REPUBLIC OF KENYA

PARLIAMENT

NATIONAL ASSEMBLY BILLS
(Bill No. 43 of 2019)

THE EQUALIZATION FUND BILL, 2019

(A Bill published in the Kenya Gazette Supplement No. 87 of 18th June, 2019 and passed by the National Assembly, with amendments, on 6th May, 2020)
PART II—THE EQUATING FUND

1—Introduction

PART III—THE EQUATING FUND BOARD

1—Categories of the Board

PART IV—APPLICATION

1—Application

PART V—DISTRIBUTION AND ADMINISTRATION

21—Distribution of Local Committee

22—Administrative Committee

PART VI—LOCAL COMMITTEES

13—Remuneration of Board Members

14—Declaration of Conflicts of Interest

15—Board Meetings

16—Chairman of the Board

17—Secretary of the Board

18—Common seal

19—Protection from Personal Liability

PART I—PRELIMINARY

1—Title
The Equalization Fund Bill, 2019

23—Identification of projects.
24—Submission of project proposals.
25—Consideration of proposed projects.
26—Reports to the National Assembly.
27—Ministry to implement projects.
28—Procurement of services and works.

PART VI—FINANCIAL PROVISIONS

29—Funds of the Board.
30—Financial Year.
31—Annual Estimates.
32—Accounts and audit.
33—Annual report.

PART VII—WITHDRAWALS FROM THE FUND

34—Bank Account of the Fund.
35—Withdrawals from the Fund.

PART VIII—MISCELLANEOUS

36—Winding up of the Fund.
37—Provisions in the Act complimentary.

PART IX—OFFENCES AND PENALTIES

38—Misappropriation of the Fund.

PART X—PROVISIONS ON DELEGATED POWERS

39—Regulations.

PART XI—CONSEQUENTIAL AMENDMENTS

40—Amendment of Act No. 18 of 2012.
41—Revocation of Guidelines.

SCHEDULE—CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD
PART I—PRELIMINARY

ENACTED by Parliament of the Republic of Kenya as

An Act of Parliament to operationalise Article 21A of

The Equalisation Fund Bill, 2019
(d) pastoral persons and communities, whether they are—

(i) nomadic; or

(ii) a settled community that, because of its relative geographic isolation, has experienced only marginal participation in the integrated social and economic life of Kenya as a whole; and

“marginalised area” means a geographical area where a marginalised community exists as determined by the Commission on Revenue Allocation in accordance with Article 216(4) of the Constitution.

3. The purpose and object of this Act is to—

(a) provide a framework for the direct administration and management of the Fund;

(b) establish an Equalization Fund Board responsible for administering and managing the Fund; and

(c) establish structures and mechanisms of implementing the Fund.

4. Pursuant to Article 204(3)(b) of the Constitution, this Act shall apply to the direct use of the Equalisation Fund to provide basic services including water, roads, health facilities and electricity to marginalized areas to the extent necessary to bring the quality of those services in those areas to the level generally enjoyed by the rest of the nation, so far as possible.

PART II—THE EQUALISATION FUND

5. (1) The Equalisation Fund shall comprise—

(a) one half percent of all revenue collected by the national government each year calculated on the basis of the most recent audited accounts of revenue received, as approved by the National Assembly;

(b) income generated from proceeds of the Fund; and

(c) the cumulative amount of national revenue from previous years not spent.

(2) All receipts, savings and accruals to the Fund and the balance of the Fund at the end of each financial year shall be retained in the account of the Fund.
Principal Secretary;

Treasurer of a person described in writing by the
person responsible for matters relating to National
Security;

(d) the Principal Secretary in the Ministry for the
Environment, Training and Labour;

(e) the Principal Secretary in the Ministry for the
Economic and Planning Programme;

(f) any other person described in writing by the
Principal Secretary in the Ministry for the
Economic and Planning Programme.

(b) A person appointed by the President with the
approval of the National Assembly.

The Board shall comprise—

7. (1) The Board shall comprise—

(a) a Councillor appointed by the President with the

(b) any other person appointed by the President with the

(c) any other person appointed by the President with the

(d) any other person appointed by the President with the

(2) The Board is a body corporate with perpetual

6. (1) There is established a Board to be known as the

PART III—THE EQUALISATION FUND BOARD

The Equalisation Fund Bill, 2019
(f) the Principal Secretary in the Ministry for the time being responsible for Arid and Semi-Arid Lands or a person designated in writing by the Principal Secretary;

(g) four persons appointed by the Cabinet Secretary for the time being responsible for the National Treasury to represent marginalized communities;

(h) the Chief Executive Officer who shall be an ex-officio member and secretary to the Board.

