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22/4/2020

REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY



TWELFTH PARLIAMENT

FOURTH SESSION

THE BUDGET AND APPROPRIATIONS COMMITTEE REPORT ON
REPORT OF THE BUDGET AND APPROPRIATIONS COMMITTEE ON
THE SENATE AMENDMENTS TO THE DIVISION OF REVENUE BILL,

2020

APRIL, 2020

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 22 APR 2020	DAY: WED
TABLED BY:	CHAIR - BUDGET (HON K-ICHUNG'WAAH)
CLERK AT THE TABLE:	

THE MESSAGE FROM THE SENATE ON THE DORB, 2020

MANDATE OF THE COMMITTEE

Mr. Speaker, Article 221 (4 and 5) of the Constitution and 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. In this regard, Standing Order 207 establishes the Budget and Appropriations Committee with specific mandates among which is to:

1. Investigate, inquire into and report on all matters relating to coordination, control and monitoring of the national budget,
2. Discuss and review the estimates and make recommendations to the House,
3. Examine Budget Policy Statement, Medium Term Debt Strategy Paper and Division of Revenue Bill (DORB) presented to the House,
4. Examine Bills related to the national budget, including Appropriations Bill, and
5. Evaluate tax estimates, economic and budgetary policies and programs with direct budget outlays.

Mr. Speaker, the Budget and Appropriations Committee as currently constituted comprises of the following Honorable Members:

- 1) Hon. Kimani Ichung'wah, CBS, M.P.- Chairperson
- 2) Hon. Moses Lessonnet, M.P.- Vice Chairperson
- 3) Hon. (CPA.) John Mbadi, EGH, CBS, M.P.
- 4) Hon. (Dr.) Gideon Ochanda, M.P.
- 5) Hon. (Dr.) Korei Ole Lemein, M.P.

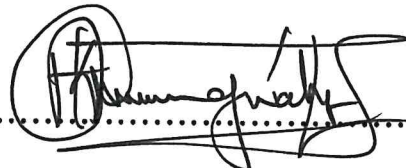
- 6) Hon. (Dr.) Makali Mulu, M.P.
- 7) Hon. Benard Masaka Shinali, M.P.
- 8) Hon. James Mwangi Gakuya, M.P.
- 9) Hon. John Muchiri Nyaga, M.P.
- 10) Hon. Jude Njomo, M.P.
- 11) Hon. Millie Odhiambo, M.P.
- 12) Hon. Moses Kiarie Kuria, M.P.
- 13) Hon. Naisula Lesuuda, OGW, M.P.
- 14) Hon. Richard Onyonka, M.P.
- 15) Hon. Sakwa Bunyasi, M.P.
- 16) Hon. Samwel Moroto, M.P.
- 17) Hon. Sarah Paulata Korere, M.P.
- 18) Hon. Twalib Bady, M.P.
- 19) Hon. (Dr.) John K. Mutunga, M.P.
- 20) Hon. (Eng.) Mark Nyamita, M.P.
- 21) Hon. Danson Mwashako, M.P.
- 22) Hon. Fatuma Gedi Ali, CBS, M.P.
- 23) Hon. Florence Chepngetich Koskey, M.P.
- 24) Hon. James Gichuki Mugambi, M.P.
- 25) Hon. Paul Abuor, M.P.
- 26) Hon. Qalicha Gufu Wario, M.P.
- 27) Hon. Wagari Mwaniki, M.P.

Acknowledgements

Mr. Speaker, the committee is grateful to your Office, the Office of the Clerk of the National Assembly and the Parliamentary Budget Office for the support received as it discharged its mandate of reviewing the Division of Revenue Bill (National Assembly Bill No. 3 of 2020) during this period of minimal physical contacts as a result of Global health crisis of COVID-19.

Mr. Speaker, it is therefore my pleasant undertaking, on behalf of the Budget and Appropriations Committee to table this report and recommend it to the House for adoption.

Signed:



HON. KIMANI ICHUNG'WAH, CBS, M.P.

