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REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT - THIRD SESSION

THE SENATE

25/05/24
 APPROVED
 RT. HON. SEN
 AMASON J. KINGI

STANDING COMMITTEE ON FINANCE AND BUDGET

REPORT ON THE COUNTY PUBLIC FINANCE LAWS
 (AMENDMENT) BILL, (SENATE BILLS NO. 39 OF 2023)

Clerk's Chambers,
 Parliament Buildings,
 NAIROBI.

May 2024

① Clerk
 This is forwarded and recommended for approval for tabling
 24/05/2024.

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LIST OF ABBREVIATIONS/ ACRONYMS

CAF	-	County Assembly Forum
COB	-	Controller of Budget
COG	-	Council of Governors
CRA	-	Commission on Revenue Allocation
CRF	-	County Revenue Fund
ICPAK	-	Institute of Institute of Certified Public Accountants-Kenya
OAG	-	Office of Auditor General
PFM	-	Public Finance Management
SOCATT (K)-		Society of Clerks at the Table in Kenyan
TISA	-	The Institute for Social Accountability

PREFACE

ESTABLISHMENT AND MANDATE OF THE COMMITTEE

Article 124 (1) of the Constitution of Kenya provides that each House of Parliament may establish committees and shall make Standing Orders for the orderly conduct of its proceedings, including the proceedings of its committees.

Parliamentary committees consider policy issues, scrutinize the workings and expenditures of the national and county governments, and examine proposals for legislation. The end result of any process in Committees is a report, which is tabled in the House for consideration.

The Senate Standing Committee on Finance and Budget is established under section 8(1) of the Public Finance Management (PFM) Act, Cap.412A and standing order 228 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 examine -
 - (i) the Budget Policy Statement presented to the Senate;
 - (ii) the report on the budget allocated to constitutional Commissions and independent offices;
 - (iii) the Division of Revenue Bill, the County Allocation of Revenue Bill, the County Governments Additional Allocations Bill, and the cash disbursement schedules for county governments;
 - (iv) all matters related to resolutions and Bills for appropriations, the share of national revenue amongst the counties, matters concerning the national budget, including public finance and monetary policies and public debt, planning, and development policy; and
- 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.

MEMBERSHIP OF THE COMMITTEE

Following the constitution of the Standing Committees of the Senate of the Thirteenth (13th) Parliament on Thursday, 13th October, 2022, the Senate Standing Committee on Finance and Budget as currently constituted comprises the following Members-

- | | | |
|---|---|-------------------------|
| 1) Sen. (Capt.) Ali Ibrahim Roba, EGH, MP | - | Chairperson |
| 2) Sen. Maureen Tabitha Mutinda, MP | - | Vice-Chairperson |
| 3) Sen. (Dr.) Boni Khalwale, CBS, MP | - | Member |
| 4) Sen. Joyce Chepkoech Korir, MP | - | Member |
| 5) Sen. Tabitha Karanja Keroche, MGH, MP | - | Member |
| 6) Sen. Mohamed Faki Mwinyihaji, CBS, MP | - | Member |
| 7) Sen. Richard Momoima Onyonka, MP | - | Member |
| 8) Sen. Shakila Abdalla Mohamed, MP | - | Member |
| 9) Sen. Eddy Gicheru Oketch, MP | - | Member |

CHAIRPERSON'S FOREWORD

The County Public Finance Laws (Amendment) Bill, 2023 was published in the Kenya Gazette Supplement No. 159 (Senate Bills No. 39) of 2023. It was read a First Time in the Senate on the 14th November, 2023 and committed to the Senate Standing Committee on Finance and Budget for consideration and to facilitate public participation.

The principal object of the Bill is to give financial autonomy to county assemblies in line with the principle of separation of powers.

The Bill seeks to amend section 109 of the Public Finance Management Act, CAP.412A to establish a County Assembly Fund (CAF) in order to have monies for the operations of county assemblies channelled through the Fund. The Bill also seeks to provide for instances where the county assemblies can be able to spend money in cases of emergencies.

Pursuant to Article 118 of the Constitution and standing order 145(5) of the Senate standing orders, the Committee invited members of the public to submit views on the Bill. An advert was published in the Daily Nation and Standard newspapers on 22nd November, 2023. Further, the Committee held consultative meetings with key stakeholders. The Committee received submissions from the following stakeholders-

- a) The National Treasury and Economic Planning.
- b) The Commission on Revenue Allocation (CRA).
- c) Office of the Controller of Budget.
- d) The Council of Governors.
- e) The Institute of Certified Public Accountants-Kenya (ICPAK).
- f) County Assembly Forum.
- g) The Institute for Social Accountability.
- h) The Lake Region Budget Hub.
- i) The Society of Clerks at the Table in Kenyan County Legislatures (SOCATT).
- j) The Rift valley Budget Hub.
- k) The Coast Regional Budget Hub.

Having considered the Bill and submissions from the stakeholders, the Committee made several observations, including-

- a) The Bill is informed by the challenges faced by county assemblies in the requisition of funds process through the county treasury. However, the inability of the County Executive to fulfil requisition requests is partly due to delayed disbursement of funds by the National Treasury. The Committee noted, therefore, that despite the establishment of the County Assembly Fund, the county assemblies are likely to continue experiencing delayed disbursement of funds.
- b) The County Assembly Fund cannot be a recipient of grants, gifts, donations or bequests. This is because the Fund would be equivalent to an exchequer account, which can only receive funds by way of appropriation for transparency and accountability purposes. It will be a challenge to oversight utilization of the funds if the receipts into the fund are not clearly monitored.
- c) It is imprudent for the Fund to be used to defray emergency costs. In any case, section 110 of the PFM Act already provides for the establishment of a County Emergency Fund to enable payments in respect of urgent and unforeseen expenditure needs that may arise within the county. Given that the county assembly resources are purely to cater for management of the county assembly, the provision on expenditure for emergencies is unnecessary.
- d) The Fund is unlikely to incur administrative expenses as the resources contained therein are purely for purposes of meeting the expenditure of the county assemblies. As such, there is no need to provide for administrative expenses of the Fund.
- e) Any unspent appropriations held in the Fund by the end of the financial year should lapse. The unutilized balances should not remain in the Fund but should be returned to the County Revenue Fund so that they can be appropriated.

The Committee, having considered stakeholders submissions and the contents of the Bill, recommends that the Senate approves the County Public Finance Laws (Amendment) Bill, (Senate Bills No.39 of 2023) with the following amendments-

- a. clause 6 (the proposed new section 109A(2)) be amended by-

- deleting paragraph (b)- since the Fund will be similar to exchequer and is not eligible to receive grants, gifts, donations or bequests. Any monies to the Fund shall be in accordance with the respective county government's approved appropriations.
 - deleting paragraph (d)- This is because as the structure of the county government, county assemblies are not expected to have access to any other source of funding other than the annual county government appropriations.
- b. clause 6 (the proposed new section 109A (7)) be amended by deleting the word Service. This is to ensure uniformity in the Bill since the Fund is to be known as County Assembly Fund.
- c. clause 6 (the proposed new section 109A (10)) be amended to indicate that any unutilized balances in the Fund by the end of the financial year shall lapse and returned to the County Revenue Fund for re-budgeting. This will promote principles of openness and accountability in managing public resources.
- d. clause 6 (the proposed new section 109B) be amended by deleting paragraph (c). This is because the proposed Fund is purely for defray costs related to the operations of the county assembly. It's unlikely that there will be any administrative costs for running the Fund.

Acknowledgement

I take this opportunity to commend the Members of the Committee for their devotion and commitment to duty, which made the consideration of the County Public Finance Laws (Amendment) Bill, 2023 successful.

I also thank the offices of the Speaker and the Clerk of the Senate for the support extended to the Committee in undertaking this important assignment.

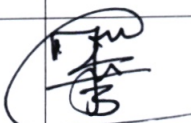




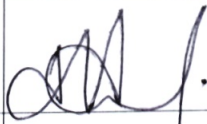


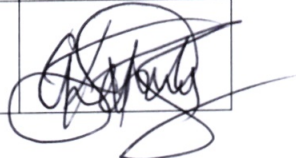
It is now my pleasant duty, pursuant to standing orders 148(1) and 223(6) of the Senate Standing Orders, to present the report of the Standing Committee on Finance and Budget to the Senate on the County Public Finance Laws (Amendment) Bill, 2023

Signature..........Date.....20/05/24.....

**SEN. (CAPT.) ALI IBRAHIM ROBA, EGH, MP,
CHAIRPERSON,
STANDING COMMITTEE ON FINANCE AND BUDGET**

ADOPTION OF THE REPORT ON THE COUNTY PUBLIC FINANCE LAWS (AMENDMENT) BILL, 2023.

We, the undersigned Members of the Senate Standing Committee on Finance and Budget, do hereby append our signatures to adopt this Report-

	Name	Designation	Signature
1.	Sen. Capt. Ali Ibrahim Roba, EGH, MP	Chairperson	
2.	Sen. Maureen Tabitha Mutinda, MP	Vice-Chairperson	
3.	Sen. (Dr.) Boni Khalwale, CBS, MP	Member	
4.	Sen. Tabitha Karanja Keroche, MGH, MP	Member	
5.	Sen. Joyce Chepkoech Korir, MP	Member	
6.	Sen. Mohamed Faki Mwinyihaji, CBS, MP	Member	
7.	Sen. Richard Momoima Onyonka, MP	Member	
8.	Sen. Shakila Abdalla Mohamed, MP	Member	
9.	Sen. Eddy Gicheru Oketch, MP	Member	

CHAPTER ONE: OVERVIEW OF THE BILL

1.1 Background

1. The County Public Finance Laws (Amendment) Bill, 2023 is sponsored by Sen. Kathuri Murungi, MGH, MP.
2. The County Public Finance Laws (Amendment) Bill, 2023, Senate Bills No. 39 of 2023, was published in the Kenya Gazette Supplement No. 159. The Bill was read a First Time in the Senate on 14th November, 2023 and committed to the Senate Standing Committee on Finance and Budget for consideration and to facilitate public participation.

1.2 Objects of the Bill

3. The Bill seeks to amend the Public Finance Management Act, Cap. 412A, to establish a County Assembly Service Fund in order to anchor the Fund in the Act and further to ensure that county assemblies have direct access to the monies in the Fund. The overarching objective of these amendments is to ensure that the legislative arms of county governments can effectively discharge their constitutional mandate.

1.3 Overview of the Bill

4. The Bill proposes to amend the Public Finance Management Act to insert new sections to provide for the following-
 - (a) establishment of a County Assembly Service Fund in each county;
 - (b) the Fund shall be used to defray the administrative expenses of the County Assembly; for the acquisition and proper maintenance of buildings, grounds and other assets of the County Assembly; and for any other purpose provided for in the Constitution and any other written law;
 - (c) further, all receipts, savings and accruals to the Fund and the balance of the Fund at the end of each financial year shall be retained in the County

Assembly Service Fund and applied in accordance with the Constitution and this Act;

- (d) that the Appropriation Bill for a respective county shall be accompanied by a schedule setting out monthly disbursements to the Fund from the County Revenue Fund;
- (e) that the Controller of Budget shall have viewer rights access to all bank accounts maintained by a county executive, a county assembly and any other county government entity;
- (f) that if, at the end of a financial year, a county government entity is holding appropriated money that was withdrawn from the County Exchequer Account or the County Assembly Service Fund Account but has not been spent, it shall repay the unspent money to the County Exchequer Account or the County Assembly Service Fund Account and prepare a refund statement which shall be forwarded to the Controller of Budget

5. The Bill further proposes to repeal section 34 of the County Assembly Services Act No. 24 of 2017 which presently provides for the establishment of a County Assembly Services Fund

1.4 Implications of the Bill

6. The Bill intends to provide a channel through which monies allocated to the county assemblies will be disbursed. The intention is to ensure the assemblies are able to access the monies when need arises without solely relying on the county treasuries.

CHAPTER TWO: SUBMISSIONS BY STAKEHOLDERS

7. Pursuant to the provisions of Article 118 of the Constitution and standing order 145 of the Senate Standing Orders, the Committee invited key stakeholders to submit their comments on the Bill. In this respect, the Committee received submissions from the following stakeholders-
- a) The National Treasury and Economic Planning;
 - b) The Commission on Revenue Allocation (CRA);
 - c) Office of the Controller of Budget;
 - d) The Council of Governors;
 - e) The Institute of Certified Public Accountants-Kenya (ICPAK);
 - f) County Assembly Forum;
 - g) The Institute for Social Accountability;
 - h) The Lake Region Budget Hub;
 - i) The Society of Clerks at the Table (SOCATT) in Kenya;
 - j) The Rift valley budget hub; and
 - k) The Coast Regional Budget Hub.
8. The submissions by each stakeholder are as summarized below-

2.1 The National Treasury and Economic Planning

9. The National Treasury made the following submissions-
- a) That the current legal provisions for county governments relating to section 109 of the PFM Act, 2012 are a mirror of section 17 of the Act as they relate to the National Government. The purpose for this financial provision is to ensure that there are no multiple centres of accountability on matters of financial management. The general architecture of the PFM Act is to promote clear lines of responsibility and accountability in the country's public finance management system.
 - b) Section 109(3) of the PFM Act assigns the County Treasury the responsibility to administer the County Revenue Fund and ensure that the county government

complies with the provisions of Article 207 of the Constitution. Further, section 109(6) of the PFM Act requires the County Treasury to obtain the written approval of the Controller of Budget before withdrawing money from the County Revenue Fund under the authority of an Act of the County Assembly that appropriates money for a public purpose; an Act of Parliament or county legislation that imposes a charge on that Fund; or the PFM Act in accordance with sections 134 and 135.

- c) In the proposed new section 109A(7) on the withdrawal of money from the County Assembly Fund Account, the National Treasury noted that money can only be moved out of the County Revenue Fund to the County Assembly Fund with the approval of the Controller of Budget. The County Treasury is the administrator of the County Revenue Fund, and is therefore the only office authorized by law to obtain Controller of Budget's approval to move money out of the County Revenue Fund. The Fund therefore introduces bureaucracy in withdrawal of funds. Further, the flow of funds from the County Treasury for the running of the County Assemblies should be solved administratively.
- d) Regarding County Assemblies being able to spend money in emergencies from the proposed County Assemblies Fund, sections 110-115 of the PFM Act are clear on the creation and usage of County emergency funds in line with Article 208 of the Constitution.
- e) Sections 45 and 136 of the PFM Act provide that at the end of the financial year, any unspent balances lapse. In this regard, the proposed new section 109(10) contravenes the PFM Act.
- f) That the procedure for establishment of a county public Fund is provided for under section 116 of the PFM Act. The minimum requirements that public funds must comply with are well set out under Regulation 197 of the Public Finance Management (County Government) Regulations, 2015 and they include -
 - i) a demonstration that the functions and the public services to be delivered through the Fund cannot be delivered through the structure of budget appropriations;

- ii) a clear justification as to why a Fund structure is deemed appropriate for improved service delivery in light of the legislative and policy mandate of the county government entity;
 - iii) the administration costs of the Fund shall be a maximum of three (3%) percent of the approved budgets of the Fund;
 - iv) the establishment of the Fund and its continued existence should not depend on annual financing from the county exchequer;
 - v) a demonstration of how the activities of the proposed County Public Fund shall fit in the overall Medium-Term Plan and County Fiscal Strategy Paper; and
 - vi) the initial approval for establishment of a county public Fund shall be for a maximum period of ten (10) years, beyond which fresh approvals shall be sought.
- g) Analysis of the proposed County Assembly Services Fund clearly indicates that a move to establish such Fund contravenes the above legal provisions. Its establishment would mean a review of the regulations whose spirit is to promote accountability and control proliferation of public funds.
- h) The National Treasury and Economic Planning does not support establishment of the proposed Fund since it will lead to multiple centres of accountability and also contravene the above-mentioned legal provisions whose spirit is to ensure proper accountability, ease administration and provide oversight on public financial management in the country.

2.2 The Commission on Revenue Allocation

10. The CRA appeared before the Committee and submitted as follows-

- a) Clause 6: Establishment of County Assembly Fund.

Proposed new section 109A be amended to provide for an autonomous Fund in line with Article 207(1) and 4(b) of the Constitution to be financed directly from the Consolidated Fund as part of the county's equitable share.

- b) Proposed new section 109A (2)(c) be deleted since it is a duplication of 109A (2)(a).
- c) Proposed new section 109A (11) be amended to provide for timelines for submission of reports to CRA and Controller of Budget. This is to align with PFM Act provisions.
- d) In the proposed new section 109B on the utilization of the Fund, the phrase “administrative expenses” ought to be defined for clarity and to avoid misinterpretation. Further, a provision to the effect that such expenses shall be in line with the budget ceiling framework recommended by CRA and approved by the Senate should be added to align with the PFM Act provisions.
- e) In the proposed new section 109D on Authority to Incur Expenditure, there is a need to specify who will develop expenditure guidelines on usage of funds for clarity purposes.
- f) Proposed new section 109E on disbursement to County Assembly Fund. The Fund should be autonomous and the National Treasury should prepare two cash disbursement schedules (County Executive and County Assembly) which shall be approved by the Senate. The county assembly disbursement schedule should be informed by approved recurrent budget expenditure ceilings approved by the Senate.
- g) Proposed new section 109E (2) be deleted.
- h) Clause 8 on the amendment of section 134 of the PFM Act should be amended by deleting the word "Service" in the phrase “County Assembly Service Fund.” subclause 109A establishes “County Assembly Fund” and not “County Assembly Service Fund” referred to in this clause.
- i) Clause 9(2) on amendment of section 136 PFM Act be amended to provide that refund statement of unspent funds shall be forwarded to both the Controller of Budget and Commission on Revenue Allocation to align it with Article 216 of Constitution.
- j) In the Memorandum of Objects and Reasons the statement under paragraph 3 which reads that “the Bill also seeks to provide for instance where the county

assemblies can be able to spend money in emergencies” be deleted. Sections 110-115 of PFM Act vest such power to the CEC Finance and not County Assembly.

- k) The proposed Bill should provide the process of determination of amounts due to county assemblies for clarity purposes.

2.3 The Office of the Controller of Budget

11. The OCOB made the following submissions-

- a) That section 32(3) of the County Assembly Service Act should not be deleted but be amended to provide that in preparing the financial statements for the Board, the Secretary shall ensure that the report contains information on the financial and non-financial performance of the Board. This is because the preceding sub-sections relate to the accounts and reports of the Board.
- b) The proposed section 109A (2)(b), (c) and (d) should be deleted, based on the following reasons;
 - i) The Fund should only receive funds appropriated by the county government in each financial year. All monies to the Fund should be channelled through the County Revenue Fund.
 - ii) In any event, grants, levies or other revenue should be factored in the Appropriation Act before being spent.
 - iii) The Fund, being an equivalent of a county exchequer account, should only receive funds through the Appropriation Act.
- c) The proposed new section 109A(5)(b) should be deleted because this is a Fund account (equivalent to the Exchequer) and payments are not made from it. Payments should be made from either the recurrent or development operational accounts.
- d) The proposed new section 109A (10) should be deleted as it contradicts section 136 of the Public Finance Management Act since an appropriation lapse after the end of a financial year and any unspent funds should be re-budgeted.

- e) Under the proposed new section 109A (11), the phrase "with a copy to" be deleted and other agencies that ought to receive the financial reports such as the National Treasury, the County Treasury and the County Assembly be introduced. That this is to align with section 163 of the PFM Act, 2012 and ensure that financial reports are submitted to all the named agencies.
- f) the proposed new section 109B(a) and (c) be deleted. This is because the Fund should not have any administrative costs. The proposed County Assembly Fund is equivalent to the County Exchequer Account which does not have administrative costs. The Fund purpose will be to implement the programs of the county assembly in accordance with the Appropriation Act.

2.4 The Council of Governors (CoG)

12. The CoG submitted as follows-

General comments

- a) That giving financial autonomy to county assemblies in line with the principle of separation of powers will indeed address the challenges of county assemblies relying on the county executive for finances which occasion delays and other conflicts between the two arms of government.
- b) Whereas the objective is to give autonomy to the county assemblies, the Bill has not addressed the challenge but reinforced the current practice by making the county executive the entity responsible for disbursing funds to the county assemblies. This will not only transfer the responsibility of disbursing funds from the National Treasury but also cause acrimony between the county executives and the assemblies in instances where the National Treasury does not adhere to the approved disbursement schedule, as has been the case for the past 10 years.
- c) That in order to give the county assemblies the desired autonomy and to avoid further aggravating conflicts between the assemblies and the executive, the Bill should provide for exemption of the funds due to the county assemblies from

being paid into the County Revenue Fund in accordance with Article 207 (1) of the Constitution and section 109(2)(a) of the PFM Act. This way, the National Treasury should be responsible for the disbursement of county assemblies' monies to the County Assembly Fund being established.

- d) There is need for more research and stakeholder engagement for the Bill to achieve its objective since it also has the potential to affect the budgetary ceilings for both arms of the county governments.

