

INTERNAL MEMO

SENATE STANDING COMMITTEE ON FINANCE AND BUDGET

To: Speaker of the Senate
Thro': Clerk of the Senate
Thro': Deputy Clerk
From: Director, Committee Services
Date: 20th December, 2021



Rt. Hon. Speaker
You may approve for
tabling: 20/12/21

RE: REPORT ON THE CONSIDERATION OF THE AMENDMENTS PASSED BY THE NATIONAL ASSEMBLY TO THE COUNTY GOVERNMENTS GRANTS BILL (SENATE BILLS NO.35 OF 2021)

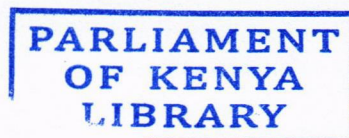
The above matter refers.

Approved
[Signature]
21/12/21

At its 266th meeting, the Standing Committee on Finance and Budget considered the report on the consideration of the amendments passed by the National Assembly to the County Governments Grants Bill (Senate Bills No.35 of 2021). The Committee intends to table the report in the next Senate Plenary sitting.

This is therefore to forward the report for your information, and seek your approval for tabling.

S.N. Njuguna.



REPUBLIC OF KENYA



TWELFTH PARLIAMENT

FIFTH SESSION

THE SENATE

Rt. Hon. Speaker
You may approve for
tabling.
20/12/21

Approved
21/12/2021

THE STANDING COMMITTEE ON FINANCE AND BUDGET

REPORT ON THE CONSIDERATION OF THE AMENDMENTS PASSED BY
THE NATIONAL ASSEMBLY TO THE COUNTY GOVERNMENTS GRANTS
BILL, (SENATE BILLS NO. 35 OF 2021)

PAPERS LAID	
DATE	21/12/21
TABLED BY	Chair. Finance - Sen. Kelsiro
COMMITTEE	Finance
CLERK AT THE TABLE	M. Adhokoru

Clerk's Chambers
Parliament Buildings,
NAIROBI

December 2021

DC-EG
Recommended & Forwarded for approval
for processing
20/12/2021

TABLE OF CONTENTS

TABLE OF CONTENTS 1

PREFACE 2

EXECUTIVE SUMMARY 4

 Acknowledgement..... 5

1 INTRODUCTION 6

 1.1 Background on the County Governments Grants Bill (Senate Bills No. 35 of 2021) 6

 1.2 Committal of the Bill to the Standing Committee on Finance and Budget 7

2 CONSIDERATION OF AMENDMENTS PASSED BY THE NATIONAL ASSEMBLY TO THE BILL..... 8

3 COMMITTEE RECOMMENDATION 11

PREFACE

The Standing Committee on Finance and Budget was constituted by the House on Thursday, 14th December, 2017 during the First Session of the Twelfth Parliament. The Committee was later reconstituted on Wednesday, 24th June, 2020, during the Fourth Session of the Twelfth (12th) Parliament. The Committee as currently constituted, comprises the following Members-

- | | |
|--|--------------------|
| 1. Sen. Charles Kibiru, MP | - Chairperson |
| 2. Sen. (Dr.) Ochillo-Ayacko, EGH, MP | - Vice Chairperson |
| 3. Sen. Wetang'ula Moses Masika, EGH, MP | - Member |
| 4. Sen. Kimani Wamatangi, MP | - Member |
| 5. Sen. Mutula Kilonzo Junior, CBS, MP | - Member |
| 6. Sen. Aaron Cheruiyot, MP | - Member |
| 7. Sen. Rose Nyamunga, CBS, MP | - Member |
| 8. Sen. CPA Farhiya Haji, MBSMP | - Member |
| 9. Sen. Millicent Omanga, MP | - Member |

The Standing Committee on Finance and Budget is established pursuant to Section 8 of the Public Finance Management Act, 2012 and standing order 218(3) of the Senate Standing Orders and is mandated to -

- a) *Investigate, inquire into and report on all matters relating to coordination, control and monitoring of the county budgets and to examine -*
 - i) *the Budget Policy Statement presented to the Senate;*
 - ii) *report on the Budget allocated to Constitutional Commissions and independent offices;*
 - iii) *the Division of Revenue Bill, County Allocation of Revenue Bill, and cash disbursement schedule for county governments;*

- iv) Consider all matters related to resolutions and Bills for appropriations, share of national revenue amongst the counties and all matters concerning the National Budget, including public finance and monetary policies and public debt, planning and development policy.*
- b) Pursuant to Article 228 (6) of the Constitution, to examine the report of the Controller of Budget on the implementation of the budgets of county governments.*

EXECUTIVE SUMMARY

The County Governments Grants Bill (Senate Bills No.35 of 2021) was read a First Time in the Senate on 6th July, 2021. Thereafter, pursuant to standing order 140(1) of the Senate Standing Orders, the Bill was committed to the Standing Committee on Finance and Budget for consideration, facilitation of public participation and subsequently tabling of a report

The Senate passed the Bill on 15th September, 2021. Subsequently, it was transmitted to the National Assembly for concurrence. The National Assembly passed the Bill with amendments on 2nd December, 2021.

