

Approved for tabling

B. M. SNA

27/4/2021



REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT

FIFTH SESSION

THE BUDGET AND APPROPRIATIONS COMMITTEE REPORT ON THE MESSAGE
FROM THE SENATE ON THE DIVISION OF REVENUE BILL (NATIONAL
ASSEMBLY BILL NO. 7 OF 2021)

APRIL, 2021


 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 28 APR 2021	
DAY: Wed	
TABLED BY:	Chair, Budget Hon. Kamini Kega
CLERK-AT THE-TABLE:	Finlay Muriuki

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CHAIRPERSON'S FOREWORD

In accordance with Article 110 of the Constitution, Section 191(4) of the Public Finance Management Act, 2012 and Standing Orders 41; I am honoured to present to this House, on behalf of the Members of the Budget and Appropriations Committee, the Committee's Report on the Message from the Senate on the Division of Revenue Bill (National Assembly Bill No. 7 Of, 2021).

The National Assembly considered and passed the Division of Revenue Bill (National Assembly Bill No. 7 of 2021) on 23rd, March 2021. In line with provisions of Article 110 (4) of the Constitution and Standing Orders 41 of the National Assembly relating to the messages to and from the Senate, the message was submitted to the senate on the 24th, March 2021 for its consideration and concurrence. The Senate on Tuesday, 13th April 2021, passed with amendments the Division of Revenue Bill, 2021 and sought concurrence of the National Assembly on the said Bill in accordance with provisions of Article 112(1) (b) of the Constitution.

On 16th April 2021, the Speaker received the message from the Senate regarding its passage and referred the Message and Schedule of Senate amendments to Budget and Appropriations Committee for consideration.

Consideration of the Message from the Senate on the Division of Revenue Bill (National Assembly Bill No. 7 Of, 2021)

In reviewing the message, the Committee held 1 Sitting where extensive deliberations were held. Arising from these deliberations, the committee made the following observations:

- i. The major point of departure between the National Assembly and the Senate is presentation of memo items in the Schedule of Division of Revenue Bill, 2021. There is no dispute between the amount to be allocated to counties and the removal of memo items which does not materially change the flow of funds to counties as the memo items are already set aside in the National budget and will be appropriated accordingly.
- ii. Going forward, there is need to establish a legal framework for the transfer of conditional grants to the respective County Revenue Funds (CRFs) so as to ensure timely release of funds for implementation of programmes and projects at county level.

- iii. The National Treasury should develop a legal framework for the management, control and accounting of donor funds at county level as development partners usually sign agreements with the National government. This will enable county governments to borrow directly and ensure National Government guarantees.

Committee recommendations

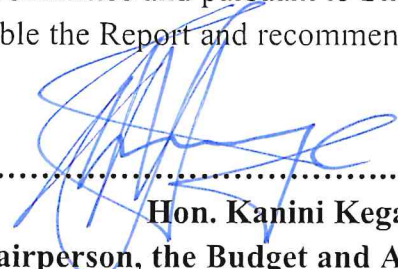
The Committee recommends that this House do concur with the proposed amendments by the Senate and therefore accepts deletion of Schedule as well as the accepting the substitution therefor the new schedule as proposed.

Acknowledgements

The Budget and Appropriations Committee is grateful to the Office of the Speaker of the National Assembly, the Office of the Clerk of the National Assembly and the Parliamentary Budget Office for the support extended in fulfilling this mandate of reviewing the message from the Senate on Division of Revenue Bill (National Assembly Bill No. 7 of 2021) during this period of uncertainty as occasioned by the Covid-19 pandemic.

On behalf of the Committee and pursuant to Standing Order 199(6), it is my pleasant duty and privilege to table the Report and recommend it to the House for adoption.

Signed:


Hon. Kanini Kega, CBS, M.P.
Chairperson, the Budget and Appropriations Committee

Date: 27th APRIL 2021

A. PREFACE

1.1: Establishment and Mandate of the Committee

Article 221 (4 and 5) of the Constitution and Section 7 of 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. Pursuant to this constitutional provision, Standing Order 207 established 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;
- ii. Discuss and review the Estimates and make recommendations to the House;
- iii. Examine the Budget Policy Statement, the Medium-Term Debt Strategy Paper and the Division of Revenue Bill (DoRB) presented to the House;
- iv. Examine Bills related to the national budget, including the Appropriations Bill; and
- v. Evaluate tax estimates, economic and budgetary policies and programmes with direct budget outlays.

