

*Report laid by  
the Hon. Finance Comm.  
of Delegated Legislation  
26/4/2018  
M.J.*



**PARLIAMENT  
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THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT-SECOND SESSION

## COMMITTEE ON DELEGATED LEGISLATION

### REPORT ON THE PUBLIC FINANCE MANAGEMENT (SENATE MONITORING AND EVALUATION)

REGULATIONS, 2018

*Approved for tableting  
26/4  
[Signature]*

APRIL 2018



*Directorate of Committee Services  
The National Assembly,  
Parliament Buildings, Continental House, Room 402  
NAIROBI*

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## ABBREVIATIONS

EM	Explanatory Memorandum
PFM	Public Finance Management
RMA	Regulatory Making Authority
SI	Statutory Instruments
SO	Standing Order

## **CHAIRPERSON'S FOREWORD**

In exercise of the powers conferred by section 24 of the Public Finance Management Act, 2012, the Chairperson of the Parliamentary Service Commission and Speaker of the National Assembly, published the **Public Finance Management (Senate Monitoring and Evaluation) Regulations, 2018** on 21<sup>st</sup> March, 2018 vide LN No.71/2018.

Following publication, the Regulations were tabled in the House on 27<sup>th</sup> March 2018 and immediately committed to the Select Committee on Delegated Legislation for review and scrutiny pursuant section 12 of the Statutory Instruments (SI) Act, 2013 and Standing Order (SO) 210 of the National Assembly.

The Committee considered the Regulations in its sitting held on Saturday, 21<sup>st</sup> April 2018 at Leisure Lodge, Kwale County and made the decision to **annul in entirety the Public Finance Management (Senate Monitoring and Evaluation) Regulations, 2018** for reasons advanced herein.

The Committee wishes to express its gratitude to the Speaker for the support accorded to the Committee in the discharge of its mandate. The Committee also wishes to record its appreciation to the Office of the Clerk of the National Assembly and the supporting Directorates for providing technical support which was vital in the consideration of this instrument.

On behalf of the Members of the Select Committee on Delegated Legislation and pursuant to Standing Order 210 (4), it is my pleasure and duty to present to the House the Committee's Report on the **Public Finance Management (Senate Monitoring and Evaluation) Regulations, 2018**.



## EXECUTIVE SUMMARY

The Public Finance Management (Senate Monitoring and Evaluation) Regulations, 2018 were tabled in the House on 27<sup>th</sup> March, 2018 and immediately committed to the Select Committee on Delegated Legislation for review and scrutiny pursuant to section 12 of the Statutory Instruments Act, 2013 and Standing Order 210 of the National Assembly Standing Orders.

The Committee considered the Regulations in a meeting held on 21<sup>st</sup> April, 2018 in Leisure Lodge, Kwale County.

Following scrutiny of the Regulations, the Committee observed that –

- i. **the regulation-making authority, i.e., the Parliamentary Service Commission complied with section 11 (1) on submission of instruments to the relevant Clerk for tabling before Parliament within the statutory timeline of seven (7) sitting days.** In this respect, the Regulations were published on 21<sup>st</sup> March, 2018, submitted to the Clerk of the National Assembly on 23<sup>rd</sup> March, 2018 and subsequently tabled on 27<sup>th</sup> March, 2018. This was within the statutory timeline contemplated under section 11(1) of the Statutory Instruments Act;
- ii. **the Regulations are inconsistent with Section 205 of the of the Public Finance Management Act, 2012** which empowers the Cabinet Secretary to make Regulations pursuant to the Act (PFM Act, 2012). The Parliamentary Service Commission can therefore not make Regulations pursuant to the PFM Act, 2012. Similarly, the Regulations are contrary to section 24(2) of the Statutory Instruments Act, 2013 which provides that a statutory instrument should not be inconsistent with the provisions of the enabling legislation.
- iii. **the regulation-making authority did not undertake adequate public participation, contrary to Articles 10 and 118 of the Constitution of Kenya on public participation, read together with Sections 5 and 11 (2) of the Statutory Instruments Act, 2013.** The Explanatory Memorandum (EM) submitted alongside the Regulations indicates that the Commission only consulted the National Treasury, the Parliamentary Budget Office and the Senators. Members of the National Assembly were not consulted;

- iv. are discriminatory to the extent that they do not provide for facilitation of all Members of Parliament to undertake Monitoring and Evaluation as envisaged in Section 24 (1) of the PFM Act, 2012. Article 93 of the Constitution of Kenya establishes Parliament as both the National Assembly and the Senate. The Public Finance Management (Senate Monitoring and Evaluation) Regulations, 2018 seeks to establish a Monitoring and Evaluation Fund specific only to the Senate thereby excluding Members of the National Assembly, who also require similar facilitation to effectively undertake their oversight role.

In view of the foregoing, the Committee recommends that pursuant to Standing Order 210 (4) (b) and section 15 (1) of the SI Act, the Public Finance Management (Senate Monitoring and Evaluation) Regulations, 2018 be annulled in entirety for the aforementioned reasons.

## 1.0 PREFACE

The Select Committee on Delegated Legislation is established pursuant to *Standing Order No. 210* and is mandated to consider statutory instruments submitted to Parliament for consideration. The Committee is expected to consider in respect of any statutory instrument, whether it is in accordance with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written laws.

### 1.1 Mandate of the Committee

The Committee is mandated to consider in respect of any statutory instrument, whether it: -

- (i) is in accordance with the provision of the Constitution, the Act pursuant to which it is made or other relevant written laws;
- (ii) infringes on fundamental rights and freedoms of the public;
- (iii) contains a matter which in the option of the Committee should more properly be dealt with in an Act of the Parliament;
- (iv) contains imposition of taxation;
- (v) directly or indirectly bars the jurisdiction of the court;
- (vi) gives retrospective effect to any of the provision in respect to which the Constitution does not expressly give any such power;

The Committee is equally tasked with the responsibility of scrutinizing statutory instruments, whether: -

- (i) it involves expenditure from the consolidated fund or other public revenues;
- (ii) is defective in its drafting or for any reason form or part of the statutory instrument calls for any elucidation;
- (iii) appears to make some unusual or unexpected use of the power conferred by the Constitution or the Act pursuant to which it is made;
- (iv) appears to have had unjustifiable delay in its publication or laying before Parliament;
- (v) makes rights, liberties or obligations unduly dependent upon non-renewable decisions;
- (vi) makes rights, liberties or obligations unduly dependent insufficiently defined administrative powers;
- (vii) inappropriately delegates legislative powers;



- (viii) imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation;
- (ix) appears for any reason to infringe on the rule of law;
- (x) inadequately subjects the exercise of legislative power to Parliamentary scrutiny; and,
- (xi) accords to any other reason that the Committee considers fit to examine.

## 1.2 Committee Membership

The Committee on Delegated Legislation as constituted by the House in December 2017 comprises of the following Members: -

- 1) **Hon. Gladys Boss Shollei, CBS, MP** - **Chairperson**
- 2) **Hon. Fatuma Gedi, MP** - **Vice- Chairperson**
- 3) Hon. George Gitonga Murugara, MP
- 4) Hon. Alice Wahome, MP
- 5) Hon. Robert Mbui, MP
- 6) Hon. Daniel Maanzo, MP
- 7) Hon. Muriuki Njagagua, MP
- 8) Hon. Isaac Waihenya Ndirangu, MP
- 9) Hon. Alfred Bernard Wekesa Sambu, MP
- 10) Hon. William Kamket Kassait, MP
- 11) Hon. Ronald Kiprotich Tonui, MP
- 12) Hon. John Munene Wambugu, MP
- 13) Hon. Charles Gimose, MP
- 14) Hon. Abdi Koropu Tepo, MP
- 15) Hon. Jennifer Shamalla, MP
- 16) Hon. Muturi Kigano, MP
- 17) Hon. Martha Wangari, MP
- 18) Hon. Patrick Kariuki Mariru, MP
- 19) Hon. Timothy Wanyonyi, MP
- 20) Hon. William Kamoti, MP
- 21) Hon. Dr. Wilberforce Oundo, MP
- 22) Hon. Sammy Seroney, MP

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### 1.3 Committee Secretariat

The secretariat comprises of the following members of staff;

Mr. Susan Maritim	<b>Clerk Assistant I (Team Leader)</b>
Mr. Jimale Mohamed	<b>Clerk Assistant III</b>
Mr. Dima Dima	<b>Senior Legal Counsel</b>
Ms. Mugure Gituto	<b>Legal Counsel II</b>
Ms. Anne N. Kigoro	<b>Research &amp; Policy Analyst</b>
Mr. Anthony Wamae	<b>Serjeant-at-Arms</b>



## 2.0 CONSIDERATION OF THE REGULATIONS

### 2.1 Introduction and Background Information

The Public Finance Management (Senate Monitoring and Evaluation) Regulations, 2018 were published pursuant to section 24 of the Public Finance Management Act, 2012.

The Regulations provide for the establishment and operationalization of a Fund in exercise of the Senate's oversight function over county governments. The Regulations will thus facilitate Members of the Senate to undertake monitoring and evaluation of county programmes and projects implemented at the counties and other relevant functions in view of Article 96 of the Constitution which requires the Senate to oversight national revenue allocated to county governments.

In addition, the Regulations seek to establish the Senate Monitoring and Evaluation Committee and which shall also be guided by the Regulations with respect to the administration, disbursement and management of the Fund to ensure effectiveness and efficiency. The instrument provides for: sources of funding and guide on the administration, management and financial provisions as relates to the Fund.

The main source of funding to the Fund is allocation through approved appropriations under the budget of the Parliamentary Service Commission with a provision for a minimum allocation of Kshs 1 billion every financial year. It also provides for upward revision of the threshold from time to time in the future. Other sources are donations and gifts through the Commission as well as other lawful sources.

The Fund shall be utilized in –

- (i) undertaking county expenditure tracking surveys;
- (ii) promoting citizen engagement on issues affecting the counties by undertaking civic education and community sensitization;
- (iii) initiating a partnership approach with stakeholders at the county level to ensure a strong and more strategic focus on community development;
- (iv) undertaking research, studies and surveys on various thematic areas affecting counties;
- (v) undertaking social auditing of development projects being undertaken in the counties;

- (vi) tracking and monitoring development activities in the counties; and
- (vii) any other monitoring and evaluation activity relevant to the Senator's mandate.

## **2.2 Committal to the Committee on Delegated Legislation**

In exercise of the powers conferred by **section 24 of the Public Finance Management Act, 2012**, the Chairperson of the Parliamentary Service Commission and Speaker of the National Assembly, published the **Public Finance Management (Senate Monitoring and Evaluation) Regulations, 2018 on 21<sup>st</sup> March, 2018 vide LN No.71/2018.**

Following publication, the Regulations were tabled in the House on 27<sup>th</sup> March 2018 and immediately committed to the Select Committee on Delegated Legislation for review and scrutiny in line with section 12 of the Statutory Instruments (SI) Act, 2013 and Standing Order (SO) 210 of the National Assembly Standing Orders.

## **2.3 Consideration of the Instruments**

The scrutiny of the Regulations was guided by the Constitution, Section 24 of the Public Finance Management Act, 2012, the Statutory Instruments Act, (No. 23 of 2013) and the Interpretation and General Provisions Act, (Chapter 2) which regulate the making, scrutiny and publication of the Regulations.