Through a letter dated 8th December, 2021, the Speaker informed the Committee on the passage of the Bill with amendments by the National Assembly. The Speaker directed the Committee to expeditiously consider the National Assembly amendments to the Bill and report back to the Senate in the following Plenary sitting.

At its 266th Sitting held on 14th December, 2021, the Committee considered the National Assembly amendments to the County Governments Grants Bill (Senate Bills No.35 of 2021) and noted that the spirit of the amendments negated the object or purpose of the Bill.

The Committee recommends that the Senate rejects the amendments passed by the National Assembly to the County Governments Grants Bill (Senate Bills No. 35 of 2021).

Acknowledgement

The Committee wishes to thank the Office of the Speaker and the Office of the Clerk of the Senate for the support extended to it in the consideration of the amendments proposed by the National Assembly.

Mr. Speaker Sir,

It is my pleasant duty, pursuant to standing order 213 (6) of the Senate Standing Orders, to present the Report of the Standing Committee on Finance and Budget on the amendments passed by the National Assembly to the County Governments Grants Bill (Senate Bills No. 35 of 2021) for consideration by the House.

SIGNATURE:



SEN. CHARLES KIBIRU, MP.

(CHAIRPERSON, STANDING COMMITTEE ON FINANCE AND BUDGET)

DATE: 15th December, 2021

1 INTRODUCTION

1.1 Background on the County Governments Grants Bill (Senate Bills No. 35 of 2021)

The Bill seeks to provide a framework for the transfer of additional allocations under Article 202(2) of the Constitution from national government's share of revenue and development partners to the county governments.

The Bill also seeks to comply with the orders of the court in High Court Petition No. 252 of 2016. In the matter, the court held that Article 202 of the Constitution as read with Article 218(1)(a) of the Constitution did not permit conditional or unconditional grants to be provided for in the Annual Division of Revenue Act. The court held that such conditional or unconditional grants could be issued to the county level of government under Article 190 of the Constitution or through an agreement between the two levels of government that respects the institutional and functional integrity of both levels of government but not in the Annual Division of Revenue Act.

The object of the Bill is to provide for the allocation of conditional grants to county governments for the financial year 2021/2022.

1.2 Committal of the Bill to the Standing Committee on Finance and Budget

The County Governments Grants Bill (Senate Bills No. 35 of 2021) was published on 25th May, 2021 and read a First Time in the Senate on 6th July, 2021. The Bill was thereafter committed to the Standing Committee on Finance and Budget for consideration.

Pursuant to Article 118 (1) (b) of the Constitution and standing order 140 (5) of the Senate Standing Orders, the Committee invited views on the Bill from the public by placing advertisements in the Daily Nation and the Standard newspapers and publication on the Parliamentary Service Commission Website.

The Committee received oral submissions at the Public Hearing held on 14th July, 2021 from the National Treasury, Office of the Controller of Budget (CoB), Commission on Revenue Allocation (CRA), and Council of Governors (CoG). The Committee considered the submissions and reported back to the Senate.

The Senate passed the Bill, with amendments, on 15th September, 2021 and it was thereafter transmitted to the National Assembly for concurrence. Pursuant to standing order 156 of the Senate Standing Orders, the Bill was forwarded to the National Assembly together with a message requesting for concurrence.. The National Assembly passed the Bill with further amendments on 2nd December, 2021.

Through a letter dated 8th December, 2021 the Speaker informed the Committee on the passage of the Bill with amendments by the National Assembly. The Speaker directed the Committee to expeditiously consider the National Assembly amendments to the Bill and report back to the Senate in the following sitting.

At its 266th Sitting held on 14th December, 2021, the Committee considered the amendments passed by the National Assembly to the Bill.

