERCISE of the powers conferred by Section 110 of the Public Finance Management Act, 2012 Vihiga County Executive Committee Member for Finance and Economic Planning makes the following Regulations —

PART I —PRELIMINARY

1. Short title

These regulations may be cited as the Public Finance Management (Vihiga County Emergency Fund) Regulations, 2023 and shall commence operation on the date of publication in the Gazette.

2. Interpretation

In these regulations unless the context otherwise requires —

“Accounting Standards Board” means the Public Sector Accounting Standards Board established under section 192 of the Public Finance Management Act, 2012;

“County” means Vihiga County;

“County Assembly” means Vihiga County Assembly;

“County Exchequer Account” means the county revenue fund pursuant to Article 207 of the Constitution of Kenya, 2010;

“Emergency” means an urgent and unforeseen need which falls within the mandate of the County Government that threatens damage to human life or welfare or threatens damage to the environment for which immediate expenditure is required;

“County Executive Committee” means County Executive Committee of Vihiga County established pursuant to Article 179 of the Constitution of Kenya as read with Section 35 of the County Governments Act No. 12 of 2017;

“County Executive Committee Member” means the County Executive Committee Member of the respective departments of the County Government;

“Fund” means the Vihiga County Emergency Fund established under Regulation 4;

“Unforeseen event” means an occurrence or circumstance that is not anticipated.

“Meetings” means assembly of members for a particular purpose either virtual or physical

3. The Object and purpose

The object and purpose of these regulations is to provide for—

(a) the establishment of a Fund from which payments shall be made when an urgent and unforeseen need for expenditure for which there is no specific legislative authority arises;

(b) a common basket emergency Fund in order to facilitate faster, transparent, predictable, and accountable release of funds for emergency management.

(c) the sources of funds; and

(d) the administration of the Fund.

(e) enable payments to be made when an urgent and unforeseen need for expenditure for which there is no specific legislative authority arises.

PART II— ESTABLISHMENT OF THE FUND

4. Establishment of the Fund

(a) There is established a Fund to be known as the Vihiga County Emergency Fund which shall be administered from the county department responsible for Finance.

(b) The purpose of the Fund is to enable payments to be made by the County Government whenever an urgent and unforeseen need for expenditure for which there is no specific legislative authority arises.

5. Sources of funds of the Fund

There shall be paid into or retained in the Fund—

(a) monies appropriated by the County Assembly; and

(b) any other monies from lawful sources.

6. Retention at the end of Financial Year

Any unused monies at the end of the financial year shall not be paid to the county revenue account but shall be retained in the Fund and carried forward to the next financial year as provided for in section 116 of the Public Finance Management Act, 2012.

7. Effect of retention on annual allocations

Money retained in the Fund shall not form part of the annual allocation for the Fund.

PART III—ADMINISTRATION OF THE FUND

8. Establishment of the Advisory Committee

There is established for the Fund, the Advisory Committee comprising of-

(a) the executive Committee Member responsible for matters relating to Finance who shall be the Chairperson;

(b) the Executive Committee Member responsible for public service;

- (c) the County Attorney;
- (d) the Executive Committee Member responsible for public works;
- (e) the Executive Committee Member responsible for environment and water;
- (f) the Executive Committee Member responsible for health services;
- (g) the County Chief Officer of the department responsible for disaster management;
- (h) the County Chief Officer responsible for matters related to finance;
- (i) the Director of Budget in the County Government;
- (j) the Director of Disaster Management in the County Government;
- (k) the County Commissioner or a person designated by him or her in writing who shall be an ex officio member; and
- (l) the Fund Administrator who shall be ex officio member and the Secretary of the Committee;

Provided that the committee shall have power to co-opt other members not exceeding three who in the opinion of the committee possess the relevant qualification and expertise in matters related to emergency or disaster management.

Ex-official members exit after a tenure of three (3) years from the date of appointment.

9-Functions of the Advisory Committee.

The Advisory Committee shall be responsible for discharge of the following functions—

- (a) formulation of the guidelines required to achieve the objects of the Fund;
- (b) provision of oversight on the administration and management of the Fund;
- (c) maintenance of proper records of the Committee affairs and books of accounts;
- (d) submission of quarterly returns and reports of the Committee operations to the Executive Committee;
- (e) the custody of all Fund assets and documentation;
- (f) receiving of any gifts, donations, grants or endowments made to the Fund;
- (g) preparation of annual estimates and reports to the Executive Committee;
- (h) approval of opening and operation of bank accounts for the Fund;

(i) ensuring that not later than three months after the end of each financial year, cause to be prepared financial statement of the Fund and submit the same to the Auditor General;

(j) ensuring that the earnings of, or accruals to the Fund are retained in the Fund unless the Executive Committee Member directs otherwise;

(k) ensuring that money held in the Fund, including any earnings or accruals is spent only for the purposes for which the Fund is established; and

(l) the performance of such other functions as the Committee may deem necessary for the proper discharge of its mandate.

10. The Fund Coordinator

(1) There shall be appointed by the Advisory Committee, the Fund Coordinator who shall be responsible for-

(a) the general coordination of the functions of the Advisory Committee assigned by these regulations; and

(b) any other function assigned by the Advisory Committee in writing.

(2) Despite sub-regulation (1), the Fund Coordinator shall be the director for the time being responsible for disaster management in the county.

11-Fund Administrator

Executive Committee Member for Finance shall, in consultation with the head of county public service, designate an officer with the relevant qualifications and experience from the County Public Service to be the Administrator of the Fund responsible for the day-to-day administration of the Fund.

12-Functions of the Fund Administrator.

