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31/7/19

REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT

THIRD SESSION

BUDGET AND APPROPRIATION COMMITTEE REPORT

REPORT ON THE DIVISION OF REVENUE BILL, 2019

(SENATE BILL NO. 13)

THE NATIONAL ASSEMBLY  
PAPERS LAID

DATE: 31 JUL 2019

DAY: Wednesday

MEMBER: Hon. Kimani Ichungu  
(Chairperson BAC)

MEMBER: Halima Ahmed

JULY, 2019

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## **CHAIRPERSON'S FOREWORD**

The Budget and Appropriations Committee is a select Committee established under Article 221 (4 and 5) of the Constitution, Section 7 of the Public Finance Management Act, 2012 and Standing Order 207. The Committee is mandated to be taking the lead in budgetary oversight by the National Assembly.

The Division of Revenue Bill (Senate Bill No. 13) of 2019 was read a first time during the afternoon sitting of Tuesday, July 30<sup>th</sup>, 2019 and was referred to the Budget & Appropriations Committee to deliberate and advise the House on how to proceed when considering the Bill. Senate Bill No. 13, proposes to allocate to county governments Kshs. 391.07 billion, being county government equitable share worth Kshs. 335.67 billion and additional conditional allocations worth Kshs. 55.38 billion. The Committee has had deliberations on this matter as hereby contained in this report.

The committee reiterates the need to understand and appreciate the fact that the division of revenue bill is an outline of a lengthy budget process, which at its core, is a fiscal framework drawn from consideration of various macro-economic variables and is the basis upon which the critical schedule, included in a Division of Revenue Bill is drawn from. Beyond this, a further concern arose relating to how best this House can meet its mandate under Article 95(4) of the Constitution that provides that this House shall determine the allocation of national revenue between the levels of government, while remaining open to input from key stakeholders and importantly, the input by the Senate House.

On behalf of the Committee and Pursuant to the Standing Orders 199(6) of the National Assembly, it is therefore my pleasant duty and privilege, to lay this report on review of the proposed the Division of Revenue Bill, 2019 (Senate Bill No. 13) for consideration and approval by the House.

**HON. KIMANI ICHUNG'WAH, CBS, M.P.**  
**CHAIRPERSON, BUDGET & APPROPRIATIONS COMMITTEE**

## MANDATE OF THE COMMITTEE

**Mr. Speaker**, Article 221 (4 and 5) of the Constitution and the Public Finance Management Act, 2012 provides 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. Examine Budget Policy Statement, Medium Term Debt Strategy Paper and Division of Revenue Bill (DORB) presented to the House Investigate, inquire into and report on all matters relating to coordination, control and monitoring of the national budget;
- ii. Discuss and review the estimates and make recommendations to the House;
- iii. Examine Bills related to the national budget, including Appropriations Bill; and
- iv. Evaluate tax estimates, economic and budgetary policies and programs with direct budget outlays.

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

MEMBER OF PARLIAMENT	CONSTITUENCY	PARTY
1. Hon. Kimani Ichung'wah, CBS, M.P- Chairperson	Kikuyu	Jubilee
2. Hon. Moses Lessonet, M.P- Vice Chairperson	Eldama Ravine	Jubilee
3. Hon. CPA John Mbadi, EGH, CBS, M.P.	Suba South	ODM
4. Hon. Richard Onyonka, M.P.	Kitutu Chache South	Ford Kenya
5. Hon. Samwel Moroto, M.P.	Kapenguria	Jubilee
6. Hon. Millie Odhiambo, M.P.	Suba North	ODM
7. Hon. Twalib Bady, M.P.	Jomvu	ODM
8. Hon. (Dr.) Gideon Ochanda, M.P.	Bondo	ODM
9. Hon. James Mwangi Gakuya, M.P.	Embakasi North	Jubilee
10. Hon. (Dr.) Makali Mulu Benson, M.P.	Kitui Central	Wiper
11. Hon. Moses Kiarie Kuria, M.P.	Gatundu South	Jubilee
12. Hon. Benard Masaka Shinali, M.P.	Ikolomani	Jubilee
13. Hon. John Muchiri Nyaga, M.P.	Manyatta	Jubilee
14. Hon. Jude Njomo, M.P.	Kiambu Town	Jubilee
15. Hon. (Dr.) Korei Ole Lemein, M.P.	Narok South	Jubilee
16. Hon. Sarah Paulata Korere, M.P.	Laikipia North	Jubilee
17. Hon. Naisula Lesuuda, OGW, M.P.	Samburu West	KANU
18. Hon. Sakwa Bunyasi, M.P.	Nambale	ANC
19. Hon. Danson Mwashako, M.P.	Wundanyi	Wiper