Specific comments

- e) The short title of the Bill be amended to be cited as the Public Finance Management (Amendment) Act, 2023. This is because the Principal Act being amended is PFM Act with consequential amendments to County Assembly Services Act, 2017, which is not a Public Finance Law.
- f) In the proposed new section 109E (1) on disbursement to the County Assembly Fund, CoG submitted that Article 207 (1) provides for reasonable exclusion money from being paid into the County Revenue Fund (CRF) by an Act of Parliament. It is also supported by provision of section 109 (2)(a) of PFM Act. Therefore, to give full autonomy to the county governments, the money for the county assemblies should be excluded from the CRF and instead paid directly into the County Assembly Fund by The National Treasury.
- g) Further, in the proposed new section 109E(2), CoG noted that there is need for consultation and clarity on whether it is the National Treasury and the Senate or county treasury and the county assembly to prepare and approve the disbursement schedule, respectively.
- h) That as it is, the provision will be punitive to the county treasuries in cases where the National Treasury does not adhere to the approved disbursement schedule. It has been the case for the past 10 years that the National Treasury has been delaying the disbursement of money to counties. Therefore, making it mandatory for the county treasury to transfer funds monthly while the National Treasury doesn't disburse funds as per the schedule will expose the county executive

Committee Members for Finance to breaking the law and form grounds for impeachment.

- i) That clause 7 in the proposed new section 119A of the proposed Bill on the access to internet banking user rights by the CoB should be deleted because the provision is discriminatory to the county level of government as the same is not being proposed or doesn't exist in any law for the national government accounts. Further, that the Controller of Budget's mandate as provided for under Article 228 is to oversee the implementation of the budgets of the two levels of government by authorizing withdrawals from public funds under Articles 204, 206 and 207. This mandate does not extend to audit of accounts of either level of government as this is the mandate of the Auditor General under Article 229(4) of the Constitution.
- j) Under clause 8 on the amendment of section 134 of the PFM Act, 2012, CoG proposed that "County Assembly Service Fund" be replaced with "County Assembly Fund" since it is not properly quoted for the purpose of the Bill.
- k) That there is no formula/ratio for sharing of funds between the county executives and county assemblies especially on the development budget. Counties sources of funds include equitable share, own source revenue and loans and grants. While the overarching objective of the Bill is to give the county assemblies financial autonomy, there is no framework for sharing and which arm of the county governments will bear any shortfalls. There is therefore a need to ensure that county executives are protected regarding the implementation of budgets in cases of shortfalls in revenue collection by the counties.

2.5 The Institute of Certified Public Accountants of Kenya (ICPAK)

13. ICPAK submitted as follows-

- a) That currently there are statutory provisions to guarantee financial autonomy of the County Assembly. For instance, Section 31 of the County Assembly Services Act 2017. Further, there exists frameworks through the county budgeting process to guarantee independence of the County Assembly. As such, there is a

need to streamline the administrative structures between the County Treasury and County Assembly to iron out any delays in disbursement of funds to the Assembly.

- b) The establishment and operationalization of the County Assembly Fund could further be affected by the ongoing implementation of the Treasury Single Account. According to the PFM Act the “Treasury Single Account”— in relation to the county government, means a centralized bank account system established in each county where all deposits and payment transactions are processed for county departments and any other county entity which draws directly from the County Revenue Fund. Section 119(2) of the PFM Act provides that as soon as practicable, each County Treasury shall establish a Treasury Single Account at the Central Bank of Kenya, or a bank approved by the County Treasury through which payments of money to and by the various county government entities are to be made.
- c) In the proposed new section 109A2(a) of the proposed Bill on the establishment of County Assembly Fund, ICPAK noted that county assembly funds are still subject to the approval of the executive since all county funds are controlled through CRF and that is why all the 47 counties have each one County Revenue Fund (CRF) Account at CBK and that if absolute independence is to be realized, then County Assembly allocations shouldn't be channelled through County Revenue Fund, which on the other side, is against the constitution that directs how national resources are to be shared amongst the two levels of government.
- d) Therefore, County Assemblies should be allowed to draw their entire allocation into a special purpose Account in CBK and remain entities of the counties.
- e) Since governors are the county accounting officers, they do appear before the oversight authority which is the Senate, and therefore should have some control over county assemblies especially on financial matters since the budget making process is one for each county. County assemblies should be oversighted by the senate (through Executive) not just by being audited by the auditor general.

- f) The proposed new section 109A contradicts section 109 of the principal Act. If there are amendments to be done to PFM Act then they are to be done in section 109 and not introducing it under another section.
- g) That clause 6 of the proposed Bill gives the county assembly autonomy without considering the structures in place to manage. Section 103 and 104 of the PFM Act has put in place a clear structure in the county when it comes to management of funds. Therefore, any amendment seeking for autonomy of the county assembly should equally provide for how the funds shall be managed, for proper accountability.
- h) Only money appropriated from the CRF to be paid to the County Assembly Fund. Allowing the county assembly to also have a different Fund which receives money even from levies, grants etc. will be subject to abuse and might contravene Article 207 of the Constitution.
- i) The proposed new section 109A(3) on the provision that the clerk of the county assembly to be the administrator of the County Assembly Fund contradicts section 116(3) of the PFM Act which provides that the CEC shall designate an administrator for any fund that he has established. The section goes ahead and gives the role of the Administrator. Additionally, that clause 6 again contradicts section 148 (4) of the PFM Act which provides that the clerk to the assembly shall be the accounting officer. Therefore, section 116 of the PFM Act should be applied, the CEC to establish the Fund and not necessarily amending section 109.
- j) Under the proposed new section 109A (11) on financial reports, ICPAK submitted that financial reports of the county assembly should also be shared with the executive because by transferring Funds from the CRF, the executive is expected to account for that transfer in its financial books and therefore for consolidation purposes as required by reporting templates issued by PSASB, the executive requires financial statements of County Assembly and other entities owned by counties. This is for proper accountability and in line with section 164(4)(b) of the PFM Act 2012.

- k) On disbursement to the County Assembly Fund under section 109E (1 & 2) of the proposed Bill, the institute recommended that county assemblies should draw their entire budget allocation into their special purpose account. County Treasury should be removed from the process of monthly disbursements.
- l) Under clause 9 on the unspent monies, ICPAK submitted that all county unspent monies should be returned to CRF under cash accounting. Therefore, the County Assembly Fund Account should repay the unspent funds to CRF.
- m) The Institute was of the considered opinion that already there are frameworks through the county budgeting process to guarantee independence of the County Assembly through the Constitution of Kenya, Public Finance Management Act 2012, County Government Act, 2012 and County Assembly Services Act 2017. As such, there is need to strengthen the current administrative structures as opposed to amending the PFM Act 2012 as envisaged by the proposed Bill.

2.6 The County Assembly Forum (CAF)

14. CAF submitted the following-

- a) The Bill represents a significant stride towards providing financial autonomy for County Assemblies. Since the inception of Devolution in 2013, County Assemblies have sought greater control over their financial resources to better serve their constituents.
- b) The Bill contains comprehensive provisions, particularly the establishment of the County Assembly Fund outlined in the proposed section 109A. This fund, sourced from various avenues including appropriations, grants, and donations, serves as a dedicated resource for County Assemblies, ensuring greater financial stability and flexibility in meeting their administrative and developmental needs.
- c) While recognizing the positive steps taken in the proposed new section 109E regarding the disbursement of funds to the County Assembly Fund, further refinements may be needed. Feedback from the County Assemblies Forum suggests that this section might not entirely meet the expectations and satisfaction of the county-level governance bodies. Further consultation and

potential adjustments may be considered to align this section more closely with the needs of County Assemblies.

- d) The inclusion of in the proposed new section 109D, authorizing the Clerk of a County Assembly to permit expenditure with accompanying guidelines, is a commendable feature. Clear guidelines on expenditure help ensure transparent and responsible financial management within County Assemblies, fostering accountability and efficiency.
- e) Amend the proposed new section 109A(2) to provide that monies to be paid into the Fund shall be such monies as may be appropriated by the County Assembly from the Consolidated Fund and not County Revenue Fund. CAF gave the following reasons-
 - i. Placing the fund under the National Treasury diminishes the potential influence of the executive branch at the county level, thereby fostering a more autonomous financial structure for County Assemblies.
 - ii. Establishing the County Assemblies Fund under the National Treasury mitigates the risk of undue executive influence on the financial affairs of County Assemblies.
 - iii. Placing the County Assemblies Fund under the National Treasury provides an additional layer of protection against potential fiscal imbalances.
 - iv. Consistency with the principle of checks and balances.
 - v. Streamlining resource allocation.
- f) The proposed new section 109E be amended to provide that the National treasury shall disburse funds directly to the County Assemblies Fund in accordance with a schedule prepared by the National Treasury in consultation with the Intergovernmental Budget and Economic Council as per section 17(7) of PFM Act.

- g) CAF indicated that this will help minimize executive influence, preserve oversight independence, enhance checks and balances, mitigate political pressures, and align with best practices in financial management.

2.7 The Coast Regional Budget Hub

15. The Coast Regional Budget Hub submitted the following-

- a) Most of the proposals in the Bill seek to amend two Acts namely; the Public Finance Management Act of 2012 and the County Assemblies Service Act 2017. Therefore, this should be presented as a miscellaneous Act that seeks to amend the County Assemblies Service Act 2017 and the PFM Act and not as a separate Act.
- b) There is discrepancy between the proposed new sections 109E and 109A (7) and the general objectives of the Bill. The Bill proposes the independence of the County Assemblies by not relying on County Treasury to do disbursements to the County Assemblies but the section still mentions that disbursement would be from the County Treasury. Further, that there are instances of delayed exchequer release and the Bill has not mentioned what happens to that effect.
- c) In the proposed new section 109D (1) on authority to incur expenditure, the Coast Regional Budget Hub proposed that there should be a clear description of the people who can be authorized by the clerk to incur expenditure. The position and role of the person who can incur expenditure other than the clerk should be clearly indicated.
- d) The autonomy of the county assembly is paramount as the oversight body mandated to approve county budgets and oversee implementation of projects and programmes. Article 175(a) of the Constitution states that county governments shall be based on democratic principles and the separation of powers. The county Governors have been using unorthodox means to frustrate transfer of funds to county assembly accounts and that has hindered execution of their mandate.

- e) The Controller of Budget should ensure that quarterly reports of the funds are submitted timely because counties have created so many funds and they haven't been submitting the quarterly reports as required.

2.8 The Rift Valley Budget Hub

16. The Rift Valley Budget Hub submitted as follows-

- a) Basis for allocation to the Fund once operationalized- that the Senate should maintain the practice of ceilings through the County Allocation of Revenue Act which are usually proposed by CRA with information generated by SRC. This will mitigate the scramble for resources between the County Treasury and County Assembly.
- b) In the proposed new section 109A (10) on utilization of the Fund, Budget Hub proposed that to avoid tying monies in the Fund, subsequent CARA ceilings should take into consideration the balances in the Fund. At the end of the financial year, the fund administrator should declare the balances and its purpose by economic (whether salaries, use of goods and services and capital projects) as well as program clarification.
- c) That the proposed new section 109E (1) and (2) on disbursement to County Assembly Fund assumes an ideal situation where cash flow in the County is seamless. On the contrary, county governments experience cash flow challenges occasioned by delayed disbursement of equitable share and shortfall in local revenue. Under such circumstances, the County Treasury will be forced to prioritize the County Assembly at the expense of other more crucial services. Even worse if the County Treasury is unable to do so, this section could create conflict between the County Assembly and County Treasury.
- d) Creating a new Fund and altering financial management practices, could result in serious tussles in management of county revenue allocations and compromise adherence to the principles of public finance management. The Senate should

therefore review the Bill with a keen consideration of the principles of public finance management and the contextual realities.

2.9 The Lake Region Budget Hub

17. The Lake Region Budget Hub submitted the following-

- a) That the Bill does not provide a specific date on when the new law takes effect. Therefore, the enacted act should be able to state the commencement date.
- b) Section 34 of the County Assembly Services Act No. 24 of 2017 is deleted without any explanation provided in the Bill. It's important for any legislative changes to be accompanied by justifications or rationale to ensure transparency and accountability.
- c) In the proposed new section 109E (1), on disbursement to County Assembly Fund, the disbursements should be based on the exchequer releases or on quarterly basis. The Bill should therefore ensure that the proposed dates are in line with the exchequer release schedules to avoid giving guidelines that are practically impossible to implement.
- d) While the Bill establishes the County Assembly Fund and outlines its administration, there's limited mention of oversight mechanisms to prevent misuse or mismanagement of funds. Clear provisions for auditing, reporting, and accountability mechanisms should be included to ensure proper utilization of public funds.
- e) There's a notable absence of provisions for public participation in the management and utilization of county assembly funds. Incorporating mechanisms for public input and scrutiny can enhance transparency and accountability in the allocation and expenditure of public resources.
- f) Section 136 of the Public Finance Management Act is amended to address the repayment of unspent funds by county government entities. However, the Bill should provide clear guidelines on the process and timelines for such refunds, including mechanisms for monitoring compliance.

- g) The Bill should include explanatory notes or preamble sections to provide context and justification for each proposed amendment, ensuring clarity and transparency in the legislative process.
- h) Incorporate provisions for independent audits, regular reporting, and oversight by bodies such as the Controller of Budget and the Auditor General to enhance accountability and transparency in the management of county assembly funds.

2.10 The Institute for Social Accountability (TISA)

18. TISA submitted the following-

- a) Under clause 2, the deletion of the definition of the term "fund" in the County Assembly Services Act of 2017 should be accompanied with a new definition of the term "fund". The County Assembly Fund in the proposed Bill should mirror section 24 of the PFM Act on the establishment of the Parliamentary Service Fund and leave out all definitions in the County assemblies services Act the same way the definition, powers and responsibilities are defined in the Parliamentary Service Act.
- b) While the Memorandum of Objects and Reasons speaks of how the County Assembly Services Fund shall be utilized including during county assembly emergencies, the proposed new section 109B does not include emergencies as one of its uses. There is a need to realign the proposed new section 109B with the Memorandum of Objects and Reasons to include emergencies.
- c) There is need to amend section 19 of the County Assembly Services Act which highlights the role of the county assembly clerk to add that the Clerk shall be the administrator of the County Assembly Fund as proposed in the Bill.
- d) The proposed new section 109 should clarify on whether creation of the County Assembly Fund is meant to replace the County Revenue Fund or not. This is because subsection 2(a) is still making reference to the latter.
- e) In the proposed new section 109D, there should be clear justifications by the clerk on authorizing the number of members of staff to incur expenditure.

Further, there should be clarity on the procurement guidelines and limitations in order to have a balanced market rate.

2.11 The Society of Clerks at the Table (SOCATT) in Kenya

19. SOCATT (K) submitted the following-

- a) That entrenching financial autonomy for county assemblies will strengthen accountability and prudence in discharge of the county assembly mandate and further enhance strong intergovernmental relations within counties by reducing avenues for conflict between the two arms of county government.
- b) SOCATT (K) supported the provisions of the proposed new section 109A highlighting that they provide financial autonomy for county assemblies through establishment of a County Assembly Fund. Further, that the clerk being the fund administrator is in line with existing parliamentary management and public finance accountability practices.
- c) On retention of the unutilized balances, SOCATT indicated that this will ensure county assembly operations are not disadvantaged by delays in disbursements.
- d) In the proposed new section 109E on the disbursement to County Assembly Fund, the National Treasury should be the one to disburse monies to the County Assembly Fund for county assemblies to achieve full financial autonomy.
- e) That they support the proposal of the Controller of Budget to have viewer rights access to all bank accounts maintained by the county executive, the county assembly and all other county government entities. This will ensure that oversight institutions have an opportunity to intervene during funds expenditure without interference to county government business.
- f) The County Assemblies have the responsibility to approve the use of public resources by county governments. This role entails scrutinizing county government policies, Bills, budget documents, implementation reports and audit issues. In performing the role, the county assembly should have professional and technical people to guide the Members of county assembly in making informed decisions on public finance. As a parliamentary practice, county assemblies

should also have Budget Offices to provide professional services on budget and policy issues, like the Parliamentary Budget Office (PBO) at the national level.

CHAPTER THREE: THEMATIC ANALYSIS OF THE BILL

20. Financial autonomy of legislatures and the doctrine of separation of powers

- a) The main object of this Bill, as stated in its memorandum of objects and reasons is to promote the financial autonomy of county assemblies. The mischief that the Bill seeks to remedy is the difficulty faced by county assemblies in requisitioning of funds through the county executive. In particular that their requests for funds are either ignored or not fulfilled in accordance with their wishes. This in turn has hampered the ability of county assemblies to discharge their mandate. It is further argued that this situation has undermined the principle of separation of powers and the ability of county assemblies to check and balance the powers of the executive.
- b) The question that faced the Committee was whether the principle of separation of powers (and financial autonomy) is absolute or whether it should be

considered as functional and relative. To answer this question, the Committee first considered the classical (pure) definition of separation of powers: that there are essentially three arms of government and the institutions set up to exercise these powers must adhere to the rule that one arm must not encroach on the powers of another.

- c) However, in modern government and in practical terms it is impractical and undesirable for there to be a strict separation of powers. The functions of the three arms of government cannot be carried out in silos and by their very nature intersect. For instance, the county assemblies carry out approval hearings for members of the county executive, the Governor participates in the law-making function of a county assembly by assenting to Bills or expressing reservations and the county assemblies enact County Appropriation Bills which to finance programmes and activities of the county government. These Appropriation Act is implemented by the County Treasuries responsible under the PFM Act for the prudent management of county funds.
- d) Similarly at the national level, Parliament enacts the Appropriation Bill which approves the expenditure of funds for certain purposes including the operations of Parliament itself. The National Treasury implements the Appropriation Act and, in this respect, receives requests for funds from Parliament for implementation of programmes and projects. These illustrations demonstrate that in our context the different arms of government while distinct their functions are interdependent. Therefore, **absolute** financial autonomy may not be achieved.
- e) However, the provisions of the Bill and the amendments proposed by the Committee therefore seek to ensure that while there may not be absolute autonomy, there must be functional autonomy of county assemblies where they are facilitated sufficiently to enable them to discharge their mandate. Indeed, even the judiciary whose independence is one of the cornerstones of our democracy and inter alia determines the constitutionality of any action

taken by Parliament is financed through the enactment by Parliament of the Appropriation Act.

21. **Direct transfer of funds by the National Treasury to the county assembly fund**

- a) The principal object of this Bill is to ensure that county assemblies have unfettered access to financial resources in order to effectively carry out their functions of legislation, representation and oversight. Some of the stakeholders submitted that the National Treasury transfer funds directly from the Consolidated Fund to the County Assembly Fund and in this way the link between the county assembly and the county executive, however tenuous, would be permanently severed. While this suggestion would represent the most direct way for county assemblies to access funds, it would pose both practical and constitutional challenges.
- b) Presently, counties have two main sources of funding, namely, the equitable share and own source revenue. Article 207(1) of the Constitution provides that “there shall be established a Revenue Fund for each county government into which shall be paid all money raised or received by or on behalf of the county government, except money reasonably excluded by an Act of Parliament”. The general rule therefore is that all monies received by or on behalf of the county government are paid into the respective CRF and appropriated by the county assembly to finance various programmes and projects of the various county government entities including the county assembly itself. The role of the National Treasury in this framework is to transfer the equitable share in accordance with Article 219 of the Constitution and section 17(7) of the PFM Act.
- c) However, the suggestion for direct transfers by the National Treasury of funds (presumably from the Consolidated Fund) to a respective County Assembly Fund seems to be more concerned with the exception and not the general rule under Article 207(1). The exception to the rule under Article 207(1) is that certain monies may, **reasonably**, be exempted from payment into the CRF by an Act of Parliament. It therefore begs the question whether this is an instance

that would **reasonably justify** the exclusion of monies for county assemblies from payment into the CRF and authorize the direct transfer of these monies into the County Assembly Fund.

- d) The Committee has applied its mind to this question and has come to the conclusion that such a scenario is not just a question of transfer of funds but raises fundamental constitutional questions on the principles of devolution and the intersection of the roles of national government entities and county government entities in management of resources intended for devolved structures of government. If the suggestion for direct transfers from the Consolidated Fund to the respective County Assembly Fund were to be accepted it would essentially mean that there would need to be a pre-determination of what would constitute an adequate share of the equitable share for the county assemblies. This situation would be problematic for various reasons.
- e) First, the determination of the amounts to be transferred would be made at the national level presumably by the Senate either in every financial year or through a basis (formula) to determine the allocation to each county assembly of the respective county's equitable share. It behoves us to remember at this juncture that one of the objects of devolution under Article 174 of the Constitution is to give powers of self-governance to the people and to recognise the right of communities to manage their own affairs. By involving national government entities such as the Senate and the National Treasury in a process to determine the resources that would be sufficient for the operations of a county assembly would be a claw back on Article 174 of the Constitution and the first step in administrative recentralization. It would take away the power of communities at the lowest level of administration to determine their development priorities.
- f) Second, is a more practical concern. If the transfer of these funds is to be made directly by the National Treasury to the respective County Assembly Fund it would be more than likely that these transfers would suffer the same perennial delays in release of exchequer currently experienced by County Treasuries.

While the Senate continues to advocate for timely releases of exchequer to counties, Governors have used additional avenues to seek redress for instance through the Intergovernmental Budget and Economic Council (IBEC) in which the CoG is represented and the Summit established under the Intergovernmental Relations Act. The umbrella body representing the County Assemblies (CAF) does not presently have membership either in IBEC or the Summit. Therefore, county assemblies would not have the additional avenues of redress in the case of delays. This would place them in a more precarious position than they are now where their fates are tied to those of the county executive.