1.2. Membership of the Committee

The Budget and Appropriations Committee as currently constituted comprises of the following Honourable Members of Parliament:

Member	Constituency	Party
1. Hon. Kanini Kega, CBS, M.P. – Chairperson	Kieni	Jubilee
2. Hon. Benard Masaka Shinali, M.P. – Vice Chairperson	Ikolomani	Jubilee
3. Hon. CPA John Mbadi, EGH, CBS, M.P.	Suba South	ODM
4. Hon. Emmanuel Wangwe, CBS, M.P.	Navakholo	Jubilee
5. Hon. CPA Moses K. Lessonet, CBS, M.P.	Eldama Ravine	Jubilee
6. Hon. Samwel Moroto, M.P.	Kapenguria	Jubilee
7. Hon. Millie Odhiambo, M.P.	Suba North	ODM
8. Hon. Richard Onyonka, M.P.	Kitutu Chache South	Ford Kenya
9. Hon. (Dr.) Makali Mulu Benson, M.P.	Kitui Central	Wiper
10. Hon. Twalib Bady, M.P.	Jomvu	ODM
11. Hon. Jude Njomo, M.P.	Kiambu Town	Jubilee
12. Hon. Fatuma Gedi Ali, CBS, M.P.	Wajir County	PDR

13. Hon. Wangari Mwaniki, OGW, M.P.	Kigumo	Jubilee
14. Hon. Sarah Paulata Korere, M.P.	Laikipia North	Jubilee
15. Hon. Josephine Naisula Lesuuda, OGW, M.P.	Samburu West	KANU
16. Hon. Alfred Kiptoo Keter, M. P	Nandi Hills	Jubilee
17. Hon. Sakwa Bunyasi, M.P.	Nambale	ANC
18. Hon. Florence Chepng'etich Koskey Bore, M.P.	Kericho County	Jubilee
19. Hon. James Gichuki Mugambi, MBS, M.P.	Othaya	Jubilee
20. Hon. Danson Mwashako, M.P.	Wundanyi	Wiper
21. Hon. (Eng.) Mark Nyamita, M.P.	Uriri	ODM
22. Hon. Paul Abuor, M. P	Rongo	ODM
23. Hon. Mercy Wanjiku Gakuya, M.P.	Kasarani	Jubilee
24. Hon. CPA Francis Kuria Kimani, M.P.	Molo	Jubilee
25. Hon. Samuel Atandi, M.P.	Alego Usonga	ODM
26. Hon. Joseph Manje, M.P.	Kajiado North	Jubilee
27. Hon. Marselino Arbelle, M.P.	Laisamis	Jubilee

1.3 Parliamentary Budget Office and Committee Secretariat

The Committee is facilitated by the following officers from the Parliamentary Budget Office:

1. Ms. Phyllis Makau, OGW	Director, Parliamentary Budget Office
2. Mr. Martin Masinde	Senior Deputy Director, Parliamentary Budget Office
3. Mr. Fredrick Muthengi	Chief Fiscal Analyst
4. Ms. Millicent Makina	Fiscal Analyst I
5. Ms. Amran Yunis	Fiscal Analyst I

The Committee Secretariat comprises of the following officers:

1. Mr. Joseph Ndirangu	Fiscal Analyst I/ Clerk of the Budget and Appropriations Committee
2. Mr. Danson Kachumbo	Fiscal Analyst I/ Clerk of the Budget and Appropriations Committee
3. Ms. Winfred Kizia	Media Relations
4. Mr. Benard Omondi	Serjeant-at-arms
5. Mr. Stephen Nyakuti	Audio Officer
6. Mr. Joram Baraza	Office Assistant

B. INTRODUCTION

1. The Division of Revenue Bill (DoRB), (National Assembly Bill No. 7 of 2021) was published on 8th March 2021 in accordance with Article 218 of the Constitution. The National Assembly considered and passed the Division of Revenue Bill (National Assembly Bill No. 7 of 2021) on 23rd March 2021. In line with provisions of Article 110 (4) of the Constitution and Standing Orders 41 of the National Assembly relating to the messages to and from the Senate, the message was submitted to the senate on the 24th March 2021 for its consideration and concurrence. and concurrence. The Senate on Tuesday, 13th April 2021, passed with amendments the Division of Revenue Bill, 2021 and sought concurrence of the National Assembly on the said Bill in accordance with provisions of Article 112(1) (b) of the Constitution.
2. On 16th April 2021, the Speaker received the message from the Senate regarding its passage and referred the Message and Schedule of Senate amendments to Budget and Appropriations Committee for consideration.
3. In accordance to Article 202 and 203 of the Constitution, the projected revenue collection for the financial year 2021/22 is estimated at Kshs 1,775.62 billion. The amount is shared between the National government, County governments and the Equalization Fund as follows:
 - i. National Government - Kshs. 1.398 trillion
 - ii. County Governments – Kshs. 370 billion
 - iii. Equalization Fund – Kshs. 6.8 billion