The Committee considered the Regulations in a meeting held on Saturday, 21<sup>st</sup> April 2018 in Kwale County, during a Committee retreat.

Following deliberations, the Committee made the decision to annul in entirety the Public Finance Management (Senate Monitoring and Evaluation) Regulations, 2018 for reasons advanced in section 3.0 of this Report.

## **3.0 COMMITTEE OBSERVATIONS**

Following scrutiny of the Regulations, the Committee observed that –

- i. **the regulation-making authority, i.e., the Parliamentary Service Commission complied with section 11 (1) on submission of instruments to the relevant Clerk for tabling before Parliament within the statutory timeline of seven (7) sitting days. In this respect, the Regulations were published on 21<sup>st</sup> March, 2018, submitted**

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to the Clerk of the National Assembly on 23<sup>rd</sup> March, 2018 and subsequently tabled on 27<sup>th</sup> March, 2018. This was within the statutory timeline contemplated under section 11(1) of the Statutory Instruments Act;

- ii. **the Regulations are inconsistent with Section 205 of the of the Public Finance Management Act, 2012** which empowers the Cabinet Secretary to make Regulations pursuant to the Act (PFM Act, 2012). The Parliamentary Service Commission can therefore not make Regulations pursuant to the PFM Act, 2012. Similarly, the Regulations are contrary to Section 24(2) of the Statutory Instruments Act, 2013 which provides that a Statutory Instrument should not be inconsistent with the provisions of the enabling legislation.
- iii. **the regulation-making authority did not undertake adequate public participation, contrary to Articles 10 and 118 of the Constitution of Kenya on public participation, read together with Sections 5 and 11 (2) of the Statutory Instruments Act, 2013.** The Explanatory Memorandum (EM) submitted alongside the Regulations indicates that the Commission only consulted the National Treasury, the Parliamentary Budget Office and the Senators. Members of the National Assembly were not consulted;
- iv. **are discriminatory to the extent that they do not provide for facilitation of all Members of Parliament to undertake Monitoring and Evaluation as envisaged in Section 24 (1) of the PFM Act, 2012.** Article 93 of the Constitution of Kenya establishes Parliament as both the National Assembly and the Senate. The Public Finance Management (Senate Monitoring and Evaluation) Regulations, 2018 seeks to establish a Monitoring and Evaluation Fund specific only to the Senate thereby excluding Members of the National Assembly, who also require similar facilitation to effectively undertake their oversight role.

#### 4.0 RECOMMENDATIONS

Having considered the Public Finance Management (Senate Monitoring and Evaluation) Regulations, 2018 against the Constitution, the Public Finance Management Act, 2012, the Statutory Instruments Act, (No. 23 of 2013) and the Interpretation and General Provisions Act,

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(Chapter 2) which regulate the making, scrutiny and publication of the Regulations, the Committee recommends that pursuant to Standing Order 210 (4) (b) and section 15 (1) of the SI Act, the Public Finance Management (Senate Monitoring and Evaluation) Regulations, 2018 be annulled in entirety for the aforementioned reasons.

For  
Signed.......... Date.....26/4/2018.....

HON. GLADYS BOSS SHOLLEI, CBS, MP  
CHAIRPERSON, COMMITTEE ON DELEGATED LEGISLATION

## ANNEXURES

- (i) Minutes of Committee
- (ii) Sittings
- (iii) Adoption List
- (iv) Copy of the Public Finance Management (Senate Monitoring and Evaluation) Regulations, 2018



(Legislative Supplement No. 11)

LEGAL NOTICE No. 71

THE PUBLIC FINANCE MANAGEMENT ACT

(No. 18 of 2012)

IN EXERCISE of the powers conferred by section 24 of the Public Finance Management Act, 2012, the Parliamentary Service Commission makes the following Regulations:—

THE PUBLIC FINANCE MANAGEMENT (SENATE MONITORING AND EVALUATION) REGULATIONS, 2018

PART I—GENERAL PROVISIONS

1. These Regulations may be cited as the Public Finance Management (Senate Monitoring and Evaluation) Regulations, 2018.

Citation.

2. (1) The purpose of the regulations is to guide the Senate Sessional Committee on Monitoring and Evaluation in the administration, disbursement and management of the Fund to ensure efficiency and effectiveness.

Purpose.

(2) The regulations—

- (a) specify the sources of monies to the Fund;
- (b) provide guidance on the administration and management of the Fund; and
- (c) provide the financial procedures for the Fund.

3. In these Regulations—

Interpretation.

“Accounting Officer” means the Clerk of the Senate;

“Administrator” means a person appointed under regulation 10 (2);

“bank account” means an account opened at a commercial bank for the purpose of Monitoring and Evaluation under these Regulations;

“Clerk” means the Clerk of the Senate appointed under Article 128 of the Constitution;

“Commission” means the Parliamentary Service Commission established under Article 127 of the Constitution;

“Committee” means the Senate Monitoring and Evaluation Committee established under regulation 12;

“county monitoring and evaluation office manager” means the monitoring and evaluation manager appointed or designated as such for purposes of the Fund;

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“county” means a county as prescribed under Article 6 (1) of the Constitution;

“Fund” means the sum allocated to Senators for purposes of carrying out monitoring and evaluation under the Commission’s budget;

“monitoring and evaluation officer” means an officer appointed or designated to advise on technical issues related to the management of the Fund;

“recipient” means a nominated or elected Senator who receives monies from the Fund;

“returns” means documentation indicating expenditure incurred during the monitoring and evaluation exercise;

“Speaker” means the Speaker of the Senate;

“staff” means an employee or employees of a Senator under these regulations.

4. (1) These Regulations shall apply to recipients of funds, the Committee established under Regulation 12 and employees of the Commission involved in the management and administration of the Fund.

Application.

(2) The application of these regulations shall be guided by Article 96 of the Constitution which requires the Senate to oversight county governments and protect their interests.

#### PART II—ESTABLISHMENT OF THE FUND

5. (1) There is established a Fund, the Senate Monitoring and Evaluation Fund.

Establishment of the Fund.

(2) The Fund shall be utilized to carry out monitoring and evaluation activities in exercise of the Senate’s oversight function over county governments.

6. The Fund shall consist of —

- (a) monies appropriated under the Commission’s Budget for monitoring, evaluation and impact assessment;
- (b) grants and donations to the Fund received through the Commission; and
- (c) any other lawful sources.

Sources of the Fund.

7. (1) The object of the Fund is to facilitate a Senator to carry out monitoring and evaluation activities in exercise of the Senate’s oversight role over county governments in accordance with Article 96 of the Constitution.

Objects of the Fund.

(2) Without prejudice to subparagraph (1), the Fund shall be utilized in—

- (a) undertaking county expenditure tracking surveys;
- (b) promoting citizen engagement on issues affecting the counties by undertaking civic education and community sensitization;

- (c) initiating a partnership approach with stakeholders at the county level to ensure a strong and more strategic focus on community development;
- (d) undertaking research, studies and surveys on various thematic areas affecting counties;
- (e) undertaking social auditing of development projects being undertaken in the counties;
- (f) tracking and monitoring development activities in the counties; and
- (g) any other monitoring and evaluation activity relevant to the Senator's mandate.

(3) A nominated Senator shall carry out the monitoring and evaluation activities in sub paragraph (2) at the national level in respect of the interest that the Senator represents in the Senate.

(4) Despite sub paragraph (3), a nominated Senator may perform the following functions in the utilization of the Fund —

- (a) evaluate programmes that promote and protect the full enjoyment of human rights of women, youth and persons with disabilities by involving them in decision-making processes in all policies and programmes; and
- (b) initiate and maintain effective public awareness campaigns designed to promote greater social awareness towards women, youth and persons with disabilities.

8. The minimum allocation to the Fund shall be one billion shillings provided under the Commission's budget for every financial year, provided that the allocation shall be reviewed upwards from time to time.

Initial allocation

9. The allocation to the Fund shall be utilized as follows —

- (a) a one percent (1%) administration fee shall be charged on the total fund allocated and shall be retained by the Commission for purposes of facilitating administrative functions of the Fund;
- (b) a one percent (1%) of the total fund allocation shall be set aside by the Commission for capacity building of the Senators and their staff;
- (c) a six percent (6%) of the total fund allocated shall be set aside for the nominated Senators and this amount shall be divided equally among the nominated Senators; and
- (d) the balance shall be shared among the elected Senators according to the formula provided for in Second Schedule of these regulations.

Allocation of the Fund

#### PART III—ADMINISTRATION OF THE FUND

10. (1) The Fund shall be administered through the Senate Monitoring and Evaluation Office established by the Commission.

Administration of the Fund.



(2) The Accounting Officer shall in writing, appoint an employee of the Commission as the Administrator of the Fund.

11. (1) The Administrator of the Fund shall—

- (a) consult with the Accounting Officer and the Committee on matters relating to the administration of the Fund;
- (b) cause to be kept proper books of accounts and other books and records in relation to the Fund, of all activities and undertakings financed by the Fund;
- (c) consolidate the required reports under these regulations and submit them to the Committee; and
- (d) carry out any other duties assigned by the Accounting Officer.

Functions of the Administrator.

(2) The Administrator may in writing, delegate to an employee of the Commission to exercise any of the administrator's powers or the performance of any of the functions under these regulations.

(3) The Accounting Officer shall ensure that the Senate Monitoring and Evaluation Office is resourced with requisite personnel for purposes of the day to day operations and handling of matters related to the management of the Fund.

(4) The Accounting Officer shall open, maintain and manage a separate account with a reputable bank where the monies due to the Fund shall be kept.

(5) The disbursement of monies out of the Fund to the recipients shall be bi-annual.

(6) The Accounting Officer shall with the approval of the Committee established under Regulation 12, introduce additional administrative measures from time to time for effective operation of the Fund.

#### PART IV—ESTABLISHMENT OF A COMMITTEE

12. The Senate shall in accordance with its Standing Orders, establish a Committee known as the Senate Monitoring and Evaluation Committee consisting of a Chairperson and not more than eight other members to oversight the kitty.

Establishment of the Senate Monitoring and Evaluation Committee.

13. The Accounting Officer or the Accounting Officer's representative shall be the secretary to the Committee.

The Accounting Officer.

14. (1) The Committee shall—

- (a) consider the bi-annual disbursements out of the Fund;
- (b) receive reports on the performance of the Fund from the Administrator;
- (c) examine the monitoring programmes being undertaken by the recipients of the Fund;
- (d) prepare and submit an annual report on the operations and performance of the Fund to the Senate; and

Functions of the Committee.

(e) perform any other function as the Senate may approve.

(2) The business and the affairs of the Committee shall be conducted in accordance with the Senate Standing Orders.

#### PART V—FINANCIAL PROVISIONS

15. The receipts, earnings, and accruals to the Fund and the balance of the Fund at the close of each financial year, shall be retained by the Fund for use for the purpose for which the Fund is established.

Receipts and earnings to be retained.

16. The Accounting Officer shall cause to be kept all proper books and records of accounts of the income, expenditure and liabilities associated with the Fund.

