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REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT - THIRD SESSION -2024
SELECT COMMITTEE ON BUDGET AND APPROPRIATIONS

REPORT ON
THE CONSIDERATION OF THE DIVISION OF
REVENUE (AMENDMENT) BILL, 2024

The Clerk's Chambers
National Assembly
Parliament Buildings
NAIROBI

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 06 AUG 2024	DAY: TUE
TABLED BY:	HON. NDIRI NYORO, MP CHAIRPERSON, BAC
CLERK-AT-THE-TABLE:	INZOFU MWAKE

AUGUST, 2024

NATIONAL ASSEMBLY
RECEIVED
06 AUG 2024
SPEAKER'S OFFICE
P. O. Box 41842, NAIROBI

Table of Contents

CHAIRPERSON’S FOREWORD ii

ACKNOWLEDGEMENTS iii

PREFACE..... 1

 Establishment and Mandate of the Committee 1

 Membership of the Committee..... 1

 Committee Secretariat 3

 Technical Staff from the Parliamentary Budget Office 3

1.0 Introduction 4

2.0 The Contents of the Division of Revenue (Amendment) Bill, 2024..... 4

3.0 Analysis of the changes in the Division of Revenue (Amendment) Bill,2024..... 5

4.0 Submissions from the public on the Division of Revenue (Amendment)Bill, 2024..... 6

5.0 Committee Observations..... 10

6.0 Committee Recommendation..... 11

CHAIRPERSON'S FOREWORD

The Division of Revenue (Amendment) Bill, 2024 was prepared following the failure to enact the Finance Bill, 2024 into law. H.E. the President, while assenting to the Appropriation Act, 2024, directed the National Treasury to prepare a revised budget for the FY 2024/25 to reduce expenditure by the amount of revenue that was expected to be generated by the Finance Bill, 2024. The revenue-raising measures contained in the Finance Bill, 2024 were projected to raise an estimated Ksh.346 billion in revenue. Consequently, due to the revised revenue projections, the two government levels should bear the reduction in expenditure equitably.

The Division of Revenue (Amendment) Bill, 2024 therefore seeks to amend the Division of Revenue Act (DORA), 2024 to provide for equitable sharing of the revenue raised nationally between the national and county governments, taking into account the downward revision of projected ordinary revenue collection for the FY 2024/25. The Bill addresses this by amending Section 5 of the Act, as well as deletion and replacement of Schedule No.5 as contained in the Act.

The Division of Revenue Act, 2024 provides for the sharing of revenue raised nationally between the national government and county governments for the Financial Year 2024/25 as per Articles 202, 203(2), and 218 of the Constitution. It contains a projected shareable revenue of **Kshs. 2,948,123,505,58**: out of which the equitable share to the county governments is **Ksh.400,116,788,147**, that of the National Government is **Kshs. 2,540,153,902,710** and the Equalization Fund is allocated **Kshs. 7,852,814,725**.

The changes and allocations as proposed in the Division of Revenue (Amendment) Bill, 2024 indicate a total sharable revenue of **Ksh.2,602.13 billion**. The amount is shared as follows; the National Government is allocated **Ksh.2,214.27 billion**, County equitable share of **Ksh,380 billion**, and the equalisation fund **Ksh.7.8 billion**. It is noted that the National Government is bearing a significant amount of the revenue shortfall amounting to Ksh.325.88 billion which is 94.19 percent of the shortfall while the County governments allocation is reduced by Ksh.20.12 billion from the initial allocation of Ksh.400.12 billion to an allocation of Ksh.380 billion. This revised allocation of Kshs. 380 billion to county governments translates to 24.20 percent of the last audited and approved revenues of government for financial year 2020/21(Kshs. 1,570.6 billion).The allocation meets the Constitutional threshold of fifteen (15) percent as per Article 203(2).

It is further noted that the County Allocation of Revenue Bill 2024 was not assented to since it was preceded by the referral of the Finance Bill, 2024 back to parliament and the subsequent requirement to amend the Division of Revenue Act, 2024 to reflect the reduced revenue projections. To this end, the County Allocation of Revenue Bill 2024 is before Parliament awaiting consideration to reflect the sharing of Ksh.380 billion among the County governments. This means that there is an urgent need for Parliament to fast-track the processing of the Division of Revenue Bill, 2024 to pave way for consideration of the Presidential reservations on the County Allocation of Revenue Bill 2024.

Committee Recommendation

The Committee having considered, reviewed, and examined the Division of Revenue (Amendment) Bill, 2024 recommends that the House approves the Bill **without amendments.**

ACKNOWLEDGEMENTS

The Budget and Appropriations Committee is grateful to the Office of the Speaker of the National Assembly, the Office of the Clerk of the National Assembly, and the Parliamentary Budget Office for the support extended in fulfilling this mandate of reviewing the Division of Revenue (Amendment) Bill, 2024. The Committee takes note and appreciates the members of the public who submitted their views on the proposed amendments, which has helped to enrich the entire process.

On behalf of the Committee and pursuant to Standing Order 199(6), it is my pleasant duty and privilege to table the Report and recommend it to the House for adoption.

SIGNED

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HON. NDINDI NYORO, CBS, M.P.

CHAIRPERSON, THE BUDGET AND APPROPRIATIONS COMMITTEE

Handwritten date

.....

DATE

PREFACE

Establishment and Mandate of the Committee

1. Article 221 (4) of the Constitution and Section 7 of the Public Finance Management Act, 2012 provide for the establishment of a Committee of the National Assembly whose main role is to take the lead in budgetary oversight by the National Assembly. Pursuant to this constitutional provision, Standing Order 207 establishes the Budget and Appropriations Committee with specific mandates as follows:
 - i. Examine the Division of Revenue Bill
 - ii. Investigate, inquire into and report on all matters relating to coordination, control and monitoring of the national budget;
 - iii. Discuss and review the budget estimates and make recommendations to the House;
 - iv. Examine the Budget Policy Statement presented to the House;
 - v. Examine bills related to the national budget including appropriation bills; and
 - vi. Evaluate tax estimates, economic and budgetary policies and programmes with direct budget outlays;

Membership of the Committee

2. Pursuant to Standing Order 207(2), the Budget and Appropriations Committee as currently constituted comprises of the following Honourable Members:

CHAIRPERSON

Hon. Ndindi, Nyoro, CBS, M.P.