(2) Where there is a tie in the voting of the Board, the Chairperson shall have a casting vote.

(3) In appointing the members of the Board under subsection (1)(g), the Cabinet Secretary shall take into consideration gender balance and diversity in qualifications of persons being appointed.

(4) A person shall not be appointed as a member of the Board if such a person—

(a) has been convicted of an offence by a court of competent jurisdiction and sentenced to imprisonment for a term exceeding six months;

(b) has been adjudged bankrupt or has entered into a composition, scheme or arrangement with creditors; or

(c) is disqualified under the provisions of any other written law from appointment.

(5) A member of the Board other than an ex-officio member, may—

(a) resign from office by notice in writing to the Chairperson;

(b) be removed from office if the member—

(i) has been absent from four consecutive meetings of the Board without the permission of the Chairperson;

(ii) is adjudged bankrupt or enters into a composition scheme or arrangement with the creditors;
(e) receive and address complaints and disputes

(d) monitor and evaluate the usage of money

(c) disburse funds from the Fund

(b) in accordance with the Act

(a) prepare and approve project proposals

(b) manage the Fund

10. The Board shall—

(a) prepare a report on the annual fund and financial summary for each financial year

(b) The Board shall hold office for a term of three years, and shall be eligible for

(c) The Board shall consist of the members of the Board, who shall

(d) meet the requirements of Chapter 6 of the

(e) social sciences

(f) education

(g) accountancy

(h) law

(i) finance

(j) economic development and planning

(k) has knowledge and experience of not less than ten

(l) years

(m) possesses a degree from a university recognized in

(p) Kenya

(a) is a citizen of Kenya

(b) a member of the Board unless the person

(c) not less than forty-five

(d) is qualified in physical or mental

(e) is incapable of performing his or her duties on

(f) one hundred thousand shillings

(g) is convicted of a criminal offense

(h) is convicted of an offense involving fraud;
relating to the Fund.

11. (1) The Board shall have all powers necessary for the proper performance of its functions under this Act.

(2) Without prejudice to the generality of subsection (1), the Board shall have power to—

(a) manage, control and administer its assets in such manner and for such purposes as best promote the purpose for which it is established;

(b) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Board;

(c) receive any grants, gifts, donations or endowments and make legitimate disbursements therefrom;

(d) enter into association with such bodies or organizations within or outside Kenya as it may consider desirable or appropriate and in furtherance of the purposes for which it is established;

(e) open such bank accounts for its funds as may be necessary; and

(f) undertake any activity necessary for the fulfilment of any of its functions.

12. The conduct and regulation of the business and affairs of the Board shall be as provided in the Schedule, but subject thereto the Board may regulate its own procedure.

13. The members of the Board shall be paid such remuneration, fees or allowances as the Cabinet Secretary may determine in consultation with the Salaries and Remuneration Commission.

14. The Board may, by resolution either generally or in any particular case, delegate to any of its committees or to any member, officer, employee or agent of the Board, the exercise of any of the powers or the performance of any of the functions or duties of the Board under this Act or under any other written law.

15. The Board may co-opt such experts as may be necessary to assist it in the discharge of its functions.
19 (1) No matter of thing done by a member or staff of the Board shall be questioned, if the matter or thing is done bona fide for the execution of the functions, powers and duties of the Board of the Board shall be questioned, if the matter or thing is done bona fide for the execution of the functions, powers and duties of the Board.

20 (1) The Board shall, in the absence of either the Chairman of the Board or the Chief Executive Officer, be represented by the Chief Executive Officer.

21 (1) The common seal of the Board shall be kept in a safe place in the Board.

22 (1) The common seal of the Board shall be kept in a safe place in the Board.

23 (4) The Board shall not be bound by any rule or regulation made by the Board under this Act, and may exercise all the powers of the Board, in cases where the Board, in its opinion, is necessary for the proper and efficient discharge of the Board's duties.

24 (b) The Chief Executive Officer shall be the Secretary of the Board and the day by day management of the Board and the Board's officers shall be the subject of the Board's Secretary.

25 (3) The Chief Executive Officer shall be the Secretary of the Board, and the Chief Executive Officer shall hold office for a period of three years, and shall be eligible for reappointment for a further term of three years.
under this Act, render the member personally liable to any action, claim or demand whatsoever.

(2) The provisions of subsection (1) shall not relieve the Board of liability to pay compensation or damages to any person for any injury to him or her, his or her property or any of his or her interests caused by the exercise of any power conferred by this Act or any other written law or by the failure, wholly or partially, of any works.