Accounts and records.

17. Within a period of three months after the end of each financial year, the Accounting Officer shall submit to the Commission the accounts of the Fund showing —

Financial statements.

(a) a statement of income and expenditure during that year; and

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

18. (1) The Administrator of the Fund shall within two months after the end of each financial year, prepare and submit to the Accounting Officer a report of the operations of the Fund for the preceding year.

Report on operations of Fund.

(2) The Accounting Officer shall submit the report under sub paragraph (1) to the Committee for information.

19. Procurement works and services relating to activities under these regulations shall be governed by the Public Procurement and Asset Disposal Act, 2015.

Procurement services.

20. An account approved by the Commission shall be opened with a reputable commercial bank at the nearest location from the county office.

Opening a bank account.

21. At the commencement of every financial year, the county monitoring and evaluation office manager shall be issued with an Authority to Incur Expenditure by the Clerk in that financial year.

Source of finance.

22. The signatories to the account opened pursuant to regulation 20 shall be —

Signatories of cheques.

(a) the county monitoring and evaluation office manager whose signature shall be mandatory; and

(b) two other signatories appointed by the Senator for that purpose.

#### PART VI—OFFICES AND STAFFING FOR PURPOSES OF MONITORING AND EVALUATION

23. A Senator shall utilize existing structures in the County Office for purposes of administrative activities in undertaking monitoring and evaluation.

Monitoring and Evaluation offices.



24. (1) A Senator shall recruit for purposes of monitoring and evaluation the following staff to serve in the county office —

Monitoring and Evaluation staff.

- (a) the county monitoring and evaluation office manager; and
- (b) the monitoring and evaluation officer.

(2) A Senator may recruit additional staff as may be necessary but subject to the ceiling of staff salaries approved by the Commission.

25. (1) A member of staff recruited under regulation 24 shall —

Terms of service.

- (a) not hold any position in a political party; and
- (b) sign a contract of employment which shall be submitted to the Clerk.

(2) A member of staff may at any time give one month's notice before resignation from employment or surrender one month's salary in lieu of notice.

26. The county monitoring and evaluation office manager shall—

County monitoring and evaluation office manager.

- (a) be the officer in charge of the administrative and institutional management of the finances allocated for monitoring and evaluation;
- (b) avail to the Clerk bi-annually, copies of bank statements and any other financial records from the Senator's allocation;
- (c) make purchases as may be necessary to effectively enable monitoring and evaluation;
- (d) ensure that the money available is spent in conformity with existing government financial regulations to facilitate quick, efficient and effective delivery of services;
- (e) in writing, keep the Senator informed about the transactions of the monitoring and evaluation bank account; and
- (f) perform any other duties as may be assigned by the Senator from time to time.

27. The monitoring and evaluation officer shall—

Monitoring and evaluation officer.

- (a) implement monitor and evaluate programs in line with the objectives of the Fund; and
- (b) perform any other duties as may be assigned by the Senator from time to time.

#### PART VII—MISCELLANEOUS PROVISIONS

28. When the office of a Senator falls vacant pursuant to Article 103 of the Constitution, the —

Transition.

- (a) contract signed between the Senator and the member of staff shall become void; and
- (b) the county monitoring and evaluation office manager shall be responsible for running the office until a new Senator is elected.

29. (1) Upon the gazettelement of a new Senator, the county monitoring and evaluation office manager shall hand over the Commission's property to the Clerk or the Clerk's appointed representative within one month after the gazettelement.

Accounting for  
Commission  
property.

(2) The Clerk shall confirm that all handing over procedures have been complied with before making the final payment of dues, if any

30. Upon winding up of the Fund, the cash balances, assets and liabilities shall be transferred to the Commission.

Winding up of the  
Fund.

31. All assets acquired from the Fund shall remain the property of the Commission and shall vest in the Commission.

Vesting of assets.

#### FIRST SCHEDULE

#### CONDITIONS FOR DISBURSEMENT

The funds shall be disbursed under the following conditions —

1. All disbursements from the Fund to the respective recipients shall be approved and minuted by the Committee;

2. All disbursements from the Fund's main account shall be made through the recipient's bank accounts maintained for every recipient by the Fund administrator;

3. The record of the amounts received by each recipient and the record of the amounts so received shall be submitted to the Committee within 30 days after the close of the financial year and no disbursements for the succeeding financial year shall be made into the accounts until the said records are duly received;

4. The Committee shall set out general conditions and requirements for release of funds from the Fund to ensure efficient and effective management of the Fund;

5. The Committee may impose reasonable requirements including restrictions on a particular recipient and such restrictions or requirements shall be reported together with the returns to be submitted to the Senate;

6. Returns from the first tranche made to a recipient in any financial year must be filed with the administrator of the Fund by the county monitoring and evaluation office manager two months after the close of the first half of the financial year;

7. Returns from the second tranche made to a recipient in any financial year must be filed with the administrator of the Fund by the county monitoring and evaluation office manager two months after the close of the financial year;

8. No disbursement to any recipient will be processed and approved until the administrator of the Fund is satisfied that the required returns have been adequately filed within the timelines set; and

9. The administrator of the Fund shall develop a schedule showing documentation to be submitted upon filing the returns.

## SECOND SCHEDULE

## FORMULA FOR ALLOCATING MONIES AMONG THE ELECTED SENATORS

PARAMETER		WEIGHT (%)
Equal Share	q	47
Population	s	45
Size of County	r	8

$$CA = ((q (BES))/47) + ((r (SC))/TS) + ((s (CP))/TP)$$

Where:

CA - Allocation due to Elected Senator

ES - Equal Share

CP - County population

TP - Total Population

SC - Size of the County

TS - Total Size

q, r, s - parameter weights where:  $q + r + s = 1$  or 100%

Dated the 20th March, 2018.

JUSTIN MUTURI,  
*Speaker of the National Assembly/  
Chairperson, Parliamentary Service Commission.*

## EXPLANATORY MEMORANDUM

27 MAR 2018

### PART I

**Name of Statutory Instrument:** The Public Finance Management (Senate Monitoring and Evaluation) Regulations, 2018

**Name of the Parent Act:** The Public Finance Management Act, No. 18 of 2012

**Enacted Pursuant to:** Section 24 of the Public Finance Management Act, 2012

**Name of the Ministry/Authority:** Parliamentary Service Commission

### PART II

#### **1. Purpose of the Statutory Instrument**

To provide a legal framework for the establishment, administration and disbursement of the Senate Monitoring and Evaluation Fund and to facilitate Senators to carry out monitoring and evaluation and impact assessment activities at the county level in the context of Article 96 of the Constitution.

#### **2. Legislative Context**

Article 96 of the Constitution provides for the role of the Senate. In particular, Article 96(1) provides that “*the Senate represents the counties, and serves to protect the interests of the counties and their governments*”. Article 96(3) of the Constitution further requires the Senate to “*.....exercise oversight over national revenue allocated to the county governments*”.

Pursuant to these provisions of the Constitution, the statutory instrument is intended to provide a legal framework that establishes mechanisms to facilitate the Senate in the effective execution of its oversight mandate over the county governments as part



of its broader mandate of protecting the interests of the counties and their governments.

### 3. Policy Background

While Article 96(3) of the Constitution mandates the Senate to provide oversight over national revenue allocated to county governments, it is important to observe that there does not exist any legal framework that establishes a mechanism that would facilitate the Senate in the discharge of this function.

The Public Finance Management (Senate Monitoring and Evaluation) Regulations are intended to provide this framework.

Part I of the Regulations provides for general provisions on the Fund. Part II provides for the establishment of the Fund.

Regulation 5(1) establishes the Senate Monitoring and Evaluation Fund which is to be utilized to *“carry out monitoring and evaluation activities in the exercise of the Senate’s oversight function over county governments”*. The object of the Fund as set out in regulation 7 is to provide funds to Senators to carry out monitoring and evaluation activities in exercise of the Senate’s oversight role over county governments in accordance with Article 96 of the Constitution.

Regulations 8 and 9 provide for the initial allocation to the Fund and for the distribution of the Fund respectively.

Part III provides for the administration of the Fund which, pursuant to regulation 11(1), is to be administered through the Senate Monitoring and Evaluation Office which is to be established by the Parliamentary Service Commission.

Part IV establishes the Senate Monitoring and Evaluation Committee and sets out its functions while Part V provides for the financial procedures.



Part VI sets out the offices and staffing for purposes of monitoring and evaluation. In particular, regulation 23 provides that a Senator shall utilize existing structures in the County Office for purposes of administrative activities in undertaking monitoring and evaluation. Regulation 24(1) provides that a Senator shall recruit a county monitoring and evaluation office manager and a monitoring and evaluation officer to serve in the county office. The county monitoring and evaluation office manager shall be in charge of the administrative and institutional management of the finances allocated for monitoring and evaluation while the monitoring and evaluation officer shall be in charge of implementing, monitoring and evaluating programs in line with the objectives of the Fund.

Part VII sets out the miscellaneous provisions regarding the winding up of the Fund, vesting of assets and the handing over of offices, records and other properties by a Senator who ceases to hold office.

The First Schedule sets out the conditions for disbursement of the Fund while the Second Schedule provides for the formula for allocating monies among the elected Senators.

#### 4. Consultation Outcome

The following institutions were consulted during the formulation of the Regulations: the National Treasury, the Parliamentary Budget Office and the Senators. The institutions submitted their views which have since been included in the Regulations.

#### 5. Impact

The Regulations shall have no impact on fundamental rights and freedoms and shall have no impact on the private sector.

The Regulations will enable the Senate to effectively provide oversight over national revenue allocated to the county governments in the manner set out in regulation 7(2) by —

- (a) undertaking county expenditure tracking surveys;
- (b) promoting citizen engagement on issues affecting the counties by undertaking civic education and community sensitization;
- (c) initiating a partnership approach with stakeholders at the county level to ensure a strong and more strategic focus on community development;
- (d) undertaking research, studies and surveys on various thematic areas affecting counties;
- (e) undertaking social auditing of development projects being undertaken in the counties;
- (f) tracking and monitoring development activities in the counties; and
- (g) performing any other monitoring and evaluation activity relevant to the Senator's mandate.

6. Monitoring and Evaluation

The Regulations are intended and expected to enhance the Senate's execution of its oversight mandate as set out under Article 96(3) of the Constitution. The Regulations are further intended to enhance the monitoring, evaluation and impact assessment activities by the Senate at the county level.

The effective implementation of these Regulations is expected to enhance accountability and prudent use of resources allocated to county governments.



