

REPUBLIC OF KENYA



KENYA NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT - FIFTH SESSION

THE BUDGET AND APPROPRIATIONS COMMITTEE REPORT ON DIVISION OF
REVENUE (No. 2) BILL, 2017

May 2017

Preamble

Mr. Speaker, following the tabling of the Division of Revenue (No. 2) Bill, 2017 in the National Assembly on 17th May 2017 and committal to the Budget and Appropriations Committee.

Mr. Speaker, Article 124 of the Constitution of Kenya, provides for the establishment of Committees by either House of Parliament. Committees are central to the workings, roles and functions of Parliament as set out in Articles 94 and 96 of the Constitution.

Article 221 (4 and 5) of the Constitution and the Public Finance Management Act, 2012 provide for the establishment of a Committee of the National Assembly whose main role is to take the lead in budgetary oversight by the National Assembly. In this regard, Standing Order 207 establishes the Budget and Appropriations Committee with specific mandates among which is to:

- i. Investigate, inquire into and report on all matters relating to coordination, control and monitoring of the national budget, and.
- ii. Examine the Division of Revenue Bill(DoRB)
- iii. Discuss and review the estimates and make recommendations to the House.

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

- | | |
|--|---------------------------|
| 1. Hon. Mutava Musyimi, CBS, M.P. | - Chairperson |
| 2. Hon. Mary Emaase, M.P | - Vice Chairperson |
| 3. Hon. Phillip Rotino, M.P | |
| 4. Hon. Benjamin Langat, M.P. | |
| 5. Hon. John Mbadi, CBS, M.P. | |
| 6. Hon. Edick Omondi Anyanga, M.P | |
| 7. Hon. (Dr.) Makali Mulu, M.P | |
| 8. Hon. Ferdinand Waititu, M.P | |
| 9. Hon. Jackson Kiptanui, M.P. | |
| 10. Hon. Jamleck Kamau, E.G.H, M.P. | |
| 11. Hon. Mohamed Shidiye, M.P. | |
| 12. Hon. Moses Lessonet, M.P. | |
| 13. Hon. Moses Ole Sakuda, M.P. | |
| 14. Hon. Nelson Gaichuhie, M.P. | |
| 15. Hon. Richard Onyonka, M.P | |

- 16.Hon. Shakeel Shabbir, M.P
- 17.Hon. Yusuf Hassan Abdi, M.P
- 18.Hon. Abdulaziz Farah, M.P.
- 19.Hon. (Dr.) Reginalda Wanyonyi, M.P.
- 20.Hon. Abdullahi Diriye M.P
- 21.Hon. Ahmed.I. Abass, M.P
- 22.Hon. Alice Ng'ang'a, M.P.
- 23.Hon. Bady Bady Twalib, M.P
- 24.Hon. Ben Momanyi, M.P
- 25.Hon. Christopher Nakuleu, M.P
- 26.Hon. Christopher Omulele, M.P.
- 27.Hon. Daniel Nanok, M.P.
- 28.Hon. Denittah Ghati, M.P.
- 29.Hon. Dennis Kariuki, M.P.
- 30.Hon. Francis Njenga, M.P.
- 31.Hon. Gideon Ochanda, M.P.
- 32.Hon. James Gakuya, M.P.
- 33.Hon. James K. Bett, M.P
- 34.Hon. Jonathan Lelelit,M.P.
- 35.Hon. Jones Mlolwa, M.P.
- 36.Hon. Joseph Limo, M.P.
- 37.Hon. Kathuri Murungi, M.P
- 38.Hon. Kenneth Okoth , M.P
- 39.Hon. K.K Stephen Kinyanjui, M.P.
- 40.Hon. (Maj.) Marcus Muluvi, M.P
- 41.Hon. Moses Kuria, M.P
- 42.Hon. Muriuki Njagagua, M.P.
- 43.Hon. Nasra Ibrahim, M.P.
- 44.Hon. (Dr.) Njogu Barua, M.P
- 45.Hon. Patrick Ole Ntutu, M.P.
- 46.Hon. Peter Weru, M.P.
- 47.Hon. Priscilla Nyokabi, M.P.
- 48.Hon. Richard Tongi,M.P
- 49.Hon. Samuel Gichigi, M.P.
- 50.Hon. Suleiman Murunga Kasuti, M.P.