Kiharu Constituency

UDA PARTY

VICE CHAIRPERSON

Hon. Otucho, Mary Emaase, M.P.

Teso South Constituency

UDA PARTY

MEMBERS

Hon. Chumel, Samwel Moroto, CBS, M.P.

Kapenguria Constituency

UDA PARTY

Hon. Odhiambo, Millie Grace Akoth, CBS, M.P.

Suba North Constituency

ODM PARTY

Hon. Mulu, Makali, PhD, M.P.

Kitui Central Constituency

WDM - Kenya

Hon. Lekuton, Joseph, M.P.

Laisamis Constituency

UDM PARTY

Hon. Lesuuda, Josephine Naisula, OGW, M.P.
Samburu West Constituency
KANU PARTY

Hon. Ochieng, David Ouma, M.P.
Ugenya Constituency
MDG PARTY

Hon. Shinali, Bernard Masaka, M.P.
Ikolomani Constituency
ODM PARTY

Hon. Atandi, Samuel Onunga, M.P.
Alego Usonga Constituency
ODM PARTY

Hon. Mejjadonk, Benjamin Gathiru, M.P.
Embakasi Central Constituency
UDA PARTY

Hon. Wachira, Rahab Mukami, M.P.
Nyeri County
UDA PARTY

Hon. (Dr.) Ongili, Babu Owino Paul, M.P.
Embakasi East Constituency
ODM PARTY

Hon. Guyo, Ali Wario, M.P.
Garsen Constituency
ODM PARTY

Hon. Busia, Ruth Adhiambo Odinga, M.P.
Kisumu County
ODM PARTY

Sergon, Flowrence Jematiah, M.P.
Baringo County
UDA PARTY

Hon. Abdirahman Mohamed Abdi, M.P.
Lafey Constituency
Jubilee Party

Hon. Robi, Mathias Nyamabe, M.P.
Kuria West Constituency
UDA PARTY

Hon. Muchira, Michael Mwangi, M.P.
Ol Jorok Constituency
UDA PARTY

Hon. Mwakuwona, Danson Mwashako, M.P.
Wundanyi Constituency
WDM – Kenya

Hon. Mwirigi, John Paul, M.P.
Igembe South Constituency
UDA PARTY

Hon. Wangaya, Christopher Aseka, M.P.
Khwisero Constituency
ODM PARTY

Hon. (Dr.) Masara, Peter Francis, M.P.
Suna West Constituency
ODM PARTY

Hon. Wanjiku, John Njuguna, M.P.
Kiambaa Constituency
UDA PARTY

Hon. Murumba, John Chikati, PhD, M.P.
Tongaren Constituency
FORD-Kenya

Hon. Kitilai, Ole Ntutu, M.P.
Narok South
Independent

Hon. Mokaya, Nyakundi Japheth, M.P.
Kitutu Chache North Constituency
UDA PARTY

Committee Secretariat

3. The Committee Secretariat is comprised of the following officers:

Mr. Danson Kachumbo
Senior Fiscal Analyst/ Lead Clerk

Mr. Ringine Mutwiri
Fiscal Analyst/ Committee Clerk

Ms. Sylvia Ocharo
Senior Policy Analyst

Mr. Moses Mwariri
Legal Counsel

Mr. Simon Ouko
Serjeant-at-arms

Ms. Fridah Ngari
Media Relations

Mr. Nimrod Ochieng
Audio Officer

Mr. Jared Amara
Office Assistant

Ms. Shamsa Abdi
Research Officer

Technical Staff from the Parliamentary Budget Office

4. The Committee received technical support from the following officers from the Parliamentary Budget Office.

Dr. Martin Masinde
Director, Parliamentary Budget Office

Mr. Robert Nyagah
Ag. Senior Deputy Director, PBO.

1.0 Introduction

1. The Division of Revenue (Amendment) Bill, 2024 was published on 12th July 2024 and tabled in the National Assembly on 24th July 2024. Consequently, the Bill was Committed to the Select Committee on Budget and Appropriations for consideration and reporting to this House. The Bill seeks to amend the Division of Revenue Act (DORA), 2024 to provide for equitable sharing of the revenue raised nationally between the national and county governments, taking into account the downward revision of projected ordinary revenue collection for the FY 2024/25.
2. The anticipated shortfall in revenue collection in FY 2024/25 is occasioned by the failure to enact the Finance Bill, 2024 into law. The president referred the Finance Bill, 2024 for reconsideration by the National Assembly, proposing deletion of all the clauses in the Bill, of which Parliament agreed with the presidential reservations. The Finance Bill contained revenue-raising measures that would support government expenditure; hence the failure to enact it translates to a revenue collection deficit. This necessitated the reorganization and rationalization of the Government's financial arrangements for the FY 2024/25.
3. The Division of Revenue Bill was assented to on 10th June 2024 after an agreed version of the Bill was passed by both Houses of Parliament following the conclusion of a mediation process on the Bill in accordance with the provisions of Articles 112(2)(b) and 113 of the Constitution. The Division of Revenue Act, 2024 was then gazetted on 11th June 2024 and given a commencement date of 25th June 2024.
4. The Act provides for the sharing of revenue raised nationally between the national government and county governments for the Financial Year 2024/25 as per Articles 202, 203(2) and 218 of the Constitution. It contains a projected shareable revenue of Kshs. **2,948,123,505,58**: out of which the equitable share to the county governments is **Ksh.400,116,788,147**, that of the National Government is **Kshs. 2,540,153,902,710** and the Equalization Fund is allocated **Ksh. 7,852,814,725**.
5. The equitable share allocated to county governments in the Division of Revenue Act, 2024 is equivalent to 25.48 percent of the most recent audited revenues (i.e Ksh. 1,570,562,945,014 of FY 2020/21) as approved by the National Assembly, as required under Article 203(2) of the Constitution. Further, the allocation to the Equalisation Fund is one-half percent (0.5%) of the shareable revenue under the provisions of Article 204 of the Constitution.