J. M. NYEGENYE, CBS,  
CLERK OF THE SENATE/SECRETARY,  
PARLIAMENTARY SERVICE COMMISSION.


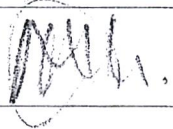
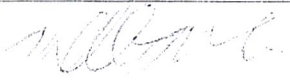
COMMITTEE ON DELEGATED LEGISLATION

ADOPTION LIST

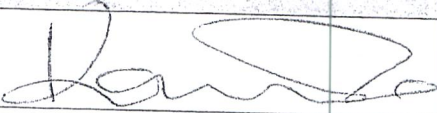



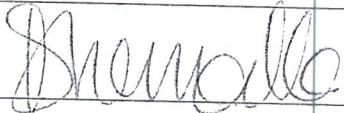


REPORT ON THE ADOPTION OF THE REPORT ON THE PUBLIC FINANCE  
MANAGEMENT (SENATE MONITORING AND EVALUATION) REGULATIONS,  
2018

We, the undersigned, hereby affix our signatures to this Report to affirm our approval:

DATE: 26/04/2018

	HON. MEMBER	SIGNATURE
1.	Hon. Gladys Boss-Shollei, MP (Chairperson)	
2.	Hon. Fatuma Ali Gedi, MP (Vice Chairperson)	
3.	Hon. Alfred Sambu, MP	
4.	Hon. Isaac Waihenya Ndirangu, MP	
5.	Hon. Robert Mbui, MP	
6.	Hon. Alice Wahome, MP	
7.	Hon. Daniel Maanzo, MP	
8.	Hon. Muriuki Njagagua, MP	
9.	Hon. Martha Wangari, MP	
10.	Hon. Timothy Wanyonyi, MP	



	HON. MEMBER	SIGNATURE
11.	Hon. William Kamoti, MP	
12.	Hon. Patrick Kariuki Mariru, MP	
13.	Hon. Ronald Kiprotich Tonui, MP	
14.	Hon. William Kamket Kassait, MP	
15.	Hon. Munene Wambugu, MP	
16.	Hon. Charles Gimose, MP	
17.	Hon. Abdi Tepo, MP	
18.	Hon. George Gitonga Murugara, MP	
19.	Hon. Jennifer Shamalla, MP	
20.	Hon. Muturi Kigano, MP	
21.	Hon. (Dr.) Wilberforce Oundo, MP	
22.	Hon. Sammy Seroney, MP	



MINUTES OF THE 30<sup>TH</sup> SITTING OF THE COMMITTEE ON DELEGATED  
LEGISLATION HELD ON SATURDAY, 21<sup>ST</sup> APRIL, 2018, AT 2.00 P.M. IN THE  
LEISURE HOTEL, BOARD ROOM, DIANI, KWALE COUNTY

---

**PRESENT**

Hon. George Gitonga Murugara, MP - (Chaired Meeting)  
Hon. Robert Mbui, MP  
Hon. Jennifer Shamalla, MP  
Hon. Alice Wahome, MP  
Hon. William Kamoti, MP  
Hon. Isaac Waihenya Ndirangu, MP  
Hon. Muriuki Njagagua, MP  
Hon. Ronald Kiprotich Tonui, MP  
Hon. Munene Wambugu, MP  
Hon. Sammy Seroney, MP

**ABSENT WITH APOLOGY**

Hon. Gladys Boss Shollei, CBS, MP - Chairperson  
Hon. Fatuma Gedi, MP - Vice Chairperson  
Hon. Daniel Maanzo, MP  
Hon. Abdi Koropu Tepo, MP  
Hon. (Dr.) Wilberforce Oundo, MP  
Hon. William Kamket Kassait, MP  
Hon. Timothy Wanyonyi, MP  
Hon. Charles Gimose, MP  
Hon. Martha Wangari, MP  
Hon. Alfred Sambu, MP  
Hon. Patrick Kariuki Mariru, MP  
Hon. Muturi Kigano, MP

**IN-ATTENDANCE**

**National Assembly Secretariat**

Ms. Susan Maritim - First Clerk Assistant  
Mr. Jimale Mohamed - Third Clerk Assistant  
Mr. Dima Dima - Senior Legal Counsel  
Ms. Ann Kigoro - Research and Policy Analyst  
Mr. Gorod Abdi - Fiscal Analyst  
Mr. Charles Ayari - Audio Officer

**MIN.NO. CDL/180/2018: PRAYER & PRELIMINARIES**

Hon. George Murugara, MP continued to chair the meeting as earlier resolved by the Members present. He thereafter called the meeting to order at 2.20 p.m. followed by the Prayer.

**MIN.NO. CDL/182/2018: CONFIRMATION OF MINUTES OF PREVIOUS MEETING**

Confirmation of minutes of the previous meeting was deferred to the next sitting.

**MIN.NO. CDL/183/2018: CONSIDERATION OF PUBLIC FINANCE MANAGEMENT (SENATE MONITORING AND EVALUATION) REGULATIONS, 2018**

The Committee considered the Public Finance Management (Senate Monitoring and Evaluation) Regulations, 2018 (*Legal Notice No. 71*). The Regulations were gazetted on 21<sup>st</sup> March 2018 and tabled before the National Assembly for legislative processing on 27<sup>th</sup> March 2018 and pursuant to section 12 (1) of the Statutory Instrument Act, (*No 23 of 2013*), referred to the Committee on Delegated Legislation.

The Chairperson thereafter welcomed the Fiscal Analyst from the Parliamentary Budget Office to make a presentation on Regulations.

**Brief from the Parliamentary Budget Office**

1. The Regulations are meant to provide for the establishment and operationalization of a Fund in exercise of the Senate's oversight function over county governments. The Regulations will thus facilitate Members of the Senate to undertake monitoring and evaluation of county programmes and projects implemented at the counties and other relevant functions in view of Art. 96 of the Constitution which requires the Senate to oversee national revenue allocated to county governments.
2. In addition, the Regulations seek to establish the Senate Monitoring and Evaluation Committee and which shall also be guided by the Regulations with respect to the administration, disbursement and management of the Fund to ensure effectiveness and efficiency. The legal Instrument provides for: sources of funding and guide on the administration, management and financial provisions as relates to the Fund.
3. The main source of funding to the Fund is allocation through approved appropriations under the budget of the Parliamentary Service Commission with a provision for a minimum allocation of Kshs. 1 billion every financial year. It also states for upward revision of the threshold from time to time. Other sources provide for options from donations and gifts through the Commission as well as other lawful sources.
4. Part I to IV of the Regulations provides for purpose of the Regulation and thus forming a legal basis to guide the Senate Committee on Monitoring and Evaluation in the oversight of the Fund and other related activities under the Fund. The proposed Regulations will provide a sufficient level of legal and fiscal detail for the Committee to administer, disburse



and manage the Fund in supporting the oversight role of Senate and also guide other key stakeholders.

5. In strengthening monitoring and oversight mechanisms over county performance, the key mandate of the Fund includes: undertaking expenditure tracking surveys; promoting citizen engagement on issues affecting counties (through civic education and sensitization); initiating partnership approach with stakeholders to strengthen community development; undertaking research ,studies and surveys on various thematic areas affecting counties; social auditing and tracking and monitoring development at the counties.
6. For the case of nominated senators, the Regulations mandates them to undertake such activities of monitoring and evaluation with a focus at the national level in line with the respective area of representation/interest and evaluate programs focusing on youth women and persons with disabilities and initiating and maintaining public awareness on such programmes.
7. The allocation is provided as follows –
  - a) 1% administrative fee as a charge on the fund towards administrative expenses
  - b) 1% of the fund value towards capacity building and training of Senators and their staff
  - c) 6% of the fund value towards nominated senators and shared equally to cater for the activities of monitoring and evaluation as specified by the regulations
  - d) the ‘balance’ shared equitably among the elected Senators.
8. Regulations 10 – 11 (administration of the Fund) provides for establishment of the Senate Monitoring and Evaluation Office by the Commission with a view of administering the fund through an Administrator appointed by the Accounting Officer in writing. The Administrator, in addition to consulting with Accounting officer and the Committee on administration of the Fund, shall also ensure proper books of accounts and all other records are kept and consolidating all required reports and any other duties assigned by the Accounting Officer.
9. It also provides for disbursement of the fund to the recipients twice a year.
10. Further, the accounting officer is mandated to introduce administrative measures to ensure effective administration of the Fund.
11. Regulations 12 – 14 provides for the establishment of Senate Monitoring and Evaluation Committee with membership of not more than nine members inclusive of the Chairman and the Accounting Officer or representative being the Secretary to the Committee.
12. The Financial Provisions in Regulations 15 – 22 provides that appropriations and all such monies under the Fund is to be used for the purpose for which the Fund was established. This part states that the accounting officer shall ensure proper accounts and records pertaining to the fund and its activities were kept and in addition mandates the accounting

officer to submit to the Commission statement of income and expenditure and statement of assets and liabilities.

13. The County Monitoring and Evaluation Office Manager shall be issued with Authority to Incur Expenditure at the County level.
14. Regulations 23 – 26 provides for the modalities and use of offices facilities and personnel to facilitate senators to carry out the object and functions of the Fund. However, the existing structures and offices at county level are to be utilized mainly for administrative activities. For effective monitoring and evaluation, the regulations under this part also provides for senators to recruit the following officers, whose contracts are to be submitted to the Clerk, to serve at the county:
  - a) County Monitoring and Evaluation Office Manager;
  - b) Monitoring and Evaluation Officer;
  - c) Additional staff subject to limit provided by the Commission.
15. Part VII of the Regulations on Miscellaneous Provisions 28 – 31 provides for accounting for Commission’s property where the County Monitoring and Evaluation Office Manager shall handover in case of a vacancy in the Senator’s office and during transition. It further provides for the winding up of the Fund and vests all asset of the Fund to the Commission.
16. To ensure effective disbursement and accountability, the Regulations further guide that:
  - (i) all funds disbursed must be approved by the Committee;
  - (ii) Committee to set general conditions for release of funds for purpose of ensuring timely and effective release;
  - (iii) filing of returns after every disbursement, failure to which no subsequent disbursement is made in cases of non-compliance or lack of satisfactory returns;
  - (iv) returns are made two months after every release based on the bi-annual disbursements, among others.

### **Areas of Concern**

The PBO noted the following areas of concern for the Committee to consider –

- (i) under Paragraph 2 of the Regulations, ‘bank account’ is defined as an account opened at a commercial bank for purposes of monitoring and evaluation. It is not clear whether the bank account is with respect to accounts of the main Fund or the various other sub accounts for purposes of monitoring and evaluation including accounts to be opened by recipient for the same purpose. There’s need for clarity on the term ‘bank account’ and whether to consider the option of banking the main Fund at the Central Bank of Kenya.
- (ii) The provision on the disbursement of funds to recipients twice a year may require stating clear timelines. This is important taking into account the need for work and cash flow planning and in-year reporting requirements as well as in-year financial accountability and end of year timelines for financial accounts submission and auditing.



- (iii) The provision for bank account opening approved by the Commission needs to be harmonized with provision under sub-paragraph 10(5) on transfers of funds to the recipients and paragraph 20 on the bank accounts to be opened at county level for clarity and consistency.
- (iv) The PFM Regulations provide for issuance of Authority to Incur Expenditure (AIE) for purpose of vote control procedure. In addition to designation or appointment of an Authority to Incur Expenditure (AIE) holder at the beginning of the year, there is need to state if the issuance is to be done quarterly or semi-annually.
- (v) While the County Monitoring and Evaluation Officer and Monitoring and Evaluation Officer have been provided at the county level, it is not clear for the case of non-elected/nominated senators tasked with similar oversight mandate of as per sub paragraph 7(4). In addition, there is need for filing returns more frequently as the current provision of filing returns twice a year may not offer adequate in-year reporting on the performance of the disbursements and monitoring activities. It is recommended that submission be made quarterly as provided in the Principal Act.