20. Hon. Fatuma Gedi Ali, M.P.	Wajir County	PDR
21. Hon. Florence Chepng'etich Koskey Bore, M.P.	Kericho County	Jubilee
22. Hon. James Gichuki Mugambi, M.P.	Othaya	Jubilee
23. Hon. (Dr.) John K. Mutunga, M.P.	Tigania West	Jubilee
24. Hon. (Eng.) Mark Nyamita, M.P.	Uriri	ODM
25. Hon. Paul Abuor, M.P.	Rongo	ODM
26. Hon. Qalicha Gufu Wario, M.P.	Moyale	Jubilee
27. Hon. Wangari Mwaniki, M.P.	Kigumo	Jubilee

### **Committee Secretariat**

1. Mr. Danson Kachumbo	Fiscal Analyst II/ Clerk
2. Mr. Chacha Machage	Fiscal Analyst II/Clerk
3. Mr. Benard Omondi	Sergeant at Arms III
4. Mr. Joram Baraza	Office Assistant II

### **Division of Revenue Bill, 2019 (Senate Bill No. 13)**

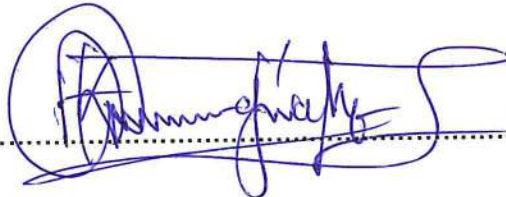
The Division of Revenue Bill, 2019 (Senate Bill No. 13) was read a first time during the afternoon sitting of Tuesday, 30<sup>th</sup>, July 2019 and was referred to the Budget and Appropriations Committee for consideration. The Bill seeks to provide the position of the Senate on the distribution of total sharable revenue between the national government and county governments for the financial year 2019/20. The Committee has had deliberations on this matter as hereby contained in this report.

### **Acknowledgements**

**Mr. Speaker**, the committee is grateful to your Office, the Office of the Clerk of the National Assembly and the Parliamentary Budget Office for the support received as it discharged its mandate of reviewing the Division of Revenue Bill, 2019 (Senate Bill No. 13).

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

Signed: .....



**HON. KIMANI ICHUNG'WAH, CBS, M.P.  
CHAIRPERSON, BUDGET & APPROPRIATIONS COMMITTEE**

Date: .....

31/07/2019.

## A. INTRODUCTION:

1. **Mr. Speaker**, the Division of Revenue Bill is meant to provide for sharing of revenue raised nationally between the national government and county governments for the financial year 2019/20 in accordance with Article 202, 203, 205 and 218 (2) of the Constitution. The Bill therefore sets out the total sharable revenue, national government share of revenue, county equitable share of revenue, conditional grants and the Equalization fund.
2. **Mr. Speaker**, as you are aware on 23<sup>rd</sup> July 2019, the Division of Revenue Bill (No 2), was published and tabled before the National Assembly, forwarded to the Budget and Appropriations Committee, after which it underwent the second and third reading on 25<sup>th</sup> July 2019. Similarly, the Senate, on Tuesday 23<sup>rd</sup> July 2019, passed its version of the Division of Revenue Bill, (No. 13 of 2019) and forwarded for concurrence through a message to the National Assembly.
3. **Mr. Speaker**, Article 95(4) states that it is the role of the National Assembly to determine the allocation between the levels of government while Article 96(3) stipulates that the Senate determines the allocation of revenue among counties. This therefore raises the concern as to the legality of the division of revenue bill as forwarded by the Senate, however the subsequent implication is that this undertaking risks diverting the attention of this House from the objective of sharing of resources equitably between both levels of government.
4. **Mr. Speaker; it** is important to note that the National Assembly has continuously agreed to allocate substantial resources to both levels of government despite the recurrence to fiduciary risk. In fact, the Division of Revenue Bill (No. 2) that was approved by the House, allocated up to 30.5 percent of the most recent and approved audited accounts of revenues, to county governments, which is more than is more than double the constitutional threshold.
5. **Mr. Speaker**, in evaluating the DoRB (Senate Bill No. 13), 2019 the committee took a broad critical look and took in to different factors into consideration. For example, the committee was cognizance of the set-out criteria under Article 203(1) of the Constitution, capacity to generate adequate revenues to meet demands by both levels of government, the rising non-discretionary expenditures, competing expenditure priorities, medium term fiscal policy and consolidation measures, efficiency in allocation and utilization of resources etc. The committee even went further as to revisit the budgets of Parliament and the Judiciary for resource savings but these were considered too critical at the moment.