2.0 The Contents of the Division of Revenue (Amendment) Bill, 2024.

6. The purpose and object of the Bill is to amend the Division of Revenue Act, 2024 to provide for equitable sharing of the revenue raised nationally between the national and county governments, taking into account the downward revision of projected ordinary revenue collection. The Bill addresses this by amending Section 5 of the Act, and deletion and replacement of Schedule No.5 of 2024 as contained in the Act.

7. The changes proposed in the Bill compared to the provisions in the Division of Revenue Act, 2024 are as follows:

<u>Section provision in the DORA, 2024</u>	<u>Proposed Amendment</u>	<u>Rationale</u>
Section 5(1): if the actual revenue raised nationally in the financial year falls short of the expected revenue set out in the Schedule, the shortfall shall be borne by the national government.	Deletion of subsection 5(1) and replacing therefor with, <i>"If the actual revenue raised nationally in the financial year 2024/25 falls short of the expected revenue set out in the Schedule, the shortfall shall be borne by both the national government and the county governments equitably."</i>	This is to provide for a revenue collection shortfall to be borne by both levels of government in FY 2024/25.
New sub clause 5(1A)	Inserting new sub-clause 5(1A) immediately after sub-clause 5(1): <i>"Notwithstanding the generality of subsection (1), the proportion of the shortfall to be borne by county governments shall not exceed fifteen percent (15%) of that shortfall"</i>	This is to safeguard the proportion of revenue shortfall to be borne by county governments
Deletion and replacement of schedule No.5 of 2024	<i>The principal Act is amended by deleting the Schedule and substituting therefor the following new Schedule</i>	To provide for deletion of the Schedule in the Act and replacing with a new Schedule.

8. The proposed schedule in the Division of Revenue (Amendment) Bill, 2024 divides the revenue raised nationally (total sharable revenue) between the National Government and County governments as follows;

A. Total Sharable Revenue	2,602,123,505,582
B. National Government	2,214,270,690,857
C. Equalization Fund	7,852,814,725
D. County equitable share	380,000,000,000

9. The Schedule indicates that the allocation to the Equalization Fund and the County equitable share is 0.50% and 24.20% respectively of the audited and approved revenue of FY 2020/21 which amounted to Ksh. 1,570,562,945,014.

3.0 Analysis of the changes in the Division of Revenue (Amendment) Bill, 2024

10. Revenue raised nationally for the FY 2024/25 projection has been revised down by Ksh.346 billion (11.74 %) from the initial projected revenue of Ksh. 2,948.12 billion (as contained in the DORA, 2024) to a revised of projection of Ksh. 2,602.12 billion. The Ksh.346 billion downward adjustment is equitably shared between the two levels of government. The National Government share of revenue raised nationally is proposed to be reduced by Ksh.325.88 billion (94.19% of the shortfall) while that of the County governments is reduced by Ksh. 20.12 billion (5.81% of the shortfall). This

implies that the equitable share to county governments reduces from Ksh.400.12 billion to Ksh. 380 billion and that of the National Government from Ksh 2,540.15 billion to Ksh. 2,214.27 billion.

11. The National Government proposed new allocation of Ksh. 2,214.27 billion is 12.83 percent less than what it was allocated in the Division of Revenue Act, 2024. To cover the adjustment, the government has proposed significant changes in the FY 2024/25 approved Budget through a supplementary Budget No. I of FY 2024/25. The revised budget proposes expenditure cuts across all the arms of government including the Executive, the Legislature, the Judiciary, and constitutional commissions.
12. The overall changes in the supplementary budget as tabled in the Parliament indicate a reduction of Ksh.151.2 billion from the Executive arm of government, Ksh. 3.73 billion from the Parliament and Ksh.1.54 billion from the Judiciary. This has necessitated austerity measures across state departments.
13. Under the revised fiscal framework, county governments will receive Ksh.380 billion which is 5.03 percent less than the 400.12 billion contained in the Division of Revenue Act, 2024. Further, the amount (Ksh.380 billion) is Ksh.5 billion less than the Ksh.385.4 billion allocated to counties in FY 2023/24. This means counties are expected to receive on average 1.4 percent less funding as an equitable share from the allocation of FY 2023/24.
14. This revised allocation of Ksh. 380 billion to county governments translates to 24.20 percent of the last audited and approved revenues of the government for the financial year 2020/21(Ksh. 1,570.6 billion). The allocation meets the constitutional threshold of fifteen (15) percent in line with Article 203(2) of the Constitution.

Table 1: Changes in the allocations in Division of revenue, 2024.

Type/level of allocation	DORA, 2024 (Ksh.)	Adjusted allocation	variation	% change
Total Sharable Revenue	2,948,123,505,582	2,602,123,505,582	(346,000,000,000)	(11.74)
National Government	2,540,153,902,710	2,214,270,690,857	(325,883,211,853)	(12.83)
Equalization Fund	7,852,814,725	7,852,814,725	-	-
County equitable share	400,116,788,147	380,000,000,000	(20,116,788,147)	(5.03)

Source: DORA, 2024 & DOR(Amendment)Bill, 2024

4.0 Submissions from the public on the Division of Revenue (Amendment)Bill, 2024

15. The Committee received written submissions from the public while considering the Division of Revenue (Amendment) Bill,2024. **The Bajeti Hub (formerly International Budget Partnership Kenya - IBP Kenya) submitted as follows;**

- i. The National Assembly to reconsider maintaining the allocation toward the Equitable Share at KES 400,116,788,147 as provided for in the Division of Revenue Act, 2024, since the national government has many other avenues to raise revenue, whereas county governments largely rely on the Equitable Share.

The Committee Response: The committee agrees that the National Government has many avenues to raise revenue. However, the Division of Revenue (Amendment) Bill, 2024 was triggered by the failure to enact the Finance Bill, 2024. This means that in the absence of the Finance Act, the National government shall not be able to raise for FY 2024/25. It is also notable that County Governments have avenues for raising their Own Source Revenue through the respective County Finance Acts.

16. The Lake Region Budget Hub submitted as follows;

- i. The allocations towards counties should be retained at Kshs. 400,116,788,147 as approved by the DORA 2024. The reduction of budget to counties has the effect of rendering most essential services to be affected in counties especially health services that are heavily devolved. The national government should bear the reduction of allocation and develop a supplementary budget to cut on the aspect of duplication of programmes and activities, especially for those that are devolved.