PART IV—LOCAL COMMITTEES

20. (1) There is established a Local Equalisation Fund Committee for every Constituency in a marginalised area as determined by the Commission on Revenue Allocation pursuant to Article 216(4) of the Constitution.

(2) A Local Committee shall comprise—

(a) the national government official responsible for co-ordination of national government functions;

(b) two men each nominated in accordance with subsection (3), one of whom shall be a youth at the date of appointment;

(c) two women nominated in accordance with subsection (3), one of whom shall be a youth at the date of appointment;

(d) one person with disability nominated by a registered group representing persons with disabilities in the area in accordance with subsection (3);

(e) two persons nominated by the relevant constituency office established under Regulations made pursuant to the Parliamentary Service Act, 2000;

(f) an officer of the Board seconded to the Committee by the Board who shall be an \textit{ex officio} member; and

(g) one member co-opted by the Board in accordance with Regulations made by the Board.

(3) The seven persons referred to in subsection (2)(b), (c), (d) and (e) shall be selected in such manner and shall
members of the Committee and the members so selected to be
(10) be made through a resolution of the Board or in
(11) a decision to remove a member under subsection
(8) physical or mental infirmity.
(1) crossing of interests within the committee.
(2) promoting unethical practices.
(3) unbecoming personal public conduct.
(4) bringing the committee into disrepute through
(5) embezzlement of public funds.
(6) gross misconduct.
(7) lack of integrity.
(8)
—grounds—
removed from office on any one or more of the following
committee measures:
(1) four meetings in the same financial year, including sub-
year in the committee shall not hold more than one;
(2) a local Committee shall meet at least six times in
an period of thirty days;
(3) a category of persons where the vacancy has occurred within
committee in the manner provided for in the Act,
shall expire upon the appointment of a new local
Committee shall be two years and shall be renewable but
the term of office of the members of a local
(4) half of the local membership.
(5) The requirement of a Local Committee shall be one
publication by the Board.
be submitted to the National Assembly for approval before
(6) The Regulations made under subsection (3).
(7) The Regulations made by the Board.
(8) The names of the persons selected under
paragraphs have such qualifications as the Board may by Regulations.
removed shall be given a fair hearing before the resolution is made.

(12) A vacancy arising as a result of the removal of a member under subsection (10) shall be filled in the manner set out in subsection (8) and minutes of the meeting shall indicate the fact of the removal or appointment of a member.

21. (1) A person may present a petition to the Board for the dissolution of a Local Committee setting out the alleged facts constituting one or more of the following grounds for dissolution:

(a) serious violation of the Constitution or any other law including a contravention of Chapter Six;

(b) gross misconduct, whether in performance of the members' or office holders' functions or otherwise;

(c) incompetence; or

(d) any other cause as may be deemed justifiable.

(2) Upon receiving a petition under subsection (1), the Board may suspend the Local Committee pending the outcome of the complaint.

(3) The Board shall consider the petition, hear all or some of the members of the committee and where it is satisfied that the petition discloses sufficient ground for dissolution, dissolve the Local Committee.

(4) Vacancies arising from the removal of all the members of a Local Committee under subsection (3) shall be filled in the manner set out in section 20(2) and minutes of the meeting shall indicate the fact of the removal or appointment of members.

22. A Local Committee may engage such staff with the approval of the Board as may be necessary for execution of its functions.

PART V—IDENTIFICATION AND CONSIDERATION OF PROJECTS

23. (1) A Local Committee shall identify the projects to be undertaken in its Constituency.
PART V—FINANCIAL PROVISIONS

28 All works and services relating to projects under this Act shall be procured in accordance with the provisions of regulations made under this Act.

29 (1) A project management committee appointed in accordance with the regulations made under this section, shall be constituted by the Head of the Office of the Board.

(2) The duties of the Board shall consist of—

(a) making funds from any other source provided for the Board's needs available for the disbursement of donations as may be given to the National Assembly;

(b) setting aside such sums as may be approved by the National Assembly.

(3) The funds of the Board shall consist of—

(a) funds of the Board;

(b) grants, gifts or donations as may be given to the Board; and

(c) sums of the Board.

The National Assembly shall—

(a) approve the proposed annual financial statement, and

(b) submit the financial statement to the National Assembly for approval.

20 The Board shall submit a quarterly report to the

(a) project management committee.

21 Where the Board does not approve a project for funding, the project proposal by the local committee for funding, shall be submitted to the National Assembly for approval, by the National Assembly and may approve a

(a) the project proposal, and

(b) the amount of the project.

