



## **ICPAK SUBMISSION ON THE COUNTY WARDS DEVELOPMENT EQUALISATION FUND BILL, 2018**

**APRIL 2018**

### **Background Information**

The Institute for Certified Public Accountants of Kenya (ICPAK) welcomes the initiative to decentralize development through the County Wards Development Fund Bill 2018. The Bill seeks to provide a framework for the determination of projects that are to be implemented through the Fund by the county governments and an oversight mechanism to ensure the efficient and proper use of the funds and implementation of the projects.

We hold the opinion the objects of the draft Bill are well defined to address the haphazard push by counties to establish these funds. It will the policy and legislative framework to devolve resources to the ward level in an equitable manner to meet the socio-economic objectives of poverty alleviation and infrastructural development.

However, it's worth noting that similar initiatives driven by individual county assemblies have been met with resistance. This owes much to the precedence set earlier challenging the constitutionality of the Constituency Development Fund which is premised on similar foundations and principles. As we debate this Bill, there is need to take cognizance of issues around duplicity of functions with other funding initiatives already set out through other funding mechanisms. The question would be how to integrate this fund to address possible duplicity of funding arrangements at the counties. It is equally important that right at the onset, we address the perceived conflict that has defined the participation by elected officials in the management of such funds, the case in point the National Government CDF. We should therefore ensure that the principle of separation of mandates between executive and oversight roles are adequately addressed.

Nevertheless, the Bill once enacted will achieve the following:

- (i) Guarantees at least Kshs. 20 billion is allocated to development expenditure at the ward level. This will support implementation of the fiscal responsibility principle on at least 30% of the budget allocated to development expenditure
- (ii) Deals with intra-county inequality and marginalization: Through allocation of at least 8% of the share of county revenue to this fund, all wards in any given county will be guaranteed of flow of funds to support community initiatives and projects.

The Institute of Certified Public Accountants of Kenya (ICPAK) has reviewed the Bill and developed a position paper detailing its proposals for your consideration.

**Table: Summary of the proposals on the County Wards Development Equalisation Bill 2018**

Clause		Provision in the Bill	Issue of Concern	Proposed Amendment	Justification
1.	<b>General comments:</b>  <b>Deal with any potential duplicity or overlaps</b>	Due to the large number of funds created at the local level, there has been lack of clarity on administration and implementation leading to overlap of roles and responsibilities. The multiplicity of funding channels for local service delivery and development has following effects:  (i) Imposes high administration and transaction costs;  (ii) Leads to lack of comprehensive and composite planning and organization of the development projects at the local level;  (iii) Results to fragmentation of resources and duplication of projects thus undermining the service delivery and developmental objectives of the funding.		To avoid overlap in the responsibilities, the Institute proposes the need for integrating prioritization of activities/projects under the County Ward Development Fund to be in line with the fund with the County Integrated Development Plans(CIDPs) <sup>1</sup> ;	To deal with duplicity at the local level
2.	<b>Title</b>	“The County Ward Development Equalisation Fund Bill”	The use of “Equalisation” limits the application of the Bill to marginalized counties only as stipulated by Article 204 of the constitution and as classified by the CRA Policy on Marginalization  The term “equalization” is further left in subsequent clauses i.e Clause 5.	Delete “Equalisation” from the title to read <i>“The County Wards Development Fund Bill 2018”</i>	To allow it’s applicability to all 47 Counties

<sup>1</sup> One of the objectives of county planning is to ensure harmony between national, county and sub-national spatial planning requirements- Section 103-County Government Act

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3.	<b>Part III: Establishment of the Board</b>	The Bill establishes the Board to administer the fund in the respective county	There's a danger in this Board bypassing structures already established through the County Government Act	Consider using the current structures (County Government Act 2012) in administering the Fund, that is, <ul style="list-style-type: none"> <li>▪ Office of the Sub-county administrator</li> <li>▪ Office of the Ward administrator</li> <li>▪ Office of the Village Administrator</li> </ul>	<ul style="list-style-type: none"> <li>▪ The County Government Act has already established further decentralized units</li> <li>▪ Creation of a new Board with attendant staff could have serious cost implications</li> </ul>
4.	<b>Clause 8(4)</b>	Unspent funds shall be allocated to any eligible project and such project may be new or ongoing at the end of the financial year	Though this is a good provision, it might be exploited to allocate such funds to recurrent expenditure	Amend by inserting the term "capital" to read, <i>"Unspent funds shall be allocated to any eligible capital project and such project may be new or ongoing at the end of the financial year"</i>	To curb against allocating any unspent funds to recurrent expenditure
5.	<b>Clause 17(1)</b>	The Bill provides Composition of the Board	It is not clear which position the Bill refers to under the County Government structure in 17(a) and 17(b), that is, <i>"The Chief Executive Officer"</i>  If it referred to the County Executive Committee member or Chief Officer, then there could be challenges in cases where one of the above officers' discharges both economic policy and planning; and matters finance	Amend by providing clarity on the position of Chief Executive Officer	For clarity in constitution of the Board
6.	<b>Clause 21: The Fund Manager</b>	The Bill creates the position of the Fund Manager to support	It fails to recognize the importance of professional body affiliation to ethical practices in management.	Amend Clause 21(2) to read, "A person qualifies for appointment under subsection	Professional accountants play an important role in

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		implementation of the Fund	This position being critical to the overall management of the Fund should have been reserved to members of ICPAK in good standing.	(1) if such person has a degree in finance, accounting, economics, engineering, community development or relevant field from a university recognized in Kenya and a member of the Institute of Certified Public Accountants of Kenya(ICPAK) in good standing	ensuring quality financial management essential for accountability and financial stability of any given entity
7.	<b>Part V Project Proposal &amp; Implementation Committee</b>	The Bill establishes for each ward, a Committee known as the Project Proposal and Implementation Committee	In as much as we appreciate the Ward level Project Committee, the Bill fails to create avenues for establishment of project implementation committees per project initiated by the community.	Include provisions on Project Committees per project. Insert a new Clause 35: Project Committees <i>“Projects under this Act shall be implemented by a specific project management committee appointed by the relevant department of the County Government”</i>	This is essential in supporting monitoring & ensuring ownership of the projects by the beneficial community)
8.	<b>Clause 52(4)  Regulations</b>	Provisions on Regulations	The Bill erroneously provides that the absence of regulations shall not hinder implementation of this legislation.  This may in fact hamper smooth implementation since regulations elaborate on the finer details of the law.	Delete 52(4)	Regulations are important in providing details for the implementation of any given law.