## **B. THE CONTENTS OF THE DIVISION OF REVENUE BILL (SENATE BILL NO. 13), 2019**

6. **Mr. Speaker;** despite the proposed Division of Revenue Bill, 2019 (Senate Bill No. 13), maintaining the shareable revenue at Kshs 1,878 trillion and the national government equitable share remaining unchanged, there are key differences between it and the Division of Revenue Bill (No. 2), 2019, that the House approved on 25<sup>th</sup> July 2019.
7. **Mr. Speaker;** It is important to note that the Division of Revenue Bill, 2019 (Senate Bill No. 13), has not allocated any resources for the *Leasing of Medical Equipment* which had initially been allocated Kshs. 6.2 billion in the First division of Revenue Bills and the republished Division of Revenue Bill (No. 2) of 2019.
8. **Mr. Speaker;** while we agree that a serious audit issues have been raised pertaining to the implementation of the program and its impact, and even though it will be important to proceed cautiously upon undertaking a review of the efficiency of resource utilization of this program, it is important to note that the allocations of these resources remain critical in provision of health care at the county level and such a reduction could affect such services.
9. **Mr. Speaker;** this House continues to be supportive to the development of the devolved governments in the country and this was taken into consideration during the approval of the Division of Revenue Bill (No. 2) of 2019, when it allocated Kshs. 378.1 billion as total resources to be allocated to county governments. However the proposed DoRB (Senate Bill No. 13), 2019 proposes to increase this to Kshs 391.07 billion broken down as follows:
  - i. *County Equitable Share (Kshs 335.67 billion);*
  - ii. *Additional conditional allocations from the share of the National Government (Kshs. 7.7 billion);*
  - iii. *Allocation from Fuel levy Fund Kshs. 8.98 billion; and*
  - iv. *Conditional allocations from loans and grants (Kshs. 38.7 billion).*
10. **Mr. Speaker;** the proposed increase of the county equitable share to allocate Kshs. 335.67 billion leads to a Kshs. 19.7 billion above the 316.5 billion allocated under the Division of Revenue (No. 2) Bill. These are substantial increase in resource allocation to the county equitable share of revenue, but there is no explanatory memorandum as to how these new resources are to be raised.
11. **Mr. Speaker,** it is important to note that based on revenue underperformance trends, the Division of Revenue (No. 2) Bill, 2019, had revised the baseline of equitable share of revenue to county governments from Ksh. 314 billion to Ksh. 304.96 billion for the financial year 2018/19 to reflect a shortfall that had already been borne by the National Government in FY



2018/19. However, the proposed bill by the Senate, there is no explanation as to how the shortfall in the revenue loss has been treated.

12. **Mr. Speaker**, besides the conditional grants from the national government's share of revenue, the bill proposes the following proceeds from loans and grants from the development partners, to be disbursed to county governments through respective state departments;
- i. *Kenya Devolution Support Program (KDSP) County Capacity Building ("level 1") Grant of Kshs. 1.4 billion.*
  - ii. *Kenya Devolution Support Program (KDSP) Performance ("level 2") Grant amounting to Kshs. 4.9 billion.*
  - iii. *Transforming Health Systems for Universal Care Project conditional allocation of Kshs. 2.99 billion (World Bank credit).*
  - iv. *DANIDA Grant (Universal Healthcare in Devolved System Program) Kshs. 986.5 Million*
  - v. *National Agricultural and Rural Inclusive Growth Project (NARIGP) of Kshs. 7.2 billion (World Bank credit).*
  - vi. *EU-Instruments for Devolution Advice and Support (IDEAS) grant of Kshs. 492.7 million.*
  - vii. *IDA (World Bank) - Kenya Climate Smart Agriculture Project (KCSAP) – Kshs. 3.6 billion.*
  - viii. *Kenya Urban Support Program (KUSP) - Urban Development Grant (UDG) additional conditional allocation of Kshs. 11.46 billion.*
  - ix. *Kenya Urban Support Project (KUSP) - Urban Infrastructure Grant Allocation (UIG) - Kshs. 396 million.*
  - x. *IDA – Water and Sanitation Development Project (WSDP) World Bank Credit of Kshs. 3.5 billion.*
  - xi. *Agricultural Sector Development Support Programme (ASDSP) II- Kshs. 849.6 million.*
  - xii. *EU- Water Tower Protection and Climate Change Mitigation and Adaptation Programme (Water) - Kshs. 495 million.*
  - xiii. *Drought Resilience Programme in Northern Kenya (DRPNK) worth Kshs. 350 million.*

### **C. COMMITTEE OBSERVATIONS:**

**Mr. Speaker**, after deliberations, the following issues were observed by the committee:

- i. That the proposed new allocations, create a further Kshs. 19.7 billion financing gap above the Kshs. 6.5 billion proposed in the Division of Revenue Bill (No. 2) of 2019. This might necessitate further revision of the Finance Bill putting pressure on national level taxation in order to finance deficiencies of county level revenue collection.
- ii. Over the years, the role of own source revenue has not been given adequate weight as that given to nationally raised revenues. Furthermore, that county governments should put in place new revenue generation measures in order to complement nationally raised revenues and reduce dependency on the equitable share.