#### **Committee Observations**

Following scrutiny of the Regulations, the Committee observed that –

- i. **the regulation-making authority, i.e., the Parliamentary Service Commission complied with section 11 (1) on submission of instruments to the relevant Clerk for tabling before Parliament within the statutory timeline of seven (7) sitting days. In this respect, the Regulations were published on 21<sup>st</sup> March, 2018, submitted to the Clerk of the National Assembly on 23<sup>rd</sup> March, 2018 and subsequently tabled on 27<sup>th</sup> March, 2018. This was within the statutory timeline contemplated under section 11(1) of the Statutory Instruments Act;**
- ii. **the Regulations are inconsistent with Section 205 of the of the Public Finance Management Act, 2012 which empowers the Cabinet Secretary to make Regulations pursuant to the Act (PFM Act, 2012). The Parliamentary Service Commission can therefore not make Regulations pursuant to the PFM Act, 2012. Similarly, the Regulations are contrary to section 24(2) of the Statutory Instruments Act, 2013 which provides that a statutory instrument should not be inconsistent with the provisions of the enabling legislation.**
- iii. **the regulation-making authority did not undertake adequate public participation, contrary to Articles 10 and 118 of the Constitution of Kenya on public participation, read together with Sections 5 and 11 (2) of the Statutory Instruments Act, 2013. The Explanatory Memorandum (EM) submitted alongside the**

Regulations indicates that the Commission only consulted the National Treasury, the Parliamentary Budget Office and the Senators. Members of the National Assembly were not consulted;

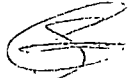
- iv. are discriminatory to the extent that they do not provide for facilitation of all Members of Parliament to undertake Monitoring and Evaluation as envisaged in Section 24 (1) of the PFM Act, 2012. Article 93 of the Constitution of Kenya establishes Parliament as both the National Assembly and the Senate. The Public Finance Management (Senate Monitoring and Evaluation) Regulations, 2018 seeks to establish a Monitoring and Evaluation Fund specific only to the Senate thereby excluding Members of the National Assembly, who also require similar facilitation to effectively undertake their oversight role.

#### Committee Resolution

Having considered the Public Finance Management (Senate Monitoring and Evaluation) Regulations, 2018 against the Constitution, the Public Finance Management Act, 2012, the Statutory Instruments Act, (No. 23 of 2013) and the Interpretation and General Provisions Act, (Chapter 2) which regulate the making, scrutiny and publication of the Regulations, the Committee recommends that pursuant to Standing Order 210 (4) (b) and section 15 (1) of the SI Act, the Public Finance Management (Senate Monitoring and Evaluation) Regulations, 2018 be annulled in entirety.

MIN.NO. CDL /184/2018:                      ADJOURNMENT

There being no other business, the meeting was adjourned at 3.30 pm.

For  
Signed:.....

Date: 26/4/2018

HON. GLADYS BOSS-SHOLLEI, CBS, MP  
(CHAIPERSON)

*Report laid by  
the Hon. Finance Comm.  
On Delegated Legislation  
26/4/2018  
mj*



THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT-SECOND SESSION

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**COMMITTEE ON DELEGATED LEGISLATION**

**REPORT ON THE PUBLIC FINANCE MANAGEMENT  
(SENATE MONITORING AND EVALUATION)  
REGULATIONS, 2018**

*Approved for table  
26/4  
[Signature]*

APRIL 2018



*Directorate of Committee Services  
The National Assembly,  
Parliament Buildings, Continental House, Room 402  
NAIROBI*

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## ABBREVIATIONS

EM	Explanatory Memorandum
PFM	Public Finance Management
RMA	Regulatory Making Authority
SI	Statutory Instruments
SO	Standing Order

## CHAIRPERSON'S FOREWORD

In exercise of the powers conferred by section 24 of the Public Finance Management Act, 2012, the Chairperson of the Parliamentary Service Commission and Speaker of the National Assembly, published the **Public Finance Management (Senate Monitoring and Evaluation) Regulations, 2018** on 21<sup>st</sup> March, 2018 vide LN No.71/2018.

Following publication, the Regulations were tabled in the House on 27<sup>th</sup> March 2018 and immediately committed to the Select Committee on Delegated Legislation for review and scrutiny pursuant section 12 of the Statutory Instruments (SI) Act, 2013 and Standing Order (SO) 210 of the National Assembly.

The Committee considered the Regulations in its sitting held on Saturday, 21<sup>st</sup> April 2018 at Leisure Lodge, Kwale County and made the decision to **annul in entirety the Public Finance Management (Senate Monitoring and Evaluation) Regulations, 2018** for reasons advanced herein.

The Committee wishes to express its gratitude to the Speaker for the support accorded to the Committee in the discharge of its mandate. The Committee also wishes to record its appreciation to the Office of the Clerk of the National Assembly and the supporting Directorates for providing technical support which was vital in the consideration of this instrument.

On behalf of the Members of the Select Committee on Delegated Legislation and pursuant to Standing Order 210 (4), it is my pleasure and duty to present to the House the Committee's Report on the **Public Finance Management (Senate Monitoring and Evaluation) Regulations, 2018**.

### 1.3 Committee Secretariat

The secretariat comprises of the following members of staff;

Mr. Susan Maritim	Clerk Assistant I (Team Leader)
Mr. Jimale Mohamed	Clerk Assistant III
Mr. Dima Dima	Senior Legal Counsel
Ms. Mugure Gituto	Legal Counsel II
Ms. Anne N. Kigoro	Research & Policy Analyst
Mr. Anthony Wamae	Serjeant-at-Arms

## 2.0 CONSIDERATION OF THE REGULATIONS

### 2.1 Introduction and Background Information

The Public Finance Management (Senate Monitoring and Evaluation) Regulations, 2018 were published pursuant to section 24 of the Public Finance Management Act, 2012.

The Regulations provide for the establishment and operationalization of a Fund in exercise of the Senate's oversight function over county governments. The Regulations will thus facilitate Members of the Senate to undertake monitoring and evaluation of county programmes and projects implemented at the counties and other relevant functions in view of Article 96 of the Constitution which requires the Senate to oversight national revenue allocated to county governments.

In addition, the Regulations seek to establish the Senate Monitoring and Evaluation Committee and which shall also be guided by the Regulations with respect to the administration, disbursement and management of the Fund to ensure effectiveness and efficiency. The instrument provides for: sources of funding and guide on the administration, management and financial provisions as relates to the Fund.

The main source of funding to the Fund is allocation through approved appropriations under the budget of the Parliamentary Service Commission with a provision for a minimum allocation of Kshs 1 billion every financial year. It also provides for upward revision of the threshold from time to time in the future. Other sources are donations and gifts through the Commission as well as other lawful sources.

The Fund shall be utilized in –

- (i) undertaking county expenditure tracking surveys;
- (ii) promoting citizen engagement on issues affecting the counties by undertaking civic education and community sensitization;
- (iii) initiating a partnership approach with stakeholders at the county level to ensure a strong and more strategic focus on community development;
- (iv) undertaking research, studies and surveys on various thematic areas affecting counties;
- (v) undertaking social auditing of development projects being undertaken in the counties;



- (vi) tracking and monitoring development activities in the counties; and
- (vii) any other monitoring and evaluation activity relevant to the Senator's mandate.

## **2.2 Committal to the Committee on Delegated Legislation**

In exercise of the powers conferred by section 24 of the Public Finance Management Act, 2012, the Chairperson of the Parliamentary Service Commission and Speaker of the National Assembly, published the Public Finance Management (Senate Monitoring and Evaluation) Regulations, 2018 on 21<sup>st</sup> March, 2018 vide LN No.71/2018.

Following publication, the Regulations were tabled in the House on 27<sup>th</sup> March 2018 and immediately committed to the Select Committee on Delegated Legislation for review and scrutiny in line with section 12 of the Statutory Instruments (SI) Act, 2013 and Standing Order (SO) 210 of the National Assembly Standing Orders.

## **2.3 Consideration of the Instruments**

The scrutiny of the Regulations was guided by the Constitution, Section 24 of the Public Finance Management Act, 2012, the Statutory Instruments Act, (No. 23 of 2013) and the Interpretation and General Provisions Act, (Chapter 2) which regulate the making, scrutiny and publication of the Regulations.

The Committee considered the Regulations in a meeting held on Saturday, 21<sup>st</sup> April 2018 in Kwale County, during a Committee retreat.

Following deliberations, the Committee made the decision to annul in entirety the Public Finance Management (Senate Monitoring and Evaluation) Regulations, 2018 for reasons advanced in section 3.0 of this Report.

## **3.0 COMMITTEE OBSERVATIONS**

Following scrutiny of the Regulations, the Committee observed that –

- i. the regulation-making authority, i.e., the Parliamentary Service Commission complied with section 11 (1) on submission of instruments to the relevant Clerk for tabling before Parliament within the statutory timeline of seven (7) sitting days. In this respect, the Regulations were published on 21<sup>st</sup> March, 2018, submitted

8| Committee on Delegated Legislation: Report on the Public Finance Management (Senate Monitoring and Evaluation) Regulations, 2018

to the Clerk of the National Assembly on 23<sup>rd</sup> March, 2018 and subsequently tabled on 27<sup>th</sup> March, 2018. This was within the statutory timeline contemplated under section 11(1) of the Statutory Instruments Act;

- ii. **the Regulations are inconsistent with Section 205 of the of the Public Finance Management Act, 2012** which empowers the Cabinet Secretary to make Regulations pursuant to the Act (PFM Act, 2012). The Parliamentary Service Commission can therefore not make Regulations pursuant to the PFM Act, 2012. Similarly, the Regulations are contrary to Section 24(2) of the Statutory Instruments Act, 2013 which provides that a Statutory Instrument should not be inconsistent with the provisions of the enabling legislation.
- iii. **the regulation-making authority did not undertake adequate public participation, contrary to Articles 10 and 118 of the Constitution of Kenya on public participation, read together with Sections 5 and 11 (2) of the Statutory Instruments Act, 2013.** The Explanatory Memorandum (EM) submitted alongside the Regulations indicates that the Commission only consulted the National Treasury, the Parliamentary Budget Office and the Senators. Members of the National Assembly were not consulted;
- iv. **are discriminatory to the extent that they do not provide for facilitation of all Members of Parliament to undertake Monitoring and Evaluation as envisaged in Section 24 (1) of the PFM Act, 2012.** Article 93 of the Constitution of Kenya establishes Parliament as both the National Assembly and the Senate. The Public Finance Management (Senate Monitoring and Evaluation) Regulations, 2018 seeks to establish a Monitoring and Evaluation Fund specific only to the Senate thereby excluding Members of the National Assembly, who also require similar facilitation to effectively undertake their oversight role.

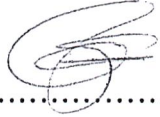
#### 4.0 RECOMMENDATIONS

Having considered the Public Finance Management (Senate Monitoring and Evaluation) Regulations, 2018 against the Constitution, the Public Finance Management Act, 2012, the Statutory Instruments Act, (No. 23 of 2013) and the Interpretation and General Provisions Act.