2 CONSIDERATION OF AMENDMENTS PASSED BY THE NATIONAL ASSEMBLY TO THE BILL

At its 266th Sitting held on 14th December, 2021, the Committee considered the amendments passed by the National Assembly as summarized below-

Observations by the Committee

From the foregoing the Committee made the following observations-

- (1) That the County Governments Grants Bill, sponsored by the Committee on Finance and Budget, was introduced in the Senate following the judgment in High Court Petition No. 252 of 2016, in which the court held, *inter alia*, that conditional grants cannot be included in the Division of Revenue Bill (and therefore Division of Revenue Act) as a strict consideration of the provisions of Article 218 of the Constitution sets out that the only matters to be dealt with in the Division of Revenue Bill is the division of nationally raised revenue between the national government and county governments;
- (2) Further that whereas the court found that conditional grants cannot be included in the Division of Revenue Bill, it did not preclude the development, introduction and enactment of a legislative instrument to provide for the manner in which conditional grants will be distributed to county governments. Indeed, the judgment dealt with the question of the nature of the matters to be dealt with in a Division of Revenue Bill but did not preclude a legislative action setting out conditional grants;
- (3) That the County Governments Conditional Grants Bill seeks to set out the information that was hitherto contained in the Second and Third Schedule of the County Allocation of Revenue Bill prior to coming into effect of the judgment in HC Petition No. 252 of 2016;

- (4) That the National Assembly has proposed various amendments to the County Governments Grants Bill whose effect would be to defeat the principle object of the Bill which is to deal with the question of disbursement of conditional grants to the county governments from the national government and development partners;
- (5) That in particular by changing the long title and short title of the Bill to refer to additional allocations under Article 202(2) of the Constitution, the amendments proposed by the National Assembly would leave out conditional allocations by development partners which form part of the transfers to county governments;
- (6) Further that the proposed deletion of the First and Second Schedule to the Bill would amount to a complete erosion of the substratum of the Bill and its objects. Further that by including the issue of financing of transferred functions in the provisions of the Bill introduces an issue outside the scope of the Bill which would be properly dealt with through a separate legislation.

The Committee therefore makes the following specific recommendations with respect to the proposed amendments-

CLAUSE 1

Clause of the Bill amended—

(a) THAT, Clause 1 of the Bill be amended by deleting the word “Grants” and substituting therefor the following words “Additional Allocation”;

Resolution: Not agreed to.

CLAUSE 2

(b) THAT, Clause 2 of the Bill be amended in the definition of “conditional allocation” by deleting the word “conditional” and substituting therefor the word “additional”;

Resolution: Not agreed to.

CLAUSE 3

(c) THAT, Clause 3 of the Bill be amended in paragraph (a) by deleting the expression “for the financial year 2021/2022” appearing after the word “allocations”;

Resolution: Not agreed to.

CLAUSE 4

(d) THAT, the Bill be amended by deleting clause 4 and substituting therefor the following new clause—

Additional allocation to the county governments.

4. (1) Additional grants shall be funds agreed upon by the national and the county governments during the consideration of the Budget Policy Statement and shall comprise of—

(a) resources required for transfer of functions to counties from the National Government as provided for under Article 187 of the Constitution;

(b) conditional and unconditional allocations provided for under Article 202(2) of the Constitution; and

(c) loans and grants from development partners. (2) Additional funds allocated under this section shall be included in the respective county governments’ appropriation bills. (3) The National Treasury shall facilitate any agreement between a county government and a development partner and shall table the agreements in the National Assembly and the Senate before inclusion in the Budget Policy statement.”;

Resolution: Not agreed to.

CLAUSE 8

(e) THAT, Clause 8 of the Bill be amended –

- i) by deleting paragraph (a);
- ii) by deleting paragraph (b); and
- iii) in paragraph (c) by deleting the proposed New Section 191 B.

Resolution: Not agreed to.

CLAUSE 9

(f) THAT, Clause 9 of the Bill be deleted

Resolution: Not agreed to.

FIRST SCHEDULE

(g) That, the first schedule of the Bill be amended by deletion.

Resolution: Not agreed to.

SECOND SCHEDULE

(h) That, the Second schedule of the Bill be amended by deletion.

Resolution: Not agreed to.

3 COMMITTEE RECOMMENDATION

Pursuant to standing order 159 (4) of the Senate Standing Orders, the Committee recommends that the Senate rejects the amendments passed by the National Assembly to the County Governments Grants Bill (Senate Bills No. 35 of 2021).

MINUTES OF THE 266TH MEETING OF THE SENATE STANDING COMMITTEE ON FINANCE AND BUDGET HELD ON TUESDAY, 14TH DECEMBER, 2021 AT 9:00 AM VIA ZOOM ONLINE PLATFORM.