CHAIRPERSON, BUDGET & APPROPRIATIONS COMMITTEE

Date:

21/4/04.

Introduction

1. The Division of Revenue Bill (DORB), 2020 (National Assembly Bill No. 3 of 2020) was published on 9th March 2020 in accordance with Article 218 of the Constitution. The National Assembly considered and passed the Division of Revenue Bill 2020 on 17th March 2020 without amendments. In line with provisions of Article 110 (4) of the Constitution and Standing Orders 41 of the National Assembly relating to the messages to and from the Senate, the message was submitted to the senate on the 17th March 2020 for its consideration and concurrence.

2. The revenue raised nationally is shared in accordance to Articles 202 and 203 of the Constitution. The DORB 2020 as passed by the National Assembly projected total shareable revenue estimated at Kshs 1,856.7 billion. Arising from this revenue projection, the bill made provisions for equitable share of the nationally raised revenue as follows;
 - a) the National Government Kshs. 1,533.41 billion
 - b) Equitable Share Kshs 316.5 billion
 - c) GoK Conditional allocations Kshs. 13.73 billion
 - d) Road Maintenance Fuel Levy Fund Kshs. 9.43 billion
 - e) Additional allocations (loans & grants) Kshs. 30.20 billion
 - f) Equalization Fund Kshs 6.788 billion

3. Under clause 4 of the Bill, with reference to allocations to national and county governments, the Bill makes explicit provisions with respect to recent transfer of some of functions from Nairobi City County to the national Government. In particular, clause 4 (2) provides that “*The amount of resources required for the*

performance of transferred functions to another level of government in line with Article 187(2) of the Constitution shall be transferred in full or partially upon enactment of this Act.

4. Further clause 4 (3) provides that for avoidance of doubt, where the transfer of functions is—
 - a) from a county government to the national government, the requisite funds shall be retained in the Consolidated fund for appropriation to meet the costs of the transferred functions; or
 - b) from the national government to a county government, the funds shall be transferred to the county government as conditional grants.

5. Consequently, to cater for transferred functions from the Nairobi City County, the schedule sets aside that out of the share between the two levels, the Nairobi City County share shall be *retained in consolidated fund to meet part of the cost of functions transferred to the national government.* This is in line with Article 187(2) of the Constitution that provides “*If a function or power is transferred from a government at one level to a government at the other level—*
 - (a) *arrangements shall be put in place to ensure that the resources necessary for the performance of the function or exercise of the power are transferred*”
 - (b) *constitutional responsibility for the performance of the function or exercise of the power shall remain with the government to which it is assigned by the Fourth Schedule.*

Proposed Senate Amendment to the Division of Revenue Bill, 2020

6. In its consideration of the Division of Revenue Bill, 2020, the Senate was in concurrence with the National Assembly with respect to amounts of sharable revenue. However, the Senate proposed amendments to delete subclauses 2 and 3 under clause 4. Specifically, the Senate removes the original provision made by the National Assembly making provision for setting aside the equitable share amount due to Nairobi City County shall be *retained in consolidated fund to meet part of the cost of functions transferred to the national government*.
7. This therefore means that the Nairobi County will receive its full share of revenue allocation into the County Revenue Fund. This further means that other arrangements need to be found to facilitate the transfer of required resources to National Government with respect to the transferred functions.
8. A further implication of the Senate amendment is that it also amends schedule I of the Bill. The new schedule thus becomes as shown in the schedule below.

Discussion of the Senate Message on the DORB 2020

9. The message from the Senate is proposing reinstating the amounts set aside for the Nairobi City County into the equitable share and not retaining its equitable share in the Consolidated Fund. The Committee is agreeable with this proposal under the understanding that adequate arrangements shall be put in place to ensure that the resources necessary for the performance of the function or exercise of the power are transferred to the National Government (Nairobi Metropolitan Services).