22. Transfer of funds to County Assemblies as first charge on the County Revenue Fund

- a) Another recommendation from stakeholders has been that the monies due to county assemblies be treated as a first charge on the County Revenue Fund. Presently, under regulation 41(2) “*debt service payments shall be a first charge on the County Revenue Fund and the Accounting Officer shall ensure this is done to the extent possible that the county government does not default on debt obligations*”. While the Bill proposes amendments to the enabling Act under which these Regulations are made, the Committee is persuaded that while the need to ensure timely and sufficient financing of county assemblies is crucial to the discharge of their constitutional mandate, a first charge on the CRF for monies due to an assembly would be an inappropriate amendment of the law. The prioritization of debt service payments guards against default which has far reaching consequences on any government’s ability to access the credit market.

- b) Additionally, this suggestion must be viewed through the prism of the national government’s role in debt management by counties. Article 212 of the Constitution provides that “*a county government may borrow only if the national government guarantees the loan*”. Further Article 214 of the

Constitution defines “public debt” to mean all financial obligations attendant to loans raised or **guaranteed** and securities issued or guaranteed by the national government. Therefore, debt management at the county level of government affects the overall debt portfolio of the national government and the ability of the country to access credit facilities. Indeed, a default by a county on a debt service payment may subject the national government to certain liabilities and affect debt management strategies. This underscores the need to ensure that debt remains a first charge on the CRF.

23. Retention of balances in the County Assembly Fund at the end of a financial year

The Bill proposes that at the end of the financial year, any balances in the Fund shall remain in the Fund. This would mean that this monies do not make up the sum of monies appropriated in the subsequent financial year. This would raise questions of accountability for the unspent funds and would be an imprudent use of public funds.

CHAPTER FOUR: COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

4.1 Observations

24. Arising from the above submissions and committee deliberations on the Bill, the Committee made the following observations-
- a) The Bill is informed by the challenges faced by county assemblies in the requisition of funds process from the through the county treasury. However, the inability of the County Executive to fulfil requisition requests is partly due to delayed disbursement of funds by the National Treasury. The Committee noted therefore that despite the establishment of the county assembly Fund, the county assemblies are likely to continue experiencing delayed disbursement of funds.
 - b) The County Assembly Fund cannot be a recipient of grants, gifts, donations or bequests. This is because the Fund would be equivalent to an exchequer account, which can only receive funds by way of appropriation for transparency and accountability purposes. It will be a challenge to oversight utilization of the funds if the receipts into the fund are not clearly monitored.
 - c) It is imprudent for the Fund to be used to defray emergency costs. In any case, section 110 of the PFM Act already provides for the establishment of a County Emergency Fund to enable payments in respect of urgent and unforeseen expenditure needs that may arise within the county. Given that the county assembly resources are purely to cater for management of the county assembly, the provision on expenditure for emergencies is unnecessary.

- d) The Fund is unlikely to incur administrative expenses as the resources contained therein are purely for purposes of meeting the expenditure of the county assemblies. As such, there is no need to provide for administrative expenses of the Fund.
- e) Any unspent appropriations held in the fund by the end of the financial year should lapse. The unutilized balances should not remain in the Fund but should be returned to the County Revenue Fund so that they can be appropriated afresh.
- f) The proposal by the Society of Clerks at the Table (SOCATT) to establish county assembly budget offices is very timely and has merit. Anchoring such an office in law is critical as it will ensure that county assemblies are adequately facilitated in undertaking their oversight function, particularly with regard to economic and budget matters. However, the proposed amendment does not fit the subject matter of the bill and should be considered as a separate legislation.

4.2 Recommendations

25. The Committee, having considered stakeholders submissions and the contents of the Bill, recommends that the Senate approves the County Public Finance Laws (Amendment) Bill, (Senate Bills No.39 of 2023) with the following amendments-

- a) clause 6 (the proposed new section 109A(2)) be amended by-
 - deleting paragraph (b)- since the Fund will be similar to exchequer and is not eligible to receive grants, gifts, donations or bequests. Any monies to the Fund shall be in accordance with the respective county government's approved appropriations.
 - deleting paragraph (d)- This is because as the structure of the county government, county assemblies are not expected to have access to any other source of funding other than the annual county government appropriations.
- b) clause 6 (the proposed new section 109A (7)) be amended by deleting the word Service. This is to ensure uniformity across the Bill since the Fund is to be known as County Assembly Fund.

- c) clause 6 (the proposed new section 109A (10)) be amended to indicate that any unutilized balances in the Fund by the end of the financial year shall lapse and returned to the County revenue fund for re-budgeting. This will promote principles of openness and accountability in managing public resources.
- d) clause 6 (the proposed new section 109B) be amended by deleting paragraph (c). This is because the proposed Fund is purely for defray costs related to the operations of the county assembly. It is unlikely that there will be any administrative costs for running the Fund.

Appendices

1. Minutes
2. Proposed Committee Stage Amendments
3. Stakeholders' submissions
4. Public advert



MINUTES OF THE A HUNDRED AND FIFTEENTH (115TH) MEETING OF THE SENATE STANDING COMMITTEE ON FINANCE AND BUDGET HELD ON MONDAY, 18TH MARCH, 2024 IN VICTORIA 1 CONFERENCE ROOM AT ARGYLE GRAND HOTEL, MACHAKOS COUNTY AT 9:00 A.M.

PRESENT

- | | | |
|---|---|-------------------------|
| 1. Sen. (Capt.) Ali Ibrahim Roba, EGH, MP | - | Chairperson |
| 2. Sen. Maureen Tabitha Mutinda, MP | - | Vice-Chairperson |
| 3. Sen. Richard Momoima Onyonka, MP | - | Member |
| 4. Sen. Eddy Oketch Gicheru, MP | - | Member |

ABSENT WITH APOLOGY

- | | | |
|--|---|--------|
| 1. Sen. (Dr.) Boni Khalwale, CBS, MP | - | Member |
| 2. Sen. Mohamed Mwinyihaji Faki, CBS MP | - | Member |
| 3. Sen. Shakila Abdalla Mohamed, MP | - | Member |
| 4. Sen. Joyce Chepkoech Korir, MP | - | Member |
| 5. Sen. Tabitha Karanja Keroche, MGH, MP | - | Member |

FRIEND TO THE COMMITTEE

- | | | |
|--------------------------------|---|---------------------|
| Sen. Kathuri Murungi, MGH, MP, | - | Sponsor of the Bill |
|--------------------------------|---|---------------------|

SECRETARIAT

- | | | |
|----------------------------|---|-------------------------|
| 1. Mr. Christopher Gitonga | - | Clerk Assistant |
| 2. Ms. Beverlyne Chivadika | - | Clerk Assistant |
| 3. Ms. Lucy Radoli | - | Legal Counsel |
| 4. Ms. Millicent Makina | - | Fiscal Analyst |
| 5. Mr. Stephem Maru | - | Sergeant-At-Arms |
| 6. Mr. Joash Ng'eno | - | Media Relations Officer |
| 7. Mr. Elijah Ichwara | - | Audio Officer |

IN ATTENDANCE

THE COMMISSION OF REVENUE ALLOCATION.

- | | | |
|---------------------------------|---|--------------------------|
| 1. CPA. Mary Wanyonyi Chebukati | - | Chairperson |
| 2. Ms. Hadija Juma | - | Commissioner |
| 3. Hon. Fatuma Gedi CBS | - | Commissioner |
| 4. Dr. Isabel Waiyaki | - | Commissioner |
| 5. Mr. Jonas M. Kuko | - | Commissioner |
| 6. CPA. James Katule | - | CEO |
| 7. CPA. Roble S. Numo | - | Director, Fiscal Affairs |
| 8. Ms. Emily W. Kimani | - | Liaison Officer |

SOCIETY OF CLERKS AT THE TABLE (SOCATT)

- | | | |
|------------------------------|---|---|
| 1. CPA. Michael Ngala | - | Clerk, Kilifi County Assembly/Treasurer |
| 2. Ms. Regina Mutheu | - | Executive Director |
| 3. Ms. Lucy Akorista | | |
| 4. Mr. Pius Nyaga | | |
| 5. Mr. Symon Walukana | | |
| 6. Ms. Julias Naliaka Lunani | | |
| 7. Ms. Agnes Mwangi | | |
| 8. Ms. Esther Wangeci | | |
| 9. Ms. Judy Kimunyi | | |

COUNTY ASSEMBLY FORUM(CAF)

- | | | |
|-------------------------|---|-----------------------|
| 1. Hon. Chege Mwaura | - | MCA, Nairobi County |
| 2. Hon. Grace W. Hinga | - | MCA, Kiambu County |
| 3. Hon. Peter Maina | - | MCA, Nyandarua County |
| 4. Hon. Kiruga Thuku | - | MCA |
| 5. Hon. Dee Kivuva | - | MCA |
| 6. Mr. Austine Munene | - | Legal Officer |
| 7. Mr. Maufin Kiplangat | | |

Institute of Certified Public Accountants of Kenya (ICPAK)

1. CPA. Celestine Busieka
2. CPA. Mary Njoroge
3. CPA. Japheth Ontomwa
4. CPA. Christine Mweu
5. CPA. Ochieng Ochiel
6. CPA. Elias Wakhisi

OFFICE OF THE CONTROLLER OF BUDGET

- | | | |
|--------------------|---|--------------------------|
| 1. Ms. Rhoda Rutto | - | Director, Legal Services |
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THE COUNCIL OF GOVERNORS

1. Mr. Stephen Momanyi - Program Officer, Finance Committee

MIN/SEN/SCF&B/676/2024 PRAYER

The Chairperson called the meeting to order at 9:30 a.m. This was followed by a word of prayer and a round of introduction.

MIN/SEN/SCF&B/677/2024 ADPTION OF THE PROGRAMME/AGENDA

The programme was adopted after being proposed by Sen. Maureen Tabitha Mutinda, MP, and seconded by Sen. Eddy Oketch Gicheru, MP.

MIN/SEN/SCF&B/678/2024 PRELIMINARIES

The Chairperson welcomed the stakeholders present to the meeting. He made opening remarks which was a brief on the purpose of the meeting which was to deliberate on the County Public Finance Laws (Amendment) Bill (Senate Bills No. 39 of 2023).

Upon invitation, Sen. Kathuri Murungi, MGH, MP, the sponsor of the Bill, thanked the Committee for setting up the consultative meeting and invitation to the meeting. He also expressed gratitude to stakeholders in attendance for honouring Committee's invitation and appearing to submit the views on the Bill. He made remarks that the Bill, which attempts to give which attempts to give county assemblies financial autonomy, was at Second Reading Stage in the Senate. Further that proposed amendments from the Committee will improve the Bill and ensure that devolution works effectively.

MIN/SEN/SCF&B/679/2024 PRESENTATIONS BY STAKEHOLDERS ON PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL, (SENATE BILLS NO.39 OF 2023)

Presentation by the Council of Governors

The representative from the Council of Governors presented the following specific recommendations to the Bill-

- a) **Short title** of the Bill be amended to be cited as the Public Finance Management (Amendments) Act, 2023. This is because the Principal Act being amended is PFM Act with consequential amendments to County Assembly Services Act, 2017, which is not a Public Finance Law.
- b) **Clause 6, proposed new section 109E on Disbursement of funds to the County Assembly Fund**

- 109E (1) be amended to provide that the National Treasury shall disburse funds to the County Assembly Fund at the beginning of each month, and not later than the fifteenth day. This is in line with Article 207(1) and section 109(2)(a) of PFM Act on exclusion of money into CRF by Act of Parliament.
- 109E (2) relating to disbursement schedule: There is need for consultation and clarity necessary to determine who should prepare the Schedule, whether it National Treasury and Senate or County Treasury and County Assembly to prepare and approve respectively.
- c) **Clause 7, proposed new section 119A: Access to Internet Banking user rights**
 - The Bill should be amended by deleting this clause. This is because the provision is discriminatory to county-level government, and does not exist in any law for the national government accounts. Further, Controller of the Budget is mandated oversee budget implementation for both national and county governments by authorizing withdrawals from public funds.
- d) **Clause 8 of the Bill** be amended to provide to read that section 134 of the PFM Act is amended by inserting the words “or County Assembly Fund” immediately after words “County Revenue Fund.”

General comment: There is no formula or ratio for sharing funds between County Executives and Assemblies, especially development budget. There is no framework on sharing shortfalls in case of underperformance of Own Source Revenue.

Presentation by the Commission on Revenue Allocation

The Chairperson of the Commission presented as follows-

- a) **Clause 6: Establishment of County Assembly Fund**
 - Proposed new section 109A be amended to provide for an autonomous Fund in line with Article 207(1) and 4(b) of the Constitution to be financed directly from the Consolidated Fund as part of county’s equitable share.
 - Proposed new section 109E (1) provides that County Treasury (Executive) shall disburse funds to County Assemblies Fund hence not addressing financial autonomy the Bill seeks to address.
 - Propose new section 109.A (2)(c) be deleted since it is a duplication of 109.A (2)(a).
 - Propose new section 109.A(11) be amended to provide for timelines for submission of reports to the Commission on Revenue Allocation and Controller of Budget. This is to align with PFM Act provisions.
- b) **Proposed new section 109B: Utilization of Fund**
 - For clarity and to avoid misinterpretation, the phrase “administrative expenses” ought to be defined.

- To align with PFM Act, such expenses shall be in line with budget ceiling recommended by CRA and approved by the Senate.
- c) **Proposed new section 109D: Authority to Incur Expenditure**
 - 109D. (2): For clarity, there is need to specify who will develop expenditure guidelines on usage of funds.
- d) **Propose new section 109E: Disbursement to County Assembly Fund**
 - The Fund should be autonomous.
 - National Treasury should prepare two disbursement schedules (County Executive and County Assembly) which shall be approved by the Senate.
 - The county assembly disbursement schedule should be informed by approved recurrent budget expenditure ceilings approved by Senate.
 - Propose new section 109E. (2) be deleted.
- e) **Clause 8: Amendment of Section 134 PFMA**
 - The Clause should be amended by deleting the word "Service" in the phrase "County Assembly Service Fund." Sub-clause 109.A establishes "County Assembly Fund" and not "County Assembly Service Fund" referred in this clause.
- f) **Clause 9: Amendment of Section 136 PFM Act**
 - Clause 9 (2) be amended to provide that refund statement of unspent funds shall be forwarded to both the Controller of Budget and Commission on Revenue Allocation to align it with Article 216 of Constitution.
- g) **Memorandum of Objects and Reasons**
 - Delete the statement under paragraph 3 which reads that the Bill seeks to provide for instance where the county assemblies can be able to spend money in emergencies. Sections 110-115 of PFM Act vest such power to the CEC Finance and not County Assembly.

Presentation by the Office of the Controller of Budget

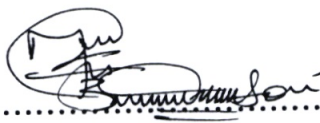
The Director of Legal Services presented as follows regarding the Bill-

- a) **Clause 4: Deletion of section 32(3) of the County Assembly Services**
 - Instead of deletion of section 32(3) of County Assembly Services Act, the clause be amended to provide that in preparing the financial statements for the **Board**, the Secretary shall ensure that the report contains information on both financial and non-financial performance of the Board.
- b) **Clause 6 of the Bill**
 - Propose new sections 109A(2)(b), (c), and (d) be deleted.
 - The Fund should only receive funds appropriated by the County Government in each financial year including grants, levies, or other relevant revenue. All monies should be channelled through CRF.

- c) **Propose new section 109A. (5)(b) be deleted-** This is a Fund account (Equivalent to Exchequer) and payments are not made from it.
- d) **Propose new section 109A. (10) be deleted-** This sub-clause contradicts section 136 of the PFM Act since appropriation lapses at the end of a financial year, and any unspent funds should be re-budgeted.
- e) **Propose new section 109A (11) be amended** by deleting the phrase “with a copy to” and introduce other agencies that should receive the Financial Reports such as National Treasury, County Treasury and County Assembly.
- f) **Propose new sections 109. B (a) and (c) be deleted-** The County Assembly Fund should not have administrative costs. The Fund is equivalent to county exchequer account which does not incur administrative costs.

MIN/SEN/SCF&B/680/2024 ADJOURNMENT AND THE DATE OF THE NEXT MEETING

The meeting adjourned at 11:05 a.m. Next meeting to be held on Monday, 18th March, 2024 at 11:30 a.m.

SIGNATURE.......... DATE. 26/03/24.....

SEN. (CAPT.) ALI IBRAHIM ROBA, EGH, MP
(CHAIRPERSON)



MINUTES OF THE A HUNDRED AND SIXTEENTH (116TH) MEETING OF THE SENATE STANDING COMMITTEE ON FINANCE AND BUDGET HELD ON MONDAY, 18TH MARCH, 2024 IN VICTORIA 1 CONFERENCE ROOM AT ARGYLE GRAND HOTEL, MACHAKOS COUNTY AT 11:30 A.M.

PRESENT

- | | | |
|---|---|-------------------------|
| 1. Sen. (Capt.) Ali Ibrahim Roba, EGH, MP | - | Chairperson |
| 2. Sen. Maureen Tabitha Mutinda, MP | - | Vice-Chairperson |
| 3. Sen. Richard Momoima Onyonka, MP | - | Member |
| 4. Sen. Eddy Oketch Gicheru, MP | - | Member |

ABSENT WITH APOLOGY

- | | | |
|--|---|--------|
| 1. Sen. (Dr.) Boni Khalwale, CBS, MP | - | Member |
| 2. Sen. Mohamed Mwinyihaji Faki, CBS MP | - | Member |
| 3. Sen. Shakila Abdalla Mohamed, MP | - | Member |
| 4. Sen. Joyce Chepkoech Korir, MP | - | Member |
| 5. Sen. Tabitha Karanja Keroche, MGH, MP | - | Member |

FRIEND TO THE COMMITTEE

- | | | |
|--------------------------------|---|---------------------|
| Sen. Kathuri Murungi, MGH, MP, | - | Sponsor of the Bill |
|--------------------------------|---|---------------------|

SECRETARIAT

- | | | |
|----------------------------|---|-------------------------|
| 1. Mr. Christopher Gitonga | - | Clerk Assistant |
| 2. Ms. Beverlyne Chivadika | - | Clerk Assistant |
| 3. Ms. Lucy Radoli | - | Legal Counsel |
| 4. Ms. Millicent Makina | - | Fiscal Analyst |
| 5. Mr. Stephen Maru | - | Sergeant-At-Arms |
| 6. Mr. Joash Ng'eno | - | Media Relations Officer |
| 7. Mr. Elijah Ichwara | - | Audio Officer |

IN ATTENDANCE

THE COMMISSION OF REVENUE ALLOCATION.

- | | | |
|---------------------------------|---|--------------------------|
| 1. CPA. Mary Wanyonyi Chebukati | - | Chairperson |
| 2. Ms. Hadija Juma | - | Commissioner |
| 3. Hon. Fatuma Gedi CBS | - | Commissioner |
| 4. Dr. Isabel Waiyaki | - | Commissioner |
| 5. Mr. Jonas M. Kuko | - | Commissioner |
| 6. CPA. James Katule | - | CEO |
| 7. CPA. Roble S. Numo | - | Director, Fiscal Affairs |
| 8. Ms. Emily W. Kimani | | |
| 9. Mr. Jeremy Wathome | | |
| 10. Mr. Ayub Muniafu | | |
| 11. Ms. Hamza Juma | | |

SOCIETY OF CLERKS AT THE TABLE (SOCATT)

- | | | |
|------------------------------|---|---|
| 1. CPA. Michael Ngala | - | Clerk, Kilifi County Assembly/Treasurer |
| 2. Ms. Regina Mutheu | - | Executive Director |
| 3. Ms. Lucy Akorista | | |
| 4. Mr. Pius Nyaga | | |
| 5. Mr. Symon Walukana | | |
| 6. Ms. Julias Naliaka Lunani | | |
| 7. Ms. Agnes Mwangi | | |
| 8. Ms. Esther Wangeci | | |
| 9. Ms. Judy Kimunyi | | |

COUNTY ASSEMBLY FORUM(CAF)

- | | | |
|-------------------------|---|-----------------------|
| 1. Hon. Chege Mwaura | - | MCA, Nairobi County |
| 2. Hon. Grace W. Hinga | - | MCA, Kiambu County |
| 3. Hon. Peter Maina | - | MCA, Nyandarua County |
| 4. Hon. Kiruga Thuku | - | MCA |
| 5. Hon. Dee Kwuwa | - | MCA |
| 6. Mr. Austine Munene | - | Legal Officer |
| 7. Mr. Maufin Kiplangat | | |

Institute of Certified public accountants of Kenya (ICPAK)

1. CPA. Celestine Busieka
2. CPA. Mary Njoroge
3. CPA. Japheth Ontomwa
4. CPA. Christine Mweu
5. CPA. Ochieng Ochiel
6. CPA. Elias Wakhisi

OFFICE OF THE CONTROLLER OF BUDGET

1. Ms. Rhoda Rutto - Director, Legal Services

THE COUNCIL OF GOVERNORS

1. Mr. Stephen Momanyi - Program Officer, Finance Committee

MIN/SEN/SCF&B/681/2024 PRELIMINARIES

The Chairperson called the meeting to order at 11:35 a.m.