9| Committee on Delegated Legislation Report on the Public Finance Management (Senate Monitoring and Evaluation) Regulations 2018

(Chapter 2) which regulate the making, scrutiny and publication of the Regulations, the Committee recommends that pursuant to Standing Order 210 (4) (b) and section 15 (1) of the SI Act, the Public Finance Management (Senate Monitoring and Evaluation) Regulations, 2018 be annulled in entirety for the aforementioned reasons.

For



Signed.....

Date.....

26/4/2018

HON. GLADYS BOSS SHOLLEI, CBS, MP  
CHAIRPERSON, COMMITTEE ON DELEGATED LEGISLATION

## ANNEXURES

- (i) Minutes of Committee
- (ii) Sitings
- (iii) Adoption List
- (iv) Copy of the Public Finance Management (Senate Monitoring and Evaluation) Regulations, 2018



*Page by heads Majority Tuesday 21st March 2018*

(Legislative Supplement No. 11)

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LEGAL NOTICE NO. 71

THE PUBLIC FINANCE MANAGEMENT ACT

(No. 18 of 2012)

IN EXERCISE of the powers conferred by section 24 of the Public Finance Management Act, 2012, the Parliamentary Service Commission makes the following Regulations:—

THE PUBLIC FINANCE MANAGEMENT (SENATE MONITORING AND EVALUATION) REGULATIONS, 2018

PART I—GENERAL PROVISIONS

1. These Regulations may be cited as the Public Finance Management (Senate Monitoring and Evaluation) Regulations, 2018.

Citation.

2. (1) The purpose of the regulations is to guide the Senate Sessional Committee on Monitoring and Evaluation in the administration, disbursement and management of the Fund to ensure efficiency and effectiveness.

Purpose.

(2) The regulations—

- (a) specify the sources of monies to the Fund;
- (b) provide guidance on the administration and management of the Fund; and
- (c) provide the financial procedures for the Fund.

3. In these Regulations—

Interpretation.

“Accounting Officer” means the Clerk of the Senate;

“Administrator” means a person appointed under regulation 10 (2);

“bank account” means an account opened at a commercial bank for the purpose of Monitoring and Evaluation under these Regulations;

“Clerk” means the Clerk of the Senate appointed under Article 128 of the Constitution;

“Commission” means the Parliamentary Service Commission established under Article 127 of the Constitution;

“Committee” means the Senate Monitoring and Evaluation Committee established under regulation 12;

“county monitoring and evaluation office manager” means the monitoring and evaluation manager appointed or designated as such for purposes of the Fund;

"county" means a county as prescribed under Article 6 (1) of the Constitution;

"Fund" means the sum allocated to Senators for purposes of carrying out monitoring and evaluation under the Commission's budget;

"monitoring and evaluation officer" means an officer appointed or designated to advise on technical issues related to the management of the Fund;

"recipient" means a nominated or elected Senator who receives monies from the Fund;

"returns" means documentation indicating expenditure incurred during the monitoring and evaluation exercise;

"Speaker" means the Speaker of the Senate;

"staff" means an employee or employees of a Senator under these regulations.

4. (1) These Regulations shall apply to recipients of funds, the Committee established under Regulation 12 and employees of the Commission involved in the management and administration of the Fund.

Application.

(2) The application of these regulations shall be guided by Article 96 of the Constitution which requires the Senate to oversight county governments and protect their interests.

#### PART II—ESTABLISHMENT OF THE FUND

5. (1) There is established a Fund, the Senate Monitoring and Evaluation Fund.

Establishment of the Fund.

(2) The Fund shall be utilized to carry out monitoring and evaluation activities in exercise of the Senate's oversight function over county governments.

6. The Fund shall consist of —

- (a) monies appropriated under the Commission's Budget for monitoring, evaluation and impact assessment;
- (b) grants and donations to the Fund received through the Commission; and
- (c) any other lawful sources.

Sources of the Fund.

7. (1) The object of the Fund is to facilitate a Senator to carry out monitoring and evaluation activities in exercise of the Senate's oversight role over county governments in accordance with Article 96 of the Constitution.

Objects of the Fund.

(2) Without prejudice to subparagraph (1), the Fund shall be utilized in—

- (a) undertaking county expenditure tracking surveys;
- (b) promoting citizen engagement on issues affecting the counties by undertaking civic education and community sensitization;

- (c) initiating a partnership approach with stakeholders at the county level to ensure a strong and more strategic focus on community development;
- (d) undertaking research, studies and surveys on various thematic areas affecting counties;
- (e) undertaking social auditing of development projects being undertaken in the counties;
- (f) tracking and monitoring development activities in the counties; and
- (g) any other monitoring and evaluation activity relevant to the Senator's mandate.

(3) A nominated Senator shall carry out the monitoring and evaluation activities in sub paragraph (2) at the national level in respect of the interest that the Senator represents in the Senate.

(4) Despite sub paragraph (3), a nominated Senator may perform the following functions in the utilization of the Fund —

- (a) evaluate programmes that promote and protect the full enjoyment of human rights of women, youth and persons with disabilities by involving them in decision-making processes in all policies and programmes; and
- (b) initiate and maintain effective public awareness campaigns designed to promote greater social awareness towards women, youth and persons with disabilities.

8. The minimum allocation to the Fund shall be one billion shillings provided under the Commission's budget for every financial year, provided that the allocation shall be reviewed upwards from time to time.

Initial allocation

9. The allocation to the Fund shall be utilized as follows —

Allocation of the Fund

- (a) a one percent (1%) administration fee shall be charged on the total fund allocated and shall be retained by the Commission for purposes of facilitating administrative functions of the Fund;
- (b) a one percent (1%) of the total fund allocation shall be set aside by the Commission for capacity building of the Senators and their staff;
- (c) a six percent (6%) of the total fund allocated shall be set aside for the nominated Senators and this amount shall be divided equally among the nominated Senators; and
- (d) the balance shall be shared among the elected Senators according to the formula provided for in Second Schedule of these regulations.

#### PART III—ADMINISTRATION OF THE FUND

10. (1) The Fund shall be administered through the Senate Monitoring and Evaluation Office established by the Commission.

Administration of the Fund.

(2) The Accounting Officer shall in writing, appoint an employee of the Commission as the Administrator of the Fund.

11. (1) The Administrator of the Fund shall—

- (a) consult with the Accounting Officer and the Committee on matters relating to the administration of the Fund;
- (b) cause to be kept proper books of accounts and other books and records in relation to the Fund, of all activities and undertakings financed by the Fund;
- (c) consolidate the required reports under these regulations and submit them to the Committee; and
- (d) carry out any other duties assigned by the Accounting Officer.

Functions of the Administrator.

(2) The Administrator may in writing, delegate to an employee of the Commission to exercise any of the administrator's powers or the performance of any of the functions under these regulations.

(3) The Accounting Officer shall ensure that the Senate Monitoring and Evaluation Office is resourced with requisite personnel for purposes of the day to day operations and handling of matters related to the management of the Fund.

(4) The Accounting Officer shall open, maintain and manage a separate account with a reputable bank where the monies due to the Fund shall be kept.

(5) The disbursement of monies out of the Fund to the recipients shall be bi-annual.

(6) The Accounting Officer shall with the approval of the Committee established under Regulation 12, introduce additional administrative measures from time to time for effective operation of the Fund.

#### PART IV—ESTABLISHMENT OF A COMMITTEE

12. The Senate shall in accordance with its Standing Orders, establish a Committee known as the Senate Monitoring and Evaluation Committee consisting of a Chairperson and not more than eight other members to oversight the kitty.

Establishment of the Senate Monitoring and Evaluation Committee.

13. The Accounting Officer or the Accounting Officer's representative shall be the secretary to the Committee.

The Accounting Officer.

14. (1) The Committee shall—

- (a) consider the bi-annual disbursements out of the Fund;
- (b) receive reports on the performance of the Fund from the Administrator;
- (c) examine the monitoring programmes being undertaken by the recipients of the Fund;
- (d) prepare and submit an annual report on the operations and performance of the Fund to the Senate; and

Functions of the Committee.



(e) perform any other function as the Senate may approve.

(2) The business and the affairs of the Committee shall be conducted in accordance with the Senate Standing Orders.

#### PART V—FINANCIAL PROVISIONS

15. The receipts, earnings, and accruals to the Fund and the balance of the Fund at the close of each financial year, shall be retained by the Fund for use for the purpose for which the Fund is established.

Receipts and earnings to be retained.

16. The Accounting Officer shall cause to be kept all proper books and records of accounts of the income, expenditure and liabilities associated with the Fund.

Accounts and records.

17. Within a period of three months after the end of each financial year, the Accounting Officer shall submit to the Commission the accounts of the Fund showing —

Financial statements.

(a) a statement of income and expenditure during that year; and

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

18. (1) The Administrator of the Fund shall within two months after the end of each financial year, prepare and submit to the Accounting Officer a report of the operations of the Fund for the preceding year.

Report on operations of Fund.

(2) The Accounting Officer shall submit the report under sub paragraph (1) to the Committee for information.

19. Procurement works and services relating to activities under these regulations shall be governed by the Public Procurement and Asset Disposal Act, 2015.

Procurement services.

20. An account approved by the Commission shall be opened with a reputable commercial bank at the nearest location from the county office.

Opening a bank account.

21. At the commencement of every financial year, the county monitoring and evaluation office manager shall be issued with an Authority to Incur Expenditure by the Clerk in that financial year.

Source of finance.

22. The signatories to the account opened pursuant to regulation 20 shall be —

Signatories of cheques.

(a) the county monitoring and evaluation office manager whose signature shall be mandatory; and

(b) two other signatories appointed by the Senator for that purpose.

#### PART VI—OFFICES AND STAFFING FOR PURPOSES OF MONITORING AND EVALUATION

23. A Senator shall utilize existing structures in the County Office for purposes of administrative activities in undertaking monitoring and evaluation.

Monitoring and Evaluation offices.

24. (1) A Senator shall recruit for purposes of monitoring and evaluation the following staff to serve in the county office --

Monitoring and evaluation staff

- (a) the county monitoring and evaluation office manager; and
- (b) the monitoring and evaluation officer.

(2) A Senator may recruit additional staff as may be necessary but subject to the ceiling of staff salaries approved by the Commission.

25. (1) A member of staff recruited under regulation 24 shall --

Terms of service

- (a) not hold any position in a political party; and
- (b) sign a contract of employment which shall be submitted to the Clerk.

(2) A member of staff may at any time give one month's notice before resignation from employment or surrender one month's salary in lieu of notice.

26. The county monitoring and evaluation office manager shall--

County monitoring and evaluation office manager

- (a) be the officer in charge of the administrative and institutional management of the finances allocated for monitoring and evaluation;
- (b) avail to the Clerk bi-annually, copies of bank statements and any other financial records from the Senator's allocation;
- (c) make purchases as may be necessary to effectively enable monitoring and evaluation;
- (d) ensure that the money available is spent in conformity with existing government financial regulations to facilitate quick, efficient and effective delivery of services;
- (e) in writing, keep the Senator informed about the transactions of the monitoring and evaluation bank account; and
- (f) perform any other duties as may be assigned by the Senator from time to time.

27. The monitoring and evaluation officer shall--

Monitoring and evaluation officer.