22 A Local Committee shall submit its proposed

(a) financial statement, and

(b) financial statement.

23 Despite subsection (1), the committee shall before

(a) the approval of the Board, the Committee.

24 (1) The

(a) project management committee.

(2) The

(a) financial statement, and

(b) financial statement.
Board.

(2) There shall be paid out of the funds of the Board any expenditure incurred by the Board and the Local Committees in exercise of powers or the performance of functions under this Act.

30. The Financial year of the Board shall be the period of twelve months ending on the thirtieth day of June in each year.

31. (1) At least three months before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Board of that year.

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

(a) the payment of the salaries, allowances and other charges in respect of members of the Board and staff of the Board; and

(b) the payment of the operation costs of the Board.

(3) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary for approval and after the Cabinet Secretary’s approval, the Board shall not increase the annual estimates without the consent of the Cabinet Secretary.

(4) No expenditure shall be incurred for the purposes of the Board except in accordance with the annual estimates approved under subsection (3), or in pursuance of an authorization of the Board given with prior written approval of the Cabinet Secretary.

(5) The Board shall set aside a sum not exceeding five per centum of the total allocation for the Fund to cater for the administration expenses of the Board.

(6) The Board shall ensure that a sum not exceeding five per centum of the total allocation for a project shall be utilised for the administration expenses of the project.
PART VI—WITHDRAWALS FROM THE FUND

Chapter 3

The withdrawal of the Fund shall be limited to such amounts as may be approved by the Board. The Board shall, before the withdrawal of the Fund, be required to submit to the Controller of Budget a report on the withdrawal of the Fund.

The Fund shall be withdrawn in accordance with the following:

1. The Board shall submit a report to the Controller of Budget within three months after the end of each financial year.
2. The Board shall submit a report to the Controller of Budget within three months after the end of each financial year.
3. The Board shall submit a report to the Controller of Budget within three months after the end of each financial year.
4. The Board shall submit a report to the Controller of Budget within three months after the end of each financial year.
5. The Board shall submit a report to the Controller of Budget within three months after the end of each financial year.
to pay amounts from the Equalization Fund in accordance with the authorization and instructions given.

(3) All withdrawals made from the Fund shall be deposited into the respective accounts of Local Committees for purposes of funding projects approved by the Board.

PART VIII—MISCELLANEOUS

36. At the winding up of the Fund pursuant to Article 204(6) or 204(7) of the Constitution—

(a) the cash balances of the Fund shall be transferred to the National Exchequer Account; and

(b) other assets of the Fund shall be transferred to the State Department responsible for matters relating to finance.

37. (1) The provisions of this Act shall be complimentary to any other projects undertaken by the national government and nothing in this Act shall be taken or interpreted to mean than an area may be excluded from any or other projects by the national government.

(2) For the avoidance of doubt, national government allocations shall continue alongside the projects funded under this Act.

PART IX—OFFENCES AND PENALTIES

38. A person who misappropriates any funds or assets from the Fund, or assists or causes any person to misappropriate or apply the funds otherwise than in the manner provided in this Act, commits an offence and shall, upon conviction, be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding four million shillings, or to both.

PART X—PROVISIONS ON DELEGATED POWERS

39. (1) The Cabinet Secretary may make regulations for the better carrying into effect the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Cabinet Secretary may make regulations prescribing—

(a) the manner of selection of, and the qualification of members of a Local Committee;
PART XI—CONSEQUENTIAL AMENDMENTS

40. The Public Finance Management Act, 2012 is amended by repealing section 18.

41. The Guidelines on the administration of the Equalization Fund established under Article 25 of the Constitution made under the Public Finance Management Act, 2012 are revoked.

(b) the authority of the Cabinet Secretary to make regulations under this Act to provide for the better carrying into effect the objectives set out in the Interpretation and General Provisions Act, 2013.

(b) the authority of the Cabinet Secretary to make regulations under this Act to provide for the better carrying into effect the objectives set out in the Interpretation and General Provisions Act, 2013.

(e) the amendments made under this section are those set out in the Interpretation and General Provisions Act, 2013.
SCHEDULE

CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD (s. 12)

1. (1) The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of the next meeting.

(2) Unless three quarters of all the members of the Board otherwise agree, at least fourteen days written notice of every meeting of the Board shall be given to every member of the Board.

(3) The chairperson shall preside at every meeting of the Board at which he or she is present but in his or her absence, the members present shall elect one of their number who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson.

(4) Unless a unanimous decision is reached, a decision on any matter before the Board shall be reached by voting through simple majority.