MIN/SEN/SCF&B/682/2024 RESUMPTION OF PRESENTATIONS BY STAKEHOLDERS ON PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL, (SENATE BILLS NO.39 OF 2023)

Presentation by the County Assemblies Forum

The Secretary General of CAF presented the following proposals regarding the Bill-

- a) Sub-clauses 109E. (1) and (2) provides for disbursement of funds to the County Assembly Fund in accordance with approved Schedule. Further review on the Bill may be required since it might not meet the expectations and satisfaction of county assemblies.
- b) Sub-clause 109D. (1) and (2) provides that authority to incur expenditure shall be done in accordance with guidelines. This will ensure transparent and responsible financial management within county assemblies, thus fostering accountability and efficiency.
- c) **Clause 6: Establishment of County Assembly Fund**
 - Proposed new section 109A. (2)(a) of PFM Act be amended to provide that monies shall be paid into the County Assembly Fund as may be appropriated by the County Assembly from the Consolidated Fund. Proposed new sections 109E. (1) be amended to provide that the National Treasury shall disburse funds to the County Assembly Fund at the beginning of each month, not later than the fifteenth day, for expenditure of the following month.
 - Proposed new sections 109E. (2) be amended to state that the disbursement shall be done in accordance with a Schedule prepared by the National Treasury in consultation with the Intergovernmental Budget and Economic Council, pursuant to section 17(7).
 - This was attributed to the fact that establishment of the Fund under the National Treasury will enhance autonomy, minimize county executive influence, safeguard county assemblies against fiscal imbalance, aligns with principle of checks and balances, will preserve oversight independence and will streamline

Presentation by the Institute of Certified Public Accountants of Kenya

The representative from the Institute presented the following recommendations regarding the Bill-

a) Clause 6: Establishment of County Assembly Fund

- New proposed section 109A. 2(a) stipulates that monies may be appropriated by county assembly from CRF established for each county.
- County assembly funds are still subject to approval by the executive since all county funds are controlled through CRF. If absolute independence was to be realised, county assembly allocations shouldn't be channelled through CRF.
- County assemblies should be allowed to draw their allocation into special purpose account at CBK and remain entities of counties.
- Amendments to PFM should be done in section 109 as opposed to introducing new sections.
- Amendment for financial autonomy of county assemblies should equally provide for how funds shall be managed, similar to ones provided in sections 103 and 104 of PFM Act.
- Establishment of County Assembly Fund where county assembly monies are paid into as per provision 109A. (2) (b) and (c) contradicts Article 207 of the Constitution. Money appropriated from CRF should be paid to County Assembly Fund.
- New proposed section 109A. (3) provides that clerk of county assembly shall be administrator of the Fund. This contradicts section 116(3) of PFMA, that require CEC to designate administrator of any fund. It also contradicts section 148(4) of PFMA that designates Clerk to Assembly as the accounting officer.
- Proposed new section 109A. (11) of the be amended to provide that financial reports of the county assembly should also be shared with the Executive (County Treasury) for proper accountability, and in line with section 164(4)(b) of PFMA.

b) Clause: Disbursement to County Assembly Fund

- Proposed new section 109E. (1) and (2) be amended to stipulate that county assemblies should draw their entire budget allocation into their special purpose account. Remove County Treasury from process of monthly disbursements.

c) Clause 9: Amendment of section 136 PFM Act- This clause be amended to provide that County Assembly Fund Account should repay the unspent funds to CRF under the cash accounting.

d) The Institute submitted that there are statutory provisions to guarantee financial autonomy of county assembly. For instance, section 31 of the County Assembly Services Act 2017.

- e) There is need to streamline the administrative structures between the county treasury and county assembly to iron out any delays in disbursement of funds to the Assembly.

Presentation by the Society of Clerks at the Table- Kenya (SOCATT)

The Treasurer, and the Clerk of Kilifi County Assembly submitted the following proposals regarding the Bill-

- a) **Clause 6: Establishment of County Assembly Fund**
 - Proposed new sections 109E. (1) be amended to state that the National Treasury shall disburse funds to the County Assembly Fund at the beginning of each month, not later than the fifteenth day, for expenditure of the following month.
 - For county assemblies to achieve full financial autonomy, they should receive monies directly from National Treasury without intervention of the County Treasury.
- b) Proposed insertion of new section 124A of PFMA on establishment of County Assembly Budget Office and its functions in each county. This will be similar to Parliamentary Budget Office established under section 9. The office will provide professional advice on budget and policy issues.

Plenary Deliberations

The Committee had a plenary session following the presentations, and the following points were raised-

- a) The Bill should specify or define County Assembly Fund's administrative expenses.
- a) Since the funds to County Assembly Fund are recurrent in nature, and they will adhere to recurrent budget ceilings recommended by CRA and approved by the Senate, how would development funds be availed to the county assembly.
- b) According to Article 207 of the Constitution, each county government must establish a County Revenue Fund into which all funds raised or received by the county government or on its behalf must be deposited, with the exception of those that are lawfully excluded by a Parliamentary Act. This serves as the basis for the establishment of the County Assembly Fund. However, it is not clear who will appropriate the money to the fund, Senate or the County Assembly.
- c) The National Treasury should disburse monies to the County Assembly Fund so that county assemblies have full financial autonomy. However, there was need to re-examine the appropriate flow of funds.
- d) According to section 148(4) of the PFMA, Clerk of the Assembly serves as the accounting officer of the county assembly. Administrator of the County Assembly Fund is also assigned to the Clerk of the Assembly. This imply that the clerk will be responsible for requisition release of funds directly to the Controller of Budget for approval of withdrawal of monies from the Fund. There will be no reference to


County Treasury in requisition for money in the Fund. Further, clerk will be responsible for financial reporting and accountability.

- e) According to Article 176 of the Constitution, county government for each county consists of a county assembly and a county executive. As a result, how prudent would it to separate the two entities.

Following consideration of the complexity of modalities involved in requisition of funds, the Committee resolved to examine, scrutinize and analyse stakeholder's submissions and propose necessary amendments to the Bill in the subsequent meeting.

MIN/SEN/SCF&B/683/2024 ADJOURNMENT AND THE DATE OF THE NEXT MEETING

The meeting adjourned at 1:34 p.m. Next meeting shall be by notice.

SIGNATURE.......... DATE...26/03/24.....

**SEN. (CAPT.) ALI IBRAHIM ROBA, EGH, MP
(CHAIRPERSON)**



MINUTES OF HUNDRED AND TWENTY-FIFTH (125TH) MEETING OF THE SENATE STANDING COMMITTEE ON FINANCE AND BUDGET HELD ON THURSDAY, 2ND MAY, 2024 IN THE GROUND FLOOR BOARDROOM, COUNTY HALL, PARLIAMENT BUILDING AT 9:00 A.M.

PRESENT

- | | | |
|---|---|--------------------|
| 1. Sen. (Capt.) Ali Ibrahim Roba, EGH, MP | - | Chairperson |
| 2. Sen. Maureen Tabitha Mutinda, MP | - | Vice-Chair |
| 3. Sen. Mohamed Mwinyihaji Faki, CBS, MP | - | Member |
| 4. Sen. Richard Momoima Onyonka, MP | - | Member |
| 5. Sen. Eddy Oketch Gicheru, MP | - | Member |

ABSENT WITH APOLOGY

- | | | |
|---|---|--------|
| 1. Sen. Tabitha Karanja Keroche, MGH MP | - | Member |
| 2. Sen. (Dr.) Boni Khalwale, CBS, MP | - | Member |
| 3. Sen. Shakila Abdalla Mohamed, MP | - | Member |
| 4. Sen. Joyce Chepkoech Korir, MP | - | Member |

SECRETARIAT

- | | | |
|----------------------------|---|-------------------------|
| 1. Mr. Christopher Gitonga | - | Clerk Assistant |
| 2. Ms. Beverlyne Chivadika | - | Clerk Assistant |
| 3. Ms. Lucy Radoli | - | Legal Counsel |
| 4. Ms. Millicent Makina | - | Fiscal Analyst |
| 5. Mr. Kiminza Kioko | - | Fiscal Analyst |
| 6. Mr. Nandemu Barasa | - | Media Relations Officer |
| 7. Mr. Constant Wamayuyi | - | Research officer |
| 8. Mr. Elijah Ichwara | - | Audio Officer |

MIN/SEN/SCF&B/734/2024 PRELIMINARIES

The Chairperson called the meeting to order at 9:06 a.m. This was followed by a word of prayer and a round of introduction.

MIN/SEN/SCF&B/735/2024 ADPOTION OF THE AGENDA

The agenda was adopted after being proposed by Sen. Eddy Oketch Gicheru, MP, and seconded by Sen. Richard Momoima Onyonka, MP, as listed below-

1. Prayer;
2. Adoption of the Agenda;
3. Confirmation of Minutes of the 122nd Sitting;
4. Matters Arising from the Minutes of the Previous Sitting;
5. Consideration of the County Governments Additional Allocations Bill, 2024 (*Committee Paper No.91*);
6. Consideration and adoption of the Report on the Public Finance Management (Amendment) Bill, 2024 (Senate Bills No.40 of 2024) (*Committee paper No.83A*);
7. Consideration of stakeholders' submissions on County Public Finance Laws Amendment Bill (Senate Bills No.39 of 2023) (*Committee Paper No.81B*);
8. Pending Legislative Business (*Committee Paper No.77*);
9. Any Other Business; and
10. Adjournment and Date of the Next Meeting.

MIN/SEN/SCF&B/736/2024

CONFIRMATION OF THE MINUTES OF THE PREVIOUS SITTINGS

The Minutes of the Hundred and Twenty-Second (122nd) hybrid meeting held on Wednesday, 24th April, 2024 at 8:00 a.m. were confirmed as true record of the proceedings of the Committee having been proposed by Sen. Richard Momoima Onyonka, MP, and seconded by Sen. Eddy Oketch Gicheru, MP.

MIN/SEN/SCF&B/737/2024

CONSIDERATION OF THE DRAFT COUNTY GOVERNMENTS ADDITIONAL ALLOCATIONS BILL, 2024 (COMMITTEE PAPER NO.91)

The Committee considered Paper No.91 regarding the draft County Governments Additional Allocations Bill, 2024, and noted the contents thereof. Thereafter, the meeting was informed that-

- a) The Bill provides for the transfer of conditional and unconditional allocations from the national government's share of revenue and from development partners to the county governments for the Financial Year 2024/2025.
- b) The proposed total county government additional allocations for the FY 2024/25 is Ksh.55.45 billion and is distributed in four Schedules –
 - i. The First Schedule contains conditional allocations to each county government from the National Government's share of revenue. The total allocation amounting to Ksh.8.21 billion.
 - ii. The Second Schedule contains Conditional Additional Allocations to County Governments from the Road Maintenance Levy Fund (RMLF) for FY 2024/25. The total allocation amounting to Ksh.10.522 billion.
 - iii. The Third Schedule contains unconditional additional allocations to County Governments from Court Fines of Ksh.7.43 million and the beneficiary

county governments 20% Share of Mineral Royalties amounting to Ksh.1.055 billion. The total allocations for the FY 2024/25 from the two entitlements amounting to Ksh.1.062 billion.

- iv. The Fourth Schedule contains conditional allocations financed by proceeds of loans and/or grants from development partners. The total allocations for the FY 2024/25 amounting to Ksh.35.66 billion from fourteen (14) different donor projects.

Committee observations

- a) The total allocations towards the construction of the county headquarters by the end of FY 2024/25 will amount to Ksh.1,736.89 million, resulting in a balance of Ksh.78.2 million of the total proposed contribution from the national government. However, as per the schedule, some counties may end up benefitting with amounts above the initially planned contributions from the national government.
- b) Committee report recommending hand over of the management of the projects to counties is before the House awaiting approval, however the multi-agency team spearheaded by IGRTC has since prepared the intergovernmental agreements and the projects handed over to the counties.
- c) Despite, the national government commitment on the allocation towards the county CAIPs, some benefiting counties are struggling with providing the matching Ksh.250 million within their budgets. This posed a risk of stalling of the projects.
- d) The CHPs Programme requires Ksh.3.23 billion as counterpart funding from the counties. However, counties indicated that they may not be able to accommodate this amount within their budget if the proposed county equitable share by the National Treasury is not enhanced.
- e) Meru-Njuri-Njeke Museum in Meru County was part of the delineated and transferred Museums as per the 2024 BPS. However, the Bill does not include Ksh.15.7 million for the Meru-Njuri-Njeke Museum.
- f) The conditional allocations from the Road Maintenance Levy Fund (RMLF)- The legal provisions on distribution of the fund may not be fully aligned to the devolved system of governance. This is because county governments are not recognized as part of road works implementation agencies. Further, in the classification of public roads (First Schedule of the Kenya Roads Act) no specific roads is designated for county governments as required by the Constitution.
- g) The unconditional allocations to the county governments from court fines and Mineral Royalties are indicated to be accruals of the Financial Year 2021/22 only. It is not clear if there were any amount that accrued in the FY 2022/23 and when these will be disbursed to the benefiting counties.
- h) Further, disbursements of court fines and Mineral Royalties has faced challenges arising from lack of frameworks and mechanism of collection and remittance of the funds directly to beneficiary counties. National Treasury has since advised that in order to fast track transfer of the funds already in Consolidated Fund, the concerned MDAs should budget for the amounts in their subsequent budgets.

- i) A review of implementation of the FLLoCA Program showed that counties such as Mombasa and Nairobi are yet to meet the Minimum Access Conditions for the County Climate Institutional Support (CCIS) Grant, hence have not benefitted from the initial (level I) allocations of Ksh.22 million. Further, other counties are falling behind in meeting Minimum Performance Conditions for them to access the County Climate Resilience Investment (CCRI) Grant (level II).

The Committee resolved that once the Bill is read a First Time, key stakeholders such as the National Treasury, Commission on Revenue Allocation and the Council of Governors be invited to a meeting to submit their views and proposals on the Bill.

MIN/SEN/SCF&B/738/2024 **CONSIDERATION OF THE REPORT ON THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL, 2023 (SENATE BILLS NO.40 OF 2023) (COMMITTEE PAPER NO.83A)**

The Committee considered the report on the Public Finance Management (Amendment) Bill, 2023 (Senate Bills No.40 of 2023) and noted the contents thereof. The report contained the overview of the Bill, submissions from stakeholders, Committee observations and recommendations (which will translate to Committee's amendments to the Bill).

MIN/SEN/SCF&B/739/2024 **ADOPTION OF THE REPORT ON THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL, 2023 (SENATE BILLS NO.40 OF 2023)**

Having considered the draft report on the Public Finance Management (Amendment) Bill, 2023 (Senate Bills No.40 of 2023), the Committee unanimously adopted the report having been proposed by Sen. Maureen Tabitha Mutinda, MP, and seconded by Sen. Eddy Oketch Gicheru, MP, with the following recommendations-

- a) Clause 2 of the Bill, *proposed new section 160A* of the PFM Act be amended to provide for-
- establishment of a Revenue Collection System Committee. This Committee will be mandated to design, develop and coordinate implementation of Integrated County Revenue Management System (ICRMS).
 - the membership of the Committee which should comprise representatives from the National Treasury, Kenya Revenue Authority, Commission on Revenue Allocation, Council of Governors and State Department for Devolution.
 - timeline within which the committee should ensure the system is available for adoption by the counties.
 - timeline within which the county governments should adopt or transition to the ICRMS.
- b) Clause 2 of the Bill, *proposed new section 160B* of the PFM Act be amended to provide-

- That each county treasury shall prepare and submit a quarterly report on the status of the adoption and implementation of the ICRMS.
- That the quarterly report shall be submitted to the respective county assembly, the Senate, Commission on Revenue Allocation and the Controller of Budget.
- c) clause 3, *proposed new section 191F(1)* of the PFM Act be amended to provide that in case where a function is transferred from the national government to county government, the Cabinet Secretary in determining the cost of the transferred function, shall do so in consultation with the respective county government.
- d) clause 3 of the Bill, *proposed new section 191G(6)* of the PFM Act be amended to provide that Auditor-General's Special Audit on the financial and non-financial performance of an entity to which a county government function is transferred to, shall be submitted to Parliament and respective county assembly.

MIN/SEN/SCF&B/740/2024

CONSIDERATION OF STAKEHOLDERS'
SUBMISSIONS ON COUNTY PUBLIC FINANCE
LAWS AMENDMENT BILL (SENATE BILLS
NO.39 OF 2023) (COMMITTEE PAPER NO.81B)

Committee considered Paper No.81B on stakeholders' submissions on the on the County Public Finance Laws Amendment Bill (Senate Bills No.39 of 2023), a Bill that seeks to provide for financial autonomy of county assemblies. Following deliberations, the Committee resolved-

- a) the proposed new sub-sections 109A.2(b), (c) and (d) of PFM Act, that stipulates the monies such as grants, gifts, donations or bequests, levies/fees, monies accruing to or received any other source, to be paid into the proposed County Assembly Fund, be deleted. This was attributed to the following-
 - the Fund should only receive funds appropriated by the county assembly, which should be channelled through County Revenue Fund;
 - Any grants, levies or other revenue should be factored in the Appropriation Act; and
 - That the Fund being an equivalent of a county exchequer accounts should only receive funds through an Appropriation Act.
- b) Since the Bill designates the Clerk of the County Assembly as the Administrator of the County Assembly Fund, section 19 of the County Assembly Services Act, 2017 which provide the roles of the Clerk should be amended to introduce the new role as the Administrator of the County Assembly Fund.
- c) Proposed new section 109A. (10) contradicts section 136 of the PFM Act that provides that any unspent balances at the end of a financial year lapses, and unutilized funds should be reappropriated. Thus, the section should be deleted or rephrased to provide that the at the end of the FY, any unutilized funds shall lapse and should be repaid into the CRF for rebudgeting in the subsequent FY.

- d) Proposed new section 190A. (11) of the PFM Act should be amended to provide that financial reports shall be submitted to National Treasury, County Treasury, County Assembly, Commission on Revenue Allocation, and Controller of Budget. Further, specify the timelines within which the financial reports shall be submitted to the named agencies.
- e) Proposed new section 109B.(c) of the PFM Act that provide that the administrative expenses as may be incurred by the Fund be deleted. This is because the expenses from the Fund are majorly recurrent in nature and shall be utilized in line with the recurrent budget ceilings proposed by CRA and approved by the Senate.
- f) For clarity, proposed new section 109D (2) be amended to provide that the Clerk of the County Assembly shall design the guidelines on the authority to incur expenditure.
- g) Clause 8 of the Bill on amendment of section 134 of the PFM Act be amended by deleting the word “Service” in the phrase “County Assembly Service Fund” since the Bill provides for establishment of County Assembly Fund.

The Committee took note of the proposal by SOCATT on establishment of a County Assembly Budget Office. The office is meant to offer professional and technical guidance to the members of the county assembly to enable them make informed decisions on public finance. The office will emulate the Parliamentary Budget Office established under section 9 of the PFM, Cap.412A. The Committee, aware of standing order 147, noted that the proposal was outside the subject matter.


The Committee, thus, resolved to sponsor an amendment Bill providing for establishment of county assembly budget office and any other related matter.

MIN/SEN/SCF&B/741/2024 ANY OTHER BUSINESS

The Committee considered an invitation by the State Department for Agriculture to a retreat on sensitization on the World Bank Agriculture portfolio projects/initiatives: the National Agricultural Value Chain Development Project (NAVCDP) and Food Systems Resilience Project (FSRP) that was scheduled for 2nd to 4th May, 2024 in Mombasa County. The Committee observed that the notice was short and resolved not to attend the retreat.

MIN/SEN/SCF&B/742/2024 ADJOURNMENT AND THE DATE OF THE NEXT MEETING

The meeting adjourned at 11:24 a.m. Next meeting shall be by notice.

SIGNATURE  DATE 09/05/2024

SEN. (CAPT.) ALI IBRAHIM ROBA, EGH, MP
(CHAIRPERSON)



MINUTES OF HUNDRED AND THIRTY-FOURTH (134th) HYBRID MEETING OF THE SENATE STANDING COMMITTEE ON FINANCE AND BUDGET HELD ON WEDNESDAY 22ND MAY, 2024 IN GROUND FLOOR BOARDROOM, COUNTY HALL AT 8:00 A.M.

PRESENT

- | | | |
|---|---|-------------------------|
| 1. Sen. (Capt.) Ali Ibrahim Roba, EGH, MP | - | Chairperson |
| 2. Sen. Maureen Tabitha Mutinda, MP | - | Vice-Chairperson |
| 3. Sen. Mohamed Mwinyihaji Faki, CBS, MP | - | Member |
| 4. Sen. Richard Momoima Onyonka, MP | - | Member (Virtual) |
| 5. Sen. Shakila Abdalla Mohamed, MP | - | Member |
| 6. Sen. Eddy Oketch Gicheru, MP | - | Member |

ABSENT WITH APOLOGY

- | | | |
|--|---|--------|
| 1. Sen. (Dr.) Boni Khalwale, CBS, MP | - | Member |
| 2. Sen. Tabitha Karanja Keroche, MGH, MP | - | Member |
| 3. Sen. Joyce Chepkoech Korir, MP | - | Member |

SECRETARIAT

- | | | |
|----------------------------|---|-------------------------|
| 1. Mr. Christopher Gitonga | - | Clerk Assistant |
| 2. Ms. Beverlyne Chivadika | - | Clerk Assistant |
| 3. Ms. Lucy Radoli | - | Legal Counsel |
| 4. Ms. Millicent Makina | - | Fiscal Analyst |
| 5. Mr. Constant Wamayuyi | - | Research officer |
| 6. Mr. Nandemu Barasa | - | Media Relations Officer |
| 7. Mr. Ian Otieno | - | Audio Officer |
| 8. Mr. Kelvin Kimeu | - | Attachee |
| 9. Ms. Lucian Tipilda | - | Attachee |

MIN/SEN/SCF&B/784/2024 **PRELIMINARIES**

The Chairperson called the meeting to order at 8:25a.m. This was followed by a word of prayer and a round of introduction.