Committee Response: The proposed reduction in the equitable share is based on equitable principle as provided in the Constitution while safeguarding critical and essential expenditure across the two levels of government. Whereas the County Governments are bearing only 5.81% (Ksh.20.12 billion) of the shortfall, the National government bears the significant share of the shortfall amounting to Ksh.325.88 billion (94.2 % of the shortfall). Further, the National government has already developed a Supplementary budget to reflect the shortfall in revenue on the approved estimates for FY 2024/25.

- ii. The Division of Revenue (Amendment) Bill 2024 should present a table of trends allocations to the various types of allocation for at least the last two previous financial years. This information is key in informing the growth in revenue to counties and the trends in regard to the percentage share against the total shareable revenue.

Committee Response: The Division of Revenue (Amendment) Bill, 2024 is an 'amendment' to an existing Act (the DORA 2024) which conventionally has never included such trend analysis. That notwithstanding, such trend comparisons are available or can be obtained from the National Treasury as per the requirement of the law.

- iii. The sharable revenue must reflect the most recent revenue status based on the most recent complete financial year. The use of the FY 2020/21 as the basis of sharing revenue do not only reflect the actual revenue status but also denies counties the much-needed revenues to effectively implement its project.

Key Proposals

- a) The auditing entities to fast-track its role in ensuring that revenues are audited periodically without delays.
- b) Sharable revenue to reflect the actual latest revenue of the most recently completed financial year.

Committee Response: The proposed allocation of Ksh.380 billion to County governments is equivalent to 24.20 percent of the last audited and approved revenues of the government for FY 2020/21 which is above the Constitutional threshold of 15 percent. It is the Commitment of the National Assembly to continue approving the audited accounts of revenue. The House is currently considering the audited accounts of revenue for FY 2021/22.

- iv. The Division of Revenue (Amendment) Bill 2024 proposes amendments to the revenue share between the national government and counties. However, going through the memorandum attached to the bill, the bill lacks detailed justification for the proposed reduced allocations to the County Governments considering that the devolved services are heavily dependent on national transfers.

Committee Response: The main reason that occasioned Amendments to the DORA, 2024 was the Failure to enact the Finance Act,2024 as captured in the Memoranda of Objects and Reasons of the Bill. On the justification of reductions, Paragraphs 4 and 10 of the Memoranda of the Bill explicitly details the same.

17. The Rift Valley Budget Hub submitted as follows;

- i. The Kshs. 380 billion recommended in the Division of Revenue (Amendment) Bill 2024 is equal to 24.20% of the Kshs 1.57 trillion recently audited revenue for FY 2020/2021. Based on the trend of revenue growth, this is unjust. Kenya reported preliminary ordinary revenue of over Kshs. 2.21 trillion in 2023/2024, which is significantly higher than the Kshs. 1.57 trillion realized FY 2020/2021. Although the revenue has grown by 40.1%, the projected equitable share has increased only by 24% (from 316.5 billion in the FY 2020/21). The fact that revenue divides are still based on outdated audited revenue implies that counties are getting a raw deal.

Committee Response: The proposed allocation of Ksh.380 billion to county governments is in line with the provisions of Article 203 (2) and (3) of the

Constitution. Further, at no given point has the allocation to counties gone below 20% of the most recent audited accounts of revenue received, and approved by the National Assembly- meaning despite delays in the approval of the audited revenue, the National government has lived to promote the spirit of the Constitution.

- ii. County functions are still being held and executed by the National Government hence denying counties the commensurate funds for such functions.

Committee Response: The National government has continually unbundled and transferred County functions and its budgets over the years. Further, policy discourse on the restructuring of Water Works Development Agencies and the RDAs is at an advanced stage.

- iii. Cash flow challenges at the county level emanating from delayed disbursements.

Committee response: Counties have always received their equitable share entitlement, despite the constraints in revenue collections. Any revenue shortfalls have always been borne by the National level.

18. The Coast Regional Budget Hub submitted as follows;

- i. The proposed amendments contravene Article 219 of the Constitution, since Parliament had already passed a resolution regarding The Third Basis on Revenue Sharing Among County Governments as contemplated under Article 216 (5), the amendment to insert the new subsection contravenes a decision already passed by Parliament.

Committee Response: The amendments are proposed on the Division of Revenue Act, 2024, and not on Provisions of Article 216(5) of the Constitution. It should be noted that the Provisions of Article 219, do not bar any amendments to the law. Acts of Parliament are live documents and can be amended anytime, and for Article 219, what is being safeguarded is the delay or deductions of County entitlements as per the law. However, by the rule of thumb, the law can be amended to increase or reduce the entitlement.

- ii. The word “Total Shareable Revenue” needs to be interpreted: The committee takes note of that.
- iii. The passing of the Supplementary Budget 1 for FY 2024-2025 and the subsequent debate of the Supplementary Appropriation Bill 2024 before the Division of Revenue (Amendment) Bill, 2024 is unconstitutional.

Committee Response: Supplementary Budgets are provided for in the Constitution in Article 223 and are not tied to the Amendments process to any

law. The processing of Supplementary Budget No. 1 for FY 2024/25 and the Division of Revenue (Amendment) Bill, 2024 are independent processes.

- iv. The Division of Revenue (Amendment) Bill, 2024 is not accompanied by a memorandum from the Commission on Revenue Allocation as provided in Article 218(2)(a)(b)(c).

Committee Response: The Bill as presented provides for Amendments on an Act of Parliament (DORA, 2024), and not an 'introduction' of a Division of Revenue Bill, as contemplated in Article 218 of the Constitution.

- v. The growth in revenue for the FY 2021-2022; FY 2022-2023 and 2023-2024 is sufficient to meet the shortfall arising out of FY 2020/21 audited and approved revenue i.e. Ksh.1, 570.562,945,014 thus the "Principal Act" should not be amended.

Committee Response: The Bill does not seek to cover revenue shortfalls arising out of the FY 2020/21 audited and approved revenue, rather it proposes to share anticipated revenue shortfall in FY 2024/25 equitably between the two levels of government.