RECOMMENDATION

10. Mr. Speaker Sir, the major point of departure between the National Assembly and the Senate is how to effect the transfer of resources needed to fully fund the transferred functions from Nairobi City County to the National Government. The National Assembly wanted the requisite resources needed to fund the transferred functions be explicitly retained in the Consolidated Fund to satisfy the provisions of Article 187. The Senate, alternatively wants the funds be transferred to the Nairobi County as usual, but does not address the sticky issue how the resources will be transferred from the Nairobi County governments County Revenue Fund to the National Government.
11. It is the view of the Committee that the required funds transfer arrangements can expeditiously be sought administratively or legally to ensure that all resources needed for the transferred functions from Nairobi City County to the National Government are made available.
12. Therefore, the Committee recommends that this House do concur with the proposed amendments by the Senate and therefore accepts deletion of Schedule as well as the accepting the substitution therefor the new schedule as proposed.



Handwritten signature and date: 21/10/2020

SCHEDULE

(s.4)

**ALLOCATION OF REVENUE RAISED NATIONALLY AMONG THE
NATIONAL AND COUNTY GOVERNMENTS FOR THE FINANCIAL
YEAR 2020/21**

Type/level of allocation	Amount in Ksh.	Percentage (%) of 2016/17 audited and approved revenue i.e. Ksh.1,357,698 Million
A. Total Sharable Revenue	1,856,700,000,000	
B. National Government*	1,533,411,510,000	
Of which:		
1. <i>Leasing of Medical Equipment</i>	6,205,000,000	
2. <i>Compensation for user fees forgone</i>	900,000,000	
3. <i>Level 5 hospitals</i>	4,326,000,000	
4. <i>Supplement for construction of county headquarters</i>	300,000,000	
5. <i>Rehabilitation of Youth Polytechnics</i>	2,000,000,000	
C. Equalization Fund	6,788,490,000	0.50%
D. County equitable share	316,500,000,000	23.31%
Memo items		
1. County equitable share	316,500,000,000	
2. Additional conditional allocations(National Government share of Revenue) of which;	13,731,000,000	
2.1. <i>Leasing of Medical Equipment</i>	6,205,000,000	

Type/level of allocation	Amount in Ksh.	Percentage (%) of 2016/17 audited and approved revenue i.e. Ksh.1,357,698 Million
2.2 Compensation for user fees forgone	900,000,000	
2.3 Level 5 hospitals	4,326,000,000	
2.4 Supplement for construction of county headquarters	300,000,000	
2.5 Rehabilitation of Youth Polytechnics	2,000,000,000	
3. Allocation from Fuel Levy Fund (15%)	9,433,265,625	
4. Conditional allocations (Loans & grants) of which:	30,204,347,510	
4.1 IDA-Kenya Devolution Support Program (KDSP) (Level 1)	2,115,000,000	
4.2 IDA-Transforming Health Systems for Universal Care Project	4,345,375,741	
4.3 DANIDA-Universal Healthcare For Devolved System Program	900,000,000	
4.4 IDA-National Agriculture & Rural Inclusive Growth Project (NARIGP)	4,261,646,438	
4.5 EU-Instruments for Devolution Advice and Support (IDEAS)	216,014,391	
4.6 IDA (World Bank) - Kenya Climate Smart Agriculture Project (KCSAP)	7,119,726,782	
4.7 World Bank- Kenya Urban Support Program(KUSP)- UDG	6,366,000,000	
4.8 IDA- Water and Sanitation Development Project (WSDP)	3,400,000,000	
4.9 Sweden Agriculture Sector		

Type/level of allocation	Amount in Ksh.	Percentage (%) of 2016/17 audited and approved revenue i.e. Ksh.1,357,698 Million
<i>Development Programme II (ASDP II)</i>	652,584,158	
<i>4.10 EU- Water Tower Protection and Climate Change Mitigation and Adaptation Programme (WaTER)</i>	528,000,000	
<i>4.11 Drought Resilience Programme in Northern Kenya</i>	300,000,000	
Total County Allocations= (1+2+3+4)	369,868,613,135	27.24%

**The National Government share includes Ksh. 4,300 million which is a special grant to the National Health Insurance Fund (NHIF) for free Maternal health care, to be disbursed as a reimbursement to county governments.*

AK
2/24/2020