MIN/SEN/SCF&B/785/2024 **ADPOTION OF THE AGENDA**

The agenda was adopted after being proposed by Sen. Mohamed Mwinyihaji Faki, CBS, MP, and seconded Sen. Shakila Abdalla Mohamed, MP, by as listed below-

1. Prayer;
2. Adoption of the Agenda;
3. Confirmation of Minutes of the 128th, 129th, 130th, 131st and 132nd Sittings;
4. Matters Arising from the Minutes of the Previous Sitting;
5. Consideration and adoption of report on County Public Finance Law (Amendment) Bill, 2023 (Senate Bills No. 39 of 2023 (*Committee paper No. 81C*))
6. Consideration of IGRTC Response on status of handing over of construction of County Headquarter projects (*Committee paper No. 95*)
7. Any Other Business; and
8. Adjournment and Date of the Next Meeting.

MIN/SEN/SCF&B/786/2024 **CONFIRMATION OF MINUTES OF THE PREVIOUS SITTINGS**

- a) The Minutes of Hundred and Twenty-Eighth (128th) meeting held on Tuesday 14th May, 2024 at 9:00 a.m. were confirmed as a true record of the proceedings of Committee having been proposed by Sen. Shakila Abdalla Mohamed, MP and seconded by Sen. Mohamed Mwinyihaji Faki, CBS, MP.
- b) The Minutes of Hundred and Twenty-Ninth (129th) meeting held on Tuesday 14th May, 2024 at 11:00 a.m. were confirmed as true record of the proceedings of the Committee having been proposed by Sen. Mohamed Mwinyihaji Faki, CBS, MP, and seconded by Sen. Shakila Abdalla Mohamed, MP.
- c) The Minutes of Hundred and Thirtieth (130th) meeting held on Wednesday 15th May, 2024 at 8:00 a.m. were confirmed as true record of the proceedings of the Committee having been proposed by Sen. Mohamed Mwinyihaji Faki, CBS, MP, and seconded by Sen. Shakila Abdalla Mohamed, MP.
- d) The Minutes of Hundred and Thirty-First (131st) meeting held on Thursday, 16th May, 2024 at 9:00 a.m. were confirmed as true records of the proceedings of Committee having been proposed by Sen. Shakila Abdalla Mohamed, MP and seconded by Sen. Mohamed Mwinyihaji Faki, CBS, MP.
- e) The Minutes of Hundred and Thirty-Second (132nd) meeting held on Thursday 16th May, 2024 at 11:00 a.m. were confirmed as true record of the proceedings of the Committee having been proposed by Sen. Mohamed Mwinyihaji Faki, CBS, MP, and seconded by Sen. Shakila Abdalla Mohamed, MP.

MIN/SEN/SCF&B/787/2024 **CONSIDERATION OF REPORT ON THE COUNTY PUBLIC FINANCE LAWS (AMENDMENT) BILL, 2023 (SENATE BILLS NO.39 OF 2023 (COMMITTEE PAPER NO.81C))**

The Committee considered Paper No.81C on draft report on the County Public Finance Law (Amendment) Bill No.39 of 2023, and noted the contents thereof. The report comprised of overview of the Bill, submissions from stakeholders, thematic analysis of the Bill, Committee observations and recommendations.

MIN/SEN/SCF&B/788/2024 **ADOPTION OF THE REPORT ON THE COUNTY PUBLIC FINANCE LAWS (AMENDMENT) BILL, 2023 (SENATE BILLS NO.39 OF 2023)**

The Committee, having considered the report on the County Public Finance Laws (Amendment) Bill, 2023 (Senate Bills No.39 of 2023), unanimously adopted the report having been proposed by Sen. Mohamed Mwinyihaji Faki, CBS, MP, and seconded by Sen. Shakila Abdalla Mohamed, MP. The Committee recommended that the Senate approves the Bill with the following amendments-

- a) clause 6 (the proposed new section 109A(2)) be amended by-
 - deleting paragraph (b)- since the Fund will be similar to exchequer and is not eligible to receive grants, gifts, donations or bequests. Any monies to the Fund shall be in accordance with the respective county government's approved appropriations.
 - deleting paragraph (d)- This is because as the structure of the county government, county assemblies are not expected to have access to any other source of funding other than the annual county government appropriations.
- b) clause 6 (the proposed new section 109A(7)) be amended by deleting the word Service. This is to ensure uniformity across the Bill since the Fund is to be known as County Assembly Fund.
- c) clause 6 (the proposed new section 109A(10)) be amended to indicate that any unutilized balances in the Fund by the end of the financial year shall lapse and returned to the County revenue fund for re-budgeting. This will promote principles of openness and accountability in managing public resources.
- d) clause 6 (the proposed new section 109B) be amended by deleting paragraph (c). This is because the proposed Fund is purely for defraying costs related to the operations of the county assembly. It's unlikely that there will be any administrative costs for running the Fund.

MIN/SEN/SCF&B/789/2024 **CONSIDERATION OF IGRTC RESPONSE ON STATUS OF HANDING OVER OF CONSTRUCTION OF COUNTY HEADQUARTER PROJECTS (COMMITTEE PAPER NO. 95)**

The Committee considered Paper No.95 relating to the Intergovernmental-Relations Technical Committee (IGRTC) response on status of handing over of Construction of County headquarter project. The Committee noted that-

- a) the IGRTC coordinated development of intergovernmental agreements between national government and the county governments. The agreements provided for the obligations of each party: State Department for Public Works, the National Treasury and respective county governments.
- b) all the parties had executed the agreements and IGRTC witnessed the same.
- c) the beneficiary counties were obligated to open *Special purpose accounts* at the Central Bank of Kenya (CBK).
- d) IGRTC indicated that they had successfully coordinated handover of the construction of the HQs to the respective counties. The National Treasury and State Department for Public Works committed to assisting the beneficiary county governments in ensuring completion of the projects while county governments committed to ensure economic use of resources and intended purpose is achieved.
- e) The Committee report was tabled in the Senate and is awaiting debate and approval. This report ought to have been approved by the Senate before handover of the projects. However, since IGRTC had already concluded the process of official handover, the Senate ought to expedite approval of the Committee report.

MIN/SEN/SCF&B/790/2024 ADJOURNMENT AND THE DATE OF THE NEXT MEETING

The meeting adjourned at 9:28 a.m. The next meeting to be held on Thursday, 23rd May, 2024 at 9:00 a.m.

SIGNATURE..... DATE.....

**SEN. (CAPT.) ALI IBRAHIM ROBA, EGH, MP
(CHAIRPERSON)**

21st May, 2024

The Clerk of the Senate,
Parliament Buildings,
NAIROBI.

COMMITTEE STAGE AMENDMENTS TO THE COUNTY PUBLIC FINANCE LAWS (AMENDMENT) BILL, SENATE BILLS NO. 39 OF 2023

NOTICE is given that Sen. Ali Ibrahim Roba, Chairperson, Committee on Finance and Budget, intends to move the following amendments to the County Public Finance Laws (Amendment) Bill, Senate Bills No.39 of 2023, at the Committee Stage-

CLAUSE 6

THAT clause 6 of the Bill be amended

(a) in the proposed new section 109A by-

(i) by deleting paragraph (b) and (d) appearing in subsection (2);

(ii) in subsection (7) by deleting the word "Service" appearing immediately after the words "County Assembly" in paragraph (b); and

(iii) by deleting subsection (10).

(b) in the proposed new section 109B by deleting paragraph (c)

CLAUSE 8

THAT clause 8 of the Bill be amended by deleting the word "Service" appearing immediately after the words "County Assembly".

Dated *22nd May* 2024.



Sen. Ali Ibrahim Roba,
Chairperson,
Committee on Finance and Budget.

Tel: 254 (20) 4298000
Fax 254 (20) 4298251
Email: info@crakenya.org
Website: www.crakenya.org



RECTOR COMMITTEE SERVICE
(DSEC)

15 MAR 2024

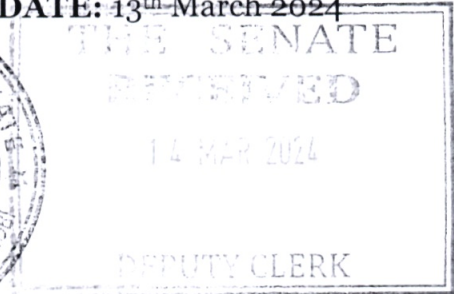
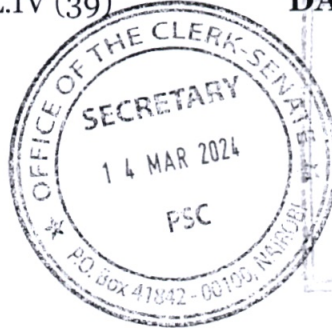
14 Riverside Drive
Grosvenor block
2nd Floor
P.O. Box 1310 – 00200
NAIROBI

COMMISSION ON REVENUE ALLOCATION

OUR REF: CRA/CSO/P&S/11/VOL.IV (39)

DATE: 13th March 2024

J.M. Nyegenye, CBS,
Clerk of the Senate
Parliament Buildings
P.O. Box 41842-00100
NAIROBI



Dear *Mr. Nyegenye,*

RE: INVITATION TO SUBMIT VIEWS ON THE COUNTY PUBLIC FINANCE LAWS (AMENDMENT) BILL, 2023 (SENATE BILLS NO. 39 OF 2023)

Please refer to the subject matter and your letter of 12th March , 2024.

In line with your request, the Commission has reviewed the County Public Finance Laws (Amendment) Bill, 2023 and our comments are herewith attached for your consideration.

We thank you for your continued support.

Yours *Sincerely,*

James Katule
CPA James Katule
COMMISSION SECRETARY/CEO

① DSEC
DHS

Kindly deal.

14/03/2024

② DDSEC (BL)
Kindly deal
15/03/2024

③ *Mr. Sitonga*
Please deal
18/03/24



COMMENTARY ON THE COUNTY PUBLIC FINANCE LAWS (AMENDMENT)BILL,2023

CLAUSE BY CLAUSE ANALYSIS

The following issues emanate from review of the Bill-

Serial No.	Clause	Recommendations	Justification for CRA Position
1.	<p>Clause 6</p> <p>Section 109A Establishment of County Assembly Fund</p>	<p>This clause seeks to amend Section 109 of the Public Finance Management Act by inserting new sections borrowed from Section 34 of The County Assembly Services Act in respect to establishment of a County Assembly Fund.</p> <p>a) As per its Memorandum of Objects and Reasons, this Bill among others aims at creating such a Fund to grant the county assemblies financial autonomy which is currently lacking due to delays in funds disbursement by the county executive.</p> <p>Recommendation:</p> <p>Create an autonomous Fund in line with Article 207 (1) and (4)(b) of the Constitution for county</p>	<p>a) To enhance financial autonomy of county assemblies and separation of powers between the two county government arms</p>

		<p>assemblies as opposed to an account at Central Bank proposed in this clause under sub clause (5)(a) which framework will still rely on disbursement by the county executive hence not addressing the financial autonomy the Bill seeks to address. Such an autonomous Fund to be financed directly from the Consolidated Fund as part of a county's equitable share.</p> <p>Under clause 109A(2) paragraphs 2(b) and (c), there shall be paid into the Assembly Fund-</p> <p>(a) <i>such monies as may be appropriated by the County Assembly from the County Revenue Fund established by each county;</i></p> <p>(c)<i>such money as maybe allocated for that purpose from investments, fees or levies administered by the County;</i></p> <p>b) Clause 109A(2)(c) is already included under 109A(2)(a) as such monies seem to refer to the Own Source Revenue collection and as such, constitute the monies in the County Revenue Fund in clause 109A(2)(a).</p> <p>Recommendation: Delete.</p>	
		<p>c) Sub clause 109A (11) provides- <i>Financial reports shall be submitted to the Commission on Revenue Allocation with a copy to the Controller of Budget</i></p>	<p>b) To avoid duplication</p> <p>c) To align with the PFM Act provisions</p>

		Recommendation: specify timelines for submission of these reports which should be done quarterly	
	Clause 109B Utilization of Fund	This amendment proposes that the County Assembly Fund shall be used among others to defray administrative expenses of the County Assembly. Recommendation: the phrase “ <i>administrative expenses</i> ” should be defined.	For clarity and to avoid misinterpretation
		Recommendation: add a provision to the effect that such expenses shall be in line with budget ceiling framework recommended by the Commission and approved by the Senate.	To align with the PFM Act provisions
	Clause 109D Authority to incur expenditure	Under sub clause 109D(2) reads- <i>“the authority to incur expenditure shall be accompanied by guidelines on usage”</i> Recommendation: specify who is to develop such guidelines	For clarity
	Clause 109E Disbursement to County Assembly Fund	Sub clause 109E reads- <i>(1) The County Treasury shall, at the beginning of every month, and in any event not later than the fifteenth day from the commencement of the month, disburse monies to the County Assembly Fund for the expenditure of the following month.</i> <i>(2) The disbursement referred to in sub section(1) shall be done in accordance</i>	The Fund should be autonomous with the County Assembly monies not going through the CRF. Based on this proposal, the National Treasury should prepare two disbursement schedules (County Executive & County Assembly) in consultation with IBEC then forward to senate for approval and Gazettement in line with

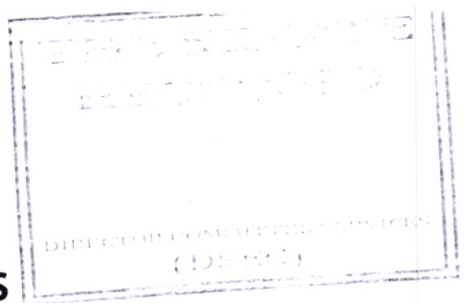
		<i>with a schedule prepared by the County Treasury and submitted to the County Assembly for approval together with the County Appropriation Bill under section 129(7)</i>	Section 17(7), PFM Act 2012. The County Assembly disbursement schedule should be informed by Senate's approved recurrent budget expenditure ceilings.
		(3) Recommendation: Delete.	
2.	Clause 8 Amendment of Section 134 PFMA	It proposes to amend the current section 134 of the PFM Act in its subsection (1) by inserting the words "County Assembly Service Fund" immediately after the words 'County Revenue Fund' Recommendation Delete the word "Service" in the phrase "County Assembly Service Fund"	To align with the Bill clause 109A which establishes a " County Assembly Fund " and not a " County Assembly Services Fund " referenced here.
3.	Clause 9 Amendment of Section 136 PFMA	Recommendation Insert the phrase " <i>and the Commission on Revenue Allocation</i> " after " <i>Controller of Budget</i> "	To align with Article 216 of the Constitution on the CRA mandate of enhancing financial management and fiscal responsibility at the county level
4.	Memorandum of Objects and Reasons	Delete the statement under paragraph 3 which reads " <i>The Bill seeks to provide for instances where the county assemblies can be able to spend money in emergencies</i> "	To align with with sections 110-115 of the PFM Act which vest such power to the CEC Finance and not the County Assembly.

GENERAL COMMENTS:

1. The objective of the Bill which is to grant financial autonomy to the County Assemblies and the Bill content do not marry as the monies to the account still have to go through the CRF. Additionally, the memorandum states that the Bill also seeks to

provide for instances where the county assemblies can be able to spend money on emergencies yet no such provisions are included, though inclusion of such provisions would be inconsistent with sections 110-115 of the PFM Act which vest such power to the CEC Finance and not the County Assembly.

2. The Commission proposes establishment of an autonomous Fund in line with Article 207 of the Constitution and the PFM Act (section 109) where monies to the County Assemblies is directly sent from the Consolidated Fund as opposed to through the CRF to ensure that the county assemblies achieve financial autonomy.
3. The Bill should provide for process of determination of amounts due to county assemblies for clarity



COUNCIL OF GOVERNORS

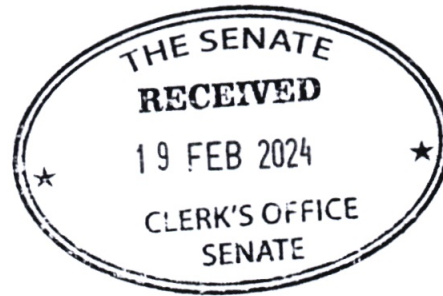
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Our Ref: COG/6/10 VOL.12 (56)

15th February 2024

Jeremiah M. Nyegenye, CBS
Clerk of the Senate
Parliament of Kenya
NAIROBI



Dear Mr. Nyegenye,

SUBMISSION OF VIEWS ON THE PUBLIC FINANCE LAWS (AMENDMENT) BILL, 2023
(SENATE BILLS NO.39 OF 2023)

Greetings.

We refer to the above subject and your letter Ref: SEN/DSEC/F&B/CORR/2024/001(b) dated 1st February 2024.

Based on the principle of consultation and cooperation as envisaged in the Constitution, the Council would like to share our views on the Public Finance Laws (Amendment) Bill (Senate Bills No.39 of 2023) for your consideration.

We appreciate your continued support.

Yours sincerely,

Mary Mwiti
Chief Executive Officer

② DDSEC
Kindly deal
20/02/2024

① DSEC
Kindly deal

Ep
20/02/2024

③ New letter
Please
20/02



LEGISLATIVE MEMORANDUM ON THE COUNTY PUBLIC FINANCE LAWS (AMENDMENT) BILL, 2023 (SENATE BILLS NO.39)

TO

THE SENATE STANDING COMMITTEE ON FINANCE AND BUDGET

FROM

THE COUNCIL OF GOVERNORS

THE COUNCIL OF GOVERNORS,

In recognition of the fact that sovereign power of the state is exercised at two levels of government, that is, the National Government and the County Governments, whose distinctness is recognized by Article 6 (2)

In further recognition of the need to ensure that all legislation is cognizant of devolved governments; and

Aware of the need for coordinated action between the National and County Governments to ensure that legislation properly respond to the key issues, and further reflects the spirit and purpose of devolution.

Having reviewed the County Public Finance Laws (Amendment) Bill, 2023, the Council of Governors on behalf of the 47 County Governments submits the proposals highlighted herein below for consideration:

A. GENERAL COMMENTS.

1. The Council appreciates the principal object of the Bill to give financial autonomy to County Assemblies in line with the principle of separation of powers. This will indeed address the challenges of County Assemblies relying on the County Executive for finances which occasion delays and other conflicts between the two arms of government.
2. Whereas the objective is to give autonomy to the County Assemblies, we note that the Bill has not addressed the challenge but reinforced the current practice by making the County Executive the entity responsible for disbursing funds to the County Assemblies. This will not only transfer the responsibility of disbursing funds from the National Treasury but also cause acrimony between the County Executives and the Assemblies in instances where the National Treasury does not adhere to the approved disbursement Schedule, as has been the case for the past 10 years.
3. It is our consideration therefore that in order to give the County Assemblies the desired autonomy and to avoid further aggravating conflicts between the Assemblies and the Executive, the Bill should provide for exemption of the funds due to the County Assemblies from being paid into the County Revenue Fund in accordance with Article 207 (1) of the Constitution and Section 109 (2)(a) of the Public Finance Management Act, 2012. This way, the National Treasury should be responsible for the disbursement of County Assemblies monies to the County Assembly Fund being established.
4. There is need for more research and stakeholder engagement for this Bill to achieve its objective as it also has the potential to affect the budgetary ceilings for both arms of the County governments further compounding the challenges.

B. SPECIFIC CONCERNS

The Council proposes the following specific amendments to the County Public Finance Laws (Amendment) Bill, 2023:

Section	Provision	CoG's proposal	Rationale/Justification
Short Title	This Act may be cited as the County Public Finance Laws (Amendment) Act, 2023.	This Act may be cited as the Public Finance Management (Amendment) Act, 2023.	The County Assembly Services Act is not a Public Finance Law. The principal Act being amended is the PFM Act, 2012 with consequential amendments to the County Assembly Services Act, 2017.
Clause 6 Section 109E Disbursement to county assembly fund.	109E. (1) The County Treasury shall, at the beginning of every month, and in any event not later than the fifteenth day from the commencement of the month, disburse monies to the County Assembly Fund for the expenditure of the following month.	Be amended to read: (1) The National Treasury shall, at the beginning of every month, and in any event not later than the fifteenth day from the commencement of the month, disburse monies to the County Assembly Fund for the expenditure of the following month.	Article 207 (1) provides for reasonable exclusion of money from being paid into the County Revenue Fund (CRF) by an Act of Parliament. This is also buttressed by the provisions of Section 109 (2)(a) of the PFM Act. Therefore, to give full autonomy to the County governments, the money for the County Assemblies should be excluded from the CRF and instead paid directly into the County Assembly Fund by the National Treasury. Secondly, this provision will be punitive to the County Treasuries in cases where the National Treasury does not adhere to the approved disbursement schedule. Indeed, it has been the case for the past 10 years that the national Treasury has been delaying on disbursement of money to Counties. Therefore, making it mandatory for the County treasury to transfer funds monthly while national treasury doesn't disburse funds as per the schedule will expose the County executive Committee Members for Finance to breaking the law and form ground for impeachment.