51.Hon. Tiyah Galgalo, M.P.

BACKGROUND AND EXECUTIVE SUMMARY

Mr. Speaker, given that the Division of Revenue (No. 2) Bill , 2017 had been passed by the National Assembly, amended by the Senate and subsequently defeated when the Mediation Committee failed to agree on a version of the Bill within thirty (30) days, in accordance with the provisions of Article 113 (4) of the Constitution, the House resolved that the Division of Revenue (No. 2) Bill (National Assembly Bill No. 22 of 2017) be exempted from the provisions of Standing Order 141 (1).

In addition, **Mr. Speaker**, pursuant to the provisions of Standing Order 120, the House resolved to reduce the publication period of the Division of Revenue (No. 2) Bill (National Assembly Bill No. 22 of 2017) from fourteen (14) days to six (6) days.

Mr. Speaker, following the tabling of the Division of Revenue (No. 2) Bill, 2017 in the National Assembly on 17th May 2017 and committal to the Budget and Appropriations Committee, I hereby present to the House the Budget and Appropriations Committee Report to that effect. As members are already aware the Division of Revenue Bill provides for the vertical sharing of nationally raised revenue between the two levels of government as well as marking out specific resources to be provided to Counties as conditional grants and the Equalization Fund.

Mr. Speaker, I would like to recap Honorable Members that the enactment of the Division of Revenue Bill is critical in setting the stage for the preparation of the County Allocation of Revenue Bill, which will inform the preparation of respective county budget documents in a manner that is timely and enables fiscal clarity. Given the revised budget calendar which has been proponed to accommodate the August general elections, the early conclusion and subsequent enactment of DoRB will timely enable the counties to carry on with their budgeting process.

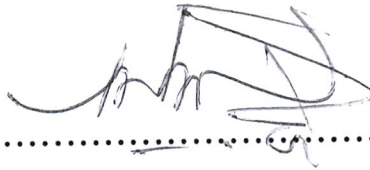
Mr. Speaker, the Committee held its meeting today, 18th May, 2017 to consider and review the contents of the Bill. The Committee managed to hold consultations on the Bill with the Cabinet Secretary, National Treasury, who informed the Committee that the National Government had secured loans and grants which will

be provided to the Counties as Conditional Grants. In this regard **Mr. Speaker**, the Committee will be bringing amendments to the bill during the Committee Stage.

Acknowledgement

Mr. Speaker, the Budget and Appropriations Committee is immensely grateful to the Office of the Speaker, the Office of the Clerk of the National Assembly and the Parliamentary Budget Office and other technical teams for the unwavering support received as it discharged its mandate during the deliberations on the proposed amendments.

Mr. Speaker, on behalf of the Members of the Budget and Appropriations Committee, and as required under Articles 204 and 221(5) of the Constitution, as well as sections 18(4) and 39(2) of the Public Finance Management Act 2012; it is with great pleasure that I present to this House the Committee's report



Signed:

Hon. Mutava Musyimi, CBS, MP
Chairman, Budget & Appropriations Committee

18-5-17

Date:.....

1.0. INTRODUCTION

1. Mr. Speaker, Budget oversight is not a onetime event but a continuous process that calls for regular consultations in particular with the executive. It requires commitment of legislators to ensuring that the process of mobilization, allocating and accounting is guided by the need to effectively deliver services to the people of this country. The House will recall the budget cycle this year was re-organized so that by this time the legislators should be busy seeking for fresh mandate from the people.
2. Mr. Speaker, the resolutions on the Budget Policy Statement that this house passed were the basis of the first and this second Division of Revenue Bill. During the finalization of the first Bill, the Committee was informed by the Authorities that although they were optimistic over the economic growth there were risks namely the effects of drought and the usual downside of the economy during an election year. Critical at that time was the need to keep the overall deficit at a manageable level and this called for reduction of overall expenditure. This action therefore affected the projected overall sharable revenue. The recent projections of the economic growth rate have gone down and that means the available resources for the next financial year will be less and we should start tightening our belt hence the reason behind this second Division Revenue Bill remaining the same as the first Bill.