PRESENT

- | | | |
|---|---|-------------|
| 1. Sen. Charles Kiburu, MP | - | Chairperson |
| 2. Sen. Mutula Kilonzo Junior, CBS, MP | - | Member |
| 3. Sen. Moses Wetangula Masika, EGH, MP | - | Member |
| 4. Sen. Millicent Omanga, MP | - | Member |
| 5. Sen. Rose Nyamunga, CBS, MP | - | Member |
| 6. Sen. CPA Farhiya Haji, MBS, MP | - | Member |

ABSENT WITH APOLOGY

- | | | |
|---------------------------------------|---|------------------|
| 1. Sen. (Dr.) Ochillo-Ayacko, EGH, MP | - | Vice-Chairperson |
| 2. Sen. Kimani Wamatangi, MP | - | Member |
| 3. Sen. Aaron Cheruiyot, MP | - | Member |

SECRETARIAT

- | | | |
|----------------------------|---|------------------|
| 1. Mr. Christopher Gitonga | - | Clerk Assistant |
| 2. Ms. Beverlyne Chivadika | - | Clerk Assistant |
| 3. Ms. Phyllis Makau | - | Director, PBO |
| 4. Ms. Amran Yunis | - | Fiscal Analyst |
| 5. Mr. William Wambiru | - | Fiscal Analyst |
| 6. Mr. Chacha Machage | - | Fiscal Analyst |
| 7. Ms. Sharon Rotino | - | Researcher |
| 8. Mr. Ian Otieno | - | Audio Officer |
| 9. Ms. Lucy Radoli | - | Legal Counsel |
| 10. Mr. Daniel Kirwa | - | Serjeant-at-Arms |

MIN. NO. 3063/12/2021: PRELIMINARIES

The Chairperson called the meeting to order at 9.13 a.m. and thereafter followed by a word of prayer.

MIN. NO. 3064/12/2021: ADOPTION OF THE AGENDA

The agenda was adopted after it was proposed by Sen. CPA Farhiya Haji, MBS, MP and seconded by Sen. Mutula Kilonzo Junior, CBS, MP.

MIN. NO. 3065/12/2021: CONFIRMATION OF MINUTES

- a) The minutes of the 263rd meeting held on Monday, 6th December, 2021 at 9:30 a.m. was confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Millicent Omanga, MP, and seconded by Sen. Rose Nyamunga, CBS, MP.

- b) The minutes of the 264th meeting held on Wednesday, 8th December, 2021 at 9:00 a.m. were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Millicent Omanga, MP, and seconded by Sen. Mutula Kilonzo Junior, CBS, MP.
- c) The minutes of the 265th meeting held on Thursday, 9th December, 2021 at 9:00 a.m. was confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Moses Wetangula Masika, EGH, MP, and seconded by Sen. Mutula Kilonzo Junior, CBS, MP.

**MIN. NO. 3066/12/2021: CONSIDERATION AND ADOPTION OF THE REPORT
ON 2022 BUDGET POLICY STATEMENT AND THE
MEDIUM TERM DEBT MANAGEMENT STRATEGY**

The Committee deliberated on the report and resolved to propose the following financial recommendations that-

- (a) the County Equitable share be **Kshs. 495 billion**,
- (b) the Equalization Fund- **Kshs. 7.07 billion**,
- (c) the County Conditional Grants be **Kshs. 37.03 billion** which comprises of the following-
 - Supplement for Construction of County HQs- **Kshs. 0. 45 billion**,
 - Leasing of Medical Equipment- **Kshs. 5.20 billion**
 - Allocation from Development Partners as Loans and Grants- **Kshs. 31.38 billion**
- (d) That the proposed allocation of **Kshs. 1,764.52 billion** shareable revenues to the National Government for FY 2022/23 in the 2022 BPS, be **reduced by 7 percent**;
- (e) That the budget deficit including grants be pegged at 6 percent of GDP while budget deficit excluding grants be pegged at 6.4 percent as projected in the BPS 2022

The Committee considered the report on the 2022 BPS and MTDMS. The Committee unanimously adopted the report having being proposed by Sen. Mutula Kilonzo Junior, CBS, MP, and seconded by Sen. Rose Nyamunga, CBS, MP with the following recommendations.

**MIN. NO. 3067/12/2021: CONSIDERATION OF NATIONAL ASSEMBLY
AMENDMENTS TO THE COUNTY GOVERNMENTS
GRANTS BILL**

The Committee was apprised on amendments from the National Assembly to the County Governments Grants Bill (Senate Bills No. 35 of 2021). The Bill provides for the allocation and transfer of conditional allocations from national government's share of revenue and from development partners to the county governments, pursuant to Article 202 (2) of the Constitution.