C. PROPOSED SENATE AMENDMENT TO THE DIVISION OF REVENUE BILL, (NATIONAL ASSEMBLY BILL NO. 7 OF 2021)

4. In its consideration of the Division of Revenue Bill, 2021, the Senate observed the High Court ruling on Petition No. 252 of 2016. In its ruling the court ordered that in accordance with Article 202(2) of the Constitution all funds christened in the Division of Revenue Act as conditional or unconditional grants should be disbursed

to the Counties through the County Revenue Fund. Therefore, directed that the Division of Revenue Act to conform to the provisions of Articles 202(2) and 203 (1) of the Constitution.

5. Senate further noted that conditional or non-conditional grants are not items to be provided for under the Division of Revenue Act and that conditional and non-conditional grants can be issued to the county level of government under the auspices of Article 190 of the constitution or through an agreement between the two levels of government that respects the institutional and functional integrity of the either level of government.
6. In this regard, the Senate amended the DoRB, 2021 as passed by the National Assembly by deleting the memo items which had a proposed allocation of Kshs. 39.88 billion (from its National share) as additional conditional allocations to county governments. This comprised of: Kshs. 7.537 billion for the leasing of medical equipment and supplement for construction of county headquarters, Kshs. 32.343 billion as additional conditional allocations to county governments financed from proceeds of loans and grants by development partners.
7. These conditional grants were reflected in the DoRB as memo items which served as additional information to disclose the allocations going to the county governments besides county equitable share allocation. These funds therefore are included in the appropriation bill for the National Budget. The DoRB as passed by the National Assembly versus the one approved by senate is as shown below.

Schedule 1: Allocation of revenue raised nationally among the national and county governments for the FY 2021/22		
Type/level of allocation	FY 2021/22- Amount in Kshs. Percentage (%) of 2016/17 audited and approved revenue i.e., Ksh. 1,357,698 Million	
	National Assembly	Senate
A. Total Sharable Revenue	1,775,624,173,860	1,775,624,173,860
B. National Government	1,398,798,856,427	1,398,798,856,427
Of which:		
<i>1. Leasing of Medical Equipment</i>	7,205,000,000	

2. Supplement for construction of county headquarters	332,000,000	
C. Equalization Fund	6,825,317,433	6,825,317,433
D. County equitable share	370,000,000,000	370,000,000,000
Memo items		
1. County equitable share	370,000,000,000	
2. Additional conditional allocations (National Government share of Revenue) of which;	7,537,000,000	
2.1. Leasing of Medical Equipment	7,205,000,000	
2.2. Supplement for construction of county headquarters	332,000,000	
3. Allocation from Fuel Levy Fund (15%)	-	
4. Conditional allocations (Loans & grants) of which:	32,343,890,512	
4.1 IDA-Kenya Devolution Support Program (KDSP) (Level 2)	4,600,000,000	
4.2 IDA-Transforming Health Systems for Universal Care Project	2,234,664,075	
4.3 DANIDA-Universal Healthcare for Devolved System Program	701,250,000	
4.4 IDA-National Agriculture & Rural Inclusive Growth Project (NARIGP)	6,394,997,407	
4.5 EU-Instruments for Devolution Advice and Support (IDEAS)	230,730,934	
4.6 IDA (World Bank) - Kenya Climate Smart Agriculture Project (KCSAP)	7,838,338,490	
4.7 Kenya Informal Settlement Improvement Project (KISIP II)	2,800,000,000	
4.8 IDA- Water and Sanitation Development Project (WSDP)	5,000,000,000	
4.9 Sweden Agriculture Sector Development Programme II (ASDP II)	1,300,042,902	
4.10 Drought Resilience Programme in Northern Kenya	370,000,000	
4.11 Emergency Locust Response Project (ELRP)	800,000,000	
4.12 UNFPA- 9th Country Programme Implementation	73,866,704	
Total County Allocations= (1+2+3+4)	409,880,890,512	

8. As indicated in the schedule above only the sharing of nationally raised resources to National Government, Equalization Fund and Equitable share will remain in the schedule.