2.0. HIGHLIGHTS OF THE DIVISION OF REVENUE BILL, 2017

3. Mr. Speaker, the Division of Revenue (No. 2) Bill, 2017 provides for sharing of revenue raised nationally between the national government and county governments for the financial year 2017/18 in accordance with Article 203 and 218 of the Constitution. The Division of Revenue Bill, 2017 therefore sets out the indicative sharable revenue, national government share of revenue, county equitable share of revenue, conditional grants and the Equalization fund. The equitable share of revenue to counties is shared using the formula approved under Article 217 of the Constitution.
4. Mr. Speaker, Article 202 (2) & (3) of the Constitution provides that at least fifteen percent of nationally raised revenues should be send aside and the

basis of this proportion should be the last audited revenue accounts. The last audited and approved revenue accounts relate to financial year 2013/14 which total to Kshs 935,653 million. This means as per the provisions of the Constitution the minimum that should have been given to the Counties for equitable share should have been at least Kshs 140,347 million. This the proposed equitable share has complied to.

5. Mr. Speaker, The Constitution recognizes that the national government must meet all the national interest as well debt obligation and other emergencies like the current cost of food. Thus the projected revenues took into consideration of this need as per article 203 (1). National interest and public debt obligations were taken care. In addition the equitable share for counties was further enhanced from the basic minimum of Kshs 140,347 million to Kshs 291,000 million. Honorable members the total amounted allocated to Counties is thus calculated as follows:

- (a) Established figure of total revenue sharable as per audited accounts
- (b) Fifteen Percent of (a) above
- (c) Required delivery of service at county level (if it is more than the basic minimum of (b) above then these resources are from projected revenues

3.0. NATIONAL GOVERNMENT ALLOCATION

6. Mr. Speaker, Out of the financial year 2017/18 projected revenue of Kshs 1,549,412 million, the national Government share comprise of the following;
- i. The National government share of Kshs 1,238,343.84 million that includes Kshs 3,400 million as a special grant to the National Hospital Insurance Fund (NHIF) to cater for free maternal health care to be disbursed as reimbursements,
 - ii. The Equalisation Fund of Kshs. 7,727 million.

4.0. COUNTY GOVERNMENT ALLOCATIONS

7. Mr. Speaker, The County government share of Kshs 323,757.56 million comprises of county equitable sharable revenue of Kshs 291,136.16 million compared to Kshs 280,300 million in financial year 2016/17. There is a steady growth of equitable sharable revenue over the period equivalent to an increase of Kshs 10,836 million from financial year 2016/17 allocation. The additional allocations to the county governments relate to five (5) conditional allocations of 12,205 million counties for provision of

specific services (Leasing of medical equipment, Level 5 Hospitals, Rehabilitation of youth polytechnics, compensation of user fees forgone and construction of county headquarters) and further extra conditional grants of Kshs 20,416.4 million.

8. Mr. Speaker, besides these five areas there is a provision of Kshs 3,400 million from the national government share as a special grant to the National Hospital Insurance Fund (NHIF) to cater for free maternal health care to be disbursed as reimbursements. Previously, free maternal health care was reimbursed directly to the county governments but there is policy shift in administration of the free maternal health care where the service shall be administered through the existing National Hospital Insurance Fund framework.