(5) Subject to there being a quorum, the proceedings of the Board shall not be invalid by reason only of a vacancy among the members.

(6) Subject to the provisions of this Schedule, the Board may determine its own procedure and the procedure for any committee of the Board and for the attendance of any other persons at its meetings.

2. (1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Board and is present at a meeting of the Board at which the contract, proposed contract or other matter is the subject of consideration, he or she shall, at the meeting and as soon as practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter.

(2) Despite subparagraph (1), if the majority of the members present are of the opinion that the experience or expertise of that member is vital to the deliberations of the
3. The Board shall cause minutes of all proceedings of the

Purpose

minutes of the Board to be entered in books for that

decision.

is made.

shall be recorded in the minutes of the meeting at which it

paragraph

impose.

the deliberations subject to such restrictions as it may

meeting; the Board may permit the member to participate in

The Equalization Fund Bill, 2019
MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons

The principal object of this Bill is to operationalize the Equalisation Fund as established under Article 204 of the Constitution. The Bill proposes to establish a Board to administer the Fund in instances where the Fund is directly used for the provision of basic services including water, roads, health, facilities and electricity to marginalised areas to bring the quality of the provisions of such services as nearly as possible to the same quality enjoyed by other areas in the Country. The Bill further proposes the establishment of Local Equalisation Fund Committees in each ward in marginalised area as determined by the Commission on Revenue Allocation in their report prepared pursuant to Article 216 of the Constitution. The Local Committees are tasked with identifying projects for funding in consultation with local communities with the final decision being made by the Board and implementation done by a project implementation committee.

Enactment of the Bill will reduce the current bureaucratic red-tape that exists with regard to the administration of the Fund currently domiciled in the National Treasury. The framers of the Constitution conceptualised the Fund as a means of enabling marginalised areas to “catch-up” with the rest of the country in terms of access to basic needs. This vision is yet to be achieved eight years after the promulgation of the Constitution. The Bill seeks to propose a model of administering the Fund which will accelerate its roll-out for the benefit of citizens who continue to suffer on the fringes.

PART I (Clauses 1-4) of the Bill contains preliminary provisions.

PART II (Clause 5) of the Bill outlines the sources of the Fund including monies unspent by the government or retained in the Fund.

PART III (Clauses 6-19) of the Bill establishes the Equalisation Fund Board as a body corporate with perpetual succession. Under Clause 8 the Board is to comprise nine (9) members with a Chairperson appointed from a marginalised community and vetted by the National Assembly. Clause 9 limits all members of the Board to a single six (6) year term of office.

PART IV (Clauses 20-22) of the Bill provides for the establishment of Local Equalisation Fund Committees in each ward of a marginalised area to assist the Board in identification and administration of projects funded by the Fund. The Committees are mandated to employ such staff as may be required in the exercise of their mandate.

PART V (Clauses 23-28) of the Bill contains provisions on the identification and consideration of proposed projects proposed for funding.

PART VI (Clauses 29-33) of the Bill contains financial provisions.
Passed the 18th June, 2019.

The commencement of this Bill shall occasion additional expenditure of public funds.

Article 114 of the Constitution

Section 10 of the Bill is a money Bill within the meaning of the Constitutional Funds Act, 2019 and is not an Appropriation Bill.

The Bill does not affect the functions of County Governments set out in the Fourth Schedule to the Constitution and is therefore not an Appropriation Bill.

Statement of how the Bill concerns County Governments

This Bill deals with legislative powers in the Cabinet Secretary, the County Chief Executive, the County Assembly and the County Executive.

Statement on the declaration of legislative powers and limitation of fundamental rights and freedoms

The Bill proposes the repeal of section 18 of the Public Finance Management Act, the transfer of the National Treasury Power to the Cabinet Secretary and the creation of the Equalization Fund.

PART IX (Classes 39 to 40) of the Bill contains provisions on declarations and guarantees.

PART IX (Classes 38) of the Bill contains provisions on offences.

PART VIII (Classes 36-37) of the Bill contains miscellaneous provisions.

PART VIII (Classes 34-35) of the Bill contains provisions on withdrawals from the Fund.

PART VIII (Classes 31-33) of the Bill contains provisions on the County Treasury.
I certify that this printed impression is a true copy of the Bill as passed by the National Assembly on Wednesday, 6th May, 2020.

Clerk of the National Assembly

Endorsed for presentation to the Senate in accordance with the provisions of Standing Order 142 of the National Assembly Standing Orders.

Speaker of the National Assembly