	(2) The disbursement referred to in subsection (1) shall be done in accordance with a schedule prepared by the County Treasury and submitted to the County Assembly for approval together with the County Appropriation Bill under section 129(7).	There is need for consultation and clarity on whether it is the National Treasury and the Senate or the County Treasury and the County Assembly to prepare and approve the disbursement schedule respectively.	
Clause 7 Section 119A Access to Internet Banking user rights.	7. The Public Finance Management Act is amended by inserting the following new section immediately after section 119— 119A. The Controller of Budget shall have viewer rights access to all bank accounts maintained by the county executive, the county assembly and all other county government entities.	Amend to delete the clause	The provision is discriminatory to the County level of government as the same is not being proposed or doesn't exist in any law for the National government accounts. Secondly, the Controller of Budget's mandate as provided for under Article 228 is to oversee the implementation of the budgets of the national and county governments by authorising withdrawals from public funds under Articles 204, 206 and 207. This mandate does not extend to audit of accounts of either level of government as this is the mandate of the Auditor General under Article 229 (4) of the Constitution.
Clause 8	8. Section 134 of the Public Finance Management Act is amended in subsection (1) by inserting the words "or County Assembly Service Fund" immediately after the words "County Revenue Fund".	Amend as follows: 8. Section 134 of the Public Finance Management Act is amended in subsection (1) by inserting the words "or County Assembly Fund" immediately after the words "County Revenue Fund".	The County Assembly Service Fund is not properly quoted for purposes of this Bill.

Conclusion

As you are aware, there is no formula/ratio for sharing of funds between the County Executives and County Assemblies and especially on the development budget. Counties sources of funds include equitable share, own source revenue and loans and grants. While the overarching objective of this Bill is to give the County Assemblies financial autonomy, there is no framework for sharing and which arm of the County governments will bear any shortfalls. There is therefore need to ensure that County Executives are protected regarding the implementation of budgets in cases of shortfalls in revenue collection by the Counties.

OFFICE OF THE CONTROLLER OF BUDGET



REPUBLIC OF KENYA
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P.O Box 35616-00100
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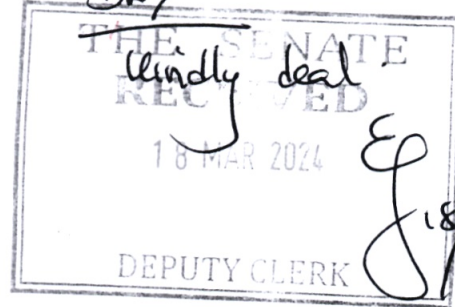
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0716274922, 0738466721
Website: www.cob.go.ke
Email: cob@cob.go.ke/Info@cob.go.ke

Ref: COB/SEN/002/VOL.2(6)

① DSEC
DLS

1st March, 2024

Mr. Jeremiah Nyegenye, CBS
Clerk of the Senate
Parliament Buildings
NAIROBI



Dear *Mr Nyegenye,*

**RE: COMMENTS ON THE COUNTY PUBLIC FINANCE LAWS
(AMENDMENT) BILL, 2023 (SENATE BILLS NO. 39 OF 2023)**

Reference is made to your letter Ref. SEN/DSEC/F&B/CORR/2024/002 dated 14th February, 2024, seeking views on the above referenced Bill which is before a Committee of the Senate.

② DDSEC(BL)
Kindly deal
18/03/2024

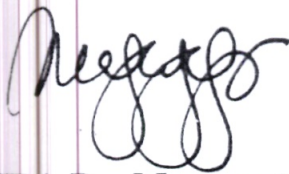
The following are some comments for your consideration:

Clause	Proposed Amendment	Justification
1. Clause 4 Section 32(3) of the County Assembly Services Act	Section 32(3), should not be deleted but be amended as follows: (3) In preparing the financial statements for the Board , the Secretary shall ensure that the report contains information on	The preceding sub-sections relate to the accounts and reports of the Board. ③ <i>Mr. Gibongu</i> Kindly deal 18 MAR 2024 19/03/24 DIRECTOR COMMITTEE SERVICES (DSEC)

	Clause	Proposed Amendment	Justification
		the financial and non-financial performance of the Board .	
2.	Clause 6 Section 109A(2)	Delete the proposed section 109A(2)(b), (c) and (d)	(a) The Fund should only receive funds appropriated by the county government in each financial year. All monies to the Fund should be channeled through the County Revenue Fund. (b) In any event, grants, levies or other revenue should be factored in the Appropriation Act before being spent. (c) The fund, being an equivalent of a county exchequer account should only receive funds through the Appropriation Act
3.	Section 109A(5)(b)	To be deleted	This is a Fund account (equivalent to the Exchequer) and payments are not made from it. Payments should be made from either the recurrent or development operational accounts.
4.	Section 109A(10)	To be deleted	It contradicts section 136 of the Public Finance Management Act since an appropriation lapses after the end of a financial year and any unspent funds should be re-budgeted.
5.	Section 109A(11)	Delete the phrase "with a copy to" and introduce other agencies that ought to receive the financial reports such as <i>the National Treasury, the County Treasury and the County Assembly</i> .	To align with section 163 of the PFMA and ensure that financial reports are submitted to all the named agencies.
6.	Section 109(B)(a) & (c)	To be deleted	The Fund should not have any administrative costs. The proposed County Assembly Fund is equivalent to the County Exchequer Account

	Clause	Proposed Amendment	Justification
			which does not have administration costs. The Fund purpose will be to implement the programs of the County Assembly in accordance with the Appropriation Act.

Yours *Sincerely,*



FCPA Dr. Margaret Nyakang'o, CBS
CONTROLLER OF BUDGET

Copy to: Standing Committee on Finance & Budget



Society of Clerks-At-The-Table in Kenyan Legislatures

1st Floor, Room 104, Transnational Plaza, Mama Ngina Street, P.O. Box 12654-00100, Nairobi, Kenya
Telephone : 0726428903 Email: info@socattkenya.org website : www.socattkenya.org

REF: REF: SOCATT/SENATE/VOL 1(51)

February 16th 2024

To: The Chairperson,
Senate Standing Committee on Finance and Budget.

Through: **Jeremiah Nyegenye, CBS**
The Clerk of the Senate, and
Secretary to the Parliamentary Service Commission,
Parliament Buildings,
NAIROBI.



RE: **MEMORANDUM ON THE COUNTY PUBLIC FINANCE LAWS (AMENDMENT) BILL, 2023: (SENATE BILLS NO. 39 OF 2023)**

The above subject refers.

In line with our Constitution and Strategic Approach 4, the Society of Clerks at the Table in Kenyan County Legislatures - SOCATT(K) has a mandate to undertake advocacy for national policy and legislation which enhances the functions and effective management of the County Assemblies. We implement this mandate through engagement with Parliamentary Committees on behalf of our membership being the Technical Services across the 47 County Assemblies in Kenya.

We make reference to your invitation to submit view on the County Public Finance Laws (Amendment) Bill, 2023 (Senate Bills No. 39 of 2023) dated February 1st, 2014; and have convened our membership to consider the Amendment Bill and input into a memorandum which we hereby submit for your consideration.

Further, kindly note that SOCATT(K) leadership is keen to engage with the Senate Standing Committee on Finance and Budget when it sits to consider this memorandum, and on subsequent matters touching on County Assemblies finance management.

Thank you for your continuous consideration and support to County Assemblies.


Regina Mutheu,
EXECUTIVE DIRECTOR.

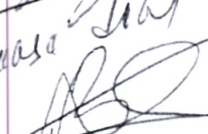


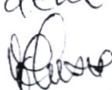
① DSEC

Please well
and deal.

Grace - on AC (TA)

16/2/2024

③ Mr. Kiunga
Please deal

19/02/24

② DDSEC
Kindly deal


19/02/2024

SOCATT(K)

Introduction & Background

The Society of Clerks at the Table in Kenyan County Legislatures - SOCATT (K) is a membership organization of all the County Assembly Services (CAS) across the 47 County Assemblies in Kenya. Our objective is to facilitate the harmonization of procedure and practice while creating platforms that enhance experience sharing, collaboration and networking for the County Assembly Service.

The County Assembly Services appreciate the continuous successful engagements with the Senate, and specifically the Standing Committee on Finance and Budget which is mandated among other matters related to protecting the interests of county governments, consider and lead review and/or amendment of laws related to public finance management.

General Comments

The principal object of this Bill is to facilitate adherence to the principle of separation of powers and parliamentary independence by entrenching financial autonomy for County Assemblies. SOCATT(K) notes that this will strengthen accountability and prudence in discharge of the County Assembly legislative, representation and oversight functions; and further facilitate strong intergovernmental relations within counties through reducing avenues for conflict between the two arms of county government.

In line with Article 10 of the Constitution (Public Participation), SOCATT(K) appreciates the opportunity to contribute to this Bill and looks forward to the impact of the amended Public Finance Management Act on the governance and management of County Assemblies by establishing a County Assembly Service Fund and facilitating County Assembly expenditure in emergencies.

SOCATT(K) concurs with various clauses of the Amendment Bill and further notes the need for additional amendment to strengthen the County Assembly Service to support Legislators in a similar manner with the function of the Parliamentary Budget Office at the national level. This will be in further implementation of the Senate's mandate in line with the Fourth Schedule of the Constitution of Kenya on Capacity building and technical assistance to the counties.

Overall, SOCATT(K) commends this initiative of the Senate in fulfilment of its mandate Article 96 of the Constitution of Kenya; and hereby submit our views as expounded below.

SOCATT(K)

CLAUSE	PROVISION	SOCATT(K) PROPOSAL	RATIONALE
6. Insertion of new sections immediately after section 109	<p>Section 109 A (1 to 2) on Establishment of County Assembly Fund.</p> <p>Also buttressed by inserting County Assembly Service Fund in Section 134.</p> <p>Section 109 A (3 to 9) on Administration of the Fund</p> <p>Section 109 A (10) on retention of unutilised balances</p> <p>Proposes to amend Section 109 E</p>	<p>We support the proposed amendment</p>	<p>These amendments provide financial autonomy for County Assemblies through establishment of a County Assembly Fund.</p>
			<p>Providing for the Assembly Clerk who is the CEO and chief accounting officer as the fund administrator is in line with existing parliamentary management and public finance accountability practices.</p>
			<p>This ensures County Assembly operations are not disadvantaged by delays in disbursements.</p>
		<p>The County Treasury should have no role in the disbursement of the monies under the County Assembly Fund.</p> <p>The clause should be deleted and substituted with a clause that: “ The National Treasury shall, at the beginning of every month, and in any event not later than the fifteenth day from the commencement of the month, disburse monies to the County Assembly Fund for the expenditure of the following month”</p>	<p>Article 207 of the Constitution of Kenya 2010 read together with Section 109 (2) (a) of the Public Finance Management Act excludes payment of monies raised or received by or on behalf of the county government to the CRF if provided by an Act if Parliament and is payable into another county public fund established for a specific purpose.</p> <p>For County Assemblies to achieve full financial autonomy, they should receive monies directly from the National Treasury without the intervention of the County Treasury to safeguard the independence of the county legislature.</p> <p>The Establishment of the County Assembly Fund was achieved under Section 34 of the County Assembly Services Act.</p>



<p>7. Access to Internet Banking user rights.</p>	<p>The Controller of Budget shall have viewer rights access to all bank accounts maintained by the county executive, the County Assembly and all other county government entities.</p>	<p>We support the proposed amendment</p>	<p>This amendmnet ensure that Oversight Institutions have an opportunity to intervene during funds expenditure without interference to county govebrmnt business.</p>
<p>Insertion of new section 124 A</p>	<p>124A (1) There is established in every County Assembly, a County Assembly Budget Office in the County Assembly Service.</p> <p>124A (2) A County Assembly Budget Office shall consist of persons appointed on merit by virtue of their experience in public finance, economics or public policy.</p> <p>124A (3) The County Assembly Budget Office shall-</p> <ol style="list-style-type: none"> a) Provide non-partisan information, analysis, and reports with respect to budget, budget proposals, and finance to the relevant committees of the County Assembly; b) Prepare reports on county budgets and economic trends and make proposals to the committees of the County Assembly responsible for budgetary matters; c) analyze any bill submitted to the County Assembly with reference to the fiscal responsibility principles and fiscal objectives set out in the relevant County Fiscal Strategy Paper; d) establish and foster relationships with the National Treasury, Parliamentary Budget Office, County Treasury, and other county treasuries for the efficient and effective performance of its fuctions; and e) ensure that all reports produced by the Budget Office are published and publicized not later than fourteen days after production. 	<p>The County Assemblies have the responsibility to approve the use of public resources by county governments. This role entails scrutinizing county government policies, bills, budget documents, implemetation reports and audit issues.</p> <p>In performing the role the County Assembly should have professional and technical people to guide the members of County Assembly in making informed decisions on public finance.</p> <p>The Parliamentary Budget Office (PBO) is established under Section 9 of the Public Finance Act and given clear mandate. As a parliamentary practice, County Assemblies should also have Budget Offices to provide professional services on Budget and Policy Issues.</p>	



REPUBLIC OF KENYA
THE NATIONAL TREASURY AND ECONOMIC PLANNING



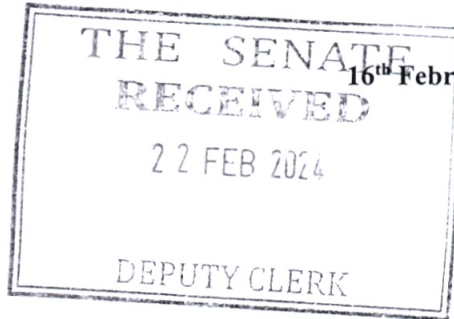
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THE NATIONAL TREASURY
P O BOX 36007 - 00100
NAIROBI
KENYA

When Replying Please Quote

REF: IGFR/SG/01/B

J.M. NYEGENYE, CBS
Clerk of the Senate
Parliament Buildings
NAIROBI



Dear *Mr. Nyegenyega,*

RE: INVITATION TO SUBMIT VIEWS ON THE COUNTY PUBLIC FINANCE LAWS (AMENDMENT) BILL, 2023 (SENATE BILLS NO.39 OF 2023)

Reference is made to a letter from the Clerk of the Senate Ref. SEN/DSEC/F&B/CORR/2024/001(a) dated 1st February, 2024 requesting for memoranda from National Treasury on the County Public Finance Laws (Amendment) Bill, 2023 (Senate Bills No.39 of 2023).

After careful review of the proposed bill, we hereby submit the National Treasury's comments for consideration by the Senate Standing Committee of Finance and Budget as requested (see attached)

Yours *Sincerely,*
[Signature]

NJUGUNA NDUNG'U, C.B.S
CABINET SECRETARY/NATIONAL TREASURY AND ECONOMIC PLANNING

Mr. Githonga -
Please deal
[Signature]
22/02/24

DSEC
kindly deal
[Signature]
22/02/2024



REPUBLIC OF KENYA
THE NATIONAL TREASURY AND ECONOMIC PLANNING

SUBMISSION BY NJUGUNA NDUNG’U, CBS, THE CABINET SECRETARY, NATIONAL TREASURY AND ECONOMIC PLANNING TO THE SENATE STANDING COMMITTEE OF FINANCE AND BUDGET ON THE COUNTY PUBLIC FINANCE LAWS (AMENDMENT) BILL, 2023

Hon. Chairperson and Hon. Members,

It is my pleasure and honor to be invited by this Honorable Committee to submit the views of the National Treasury on the above subject.

Hon. Chairperson,

The proposed amendment indicates that the object of the Bill is to provide financial autonomy of County assemblies by amending Section 109 of the Public Finance Management Act, 2012 to establish a County Assembly Fund. The purpose of the proposed Fund is to have monies for the running of County Assemblies separated from the County Treasury. The Bill also seeks to provide for instances to enable County Assemblies to spend money in emergencies.

We note that Section 109A of the proposed Bill provides that the monies to be paid into the Fund shall be such monies as may be appropriated by the County Assembly from the County Revenue Fund; or gifts, grants, donations or bequests; or such money as may be allocated for that purpose from investments, fees, or levies administered by the County; and monies accruing to or received by County Assembly from any other source.

Section 109(10) of the Bill proposes that unutilized balances in the Fund shall not lapse at the end of the financial year but shall be retained for the purpose for which it was established.

Hon. Chairperson,

We invite you to note the following:

That the current legal provisions for county governments relating to Section 109 of the PFM Act, 2012 are a mirror of Section 17 of the Act as they relate to the National Government. The purpose for this financial provision is to ensure that there are no multiple centres of accountability on matters of financial management. The general architecture of the PFM Act, 2012 is to promote clear lines of responsibility and accountability in the country's public finance management system.

Hon. Chairperson,

Section 109(3) of the PFM Act, 2012 assigns the County Treasury the responsibility to administer the County Revenue Fund and ensure that the county government complies with the provisions of Article 207 of the Constitution. Further, Section 109(6) of the PFM Act, 2012 requires the County Treasury to obtain the written approval of the Controller of Budget before withdrawing money from the County Revenue Fund under the authority of an Act of the County Assembly that appropriates money for a public purpose; an Act of Parliament or county legislation that imposes a charge on that Fund; or the PFM Act in accordance with sections 134 and 135.

Hon. Chairperson,

Section 109A (7) of the proposed bill also proposes that the administrator of a County Assembly Fund shall obtain the written approval of the Controller of Budget before withdrawing money from the County Assembly Fund Account.

We note that money can only be moved out of the County Revenue Fund to the County Assembly Fund with the approval of the Controller of Budget. The County Treasury is the administrator of the County Revenue Fund, and is therefore the only office authorized by law to obtain Controller of Budget's approval to move money out of the County Revenue Fund. The Fund therefore introduces bureaucracy in withdrawal of

funds. The flow of funds from the County Treasury for the running of the County Assemblies should be solved administratively.

Regarding County Assemblies being able to spend money in emergencies from the proposed County Assemblies Fund, Sections 110-115 of the PFM Act, 2012 are clear on the creation and usage of County emergency funds and this is in line with Article 208 of the Constitution.

Hon. Chairperson,

Sections 45 and 136 of the PFM Act, 2012 provides that at the end of the financial year, any unspent balances lapse. In this regard, Section 109(10) of the proposed Bill contravenes the PFM Act, 2012.

Hon. Chairperson,

We further wish to submit that the procedure for establishment of a county public Fund is provided for under Section 116 of the PFM Act. The minimum requirements that public funds must comply with are well set out under Regulation 197 of the Public Finance Management (County Government) Regulations, 2015. The requirements include-

- i. A demonstration that the functions and the public services to be delivered through the Fund cannot be delivered through the structure of budget appropriations;
- ii. A clear justification as to why a Fund structure is deemed appropriate for improved service delivery in light of the legislative and policy mandate of the county government entity;
- iii. the administration costs of the Fund shall be a maximum of three (3%) percent of the approved budgets of the Fund;
- iv. the establishment of the Fund and its continued existence should not depend on annual financing from the county exchequer;
- v. A demonstration of how the activities of the proposed County Public Fund shall fit in the overall Medium-Term Plan and County Fiscal Strategy Paper; and
- vi. the initial approval for establishment of a county public Fund shall be for a maximum period of ten (10) years, beyond which fresh approvals shall be sought.

Hon. Chairperson,

Analysis of the proposed County Assembly Services Fund clearly indicates that a move to establish such Fund contravenes the above legal provisions. Its establishment would mean a review of the regulations whose spirit is to promote accountability and control proliferation of public funds.

Hon. Chairperson,

In view of the above, the National Treasury and Economic Planning does not support establishment of the proposed Fund since it will lead to multiple centres of accountability and also contravene the above-mentioned legal provisions whose spirit is to ensure proper accountability, ease administration and provide oversight on public financial management in the country.



NJUGUNA NDUNG'U, CBS
THE CABINET SECRETARY



COUNTY ASSEMBLIES FORUM (CAF)

Flamingo Towers, 5th Floor Wing B, Mara Road, Upper Hill P.o Box 73552- 00200 Nairobi Kenya Tel: 0701 046 933
Email:communication@countyassembliesforum.org www.countyassembliesforum.org

CAF MEMORANDUM ON THE COUNTY PUBLIC FINANCE LAWS (AMENDMENT) BILL, 2023 (SENATE NO.39 OF 2023)

TO: Mr. Jeremiah Nyengenyé
Clerk of the National Assembly, Parliament of Kenya.

FROM: The County Assemblies Forum.

DATE: 6th December 2023.