Despite regulation 11, the Fund Administrator shall —

(a) prepare accounts for the Fund for each financial year;

(b) not later than three months after the end of each financial year submit financial statements relating to those accounts to the Auditor-General which shall include-

(i) the date and amount of each payment made from the Fund;

(ii) the person to whom the payment was made;

(iii) the purpose for which the payment was made;

(iv) monitoring report confirming that the person to whom the payment was made has spent the money for that purpose and a statement made to that effect;

- (v) photographic evidence of the activities over which funds have been expended; and
 - (vi) a statement indicating how the payment conforms to Section 112 of the Public Finance Management Act, 2012.
 - (c) present the financial statements to the County Executive and the County Assembly; and
 - (d) supervise and manage the operations of the Fund.
- (2) Accounts for the Fund and the annual financial statements relating to those accounts shall comply with the accounting standards prescribed and published by the Accounting Standards Board from time to time.

13-The Fund Secretariat

- (1) There is established by the Committee a Secretariat comprising of-
 - (a) the Fund Administrator who shall be the head; and
 - (b) such other qualified and experienced staff as may be re-deployed from the county public service by the relevant County Chief Officer in consultation with the County Executive Committee Member for Finance and the head of county public service.
- (2) The Secretariat shall be responsible for the proper management of records of the Fund.

14-Power to make payments.

Subject to regulation 15, the County Executive Committee Member for Finance may, with the approval of the Committee, make payments out of the Fund if he or she establishes that—

- (a) payment not budgeted for cannot be delayed until a later financial year without harming the general public interest;
 - (b) the 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 and limited to the county.
- 14- Power to make payments.

15-Limitation on power to make payments.

- (1) The Executive Committee Member for Finance may not, during a financial year, make a payment from the Fund exceeding two per cent of the total county government revenue as shown in the county government's audited financial statements for the previous financial year.
- (2) The Executive Committee Member for Finance shall ensure that at least Kenya Shillings Fifty Million is maintained in the Fund in every financial year.

16-County Assembly to ratify payments.

(1) The Executive Committee Member for Finance shall seek ratification of the County Assembly within two months after payment is made from the Fund in the manner provided in regulation 12.

(2) If the County Assembly is not sitting during the period referred to in sub-regulation (1), the Executive Committee Member for Finance shall seek ratification for the payment within fourteen days after the County Assembly next sits.

(3) As soon as practicable after the County Assembly has ratified the payment, the Executive Committee Member for Finance shall cause a draft of the Appropriation Bill to be introduced in the County Assembly for the appropriation of the money paid and for the replenishment of the Fund to the extent of the amount of the payment.

PART IV— BUDGETING, FINANCES AND REPORTS OF THE FUND

17-Annual estimates

(1) Before the commencement of each financial year the Committee shall cause to be prepared estimates of the revenue and expenditure of the Fund for that year.

(2) The annual estimates shall make provision for all the estimated expenditure of the Fund for the financial year concerned and in particular shall provide for—

(a) payments for emergency operations;

(b) the operations of the Fund which shall not exceed three percent of the allocation of the Fund;

(c) maintenance of assets of the Fund; and

(d) creation of such reserves to meet future or contingent liabilities and in respect of such other matters as the Committee in consultation with the County Executive Committee may determine.

(3) The annual estimates shall be approved by the Advisory Committee before the commencement of the financial year in which they relate and shall be submitted to the Executive Committee for approval and after the Executive Committee has given approval the Committee shall not increase any sum provided in the estimates without the consent of the County Executive Committee.

(4) No expenditure shall be incurred for the purposes of the Fund except as provided in these regulations.

Provided the administration costs shall not exceed three percent of the funds held in the Fund.

18-Accounts and audits

(1) The Committee shall cause to be kept all proper books and records of accounts of the income, expenditure, assets and liabilities of the Fund.

(2) Within a period of three months after the end of each financial year the Executive Committee Member for Finance shall in addition to the requirement of regulation 9 (1) (b) submit to the Auditor General the accounts of the Fund in respect of that year together with—

(a) a statement of income and expenditure of the Fund for that year; and

(b) a statement of the assets and liabilities of the Fund on the last day of that financial year.

(3) The annual accounts of the Fund shall be prepared, audited and reported upon in accordance with the Public Audit Act No. 34 of 2015.

PART V— MISCELLANEOUS

19-Meetings

(1) The Advisory Committee shall meet quarterly in a meeting convened by the chairperson on notice of seven days to the members or whenever an event requiring emergency payment arises.

(2) Notwithstanding sub-regulation (1), the Fund Administrator may request for a special meeting of the Advisory Committee and the chairperson shall convene the meeting.

(3) The chairperson shall preside at every meeting of the advisory committee and in the absence of the chairperson, the members present shall elect one of their number to preside.

20-Allowances for Advisory Committee member.

Members of the Advisory Committee may be paid such allowances or reimbursements as may be determined by the Executive Committee in line with existing guidelines of the Salaries and Remuneration Commission

21-Rules of procedure

(1) The advisory committee shall regulate and make its own rules of procedure.

(2) To transact any business of the committee at least one half of the members of the advisory committee including the Fund Administrator must be present to form a quorum.

22-Protection against personal liability.

No act or omission by a member of the Advisory Committee, employee or agent of the Fund shall, if the act or omission is in good faith or bona fide for the purpose of executing the functions, powers and duties of the Fund, shall render a member of the committee, employee or agent of the Fund personally liable to any action, claim or demand whatsoever.

23-Liability of the Fund for damages.

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For any comments, input or inquiries should be sent to disastermgt@vihiga.go.ke not later than 19th January 2024.