- iii. That the basis for increasing resource allocation to county governments is not based on actual costing of functions and since no new functions have been devolved in the past year, there is no basis for the large increase in resource allocation to county governments
- iv. That there is no fiscal space to allocate the additional revenue, given the increasing mandatory payments as indicate in the table below:

<b>Ordinary revenue</b>	<b>Kshs.1,877,176 million</b>
a) <i>National interest</i>	<i>Kshs.94,168 million</i>
b) <i>Public debt</i>	<i>Kshs.585,703 million</i>
c) <i>Other national obligations</i>	<i>Kshs.491,269 million</i>
d) <i>Emergencies</i>	<i>Kshs.6,418 million</i>
e) <i>Balance shared by the 2 levels of Government</i>	<i>Kshs.693,854 million</i>
f) <i>County Government allocation</i>	<i>Kshs.330,411 million</i>
g) <i>Equitable share</i>	<i>Kshs.316,500 million</i>
<i>o/w Grants from Nationally raised revenue</i>	<i>Kshs.13,911 million</i>

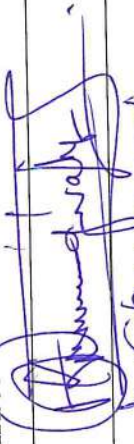




- v. That the committee had already considered a similar recommendation that was submitted by the Commission on Revenue Allocation (CRA) of allocating Kshs. 335.7 billion to county governments but and had to rationalize this to Kshs. 316.5 billion.
- vi. That based on past precedent and Article 95 (4) of the Constitution that stipulates that the National Assembly shall determine the allocation of revenue between the two levels of government, the Division of Revenue Bill has always originated from this House.

#### **D. COMMITTEE RECOMMENDATION**








13. **Mr. Speaker**, the after taking into consideration the observations above the Committee therefore recommends that House to approves the Bill with the following amendments:
- a) *That the allocations to the county equitable share be rationalized from Kshs. 335.67 billion to Kshs. 316.5 billion;*
  - b) *That Kshs. 6.2 billion be allocated towards the Leasing of medical equipment program; and*
  - c) *That in future, Division of Revenue Bill should originate from the National Assembly pursuant to Article 95(4) of the Constitution.*

Members attendance list



Budget and Appropriations Committee: Date 31/07/19 Time 11.00 A.M Sitting: .....

Name		Signature
1.	Hon. Kimani Ichung'wah, CBS, M.P- Chairperson	
2.	Hon. Moses Lessonet, M.P- Vice Chairperson	
3.	Hon. (CPA) John Mbadi, EGH, CBS, M.P.	
4.	Hon. Richard Onyonka, M.P.	
5.	Hon. Samwel Moroto, M.P.	
6.	Hon. Millie Odhiambo, M.P.	
7.	Hon. Twalib Bady, M.P.	
8.	Hon. (Dr.) Gideon Ochanda, M.P.	
9.	Hon. James Mwangi Gakuya, M.P.	
10.	Hon. (Dr.) Makali Mulu, M.P.	



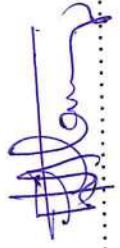
Name		Signature
11.	Hon. Moses Kiarie Kuria, M.P.	
12.	Hon. Benard Masaka Shinali, M.P.	
13.	Hon. John Muchiri Nyaga, M.P.	
14.	Hon. Jude Njomo, M.P.	
15.	Hon. (Dr.) Korei Ole Lemein, M.P.	
16.	Hon. Sarah Paulata Korere, M.P.	
17.	Hon. Naisula Lesuuda, M.P.	
18.	Hon. Sakwa Bunyasi, M.P.	
19.	Hon. Danson Mwashako, M.P.	
20.	Hon. Fatuma Gedi Ali, M.P.	
21.	Hon. Florence C.K. Bore, M.P.	
22.	Hon. James Gichuki Mugambi, M.P.	
23.	Hon. (Dr.) John K. Mutunga, M.P.	



Name	Signature
24. Hon. (Eng.) Mark Nyamita, M.P.	
25. Hon. Paul Abuor, M.P.	
26. Hon. Qalicha Gufu Wario, M.P.	
27. Hon. Wangari Mwaniki, M.P.	

Signed.....  Date..... 31/7/2019.....

(BAMSON KACHUMBO) Committee Clerk

Signed.....  Date..... 31/7/2019.....

Director of Committee Services