SUBJECT: CAF Memorandum on the County Public Finance Laws (Amendment) Bill,2023

1.0 INTRODUCTION

1. The County Assemblies Forum (CAF) is the coordinating body of the 47 County Assemblies in Kenya. The primary mandate of CAF is to promote networking and synergy among the 47 County Assemblies, coordinate intergovernmental relations and enhance good practice in legislative development. Our Mission is to provide effective leadership and coordination of the 47 County Assemblies and through policy and legislative action, promote a conducive working environment for all its members, and in that way deliver quality services to the people.
- 2.0.** As one of the pillars of the devolved government system, CAF is committed to engage in processes that provide for the strengthening of Separation of powers among County entities under the devolved system of governance

2.1. BACKGROUND

- 2.2. The principal object of this Bill is to the County Assembly Services Act and the Public Finance Management Act to provide for the financial autonomy of County Assemblies.
- 2.3. The principle of separation of powers requires that county assemblies ought to be independent in the discharge of their functions. However, the situation currently is that county assemblies submit their requisitions for funds to the Controller of Budget and thereafter rely on the county treasury to disburse funds to them. The reliance on the county executive for finances occasions delays and other conflicts between the two arms of government. In this regard, the financial autonomy of county assemblies is lacking as they rely on the whims and caprices of their respective county executives and as such cannot be said to be independent.
- 2.4. Section 17 of the County Assembly Services Act, 2017 designates the Clerk of the County Assembly as the administrative head of the county assembly. There is therefore need to establish a County Assembly Service Fund under the Public Finance Management Act in each county in order to provide the much-required financial independence for the forty-seven counties.
- 2.5. The Bill seeks to amend section 109 of the Public Finance Management Act, 2012 to establish a County Assembly Service Fund in order to have monies for the running of county assemblies being separated from the county treasury. The Bill also seeks to provide for instances where the county assemblies can be able to spend money in emergencies.
- 2.6. This Bill is a Bill concerning county governments within the meaning of Article 110 of the constitution and as the Bill provides a mechanism through which county assemblies will fund their activities independently of the county treasury. As such, the Bill directly affects the functions of county governments. The Bill therefore concerns county governments in terms of Article 110(1) (a) of the Constitution.

3.0. GENERAL COMMENTS.

- 3.1. The proposed County Public Finance Laws (Amendment) Bill, 2023, warrants commendation for its introduction by Hon. Senator Kathuri Murungi and the Deputy Speaker of the Senate. Their effort in developing and presenting this Bill reflects a commitment to legislative improvements, which is vital for the effective functioning of county governments in Kenya.
- 3.2. The Bill represents a significant stride towards providing financial autonomy for County Assemblies. Since the inception of Devolution in 2013, County Assemblies have sought greater control over their financial resources to better serve their constituents. This Bill addresses this long-standing concern and acknowledges the importance of empowering local governance structures.
- 3.3. The Bill deserves praise for its comprehensive provisions, particularly the establishment of the County Assembly Fund outlined in Section 109A. This fund, sourced from various avenues including appropriations, grants, and donations, serves as a dedicated resource for County Assemblies, ensuring greater financial stability and flexibility in meeting their administrative and developmental needs.
- 3.4. While recognizing the positive steps taken in Section 109E regarding the disbursement of funds to the County Assembly Fund, it is essential to note that further refinements may be needed. Feedback from the County Assemblies Forum suggests that this section might not entirely meet the expectations and satisfaction of the county-level governance bodies. Further consultation and potential adjustments may be considered to align this section more closely with the needs of County Assemblies.
- 3.5. The inclusion of Section 109D, authorizing the Clerk of a County Assembly to permit expenditure with accompanying guidelines, is a commendable feature. Clear guidelines on expenditure help ensure transparent and responsible financial management within County Assemblies, fostering accountability and efficiency.
- 3.6. CAF appreciates the opportunity to contribute to this Bill and on the basis of the foregoing proposes the following amendments:

4.0 SUMMARY MATRIX OF THE PROPOSED AMENDMENTS.

CLAUSE	AMENDMENT	JUSTIFICATION/COMMENTS
<p>Clause 6 of the amendment Act</p> <p>109 A (2) a of the Principal Act</p> <p>109A. (1) There is established for each county a fund to be known as the County Assembly Fund.</p> <p>(2) There shall be paid into the County Assembly Fund — (a) such monies as may be appropriated by the County Assembly from the County Revenue Fund established for each county; (b) any grants, gifts, donations or bequests; (c) such money as may be allocated for that purpose from investments, fees, or levies administered by the County; and</p>	<p>Amend the following section to state</p> <p><i>"109A. (1) There is established for each county a fund to be known as the County Assembly Fund.</i></p> <p><i>(2) There shall be paid into the County Assembly Fund —</i></p> <p><i>(a) such monies as may be appropriated by the County Assembly from the Consolidated Fund;</i></p> <p><i>(b) any grants, gifts, donations or bequests;</i></p> <p><i>(c) such money as may be allocated for that purpose from investments, fees, or levies administered by the County; and...."</i></p>	<p>1. Enhancing Autonomy and Independence: Shifting the County Assemblies Fund from the County Revenue Fund to the National Treasury underscores the importance of ensuring complete autonomy and independence for County Assemblies. Placing the fund under the National Treasury diminishes the potential influence of the executive branch at the county level, thereby fostering a more autonomous financial structure for County Assemblies.</p> <p>2. Avoiding County Executive Influence: Establishing the County Assemblies Fund under the National Treasury mitigates the risk of undue executive influence on the financial affairs of County Assemblies. The direct link to the National Treasury helps insulate the fund from local political pressures, ensuring that County Assemblies can operate with greater freedom, make independent financial decisions, and allocate resources based on the needs and</p>

		<p>priorities of their constituents.</p> <p>3. Safeguarding Against Fiscal Imbalances: Placing the County Assemblies Fund under the National Treasury provides an additional layer of protection against potential fiscal imbalances. It ensures that the financial management and disbursement of funds are governed by national standards, promoting fiscal responsibility and preventing arbitrary interference that may arise when the fund is directly tied to the County Revenue Fund.</p> <p>4. Consistency with the Principle of Checks and Balances: The proposed amendment aligns with the principles of checks and balances in governance. By separating the County Assemblies Fund from the County Revenue Fund and placing it under the National Treasury, the amendment reinforces the idea of distinct roles and responsibilities for different arms of government. This separation contributes to a more balanced distribution of powers, reducing the likelihood of undue influence or interference.</p> <p>5. Streamlining Resource Allocation: Establishing the County Assemblies Fund under the National Treasury can contribute to a more efficient and streamlined process of resource</p>
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			<p>allocation. This centralized approach facilitates a standardized and consistent disbursement mechanism, reducing administrative bottlenecks and ensuring that funds are allocated in a timely manner, ultimately supporting the effective functioning of County Assemblies.</p>
	<p>Clause 6 of the amendment Act</p> <p>109 E of the Principal Act</p> <p>109E. (1) The County Treasury shall, at the beginning of every month, and in any event not later than the fifteenth day from the commencement of the month, disburse monies to the County Assembly Fund for the expenditure of the following month.</p> <p>(2) The disbursement referred to in subsection (1) shall be done in accordance with a schedule prepared by the County Treasury and submitted to the County Assembly for approval together with the County Appropriation Bill under section 129(7)</p>	<p>Amend the following section to state</p> <p><i>"109E. (1) The National Treasury shall, at the beginning of every month, and in any event not later than the fifteenth day from the commencement of the month, disburse monies to the County Assembly Fund for the expenditure of the following month.</i></p> <p><i>(2) The disbursement referred to in subsection (1) shall be done in accordance with a schedule prepared by the National Treasury in consultation with the Intergovernmental Budget and Economic Council in accordance to section 17(7)."</i></p>	<p>1. Minimizing Executive Influence: Direct disbursement of funds from the National Treasury to the County Assemblies Fund, as opposed to the County Treasury, would help minimize executive influence at the county level. By cutting out the County Treasury as an intermediary, County Assemblies can operate with greater independence in financial matters, reducing the risk of undue influence from the county executive.</p> <p>2. Preserving Oversight Independence: Direct disbursement from the National Treasury safeguards the independence of County Assemblies, particularly in their oversight function. If funds flow directly from the National Treasury, County Assemblies can maintain a more neutral stance in scrutinizing the actions of the county executive, ensuring that oversight remains uninfluenced by local political dynamics.</p> <p>3. Enhancing Checks and Balances:</p>

Amending the provision to stipulate direct disbursement from the National Treasury aligns with the principles of checks and balances in governance. This separation of financial flows reinforces the autonomy of the legislative arm of the county government, preventing potential conflicts of interest that may arise when funds pass through the county executive's control

Mitigating Political Pressures: If funds are disbursed directly from the National Treasury, County Assemblies may experience less direct political pressure from the county executive. This ensures that financial decisions and allocations are made based on the Assembly's priorities and the needs of the constituents rather than being influenced by local political considerations.

Aligning with Best Practices in Financial Management: Direct disbursement from the National Treasury aligns with best practices in financial management by reducing potential conflicts of interest. Many governance models advocate for central control over financial disbursements to local entities to ensure fairness, transparency, and adherence to national financial standards.

4. **Mitigating Political Pressures:** If funds are disbursed directly from the National Treasury, County Assemblies may experience less direct political pressure from the county executive. This ensures that financial decisions and allocations are made based on the Assembly's priorities and the needs of the constituents rather than being influenced by local political considerations.

5. **Aligning with Best Practices in Financial Management:** Direct disbursement from the National Treasury aligns with best practices in financial management by reducing potential conflicts of interest. Many governance models advocate for central control over financial disbursements to local entities to ensure fairness, transparency, and adherence to national financial standards.

Thank you.
Yours sincerely,

A handwritten signature in black ink, appearing to read 'Philemon Sabulei', written in a cursive style.

HON. PHILEMON SABULEI
CHAIRPERSON, CAF

MEMORANDUM

From

The Lake Region Budget Hub

Contact Person:

Name: Francis Namuju

Coordinator Lake Region Hub

Phone: 0724510595

Email: fnamuju@gmail.com

To

The senate

Clerk's chamber Parliament Building

P.O. Box 41842- 00100,

Nairobi Kenya

SUBJECT: SUBMISSIONS TO THE SENATE ON THE COUNTY PUBLIC FINANCE LAW (AMENDMENT) BILL, 2023 (SENATE BILL NO. 39 OF 2023) IN ACCORDANCE WITH ARTICLE 228 (6) OF THE CONSTITUTION OF KENYA, 2010 AND THE SENATE STANDING ORDER 228 (3).

The Lake Region Budget Hub is a platform that brings together civil society organizations consisting of highly trained budget facilitators and budget champions actively participating in budget advocacy work in counties within the Lake Region Economic Block (LREB).

The regional hub idea was mainly to bring together resource persons in the civil society group with the capacity and passion for the Public Finance Management (PFM) process to cross-learn and share innovative ideas important in improving our PFM status and enhancing service delivery. The budget facilitators and champions are drawn from Busia, Bungoma, Kakamega, Trans Nzoia, Siaya, Kisumu, Migori, Homa Bay, Kisii, Nyamira, and Kericho counties.

Background

The County Public Finance Laws (Amendment) Bill, 2023, seeks to amend existing legislation, namely the County Assembly Services Act No. 24 of 2017 and the Public Finance Management Act 2012, to address various issues related to the management and utilization of public funds at the county level in Kenya. The amendments proposed in this bill aim to enhance the principle of separation of powers by strengthening the county assembly's oversight role and independence.

The current system where county assemblies rely on the county executive for funds undermines their independence, as highlighted by Section 17 of the County Assembly Services Act, 2017 designating the Clerk of the County Assembly as its administrative head. To address this, the proposed Bill seeks

MEMORANDUM

to establish a County Assembly Service Fund under the Public Finance Management Act, separating assembly funds from the county treasury and allowing for more autonomy. The amendments aim to create a mechanism for emergency spending by county assemblies. Importantly, the Bill does not delegate legislative powers or limit fundamental rights and freedoms. It directly affects county governments, aligning with Article 110(1) (a) of the Constitution, but is not classified as a money Bill under Article 114.

Overall, the County Public Finance Laws (Amendment) Bill, 2023, reflects the government's commitment to promoting good governance, transparency, and accountability in the management of public finances at the county level, thereby ensuring effective service delivery and development outcomes for the citizens of Kenya.

Key issues of concerns

This section provides some of the key areas of concern that the framers of the bill should take note of in order to strengthening the bill for the desired outcome.

Section/Key Issue	Proposal	Remarks
Commencement Date	The bill does not provide a specific date on when the new law takes effect	The enacted act should be able to state the commencement date
The County Assembly Services Act is amended by deleting section 34.	Sections 34 of the County Assembly Services Act No. 24 of 2017 are deleted without any explanation provided in the Bill. It's important for any legislative changes to be accompanied by justifications or rationale to ensure transparency and accountability.	-Reasons and justifications should be provided prior to deleting any section of an existing law
109E. (1) The County Treasury shall, at the beginning of every month, and in any event not later than the fifteenth day from the commencement of the month, disburse monies to the County Assembly Fund for the expenditure of the following month.	Funds disbursements should be based on the exchequer releases or rather on quarterly basis. Where the county treasury receives exchequer, the monies meant for the county assembly service funds should be immediately be transferred to enable counties run their business. Monthly release is also not logically as it makes the county assembly still dependent on the executive, full Funds should be disbursed therefore on quarterly basis at the beginning of every quarter for effective planning and operation.	The bill should ensure that the proposed dates are in line with the exchequer release schedules to avoid giving guidelines that are practically impossible to implement
<i>Oversight Mechanisms</i> The bill only mention that the county assembly funds administrator will report to	While the Bill establishes the County Assembly Fund and outlines its administration, there's limited	Proper oversight mechanisms should be put in place before the fund is

MEMORANDUM

<p>the Controller of budgets and partially to the commission on Revenue allocations as the only oversight mechanism/body for managing the funds.</p>	<p>mention of oversight mechanisms to prevent misuse or mismanagement of funds. Clear provisions for auditing, reporting, and accountability mechanisms should be included to ensure proper utilization of public funds.</p>	<p>created, this should not only be limited to the Controller of Budgets alone.</p>
<p><i>Lack of Provisions for Public Participation</i> -Section 201 of the Constitution of Kenya, 2010 outlines the principles of public finance which includes openness and accountability, including public participation in financial matters;</p>	<p>There's a notable absence of provisions for public participation in the management and utilization of county assembly funds. Incorporating mechanisms for public input and scrutiny can enhance transparency and accountability in the allocation and expenditure of public resources.</p>	<p>Anytime public money is spent there must be public participation involved. The bill should seek to strengthen citizens monitoring mechanisms that will help inform how citizens will influence the decision on the usage of the money.</p>
<p><i>Lack of Clarity on this section amendment:</i> 9. Section 136 of the Public Finance Management Act is amended by deleting subsection (2) and substituting therefor the following new subsection— (2) If, at the end of a financial year, a county government entity is holding appropriated money that was withdrawn from the County Exchequer Account or the County Assembly Fund Account but has not been spent, it shall repay the unspent money to the County Exchequer Account or the County Assembly Fund Account as the case may be and prepare a refund statement which shall be forwarded to the Controller of Budget.</p>	<p>Section 136 of the Public Finance Management Act is amended to address the repayment of unspent funds by county government entities. However, the Bill should provide clear guidelines on the process and timelines for such refunds, including mechanisms for monitoring compliance.</p>	<p>The bill should be clear as to what money is being deposited at the County Exchequer and what monies are being repaid to the County Assembly Fund Account</p>

Recommendations

i. Provide Explanatory Notes:

The Bill should include explanatory notes or preamble sections to provide context and justification for each proposed amendment, ensuring clarity and transparency in the legislative process.

ii. Strengthen Oversight Mechanisms:

Incorporate provisions for independent audits, regular reporting, and oversight by bodies such as the Controller of Budget and the Auditor General to enhance accountability and transparency in the management of county assembly funds.

MEMORANDUM

iii. Enhance Public Participation:

Introduce provisions for public hearings, consultations, and access to information regarding the utilization of county assembly funds to promote inclusivity and accountability in financial decision-making processes.

iv. Develop Guidelines for Fund Management:

Develop clear guidelines and procedures for the management, disbursement, and utilization of funds, including safeguards to prevent misuse or misappropriation.

v. Streamline Refund Procedures:

Specify clear procedures and timelines for the repayment of unspent funds by county government entities, ensuring adherence to financial regulations and accountability standards

Conclusion

In conclusion, "The County Public Finance Laws (Amendment) Bill, 2023," represents a significant step towards enhancing accountability, transparency, and efficiency in the management of public funds at the county level in Kenya. By proposing amendments to existing legislation, the bill aims to streamline financial processes, establish clear guidelines for fund management, and strengthen oversight mechanisms. Through these measures, the bill seeks to promote good governance practices, safeguard public resources, and ultimately contribute to improved service delivery and development outcomes for the citizens of Kenya

It is our belief that the matters raised above are of pertinent to safeguard the gains of devolution and the spirit of the constitution of Kenya, 2010. We undersigned remain available for any clarification and further deliberation including a physical appearance before the Senate Standing Committee on Finance and Budget.

Should you have any question or clarification needed, please contact the following person:

Agola Jack Benedict

Lake Region Budget Hub

Budget Facilitator

Phone: 0740767926

Email: jackagolla93@gmail.com

MEMORANDUM

List of Contributors

N O	NAME	EMAIL	PHONE NO.	ORGANIZATION	DESIGNATION	COUNTY
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**MEMORANDUM ON THE COUNTY PUBLIC FINANCE LAWS (AMENDMENT)
BILL 2023 BY THE RIFT VALLEY BUDGET HUB 2024**

Submitted on: 16th February 2024

Submitted By:

Mr. Evans Kibet.

For and on Behalf of Kenya Devolution Civil Society Organizations Working Group.

Email: evanskibetboss@gmail.com

Tel: +254711221294

To:

The Clerk,

Senate,

P.O. BOX 41842-00100,

Nairobi.

Email: clerk.senate@parliament.go.ke

Introduction:

The Rift Valley Budget Hub brings together budget practitioners from the 7 counties of **Nakuru, Baringo, Elgeyo Marakwet, West Pokot, Kericho, Bomet** and **Nandi** as a platform to build synergy in the county, regional and national level budget engagements. The hub is also platform for peer-to-peer learning on best practices in the budget processes.

The hub builds the budget capacity of citizens, civil society organizations and government officials to deliberate and make budget decisions that are responsive to citizens' needs



In response to the invitation to submit views sent via International Budget Partnership Kenya, the Hub reviewed County Public Finance Laws (Amendment) Bill 2023 and hereunder are a few issues and question that we would like Senate to consider in deliberating and approving the bill

1. Basis for allocation to the fund

Section 109 A(2) (a), gives the County Assembly powers to appropriate monies from the County Revenue Fund to the County Assembly fund. This begs the questions: *What will be the basis for the first allocation to the fund once operationalized?*

We urge the Senate to maintain the practice of ceilings through the County Allocation of Revenue Act which are usually proposed by CRA with information generated by SRC. This will mitigate the scramble for resources between the County Treasury and County Assembly.

2. Accrued allocations to the Fund

Section 109A (10) states that, *'Any unutilized balances in the County Assembly Fund shall not lapse at the end of the financial year but shall be retained for the purposes for which it was established'*

To avoid tying monies in the fund, it is our view that subsequent CARA ceilings take into consideration the balances in the fund. At the end of the financial year, the fund administrator should declare the balances and its purpose by economic (whether salaries, use of goods and services and capital projects) as well as program clarification

3. Cash flow Challenges

Section 109E (1) and (2), requires the County Treasury to disburse monies to County Assembly not later than fifteenth of every month and as per the disbursement schedules prepared by Treasury and approved by the County Assembly alongside the annual budget. This section assumes an ideal situation where cash flow in the County is seamless. However, our budget implementation research has shown that county governments experience cash flow challenges occasioned by delayed disbursement of equitable share and shortfall in local revenue. Under such circumstances, County Treasury will be forced to prioritize the County Assembly at the expense other more crucial services. Even worse the County Treasury is unable to do so, this section could create conflict between the County Assembly and County Treasury



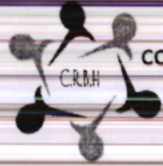


Conclusion:

The Hub agrees with the general idea of strengthening the oversight role of the County Assembly. Even then, creating a new fund and altering financial management practices, could result in serious tussles in management of county revenue allocations and compromise adherence to the principles of public finance management.

Therefore, we urge the Senate to review the bill with a keen consideration of the principles of public finance management and the contextual realities.





COAST REGIONAL
BUDGET HUB

THE CLERK
SENATE
NAIROBI.

16TH FEBRUARY, 2024.

SUBMISSION ON THE COUNTY PUBLIC FINANCE LAWS (AMENDMENT) BILL SUBMITTED

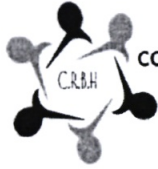
INTRODUCTION

The proposed County Public Finance Laws (Amendment) Bill seeks to amend section 109 of the Public Finance Management Act, 2012 to establish a County Assembly Service Fund in order to have monies for the running of county assemblies being separated from the county treasury. The Bill also seeks to provide for instances where the county assemblies can be able to spend money in emergencies.

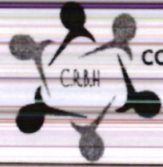
Who are we?

The Coast Regional Budget Hub is a civic engagement space, that operates in Mombasa, Kwale, Kilifi, Lamu, Taita Taveta and Tana River Counties. The Coast Regional Budget Hub is composed of budget coordinators, facilitators and community budget champions, drawn from organizations or individuals. Our key mandate is budget advocacy, and to ensure fiscal decisions undertaken by the government at the county and national level, addresses the developmental needs of our communities through better services.

Our Observations, interpretation and Understanding of the proposed Bill.