- (a) implement monitor and evaluate programs in line with the objectives of the Fund; and
- (b) perform any other duties as may be assigned by the Senator from time to time.

PART VII—MISCELLANEOUS PROVISIONS

28. When the office of a Senator falls vacant pursuant to Article 103 of the Constitution, the --

Transition

- (a) contract signed between the Senator and the member of staff shall become void; and
- (b) the county monitoring and evaluation office manager shall be responsible for running the office until a new Senator is elected.

29. (1) Upon the gazettelement of a new Senator, the county monitoring and evaluation office manager shall hand over the Commission's property to the Clerk or the Clerk's appointed representative within one month after the gazettelement.

Accounting for  
Commission  
property.

(2) The Clerk shall confirm that all handing over procedures have been complied with before making the final payment of dues, if any

30. Upon winding up of the Fund, the cash balances, assets and liabilities shall be transferred to the Commission.

Winding up of the  
Fund.

31. All assets acquired from the Fund shall remain the property of the Commission and shall vest in the Commission.

Vesting of assets.

#### FIRST SCHEDULE

#### CONDITIONS FOR DISBURSEMENT

The funds shall be disbursed under the following conditions --

1. All disbursements from the Fund to the respective recipients shall be approved and minuted by the Committee;

2. All disbursements from the Fund's main account shall be made through the recipient's bank accounts maintained for every recipient by the Fund administrator;

3. The record of the amounts received by each recipient and the record of the amounts so received shall be submitted to the Committee within 30 days after the close of the financial year and no disbursements for the succeeding financial year shall be made into the accounts until the said records are duly received;

4. The Committee shall set out general conditions and requirements for release of funds from the Fund to ensure efficient and effective management of the Fund;

5. The Committee may impose reasonable requirements including restrictions on a particular recipient and such restrictions or requirements shall be reported together with the returns to be submitted to the Senate;

6. Returns from the first tranche made to a recipient in any financial year must be filed with the administrator of the Fund by the county monitoring and evaluation office manager two months after the close of the first half of the financial year;

7. Returns from the second tranche made to a recipient in any financial year must be filed with the administrator of the Fund by the county monitoring and evaluation office manager two months after the close of the financial year;

8. No disbursement to any recipient will be processed and approved until the administrator of the Fund is satisfied that the required returns have been adequately filed within the timelines set; and

9. The administrator of the Fund shall develop a schedule showing documentation to be submitted upon filing the returns.

## SECOND SCHEDULE

## FORMULA FOR ALLOCATING MONIES AMONG THE ELECTED SENATORS

PARAMETER		WEIGHT (%)
Equal Share	q	47
Population	s	45
Size of County	r	8

$$CA = ((q (BES))/47) + ((r (SC))/TS) + ((s (CP))/TP)$$

Where:

CA - Allocation due to Elected Senator

ES - Equal Share

CP - County population

TP - Total Population

SC - Size of the County

TS - Total Size

q, r, s - parameter weights where:  $q + r + s = 1$  or 100%

Dated the 20th March, 2018.

JUSTIN MUTURI,  
*Speaker of the National Assembly/  
Chairperson, Parliamentary Service Commission.*



## EXPLANATORY MEMORANDUM

27 MAR 2018

### PART I

**Name of Statutory Instrument:** The Public Finance Management (Senate Monitoring and Evaluation) Regulations, 2018

**Name of the Parent Act:** The Public Finance Management Act, No. 18 of 2012

**Enacted Pursuant to:** Section 24 of the Public Finance Management Act, 2012

**Name of the Ministry/Authority:** Parliamentary Service Commission

### PART II

#### 1. Purpose of the Statutory Instrument

To provide a legal framework for the establishment, administration and disbursement of the Senate Monitoring and Evaluation Fund and to facilitate Senators to carry out monitoring and evaluation and impact assessment activities at the county level in the context of Article 96 of the Constitution.

#### 2. Legislative Context

Article 96 of the Constitution provides for the role of the Senate. In particular, Article 96(1) provides that “*the Senate represents the counties, and serves to protect the interests of the counties and their governments*”. Article 96(3) of the Constitution further requires the Senate to “*.....exercise oversight over national revenue allocated to the county governments*”.

Pursuant to these provisions of the Constitution, the statutory instrument is intended to provide a legal framework that establishes mechanisms to facilitate the Senate in the effective execution of its oversight mandate over the county governments as part

of its broader mandate of protecting the interests of the counties and their governments.

### 3. Policy Background

While Article 96(3) of the Constitution mandates the Senate to provide oversight over national revenue allocated to county governments, it is important to observe that there does not exist any legal framework that establishes a mechanism that would facilitate the Senate in the discharge of this function.

The Public Finance Management (Senate Monitoring and Evaluation) Regulations are intended to provide this framework.

Part I of the Regulations provides for general provisions on the Fund. Part II provides for the establishment of the Fund.

Regulation 5(1) establishes the Senate Monitoring and Evaluation Fund which is to be utilized to *“carry out monitoring and evaluation activities in the exercise of the Senate’s oversight function over county governments”*. The object of the Fund as set out in regulation 7 is to provide funds to Senators to carry out monitoring and evaluation activities in exercise of the Senate’s oversight role over county governments in accordance with Article 96 of the Constitution.

Regulations 8 and 9 provide for the initial allocation to the Fund and for the distribution of the Fund respectively.

Part III provides for the administration of the Fund which, pursuant to regulation 11(1), is to be administered through the Senate Monitoring and Evaluation Office which is to be established by the Parliamentary Service Commission.

Part IV establishes the Senate Monitoring and Evaluation Committee and sets out its functions while Part V provides for the financial procedures

Part VI sets out the offices and staffing for purposes of monitoring and evaluation. In particular, regulation 23 provides that a Senator shall utilize existing structures in the County Office for purposes of administrative activities in undertaking monitoring and evaluation. Regulation 24(1) provides that a Senator shall recruit a county monitoring and evaluation office manager and a monitoring and evaluation officer to serve in the county office. The county monitoring and evaluation office manager shall be in charge of the administrative and institutional management of the finances allocated for monitoring and evaluation while the monitoring and evaluation officer shall be in charge of implementing, monitoring and evaluating programs in line with the objectives of the Fund.

Part VII sets out the miscellaneous provisions regarding the winding up of the Fund, vesting of assets and the handing over of offices, records and other properties by a Senator who ceases to hold office.

The First Schedule sets out the conditions for disbursement of the Fund while the Second Schedule provides for the formula for allocating monies among the elected Senators.

#### 4. Consultation Outcome

The following institutions were consulted during the formulation of the Regulations: the National Treasury, the Parliamentary Budget Office and the Senators. The institutions submitted their views which have since been included in the Regulations.

#### 5. Impact

The Regulations shall have no impact on fundamental rights and freedoms and shall have no impact on the private sector.


The Regulations will enable the Senate to effectively provide oversight over national revenue allocated to the county governments in the manner set out in regulation 7(2) by —

- (a) undertaking county expenditure tracking surveys;
- (b) promoting citizen engagement on issues affecting the counties by undertaking civic education and community sensitization;
- (c) initiating a partnership approach with stakeholders at the county level to ensure a strong and more strategic focus on community development;
- (d) undertaking research, studies and surveys on various thematic areas affecting counties;
- (e) undertaking social auditing of development projects being undertaken in the counties;
- (f) tracking and monitoring development activities in the counties; and
- (g) performing any other monitoring and evaluation activity relevant to the Senator's mandate.

6. Monitoring and Evaluation

The Regulations are intended and expected to enhance the Senate's execution of its oversight mandate as set out under Article 96(3) of the Constitution. The Regulations are further intended to enhance the monitoring, evaluation and impact assessment activities by the Senate at the county level.

The effective implementation of these Regulations is expected to enhance accountability and prudent use of resources allocated to county governments.

  
J. M. NYEGENYE, CBS,  
CLERK OF THE SENATE/SECRETARY,  
PARLIAMENTARY SERVICE COMMISSION.




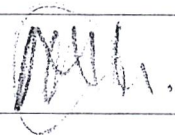
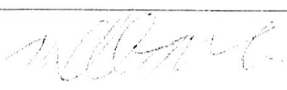
## COMMITTEE ON DELEGATED LEGISLATION




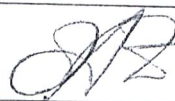
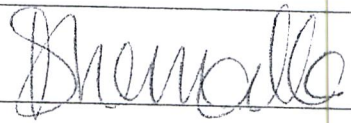


### ADOPTION LIST

#### REPORT ON THE ADOPTION OF THE REPORT ON THE PUBLIC FINANCE MANAGEMENT (SENATE MONITORING AND EVALUATION) REGULATIONS, 2018

We, the undersigned, hereby affix our signatures to this Report to affirm our approval:

DATE: 26/04/2018

	HON. MEMBER	SIGNATURE
1.	Hon. Gladys Boss-Shollei, MP (Chairperson)	
2.	Hon. Fatuma Ali Gedi, MP (Vice Chairperson)	
3.	Hon. Alfred Sambu, MP	
4.	Hon. Isaac Waihenya Ndirangu, MP	
5.	Hon. Robert Mbui, MP	
6.	Hon. Alice Wahome, MP	
7.	Hon. Daniel Maanzo, MP	
8.	Hon. Muriuki Njagagua, MP	
9.	Hon. Martha Wangari, MP	
10.	Hon. Timothy Wanyonyi, MP	

	HON. MEMBER	SIGNATURE
11.	Hon. William Kamoti, MP	
12.	Hon. Patrick Kariuki Mariru, MP	
13.	Hon. Ronald Kiprotich Tonui, MP	
14.	Hon. William Kamket Kassait, MP	
15.	Hon. Munene Wambugu, MP	
16.	Hon. Charles Gimose, MP	
17.	Hon. Abdi Tepo, MP	
18.	Hon. George Gitonga Murugara, MP	
19.	Hon. Jennifer Shamalla, MP	
20.	Hon. Muturi Kigano, MP	
21.	Hon. (Dr.) Wilberforce Oundo, MP	
22.	Hon. Sammy Seroney, MP	

MINUTES OF THE 30<sup>TH</sup> SITTING OF THE COMMITTEE ON DELEGATED  
LEGISLATION HELD ON SATURDAY, 21<sup>ST</sup> APRIL, 2018, AT 2.00 P.M. IN THE  
LEISURE HOTEL, BOARD ROOM, DIANI, KWALE COUNTY

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**PRESENT**

Hon. George Gitonga Murugara, MP - (Chaired Meeting)  
Hon. Robert Mbui, MP  
Hon. Jennifer Shamalla, MP  
Hon. Alice Wahome, MP  
Hon. William Kamoti, MP  
Hon. Isaac Waihenya Ndirangu, MP  
Hon. Muriuki Njagagua, MP  
Hon. Ronald Kiprotich Tonui, MP  
Hon. Munene Wambugu, MP  
Hon. Sammy Seroney, MP

**ABSENT WITH APOLOGY**

Hon. Gladys Boss Shollei, CBS, MP - Chairperson  
Hon. Fatuma Gedi, MP - Vice Chairperson  
Hon. Daniel Maanzo, MP  
Hon. Abdi Koropu Tepo, MP  
Hon. (Dr.) Wilberforce Oundo, MP  
Hon. William Kamket Kassait, MP  
Hon. Timothy Wanyonyi, MP  
Hon. Charles Gimose, MP  
Hon. Martha Wangari, MP  
Hon. Alfred Sambu, MP  
Hon. Patrick Kariuki Mariru, MP  
Hon. Muturi Kigano, MP

**IN-ATTENDANCE**

**National Assembly Secretariat**

Ms. Susan Maritim - First Clerk Assistant  
Mr. Jimale Mohamed - Third Clerk Assistant  
Mr. Dima Dima - Senior Legal Counsel  
Ms. Ann Kigoro - Research and Policy Analyst  
Mr. Gorod Abdi - Fiscal Analyst  
Mr. Charles Ayari - Audio Officer

MIN.NO. CDL/180/2018:

PRAYER & PRELIMINARIES

Hon. George Murugara, MP continued to chair the meeting as earlier resolved by the Members present. He thereafter called the meeting to order at 2.20 p.m. followed by the Prayer.