5.0 Committee Observations

19. Having considered the above matters, the committee made the following observations:

- i. The National Government will bear the largest share of the projected revenue shortfall of Ksh.346 billion, amounting to Ksh.325.88 billion (94.19 percent of the expected shortfall). This has necessitated the reorganization and rationalization of expenditures in FY 2024/25 through a revised budget.
- ii. The Division of Revenue Act is the prerequisite instrument upon which the County Allocation of Revenue Bill is prepared. In this regard, the County Allocation of Revenue Bill, 2024 wasn't assented to as it has to be realigned to reflect the revised County Equitable Share of revenue. The President has since sent a memorandum to Parliament as per Article 115 of the Constitution, indicating reservations, and has proposed deletion of the First Schedule to the Bill and replacing it with a new schedule which captures the allocation of Ksh.380 billion among the 47 counties.
- iii. The unprecedented delay in enactment of the County Allocation of Revenue Bill may affect the legal timelines of budget preparation by the county governments. This is because the county governments may lack the basis for preparing their budgets for FY 2024/25. As such, there is need to urgently fast-track the processing of the Division of Revenue (Amendment) Bill, 2024.

6.0 Committee Recommendation

20. Having considered, reviewed, and examined the Division of Revenue (Amendment) Bill, 2024, the Committee recommends that the House approve the Bill **without amendments.**


SIGNED



HON. NDINDI NYORO, CBS, M.P.
CHAIRPERSON, THE BUDGET AND APPROPRIATIONS COMMITTEE

06. 08. 24

DATE

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 06 AUG 2024	DAY: TUE
TABLED BY:	HON. KBINBI NYORO, MP CHAIRPERSON, BUDGET & APPROPRIATIONS COMMITTEE
CLERK AT THE TABLE:	INZOFU MWAKE



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MINUTES OF THE 57TH SITTING OF THE SELECT COMMITTEE ON BUDGET & APPROPRIATIONS HELD ON TUESDAY, 6TH AUGUST 2024 FROM 9.30 A.M. IN ROOM NO. 9, MAIN PARLIAMENT BUILDINGS.

PRESENT:

1. **Hon. Ndindi, Nyoro, CBS, M.P.- Chairperson**
2. **Hon. Otucho, Mary Emaase, M.P.- Vice Chairperson**
3. Hon. Odhiambo, Millie Grace Akoth, M.P.
4. Hon. Mulu, Makali, PhD, M.P.
5. Hon. Lekuton, Joseph, M.P.
6. Hon. Lesuuda, Josephine Naisula, OGW, M.P.
7. Hon. Ochieng, David Ouma, M.P.
8. Hon. Shinali, Bernard Masaka, M.P.
9. Hon. Atandi, Samuel Onunga, M.P.
10. Hon. Robi, Mathias Nyamabe, M.P.
11. Hon. Muchira, Michael Mwangi, M.P.
12. Hon. Mwirigi, John Paul, M.P.
13. Hon. Wangaya, Christopher Aseka, M.P.
14. Hon. Wachira, Rahab Mukami, M.P.
15. Hon. Mejjadonk, Benjamin Gathiru, M.P.
16. Hon. Busia, Ruth Adhiambo Odinga, M.P.
17. Hon. Murumba, John Chikati, PhD, M.P.
18. Hon. Mwakuwona, Danson Mwashako, M.P.
19. Hon. Mokaya, Nyakundi Japheth, M.P.
20. Hon. Guyo, Ali Wario, M.P.
21. Hon. (Dr.) Masara, Peter Francis, M.P.

ABSENT WITH APOLOGY:

1. Hon. Chumel, Samwel Moroto, M.P.
2. Hon. (Dr.) Ongili, Babu Owino Paul, M.P.
3. Hon. Sergon, Flowrence Jematiah, M.P.
4. Hon. Abdirahman Mohamed Abdi, M.P.

PARLIAMENTARY BUDGET OFFICE

- | | |
|---------------------------|---------------------------------------|
| 1. FA. Dr. Martin Masinde | Director, Parliamentary Budget Office |
| 2. Ms. Millicent Makina | Fiscal Analyst I |
| 3. Mr. Kioko Kiminza | Fiscal Analyst III |

COMMITTEE SECRETARIAT

- | | |
|------------------------|-------------------------------------|
| 1. Mr. Danson Kachumbo | Fiscal Analyst I/ Clerk |
| 2. Mr. Ringine Mutwiri | Fiscal Analyst III/ Assistant Clerk |
| 3. Ms. Sylvia Ocharo | Senior Policy Analyst |
| 4. Mr. Nimrod Ochieng | Audio Officer |
| 5. Ms. Shamsa Ahmed | Research Officer |
| 6. Ms. Fridah Ngari | Media Relations Officer |
| 7. Mr. Simon Ouko | Sergeant-at-Arms |
| 8. Mr. Jared Amara | Office Assistant |

AGENDA

1. *Prayers;*
2. *Preliminaries;*
3. *Consideration and adoption of the Committee report on the Division of Revenue (Amendment) Bill, 2024;*
4. *Any Other Business (A.O.B); and*
5. *Adjournment.*

MIN.NO.NA/BAC/2024/234: PRELIMINARIES

The Chairperson welcomed the committee members to the meeting and called the meeting to order at 10.00 a.m. A prayer was said by Hon. Wangaya, Christopher Aseka, M.P.

MIN.NO.NA/BAC/2024/235: ADOPTION OF THE AGENDA

The agenda of Hon. Guyo, Ali Wario, M.P. the meeting was adopted as having been proposed and seconded by The Hon. Atandi, Samuel Onunga, M.P. and respectively.