5.0. Conditional Allocation to County Governments

9. Mr. Speaker, in view of Article 202(2) of the Constitution, it is hereby proposed that there should be additional conditional allocation from the National Government share of revenue to support specific national policy objectives that shall be implemented by the County Governments. There are five (5) items under conditional allocation and two (2) additional county conditional allocations which are not part of the sharable revenue, as detailed hereunder;

- i.) **Ksh. 4.5 billion for leasing of medical equipment:** This conditional grant, whose purpose is to facilitate payment for leased modern specialized medical equipment in at least 2 medical facilities per county, is in its third year of implementation. The grant is usually managed by the National Government via a framework established through intergovernmental agreement.
- ii.) **Ksh. 900 million towards compensation of county health facilities for user fees foregone:** This is a grant that is a reimbursement meant to support the implementation of the government policy of not charging user fees (such as laboratory services among others) in government health facilities.
- iii.) **Ksh. 4.2 billion for level-5 hospitals:** This is an allocation for the eleven (11) hospitals across the country under this category, which serve as regional centres offering specialized care, life support and

specialized consultations among others. The allocation is compensation for serving referral cases from adjacent counties.

- iv.) **Ksh. 605 million for construction of County Headquarters:** This proposed allocation is for five counties (Isiolo, Lamu, Nyandarua, Tana River and Tharaka Nithi) to supplement their allocation for the construction of headquarters. This is a three year plan where each of these counties will receive KSh. 121 million in 2017/18.
- v.) **Ksh. 2.0 billion towards the rehabilitation of Village Polytechnics:** this proposed allocation is meant to support counties to build, equip and renovate the Village Polytechnics. This will go a long way in establishing centres of excellence in artisanship at local levels so as to equip the youth, who do not transit to secondary schools, with valuable skills needed for economic transformation and employment creation.
- vi.) **Ksh. 7.9 billion out of the Fuel Levy Fund:** This is an additional conditional allocation that will be applied to enhance the counties' capacity to repair and maintain roads under their purview. This proposed amount has increased from KSh. 4.3 billion in 2016/17 which has been occasioned by a rise in the fuel levy.
- vii.) **Ksh. 12.5 billion which an additional conditional allocation (loans and grants):** This allocation has four elements, which are:
 - a) **Ksh. 873 million World Bank loan:** This is a Result Based Financing grant under the Health Sector Support Project that is in its final year of implementation in 21 counties. This supports the pro-poor delivery of health services.
 - b) **Ksh. 1.5 billion World Bank capacity grant (KDSP Level I):** This is a grant to all 47 counties for Kenya Devolution Support Programme "level 1" for areas such as strengthening PFM system, Human resource management and intergovernmental relations; improving counties M&E and civic education of public participation.
 - c) **Ksh. 4.0 billion World Bank capacity grant (KDSP Level II):** This is a grant to all 47 counties for Kenya Devolution Support Programme "level 2" to incentivize the county

governments that shall achieve good results in the key areas under Level 1.

- d) **Ksh. 6.2 billion proceeds of other loans and grants:** This will be funds from development partners and National Government counterpart funding. It is noted that these funds will not be transferred to County Governments in 2017/18 due to pre-existing conditionality. Thus, the funds will be budgeted and managed by the National Government whereas the counties will participate through Project Steering Committees and Implementation Units.

5.0 RECOMMENDATION

10. **Mr. Speaker**, the Committee request the House to approve the Division of Revenue (No. 2) Bill, 2017 be read a second time. Members of this House are encouraged to read the bill and if possible consider proposing amendments in the next stage.

MINUTES OF 13th SITTING OF THE BUDGET AND APPROPRIATIONS COMMITTEE (BAC) HELD ON THURSDAY, 18TH MAY, 2017 IN COUNTY HALL MINI-CHAMBERS PARLIAMENT BUILDINGS AT 11.00 A.M.