No.	PROVISION IN THE BILL/ CLAUSE	ISSUE OF CONCERN/ ASK	RECOMMENDATION	JUSTIFICATION
PART I				
1.	Preliminary	<p>This Act may be cited as the County Public Finance Laws (Amendment) Act, 2023.</p> <p>Is the County Public Finance Laws in existence? How do we amend an Act that is not in existence?</p>	<p>The proposals in this bill seek to amend two (2) Acts namely the Public Finance Management Act of 2012 and the County Assemblies Service Act 2017.</p> <p>This should be presented as miscellaneous Act that seeks to amend the County Assemblies Service Act 2017 and the Public Finance Management Act, 2012 and not as a separate Act</p>	<p>Most of the proposals in this bill seek to amend two (2) Acts namely the Public Finance Management Act of 2012 and the County Assemblies Service Act 2017.</p>
2.	Section 109 E	<p>There is discrepancy between this Section 109 E County Public Finance Law (Amendment) Bill and Section 109A (7) and the general objectives of the proposal of the Act.</p>	<p>The bill proposes the independence of the County Assemblies by not relying on County Treasury to do disbursements to the County Assemblies but the section still mentions that disbursement would be from the County Assembly.</p>	<p>The Bill seeks the independence of the County Assemblies, section 109E contradicts the objectives of the Bill.</p> <p>There are instances when there are delays from the exchequer and the bill has not mentioned what happens in the event there are delays that cannot be blamed on the county treasury</p>



3	Section 109 D(1)	Chapter 12 of COK This section proposes that the Clerk of a County Assembly may, in writing, authorize a member of staff of the County Assembly to incur expenditure for the efficient management of the County Assembly	There should be clear description of the people who can be authorized by the clerk to incur expenditure. This should be clearly indicated on the position and role of the person who can incur expenditure other than the clerk .	This is inconclusive because its hasn't indicated whether it's the accountant of the county assembly or finance officer for that matter and that not everyone can be given such roles and may be prone to abuse by the clerk of the county assembly and therefore should state clearly the person who can be delegated such roles

General Observations and Recommendations

1. The autonomy of the county assembly is paramount as the oversight body mandated to approve county budgets and oversee implementation of projects and programmes . The constitution in Article 175 (a) states that county Governments shall be based on democratic principles and the separation of powers. The county Governors have been using unorthodox means to frustrate transfer of funds to county assembly accounts and that has hindered their execution of their mandate and the primary oversight roles.
2. The controller of Budget should ensure that quarterly reports of the funds are submitted timely because counties have created so many funds and they haven't been submitting the quarterly reports as required.



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THE INSTITUTE FOR SOCIAL ACCOUNTABILITY MEMORANDUM ON THE COUNTY PUBLIC FINANCE LAWS (AMENDMENT) BILL, 2023

6th FEBRUARY 2024

Introduction and Background

The Institute for Social Accountability (TISA) is a non-profit organization committed to achieving devolution, sound policy and good governance in local development in Kenya and uplifting the livelihoods of, especially, the poor and marginalized. TISA exists to promote citizen empowerment and government accountability in Kenya to institutionalize a sustainable culture of social inclusion through inclusive policy frameworks and budgetary decisions to the realization of inclusive governance and the accountable and equitable distribution of resources. Thus, TISA's mission is to help Kenyans find their voice and agency to claim their rights to services, make the Kenyan government accountable for its duties and promises; and make the constitution a lived experience.

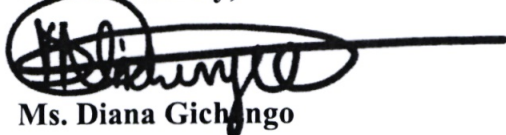
TISA is a known champion for a devolved system of government driven by separation of power and democratic principles as enshrined in Articles 174, 175 and 176 of the Constitution of Kenya, TISA commends the Meru Senator, Hon. Kathuri Murungi for sponsoring the County Public Finance (Amendment) Bill, 2023. The fiscal architecture at the county government level ought to mirror what is at the national level. Therefore the initiative to establish a county assembly services fund is in line with the doctrine of separation of powers where financial independence must be guaranteed to enable functional independence.

However, TISA has some reservations on some clauses and hence recommends the following proposals in support of the County Public Finance (Amendment) Bill, 2023, which seeks to amend the County Assembly Services Act 2017 and the Public Finance Management (PFM) Act of 2012. Overall we note that the bill seeks to anchor the fund in the PFM act while the County Assemblies Services (CAS) Act is the substantive and procedural law for this matter. Looking at the national government level the parliamentary service related funds are established in the Public Finance Management Act section 24 and substantively defined in the respective acts and in particular section 18 of the parliamentary service act cap 185A laws of Kenya. Under this guidance and in the spirit of uniformity across the two levels of government we make the following observations and recommendations

No	Clause	Proposed Amendment	Justification
1	2	The deletion of the definition of the term "fund" in the County	This section should mirror section 24 of the Public finance

		Assembly Services Act of 2017 should be accompanied with the new definition of the term “fund”, County Assembly Fund in the proposed County Public Finance (Amendment) Bill, 2023	management act on the establishment of the Parliamentary Service fund and leave out all definitions in the County assemblies services Act the same way the definition , powers and responsibilities are defined in the parliamentary service act
2	109B	While as the Memorandum of Objects and Reasons speaks of how the County Assembly Services Fund shall be utilized including the use during addressing county assembly emergencies, the Clause 109B does not include that as one of its use.	There is need to realign clause 109B with the Memorandum of Objects and Reasons to include emergencies purposes as means through which the County Assembly Services Funds can be expensed.
3	6 – 109A (4)	There is need to amend Section 19 of the County Assembly Services Act 2017 which highlights the role of the County Assembly Clerk and add that the Clerk shall be the Administrator of the County Assembly Fund as proposed in the Amendment Bill.	Amending section 19 of the County Assembly Services Act of 2017 shall show consistency of the role of the Clerk as stipulated in the Act.
4	6 – 109 (1) & (2)	The insertion of Section 109 should clarify on whether creation of the County Assembly Fund is meant to replace the County Revenue Fund or not. This is because sub-section 2 (a) is still making reference to the latter.	While the insertion of Section of 109 is explicit on the purpose that the County Assembly Fund will do, it is not clear whether the County Assembly Fund shall replace the County Revenue Fund.
5	109 (D)	The county clerk given the powers to authorize the number of members of staff to incur expenditure, this must be followed with clear justification from the clerk	There must be clarity on the procurement guidelines and limitations in order to have a balanced market rate. The insertion creates an avenue for mismanagement.

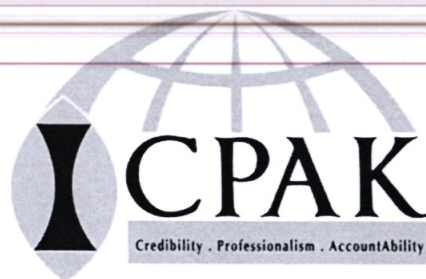
Yours sincerely,



Ms. Diana Gichungo

National Coordinator

The Institute for Social Accountability



SUBMISSION ON COUNTY FINANCE (AMENDMENT) BILL 2023

The information contained in this publication has been prepared by the Institute of Certified Public Accountants of Kenya.

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1.0 BACKGROUND

1. The Institute of Certified Public Accountants of Kenya (ICPAK) is a statutory body of accountants established under the Accountants Act of 1978, and as repealed under the Accountants Act Number 15 of 2008, mandated to develop and regulate the Accountancy Profession in Kenya. It is also a member of the International Federation of Accountants (IFAC), the global umbrella body for the accountancy profession and Pan Africa Federation of Accountants (PAFA), the continental body of Accountants. The Institute is dedicated to enhancing its contribution and that of its members to the national economic growth and development agenda.
2. ICPAK recognizes the importance of the principle of separation of powers between the executive and the legislature. Article 185 of the Constitution vests the legislative authority of a county is vested in its county assembly. The Constitution stipulates that a county assembly, while respecting the principle of the separation of powers, may exercise oversight over the county executive committee and any other county executive organs.
3. The Institute notes that currently there are statutory provisions to guarantee financial autonomy of the County Assembly. For instance, Section 31 of the County Assembly Services Act 2017 stipulates that,

Section 31 of the County Assembly Services Act 2017 of the Financial estimates
 - (1) At least three months before the commencement of each financial year the Secretary to the Board shall cause to be prepared, estimates of all the expenditure required for the purposes of this Act for that year, and shall present such estimates to the Board for review.
 - (2) The Secretary shall ensure that the budgeting process is all inclusive and that it respects the principle of public participation.
 - (3) The Board shall review the estimates forwarded under sub-section(1) and may make such alterations thereto as it may consider necessary, and shall thereafter forward them to the county assembly for approval.
 - (4) The Secretary shall provide the County Treasury with a copy of estimates as reviewed by the Board under subsection (3).
 - (5) Upon the approval of the estimates by the county assembly, all monies from time to time required for the purposes of this Act, shall be paid from the Consolidated Fund into the County Assembly Fund.
4. The Institute is of the considered opinion that already there are frameworks through the county budgeting process to guarantee independence of the County Assembly. As such, there is need to streamline the administrative structures between the County Treasury and County Assembly to iron out any delays in disbursement of funds to the Assembly.

5. The establishment and operationalization of County Assembly Fund could further be affected by the ongoing implementation of the Treasury Single Account. According to the PFM Act the "Treasury Single Account"— in relation to the county government, means a centralised bank account system established in each county where all deposits and payment transactions are processed for county departments and any other county entity which draws directly from the County Revenue Fund. Section 119 (2) of the PFM Act provides that as soon as practicable, each County Treasury shall establish a Treasury Single Account at the Central Bank of Kenya, or a bank approved by the County Treasury through which payments of money to and by the various county government entities are to be made.

2.0 SUMMARY OF ICPAK RECOMMENDATIONS

Table 1: Summary of Submissions on the County Finance (Amendment) Bill 2024

#	CLAUSE	ISSUE OF CONCERN	RECOMMENDATION	JUSTIFICATION
1.	Clause 6: Establishment of County Assembly Fund. 109A 2(a)	<p>County Assembly funds are still subject to the approval of the executive since all county funds are controlled through CRF and that is why all the 47 counties have each one County Revenue Fund (CRF) Account at CBK</p> <p>If Absolute independence is to be realized, then County Assembly allocations shouldn't be channeled through County Revenue Fund .</p> <p>On the flip side, if this happens, then we will be going against the constitution that directs how national resources are to be shared amongst the two levels of government.</p>	County Assemblies to be allowed to draw their entire allocation into a special purpose Account in CBK and still remain entities of the counties.	Since governors are the County Accounting Officers, they do appear before the oversight authority which is the Senate, they should have some control over County Assemblies especially on financial matters since budget making process is one for each county. County Assemblies should be oversighted by the senate (through Executive) not just by being audited by auditor general.

#	CLAUSE	ISSUE OF CONCERN	RECOMMENDATION	JUSTIFICATION
2.	Clause 6: Establishment of County Assembly Fund.	Having the principal Act with section 109 which is contradicted with the sort amendment section 109A. For instance section 109 (3)	If there are amendments to be done to PFM then they are to be done in sec 109 and not to introducing it under another section.	Section 109A having some element contradicting with section 109
		Giving the County assembly autonomy without considering the structures in place to manage Section 103 and 104 of the PFMA 2012 has put in place a clear structure in the County when it comes to management of funds.	Any amendment seeking for autonomy of the County Assembly should equally provide for how the funds shall be managed.	For proper accountability
3.	Clause 6: Establishment of County Assembly Fund.	Having a County Assembly Fund where monies paid into are from as per provision 109A (b) and (b) contradicts Article 207 of the constitution. Article 207 provides that , 207. (1) "There shall be established a Revenue Fund for each county government, into which shall be paid all money raised or received by or on behalf of the county government, except money reasonably excluded by an Act of Parliament".	Only money appropriated from the CRF to be paid to the County Assembly Fund.	Allowing County Assembly to also have a different fund which receives money even from levies, grants etc will be subject to abuse and might contravene Article 207 of the Constitution
4.	Clause 6: Establishment of County Assembly Fund.	This provides that the clerk of the County Assembly shall be the administrator of	Apply section 116 of the PFMA, the CEC to establish the fund	There is conflicting sections within the same act.

#	CLAUSE	ISSUE OF CONCERN	RECOMMENDATION	JUSTIFICATION
	Amendment to PFM Act section 109A (3)	the County Assembly Fund. This again contradicts sec 116 (3) of the PFMA which provides that the CEC shall designate an administrator for any fund that he has established the section goes head and gives the role of the Administrator. Clause 6 again contradicts Sec 148 (4) of the PFMA which provides that Clerk to the Assembly shall be the accounting officer.	and not necessarily amend sec 109.	
5.	Clause 6: Establishment of County Assembly Fund. 109A 11	Financial Reports The Bill provides that financial reports shall be submitted to the Commission on Revenue Allocation with a copy to the Controller of Budget. By transferring Funds from the CRF, the executive is expected to account for that transfer in its financial books and therefore for consolidation purposes as required by reporting templates issued by PSASB, the executive requires financial statements of County Assembly and other entities owned by counties.	Financial reports of the County Assembly should also be shared with the Executive.	For proper accountability and in line with section 164(4)(b) of the PFM Act 2012

#	CLAUSE	ISSUE OF CONCERN	RECOMMENDATION	JUSTIFICATION
6.	Clause 6: Disbursement to county assembly fund. 109E (1 AND 2)	Disbursement to County Assembly Fund	County Assemblies should draw their entire budget allocation into their special purpose account.	Remove County Treasury from the process of monthly disbursements
7.	Clause 9: Amendment of section 136 of No. 18 of 2012. Sec 136	Refund statement, The Bill provides that, "If, at the end of a financial year, a county government entity is holding appropriated money that was withdrawn from the County Exchequer Account or the County Assembly Fund Account but has not been spent, it shall repay the unspent money to the County Exchequer Account or the County Assembly Fund Account as the case may be and prepare a refund statement which shall be forwarded to the Controller of Budget"	All County unspent monies should be returned to CRF under cash accounting. So, County Assembly Fund Account should repay the unspent funds to CRF.	The country is still under cash basis accounting.

3.0 CONCLUSION

The Institute is of the considered opinion that already there are frameworks through the county budgeting process to guarantee independence of the County Assembly through the Constitution of Kenya, Public Finance Management Act 2012, County Government Act, 2012 and County Assembly Services Act 2017. As such, there is need to strengthen the current administrative structures as opposed to amending the PFM Act 2012 as envisaged by the proposed Bill.

country, it says



son, distribution and logistics.

Those that mostly require first level university education are in information and technology and finance and business management.

Most hard to fill vacancies requiring a masters' degree qualification are in media, communication and public relations while those that mostly require doctorate degree qualifications are in science and mathematics.

The founder and CEO of Nexford University Fadi Al Tarzi, said employers have to put systematic plans for the upskilling of their staff in order to enjoy higher performance.

Having analysed over 30 million job vacancies, Mr Tarzi said they established that employers who upskill and train their employees have a 30 per cent higher retention rate than those who do not.

"Employers must consider the concept of collective benefit where there is a sectoral approach to upskill with enterprises in the same sector coming together to upskill their staff together for the benefit of the sector," he said.

The survey noted that enterprises operating in the not-for-profit sector, education, financial and insurance, IT, transport and storage, manufacturing and agriculture, forestry and fishing had difficulty in recruiting for positions due to lack of skills by jobseekers.

In contrast, enterprises in compulsory social security, arts, entertainment and recreation, public administration and real estate had less challenges filling vacancies.

The survey also found that enterprises are conscious of the effect that their operations have on the environment.

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Findings Most of the employers also prefer workers with undergraduate degrees and diplomas

New report reveals the courses that will land you that dream job faster

IT, finance, business management, engineering, transportation, distribution and logistics and law most marketable

BY STEVE OTIENO

Despite the high rate of unemployment in the country, employers in Kenya are in dire need of workers in the fields of information technology (IT), finance and business management, engineering, transportation, distribution and logistics and law.

Also, most enterprises (43.8 per cent) prefer workers with undergraduate degree, followed by technical and vocational education and training (TVET) at 34.9 per cent, while those with secondary education follow at 23.4 per cent. Only 12.1 per cent and 3.3 per cent prefer workers with masters and doctoral degrees.

However, they find it difficult to get workers with the right fit of skills. This is according to a recent report dubbed "Skills Needs Survey" conducted jointly by the Federation of Kenya Employers (FKE), Nexford University and Africa Digital Media Institute.

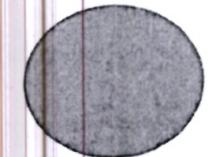
Jobseekers holding a bachelor's degree are in demand for careers in IT, finance and business management and legal professions.

A healthy 50.5 per cent of employers said they seek employees with tech-oriented courses in various career fields. This is followed by finance and management at 48.4 and legal professions at 36.5 per cent.

For holders of a masters degree, the most desirable programme is law with 10.4 per cent of employers seeking their services, while those with doctorate degrees are marketable in education and training (3.1 per cent) then science and mathematics professions (2.3 per cent).

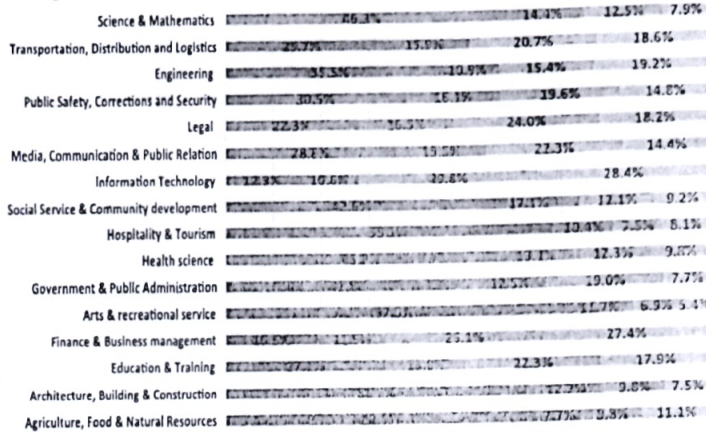
At TVET level, workers most-

NEW ORDER Many employers focusing on tech



A healthy 50.5 per cent of employers said they seek employees with tech-oriented courses in various career fields. This is followed by finance and management at 48.4 and legal professions at 36.5 per cent.

Response on extent of need of competence per Career Field



■ Not at all ■ Little extent ■ Some extent ■ Large extent

ly demanded are those in the fields of transport, distribution and logistics at 26.5 per cent, social service and community development (13.2 per cent), and hospitality and tourism at 11.1 per cent.

"From the findings of the study, it can be deduced that most of the career fields require bachelor's degree and technical vocational education," the report stated.

Should one consider a career in engineering, the course most sought by enterprises is computer and software engineering at 30.7 per cent, followed by electrical and electronics engineering (27.4 per cent), then mechanical and production engineering at 25 per cent.

Other engineering fields in high demand include civil and construction engineering (15.3 per cent), chemical and process engineering (8.3 per cent), agricultural engineering (6.3 per cent), biomedical engineering at 3.1 per cent and petroleum engineering at 0.6 per cent.

In addition to having academic qualifications, employers are also keen on the social skills of their staff with the most desired skill listed by 49.1 per cent of enterprises being effective communication, both written and oral. This is followed by critical thinking (41.7), collaboration and teamwork (25.7), time management (23.4), creativity (22.1), problem solving (21.1) and conflict resolution (20.7).

Technical skills most desired include management and computer use frequency which 36 per cent of employers said is mostly lacking in job seekers.

This is followed by mastery of a foreign language at 28 per cent.

Whereas those listed career fields are on demand, FKE Executive Director Jacqueline Mugo said the quality of learning programmes offered to students should be redesigned to link the theory bit and the reality of job demands.

On his part, Nexford University Founder and CEO, Fadi Al Tarzi said that whereas employers may only seek to hire the best candidates, they still have to identify the market's demands and conduct upskilling of their workforce to get higher performance.

"We have analysed over 30 million job vacancies and we have established that employers who upskill have better performance and have 30 per cent higher rates of employee retention," he said.

soketch@ke.nationmedia.com

REPUBLIC OF KENYA



THIRTEENTH PARLIAMENT | SECOND SESSION

THE SENATE

INVITATION FOR SUBMISSION OF MEMORANDA

At the sitting of the Senate held on Tuesday, 14th November, 2023, the Bills listed at the second column below were introduced in the Senate by way of First Reading and thereafter stood committed to the respective Standing Committees indicated at the third column.

Pursuant to the provisions of Article 118 of the Constitution and standing order 145(S) of the Senate Standing Orders, the Standing Committees now invite interested members of the public to submit any representations that they may have on the Bills by way of written memoranda.

The memoranda may be submitted to the Clerk of the Senate, P.O. Box 41842-00100, Nairobi, hand-delivered to the Office of the Clerk of the Senate, Main Parliament Buildings, Nairobi; or emailed to clerk.senate@parliament.go.ke and copied to the email address of the respective Committee indicated at the fourth column below, to be received on or before **Wednesday, 6th December, 2023 at 5.00 p.m.**

Bill	Committee Referred To	Email Address
a) The Meteorology Bill, 2023 (Senate Bills No. 45 of 2023)	Standing Committee on Land, Environment and Natural Resources	landenvironcommittee.senate@parliament.go.ke
b) The County Public Finance Laws (Amendment) Bill, 2023 (Senate Bills No. 39 of 2023)	Standing Committee on Finance and Budget	financebudgetcomm.senate@parliament.go.ke

The Bills may be accessed on the Parliament website at <http://www.parliament.go.ke/the-senate/house-business/bills>.

J.M. NYEGENYE, CBS,
CLERK OF THE SENATE.