MIN.NO.NA/BAC/2024/236: ADOPTION OF THE REPORT ON THE DIVISION OF REVENUE (AMENDMENT) BILL, 2024

The Parliamentary Budget Office took members through the draft report. The report was proposed by seconded by Hon. Guyo, Ali Wario, M.P. and Hon. (Dr.) Mulu, Makali, M.P. After deliberations, the report was **ADOPTED** as follows:

Introduction

1. The Division of Revenue (Amendment) Bill, 2024 was published on 12th July 2024 and tabled in the National Assembly on 24th July 2024. Consequently, the Bill was Committed to the Select Committee on Budget and Appropriations for consideration and reporting to this House. The Bill seeks to amend the Division of Revenue Act (DORA), 2024 to provide for equitable sharing of the revenue raised nationally between the national and county governments, taking into account the downward revision of projected ordinary revenue collection for the FY 2024/25.
2. The anticipated shortfall in revenue collection in FY 2024/25 is occasioned by the failure to enact the Finance Bill, 2024 into law. The president referred the Finance Bill, 2024 for reconsideration by the National Assembly, proposing deletion of all the clauses in the Bill, of which Parliament agreed with the presidential reservations. The Finance Bill contained revenue-raising measures that would support government expenditure; hence the failure to enact it translates to a revenue collection deficit. This necessitated the reorganization and rationalization of the Government's financial arrangements for the FY 2024/25.
3. The Division of Revenue Bill was assented to on 10th June 2024 after an agreed version of the Bill was passed by both Houses of Parliament following the conclusion of a mediation process on the Bill in accordance with the provisions of Articles 112(2)(b) and 113 of the Constitution. The Division of Revenue Act, 2024 was then gazetted on 11th June 2024 and given a commencement date of 25th June 2024.
4. The Act provides for the sharing of revenue raised nationally between the national government and county governments for the Financial Year 2024/25 as per Articles 202, 203(2) and 218 of the Constitution. It contains a projected shareable revenue of Kshs. **2,948,123,505,58**: out of which the equitable share to the county governments is **Ksh.400,116,788,147**, that of the National Government is **Kshs. 2,540,153,902,710** and the Equalization Fund is allocated **Kshs. 7,852,814,725**.

5. The equitable share allocated to county governments in the Division of Revenue Act, 2024 is equivalent to 25.48 percent of the most recent audited revenues (i.e Kshs. 1,570,562,945,014 of FY 2020/21) as approved by the National Assembly, as required under Article 203(2) of the Constitution. Further, the allocation to the Equalisation Fund is one-half percent (0.5%) of the shareable revenue under the provisions of Article 204 of the Constitution.

2.0 The Contents of the Division of Revenue (Amendment) Bill, 2024.

6. The purpose and object of the Bill is to amend the Division of Revenue Act, 2024 to provide for equitable sharing of the revenue raised nationally between the national and county governments, taking into account the downward revision of projected ordinary revenue collection. The Bill addresses this by amending Section 5 of the Act, and deletion and replacement of Schedule No.5 of 2024 as contained in the Act.

7. The changes proposed in the Bill compared to the provisions in the Division of Revenue Act, 2024 are as follows:

<u>Section provision in the</u>	<u>Proposed Amendment</u>	<u>Rationale</u>
<u>DORA, 2024</u>		
Section 5(1): if the actual revenue raised nationally in the financial year falls short of the expected revenue set out in the Schedule, the shortfall shall be borne by the national government.	Deletion of subsection 5(1) and replacing therefor with, <i>“If the actual revenue raised nationally in the financial year 2024/25 falls short of the expected revenue set out in the Schedule, the shortfall shall be borne by both the national government and the county governments equitably.”</i>	This is to provide for a revenue collection shortfall to be borne by both levels of government in FY 2024/25.
New sub clause 5(1A)	Inserting new sub-clause 5(1A) immediately after sub-clause 5(1): <i>“Notwithstanding the generality of subsection (1), the proportion of the shortfall to be borne by county governments shall not exceed fifteen percent (15%) of that shortfall”</i>	This is to safeguard the proportion of revenue shortfall to be borne by county governments
Deletion and replacement of schedule No.5 of 2024	<i>The principal Act is amended by deleting the Schedule and substituting therefor the following new Schedule</i>	To provide for deletion of the Schedule in the Act and replacing with a new Schedule.

8. The proposed schedule in the Division of Revenue (Amendment) Bill, 2024 divides the revenue raised nationally (total sharable revenue) between the National Government and County governments as follows;

A. Total Sharable Revenue	2,602,123,505,582
B. National Government	2,214,270,690,857
C. Equalization Fund	7,852,814,725
D. County equitable share	380,000,000,000

9. The Schedule indicates that the allocation to the Equalization Fund and the County equitable share is 0.50% and 24.20% respectively of the audited and approved revenue of FY 2020/21 which amounted to Kshs. 1,570,562,945,014.

3.0 Analysis of the changes in the Division of Revenue (Amendment) Bill,2024

10. Revenue raised nationally for the FY 2024/25 projection has been revised down by Ksh.346 billion (11.74 %) from the initial projected revenue of Kshs. 2,948.12 billion (as contained in the DORA, 2024) to a revised of projection of Kshs. 2,602.12 billion. The Ksh.346 billion downward adjustment is equitably shared between the two levels of government. The National Government share of revenue raised nationally is proposed to be reduced by Ksh.325.88 billion (94.19% of the shortfall) while that of the County governments is reduced by Ksh. 20.12 billion (5.81% of the shortfall). This implies that the equitable share to county governments reduces from Ksh.400.12 billion to Ksh. 380 billion and that of the National Government from Ksh 2,540.15 billion to Ksh. 2,214.27 billion.

11. The National Government proposed new allocation of Ksh. 2,214.27 billion is 12.83 percent less than what it was allocated in the Division of Revenue Act, 2024. To cover the adjustment, the government has proposed significant changes in the FY 2024/25 approved Budget through a supplementary Budget No. I of FY 2024/25. The revised budget proposes expenditure cuts across all the arms of government including the Executive, the Legislature, the Judiciary and constitutional commissions.

12. The overall changes in the supplementary budget as tabled in the Parliament indicate a reduction of Ksh.151.2 billion from the Executive arm of government, Ksh. 3.73 billion from the Parliament and Ksh.1.54 billion from

the Judiciary. This has necessitated austerity measures across state departments.

13. Under the revised fiscal framework, county governments will receive Ksh.380 billion which is 5.03 percent less than the 400.12 billion contained in the Division of revenue Act, 2024. Further, the amount (Ksh.380 billion) is Ksh.5 billion less than the Ksh.385.4 billion allocated to counties in FY 2023/24. This means counties are expected to receive on average 1.4 percent less funding as equitable share from the allocation of FY 2023/24.