Present

1. **Hon. Mutava Musyimi, CBS, M.P.** -Chairperson
2. **Hon. Mary Emaase, M. P.** -Vice Chairperson
3. Hon. Moses Lessonet, M.P.
4. Hon. Richard Tongi, M.P.
5. Hon. Christopher Omulele, M.P.
6. Hon. Abdulaziz Farah, M.P.
7. Hon. Shakeel Shabbir, M.P
8. Hon. Jackson Kiptanui, M.P.
9. Hon. Jonathan Lelelit, M.P.
10. Hon. Jones Mlolwa, M.P.
11. Hon. K.K. Stephen Kinyanjui, M.P
12. Hon. Moses Ole Sakuda, M.P
13. Hon. (Maj.) Marcus Muluvi, M.P
14. Hon. Nelson Gaichuhie, M.P
15. Hon. (Dr.) Makali Mulu, M.P
16. Hon. Kenneth Okoth , M.P
17. Hon. Moses Kuria, M.P
18. Hon. Joseph Limo, M.P.
19. Hon. Samuel Gichigi, M.P.
20. Hon. Suleiman Murunga Kasuti, M.P

Absent

1. Hon. Yusuf Hassan Abdi, M.P
2. Hon. Phillip Rotino, M.P
3. Hon. Edick Omondi Anyanga, M.P
4. Hon. Richard Onyonka, M.P
5. Hon. Francis Njenga, M.P.
6. Hon. Ben Momanyi, M.P
7. Hon. James K. Bett, M.P
8. Hon. James Gakuya, M.P.
9. Hon. Kathuri Murungi, M.P
10. Hon. Mohammed Shidiye, M.P.

11. Hon. Ahmed I. Abass, M.P.
12. Hon. Abdullahi Diriye M.P
13. Hon. Muriuki Njagagua, M.P.
14. Hon. Nasra Ibrahim, M.P.
15. Hon. (Dr.) Reginalda Wanyonyi, M.P
16. Hon. Bady Bady Twalib, M.P.
17. Hon. Christopher Nakuleu, M.P
18. Hon. Patrick Ole Ntutu, M.P.
19. Hon. Tiyah Galgalo, M.P.
20. Hon. Jamleck Kamau, M.P.
21. Hon. Gideon Ochanda, M.P.
22. Hon. Alice Ng'anga, M.P.
23. Hon. Daniel Nanok, M.P.
24. Hon. Peter Weru, M.P.
25. Hon. Benjamin Langat, M.P.
26. Hon. (Dr.) Njogu Barua, M.P
27. Hon. Ferdinand Waititu, M.P
28. Hon. John Mbadi, M.P.
29. Hon. Dennis Kariuki, M.P.
30. Hon. Denittah Ghati, M.P.
31. Hon. Priscilla Nyokabi, M.P.

National Treasury

1. Mr. Henry Rotich- Cabinet Secretary
2. Mr. Albert Mwenda
3. Mr. Fred Owegi
4. Ms. Isabella Kogei

Parliamentary Budget Office

- | | |
|---------------------------|--------------------------|
| 1. Mr. Joseph Ndirangu | Fiscal Analyst/Clerk |
| 2. Mr. Frederick Muthengi | Principal Fiscal Analyst |
| 3. Mr. Danson Kachumbo | Fiscal Analyst III |
| 4. Mr. Thomas Ogwel | Fiscal Analyst III |
| 5. Mr. Ngetich Robert | Fiscal Analyst III |
| 6. Mr. Jonathan Lemurt | Fiscal Analyst III |
| 7. Ms. Catherine Burure | Fiscal Analyst III |
| 8. Mr. Eric Kanyi | Fiscal Analyst III |

AGENDA

1. Preliminaries
2. Confirmation of Agenda
3. Matters arising
4. Agenda:
 - (i) Consideration of the draft Division of
 - (ii) Discussion on legislative proposals before the committee:
 - i. *The Parliamentary Pensions(Amendment) Bill 2017 by Hon. Nicholas Gumbo, MP*
 - ii. *The Kenya Reparation Bill, 2016 by Hon Agostinho Neto, M.P*
 - iii. *The Kenya Red cross Society (Amendment) Bill, 2016 by Hon Ishardali Sumra, M.P*
 - iv. *The Agricultural Development Bank Bill, 2016 by Hon. Francis Mwangangi, M.P*
 - v. *The Land Administration Bill, 2016 by Hon. Humphrey Njuguna, M.P*
 - vi. *The Kenya Civil Contingency Bill 2017 by Hon. Adan Keynan, M.P*
 - vii. *The Intra- County Division of Revenue Bill, 2016, by Hon. Charles Nyamai, M.P*
5. Adoption of the draft BAC report on DoRB (No.2) Bill, 2017
6. Meeting with National Treasury on Division of Revenue (No.2), 2017 Bill
7. Any Other Business