MIN.NO. CDL/182/2018:

CONFIRMATION OF MINUTES OF PREVIOUS MEETING

Confirmation of minutes of the previous meeting was deferred to the next sitting.

MIN.NO. CDL/183/2018:

CONSIDERATION OF PUBLIC FINANCE MANAGEMENT (SENATE MONITORING AND EVALUATION) REGULATIONS, 2018

The Committee considered the Public Finance Management (Senate Monitoring and Evaluation) Regulations, 2018 (*Legal Notice No. 71*). The Regulations were gazetted on 21<sup>st</sup> March 2018 and tabled before the National Assembly for legislative processing on 27<sup>th</sup> March 2018 and pursuant to section 12 (1) of the Statutory Instrument Act, (*No 23 of 2013*), referred to the Committee on Delegated Legislation.

The Chairperson thereafter welcomed the Fiscal Analyst from the Parliamentary Budget Office to make a presentation on Regulations.

**Brief from the Parliamentary Budget Office**

1. The Regulations are meant to provide for the establishment and operationalization of a Fund in exercise of the Senate's oversight function over county governments. The Regulations will thus facilitate Members of the Senate to undertake monitoring and evaluation of county programmes and projects implemented at the counties and other relevant functions in view of Art. 96 of the Constitution which requires the Senate to oversee national revenue allocated to county governments.
2. In addition, the Regulations seek to establish the Senate Monitoring and Evaluation Committee and which shall also be guided by the Regulations with respect to the administration, disbursement and management of the Fund to ensure effectiveness and efficiency. The legal Instrument provides for: sources of funding and guide on the administration, management and financial provisions as relates to the Fund.
3. The main source of funding to the Fund is allocation through approved appropriations under the budget of the Parliamentary Service Commission with a provision for a minimum allocation of Kshs. 1 billion every financial year. It also states for upward revision of the threshold from time to time. Other sources provide for options from donations and gifts through the Commission as well as other lawful sources.
4. Part I to IV of the Regulations provides for purpose of the Regulation and thus forming a legal basis to guide the Senate Committee on Monitoring and Evaluation in the oversight of the Fund and other related activities under the Fund. The proposed Regulations will provide a sufficient level of legal and fiscal detail for the Committee to administer, disburse



and manage the Fund in supporting the oversight role of Senate and also guide other key stakeholders.

5. In strengthening monitoring and oversight mechanisms over county performance, the key mandate of the Fund includes: undertaking expenditure tracking surveys; promoting citizen engagement on issues affecting counties (through civic education and sensitization); initiating partnership approach with stakeholders to strengthen community development; undertaking research ,studies and surveys on various thematic areas affecting counties; social auditing and tracking and monitoring development at the counties.
6. For the case of nominated senators, the Regulations mandates them to undertake such activities of monitoring and evaluation with a focus at the national level in line with the respective area of representation/interest and evaluate programs focusing on youth women and persons with disabilities and initiating and maintaining public awareness on such programmes.
7. The allocation is provided as follows –
  - a) 1% administrative fee as a charge on the fund towards administrative expenses
  - b) 1% of the fund value towards capacity building and training of Senators and their staff
  - c) 6% of the fund value towards nominated senators and shared equally to cater for the activities of monitoring and evaluation as specified by the regulations
  - d) the ‘balance’ shared equitably among the elected Senators.
8. Regulations 10 – 11 (administration of the Fund) provides for establishment of the Senate Monitoring and Evaluation Office by the Commission with a view of administering the fund through an Administrator appointed by the Accounting Officer in writing. The Administrator, in addition to consulting with Accounting officer and the Committee on administration of the Fund, shall also ensure proper books of accounts and all other records are kept and consolidating all required reports and any other duties assigned by the Accounting Officer.
9. It also provides for disbursement of the fund to the recipients twice a year.
10. Further, the accounting officer is mandated to introduce administrative measures to ensure effective administration of the Fund.
11. Regulations 12 – 14 provides for the establishment of Senate Monitoring and Evaluation Committee with membership of not more than nine members inclusive of the Chairman and the Accounting Officer or representative being the Secretary to the Committee.
12. The Financial Provisions in Regulations 15 – 22 provides that appropriations and all such monies under the Fund is to be used for the purpose for which the Fund was established. This part states that the accounting officer shall ensure proper accounts and records pertaining to the fund and its activities were kept and in addition mandates the accounting

officer to submit to the Commission statement of income and expenditure and statement of assets and liabilities.

13. The County Monitoring and Evaluation Office Manager shall be issued with Authority to Incur Expenditure at the County level.
14. Regulations 23 – 26 provides for the modalities and use of offices facilities and personnel to facilitate senators to carry out the object and functions of the Fund. However, the existing structures and offices at county level are to be utilized mainly for administrative activities. For effective monitoring and evaluation, the regulations under this part also provides for senators to recruit the following officers, whose contracts are to be submitted to the Clerk, to serve at the county:
  - a) County Monitoring and Evaluation Office Manager;
  - b) Monitoring and Evaluation Officer;
  - c) Additional staff subject to limit provided by the Commission.
15. Part VII of the Regulations on Miscellaneous Provisions 28 – 31 provides for accounting for Commission’s property where the County Monitoring and Evaluation Office Manager shall handover in case of a vacancy in the Senator’s office and during transition. It further provides for the winding up of the Fund and vests all asset of the Fund to the Commission.
16. To ensure effective disbursement and accountability, the Regulations further guide that:
  - (i) all funds disbursed must be approved by the Committee;
  - (ii) Committee to set general conditions for release of funds for purpose of ensuring timely and effective release;
  - (iii) filing of returns after every disbursement, failure to which no subsequent disbursement is made in cases of non-compliance or lack of satisfactory returns;
  - (iv) returns are made two months after every release based on the bi-annual disbursements, among others.

#### Areas of Concern

The PBO noted the following areas of concern for the Committee to consider –

- (i) under Paragraph 2 of the Regulations, ‘bank account’ is defined as an account opened at a commercial bank for purposes of monitoring and evaluation. It is not clear whether the bank account is with respect to accounts of the main Fund or the various other sub accounts for purposes of monitoring and evaluation including accounts to be opened by recipient for the same purpose. There’s need for clarity on the term ‘bank account’ and whether to consider the option of banking the main Fund at the Central Bank of Kenya.
- (ii) The provision on the disbursement of funds to recipients twice a year may require stating clear timelines. This is important taking into account the need for work and cash flow planning and in-year reporting requirements as well as in-year financial accountability and end of year timelines for financial accounts submission and auditing.

- (iii) The provision for bank account opening approved by the Commission needs to be harmonized with provision under sub-paragraph 10(5) on transfers of funds to the recipients and paragraph 20 on the bank accounts to be opened at county level for clarity and consistency.
- (iv) The PFM Regulations provide for issuance of Authority to Incur Expenditure (AIE) for purpose of vote control procedure. In addition to designation or appointment of an Authority to Incur Expenditure (AIE) holder at the beginning of the year, there is need to state if the issuance is to be done quarterly or semi-annually.
- (v) While the County Monitoring and Evaluation Officer and Monitoring and Evaluation Officer have been provided at the county level, it is not clear for the case of non-elected/nominated senators tasked with similar oversight mandate of as per sub paragraph 7(4). In addition, there is need for filing returns more frequently as the current provision of filing returns twice a year may not offer adequate in-year reporting on the performance of the disbursements and monitoring activities. It is recommended that submission be made quarterly as provided in the Principal Act.

#### Committee Observations

Following scrutiny of the Regulations, the Committee observed that –

- i. the regulation-making authority, i.e., the Parliamentary Service Commission complied with section 11 (1) on submission of instruments to the relevant Clerk for tabling before Parliament within the statutory timeline of seven (7) sitting days. In this respect, the Regulations were published on 21<sup>st</sup> March, 2018, submitted to the Clerk of the National Assembly on 23<sup>rd</sup> March, 2018 and subsequently tabled on 27<sup>th</sup> March, 2018. This was within the statutory timeline contemplated under section 11(1) of the Statutory Instruments Act;
- ii. the Regulations are inconsistent with Section 205 of the of the Public Finance Management Act, 2012 which empowers the Cabinet Secretary to make Regulations pursuant to the Act (PFM Act, 2012). The Parliamentary Service Commission can therefore not make Regulations pursuant to the PFM Act, 2012. Similarly, the Regulations are contrary to section 24(2) of the Statutory Instruments Act, 2013 which provides that a statutory instrument should not be inconsistent with the provisions of the enabling legislation.
- iii. the regulation-making authority did not undertake adequate public participation, contrary to Articles 10 and 118 of the Constitution of Kenya on public participation, read together with Sections 5 and 11 (2) of the Statutory Instruments Act, 2013. The Explanatory Memorandum (EM) submitted alongside the



Regulations indicates that the Commission only consulted the National Treasury, the Parliamentary Budget Office and the Senators. Members of the National Assembly were not consulted;


- iv. are discriminatory to the extent that they do not provide for facilitation of all Members of Parliament to undertake Monitoring and Evaluation as envisaged in Section 24 (1) of the PFM Act, 2012. Article 93 of the Constitution of Kenya establishes Parliament as both the National Assembly and the Senate. The Public Finance Management (Senate Monitoring and Evaluation) Regulations, 2018 seeks to establish a Monitoring and Evaluation Fund specific only to the Senate thereby excluding Members of the National Assembly, who also require similar facilitation to effectively undertake their oversight role.

#### Committee Resolution

Having considered the Public Finance Management (Senate Monitoring and Evaluation) Regulations, 2018 against the Constitution, the Public Finance Management Act, 2012, the Statutory Instruments Act, (No. 23 of 2013) and the Interpretation and General Provisions Act, (Chapter 2) which regulate the making, scrutiny and publication of the Regulations, the Committee recommends that pursuant to Standing Order 210 (4) (b) and section 15 (1) of the SI Act, the Public Finance Management (Senate Monitoring and Evaluation) Regulations, 2018 be annulled in entirety.

MIN.NO. CDL /184/2018:                      ADJOURNMENT

There being no other business, the meeting was adjourned at 3.30 pm.

For  
Signed:.....

Date: 26/4/2018

HON. GLADYS BOSS-SHOLLEI, CBS, MP  
(CHAIPERSON)