14. This revised allocation of Ksh. 380 billion to county governments translates to 24.20 percent of the last audited and approved revenues of government for financial year 2020/21(Ksh. 1,570.6 billion). The allocation meets the constitutional threshold of fifteen (15) percent in line with Article 203(2) of the Constitution.

Table 1: Changes in the allocations in Division of revenue, 2024.

Type/level of allocation	DORA, 2024 (Ksh.)	Adjusted allocation	variation	% change
Total Sharable Revenue	2,948,123,505,582	2,602,123,505,582	(346,000,000,000)	(11.74)
National Government	2,540,153,902,710	2,214,270,690,857	(325,883,211,853)	(12.83)
Equalization Fund	7,852,814,725	7,852,814,725	-	-
County equitable share	400,116,788,147	380,000,000,000	(20,116,788,147)	(5.03)

Source: DORA, 2024 & DOR(Amendment)Bill, 2024

4.0 Submissions from the public on the Division of Revenue (Amendment)Bill, 2024

15. The Committee received written submissions from the public while considering the Division of Revenue (Amendment) Bill, 2024. **The Bajeti Hub (formerly International Budget Partnership Kenya - IBP Kenya) submitted as follows;**

- i. The National Assembly to reconsider maintaining the allocation toward the Equitable Share at KES 400,116,788,147 as provided for in the Division of Revenue Act, 2024, since the national government has many

other avenues to raise revenue, whereas county governments largely rely on the Equitable Share

The Committee Response: The committee agrees that the National Government has many avenues to raise revenue. However, the Division of Revenue (Amendment) Bill, 2024 was triggered by the failure to enact the Finance Bill, 2024. This means that in the absence of the Finance Act, the National government shall not be able to raise for FY 2024/25. It is also notable that County Governments have avenues for raising their Own Source Revenue through the respective County Finance Acts.

16. The Lake Region Budget Hub submitted as follows;

- i. The allocations towards counties should be retained at Kshs. 400,116,788,147 as approved by the DORA 2024. The reduction of budget to counties have effect of rendering most essential services to be affected in counties especially health services that are heavily devolved. The national government should bear the reduction of allocation and develop supplementary budget to cut on the aspect of duplication of programmes and activities, especially for those that are devolved.

Committee response: The proposed reduction in the equitable share is based on equitable principle as provided in the Constitution while safeguarding critical and essential expenditure across the two levels of government. Whereas the County Governments are bearing only 5.81% (Ksh.20.12 billion) of the shortfall, the National government bears the significant share of the shortfall amounting to Ksh.325.88 billion (94.2 % of the shortfall). Further, the National government has already developed a Supplementary budget to reflect the shortfall in revenue on the approved estimates for FY 2024/25.

- ii. The Division of Revenue (Amendment) Bill 2024 should present a table of trends allocations to the various types of allocation for at least last two previous financial years. This information is key in informing the growth in revenue to counties and the trends in regards to the percentage share against the total sharable revenue.

Committee response: The Division of Revenue (Amendment) Bill, 2024 is an ‘amendment’ to an existing Act (the DORA 2024) which conventionally has never included such trend analysis. That notwithstanding, such trend comparisons are available or can be obtained from the National Treasury as per the requirement of the law.

- iii. The sharable revenue must reflect the most recent revenue status based on the most recent complete financial year. The use of the FY 2020/21 as the basis of sharing revenue do not only reflect the actual revenue status but also denies counties the much-needed revenues to effectively implement its project.

Key Proposals

- a) The auditing entities to fast-track its role in ensuring that revenues are audited periodically without delays.
- b) Sharable revenue to reflect the actual latest revenue of the most recently completed financial year.

Committee response: The proposed allocation of Ksh.380 billion to County governments is equivalent to 24.20 percent of the last audited and approved revenues of the government for FY 2020/21, Which is above the Constitutional threshold of 15 percent. It is the Commitment of the National Assembly to continue approving the audited accounts of revenue. The House is currently considering the audited accounts of revenue for FY 2021/22.

- iv. The Division of Revenue (Amendment) Bill 2024 proposes amendments to the revenue share between the national government and counties. However, going through the memorandum attached to the bill, the bill lacks detailed justification for the proposed reduced allocations to the County Governments considering that the devolved services are heavily dependent on national transfers.

Committee response: The main reason that occasioned Amendments to the DORA, 2024 was the Failure to enact the Finance Act,2024 as captured in the Memoranda of Objects and Reasons of the Bill. On the justification of reductions, Paragraphs 4 and 10 of the Memoranda of the Bill explicitly details the same.

17.The Rift Valley Budget Hub submitted as follows;

- i. The Ksh. 380 billion recommended in the Division of Revenue (Amendment) Bill 2024 is equal to 24.20% of the Ksh 1.57 trillion recently audited revenue for FY 2020/2021. Based on the trend of revenue growth, this is unjust. Kenya reported preliminary ordinary revenue of over Ksh. 2.21 trillion in 2023/2024, which is significantly higher than the Ksh. 1.57 trillion realized FY 2020/2021. Although the

revenue has grown by 40.1%, the projected equitable share has increased only by 24% (from 316.5 billion in the FY 2020/21). The fact that revenue divides are still based on outdated audited revenue implies that counties are getting a raw deal.

Committee response: The proposed allocation of Ksh.380 billion to county governments is in line with the provisions of Article 203 (2) and (3) of the Constitution. Further, at no given point has the allocation to counties gone below 20% of the most recent audited accounts of revenue received, and approved by the National Assembly- meaning despite delays in the approval of the audited revenue, the National government has lived to promote the spirit of the Constitution.

- ii. County functions are still being held and executed by the National Government hence denying counties the commensurate funds for such functions.

Committee response: The National government has continually unbundled and transferred County functions and its budgets over the years. Further, policy discourse on the restructuring of Water Works Development Agencies and the RDAs is at an advanced stage.

- iii. Cash flow challenges at the county level emanating from delayed disbursements.

Committee response: Counties have always received their equitable share entitlement, despite the constraints in revenue collections. Any revenue shortfalls have always been borne by the National level.

18.The Coast Regional Budget Hub submitted as follows;

- i. The proposed amendments contravene Article 219 of the Constitution, since Parliament had already passed a resolution regarding The Third Basis on Revenue Sharing Among County Governments as contemplated under Article 216 (5), the amendment to insert the new subsection contravenes a decision already passed by Parliament.