MIN BAC/013/2017/01: PRELIMINARIES

The Chairman called the meeting to order at 11.30 a.m. and led with a word of prayer. He then welcomed members to the meeting. In his introductory remarks, the Chair informed the members that committee was to meet with National Treasury for discussions on Division of Revenue (No. 2) Bill and deliberate on legislative proposals before the Committee. However, it was noted that no sponsor of legislative proposals had shown up .

MIN BAC/013/2017/02: CONFIRMATION OF AGENDA

The confirmations of the minutes of the previous meeting were postponed to the next meeting.

MIN BAC/013/2017/03: MATTERS ARISING

There were no matters arising since the confirmation of the minutes had been deferred.

MIN BAC/013/2017/04: CONSULTATIONS WITH NATIONAL TREASURY ON DIVISION OF REVENUE (No. 2) ,2017

The Chair welcomed the Cabinet Secretary, National Treasury and officers from the National Treasury to the meeting. He invited the Cabinet Secretary to make his submissions on the Division of Revenue (No. 2) Bill,2017.

The Cabinet Secretary informed the committee that National Treasury was proposing amendments to the DoRB (No.2) Bill, 201 as follows:

- a) National Government **Kshs 1,238,343,840,000,**
- b) County Governments **Kshs 334,817,178,499** which comprised of equitable share of
 - 1. County Equitable Share, Kshs 291,136,160,000
 - 2. Conditional Allocations Kshs 12,205,000,000 of which;
 - i.) *Leasing of Medical Equipment,* 4,500,000,000
 - ii.) *Level 5 hospitals,* 4,200,000,000
 - iii.) *Rehabilitation of Youth Polytechnics,* 2,000,000,000
 - iv.) *Compensation for User Forgone,* 900,000,000
 - v.) *Construction of County Headquarters,* 605,000,000
 - 3. Additional County Conditional Allocations (not part of sharable revenue) Kshs **31,476,018,499** of which
 - i. *Conditional Allocations (loans & grants)* **20,407,826,130**
 - ii. *Allocation from fuel levy (15%)* **11,068,192,369**

Members were informed that conditional allocations had arisen from Kshs.12.5 billion as proposed in the DoRB (No. 2) Bill, 2017 to Kshs. 20.4 billion on account of increased

donor support from our development partners in support of initiatives such as devolution support, drought reform programs and universal health programs. In addition, allocation to fuel levy had increased from Kshs. 7.8 billion as proposed in the DoRB (No. 2) Bill, 2017 to Kshs. 11.06 billion. This was on account of rise of fuel levy charge to Kshs. 18, therefore the fund had additional resources to it.

After the presentation, there was a lengthy deliberation on the legality of 15 percent allocation from fuel level fund to counties and exchequer releases to support village polytechnics. After deliberations, it was agreed that the issues raised will be discussed further on the floor of the House.

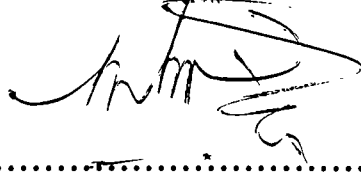
MIN BAC/013/2017/05: ADOPTION OF THE DRAFT BAC REPORT ON DORB (NO.2) BILL, 2017

The Parliamentary Budget Office took the committee through the draft BAC report on DoRB (No. 2) Bill, 2017 and after deliberations, the committee adopted the report.

MIN BAC/013/2017/06 : ADJOURNMENT

There being no other business the meeting adjourned at 1.30 p.m.

SIGNED



**HON. MUTAVA MUSYIMI, CBS, M.P,
CHAIRMAN, BUDGET AND APPROPRIATIONS COMMITTEE**

18.5.17

DATE