Committee response: The amendments are proposed on the Division of Revenue Act,2024, and not on Provisions of Article 216(5) of the Constitution. It should be noted that the Provisions of Article 219, do not bar any amendments to the law. Acts of Parliament are live documents and can be amended anytime, and for Article 219, what is being safeguarded is the delay

or deductions of County entitlements as per the law. However, by the rule of thumb, the law can be amended to increase or reduce the entitlement.

- ii. The word “Total Shareable Revenue” needs to be interpreted: The committee takes note of that.
- iii. The passing of the Supplementary Budget 1 for FY 2024-2025 and the subsequent debate of the Supplementary Appropriation Bill 2024 before the Division of Revenue (Amendment) Bill, 2024 is unconstitutional.

Committee response: Supplementary Budgets are provided for in the Constitution in Article 223 and are not tied to the Amendments process to any law. The processing of Supplementary Budget No. 1 for FY 2024/25 and the Division of Revenue (Amendment) Bill, 2024 are independent processes.

- iv. The Division of Revenue (Amendment) Bill, 2024 is not accompanied by a memorandum from the Commission on Revenue Allocation as provided in Article 218(2)(a)(b)(c).

Committee response: The Bill as presented provides for Amendments on an Act of Parliament (DORA, 2024), and not an ‘introduction’ of a Division of Revenue Bill, as contemplated in Article 218 of the Constitution.

- v. The growth in revenue for the FY 2021-2022; FY 2022-2023 AND 2023-2024 is sufficient to meet the shortfall arising out of FY 2020/21 audited and approved revenue i.e. Ksh.1, 570.562,945,014 thus the “Principal Act” should not be amended.

Committee response: The Bill does not seek to cover revenue shortfalls arising out of the FY 2020/21 audited and approved revenue, rather it proposes to share anticipated revenue shortfall in FY 2024/25 equitably between the two levels of government.

5.0 Committee Observations

19. Having considered the above matters, the committee made the following observations:

- i. The National Government will bear the largest share of the projected revenue shortfall of Ksh.346 billion, amounting to Ksh.325.88 billion (94.19 percent of the expected shortfall). This has necessitated the reorganization and rationalization of expenditures in FY 2024/25 through a revised budget.
- ii. The Division of Revenue Act is the prerequisite instrument upon which the County Allocation of Revenue Bill is prepared. In this regard, the County

Allocation of Revenue Bill, 2024 wasn't assented to as it has to be realigned to reflect the revised County Equitable Share of revenue. The President has since sent a memorandum to Parliament as per Article 115 of the Constitution, indicating reservations and has proposed deletion of the First Schedule to the Bill and replacing it with a new schedule which captures the allocation of Ksh.380 billion among the 47 counties.

- iii. The unprecedented delay in enactment of the County Allocation of Revenue Bill may affect the legal timelines of budget preparation by the county governments. This is because the county governments may lack the basis for preparing their budgets for FY 2024/25. As such, there is need to urgently fast-track the processing the Division of Revenue (Amendment) Bill, 2024.

6.0 Committee Recommendation

20. Having considered, reviewed, and examined the Division of Revenue (Amendment) Bill, 2024, the Committee recommends that the House approve the Bill **without amendments**.

MIN.NO.NA/BAC/2024/237: ANY OTHER BUSINESS & ADJOURNMENT

There being no other business, the meeting was adjourned at 11.40 a.m. The next meeting will be communicated in due course.

SIGNED

[Handwritten Signature]

HON.NDINDI NYORO, CBS, M.P.

CHAIRPERSON, BUDGET AND APPROPRIATIONS COMMITTEE

06. 08. 24.

DATE

REPUBLIC OF KENYA



NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT

BUDGET AND APPROPRIATIONS COMMITTEE
ADOPTION SCHEDULE

We, the undersigned Members of the Budget and Appropriations Committee, today.....do hereby affix our signatures to this **REPORT OF BUDGET AND APPROPRIATIONS COMMITTEE ON THE DIVISION OF REVENUE (AMENDMENT) BILL, 2024** to affirm our approval and confirm accuracy, validity and authenticity: -

NAME	SIGNATURE
1. Hon. Ndindi, Nyoro, CBS, M.P.- Chairperson	
2. Hon. Otucho, Mary Emaase, M.P.- Vice Chairperson	
3. Hon. Chumel, Samwel Moroto, CBS, M.P.	
4. Hon. Odhiambo, Millie Grace Akoth, CBS, M.P.	
5. Hon. (Dr.) Mulu, Makali, M.P.	
6. Hon. Lekuton, Joseph, M.P.	
7. Hon. Lesuuda, Josephine Naisula, OGW, M.P.	
8. Hon. Robi, Mathias Nyamabe, M.P.	
9. Hon. Ochieng, David Ouma, M.P.	
10. Hon. Muchira, Michael Mwangi, M.P.	
11. Hon. Shinali, Bernard Masaka, M.P.	
12. Hon. Mwakuwona, Danson Mwashako, M.P.	
13. Hon. Atandi, Samuel Onunga, M.P.	
14. Hon. Mwirigi, John Paul, M.P.	

NAME		SIGNATURE
15.	Hon. Mejjadonk, Benjamin Gathiru, M.P.	
16.	Hon. Wangaya, Christopher Aseka, M.P.	
17.	Hon. Wachira, Rahab Mukami, M.P.	
18.	Hon. (Dr.) Masara, Peter Francis, M.P.	
19.	Hon. (Dr.) Ongili, Babu Owino Paul, M.P.	
20.	Hon. Wanjiku, John Njuguna, M.P.	
21.	Hon. Guyo, Ali Wario, M.P.	
22.	Hon. (Dr.) Murumba, John Chikati, M.P.	
23.	Hon. Busia, Ruth Adhiambo Odinga, M.P.	
24.	Hon. Kitilai, Ole Ntutu, M.P.	
25.	Hon. Sergon, Flowrence Jematiah, M.P.	
26.	Hon. Mokaya, Nyakundi Japheth, M.P.	
27.	Hon. Abdirahman Mohamed Abdi, M.P.	