D. COMMITTEE OBSERVATIONS

9. The committee made the following observations:
 - i. The major point of departure between the National Assembly and the Senate is presentation of memo items in the Schedule of Division of Revenue Bill, 2021. There is no dispute between the amount to be allocated to counties and the removal of memo items which does not materially change the flow of funds to counties as the memo items are already set aside in the National budget and will be appropriated accordingly.
 - ii. Going forward, there is need to establish a legal framework for the transfer of conditional grants to the respective County Revenue Funds (CRFs) so as to ensure timely release of funds for implementation of programmes and projects at county level.
 - iii. The National Treasury should develop a legal framework for the management, control and accounting of donor funds at county level as development partners usually sign agreements with the National government. This will enable county governments to borrow directly and ensure National Government guarantees.

E. COMMITTEE RECOMMENDATION

10. The Committee recommends that this House do concur with the proposed amendments by the Senate and therefore accepts deletion of Schedule as well as the accepting the substitution therefor the new schedule as proposed.

SCHEDULE**(s.4)****ALLOCATION OF REVENUE RAISED NATIONALLY AMONG THE
NATIONAL AND COUNTY GOVERNMENTS FOR THE FINANCIAL YEAR
2021/22**

Type/level of allocation	Amount in Ksh.	Percentage (%) of 2016/17 audited and approved Revenue i.e., Ksh. 1,357,698 Million
A. Total Sharable Revenue	1,775,624,173,860	
B. National Government	1,398,798,856,427	
C. Equalization Fund	6,825,317,433	0.50%
D. County equitable share	370,000,000,000	27.3%

MINUTES OF THE 17th SITTING OF THE BUDGET AND APPROPRIATIONS COMMITTEE HELD AT COMMITTEE ROOM 7, PARLIAMENT BUILDINGS ON MONDAY, 26th APRIL 2021, AT 10.00 A.M.

PRESENT:

1. Hon. Kanini Kega, CBS, M.P.- Chairperson
2. Hon. Benard Masaka Shinali, M.P.- Vice Chairperson
3. Hon. Emmanuel Wangwe, CBS, M.P.
4. Hon. (CPA) Moses K. Lessonet, CBS, M.P.
5. Hon. Alfred Kiptoo Keter, M.P.
6. Hon. (Dr.) Makali Mulu, M.P.
7. Hon. Sarah Paulata Korere, M.P.
8. Hon. Josephine Naisula Lesuuda, OGW, M.P.
9. Hon. Wangari Mwaniki, OGW, M.P.
10. Hon. Fatuma Gedi Ali, CBS, M.P.
11. Hon. Danson Mwashako, M.P.
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13. Hon. (Eng.) Mark Nyamita, M.P.
14. Hon. Florence C. K. Bore, M.P.
15. Hon. Sakwa Bunyasi, M.P.
16. Hon. Samuel Atandi, M.P.
17. Hon. Mercy Wanjiku Gakuya, M.P.
18. Hon. (CPA) Francis Kuria Kimani, M.P.
19. Hon. Joseph Manje, M.P.

ABSENT WITH APOLOGY:

1. Hon. (CPA) John Mbadi, EGH, CBS, M.P.
2. Hon. Samwel Moroto, M.P.
3. Hon. Millie Odhiambo, M.P.
4. Hon. Richard Onyonka, M.P.
5. Hon. Badi Twalib, M.P.
6. Hon. Jude Njomo, M.P.
7. Hon. Paul Abuor, M.P.
8. Hon. Masalino Arbelle, M.P.

PARLIAMENTARY BUDGET OFFICE

- | | |
|------------------------------|-------------------------|
| 1) Mrs. Phyllis Makau, OGW | Director, PBO |
| 2) Mr. Martin Masinde
PBO | Senior Deputy Director, |
| 3) Mr. Frederick Muthengi | Chief Fiscal Analyst |
| 4) Ms. Amran Yunis | Fiscal Analyst I |

COMMITTEE SECRETARIAT

- | | |
|------------------------|--------------------------|
| 1) Mr. Danson Kachumbo | Fiscal Analyst I & Clerk |
| 2) Mr. Stephen Nyakuti | Audio Officer |

AGENDA

1. Preliminaries & Confirmation of Agenda
2. *Adoption of the BAC report on the message from Senate on Division of Revenue(National Assembly Bill No. 7 of 2021)*
3. Any Other Business (A.O.B)

MIN. NO. NA/BAC/2021/298: PRELIMINARY

The Chairperson welcomed the committee members to the meeting and called the meeting to order at 10.30 a.m. Thereafter, a prayer was said.

MIN. NO. NA/BAC/2021/299: ADOPTION OF ON THE MESSAGE FROM SENATE ON DIVISION OF REVENUE(NATIONAL ASSEMBLY BILL NO. 7 OF 2021)

Members were taken through the draft report by Director, Parliamentary Budget Office. The committee went clause by clause of the report. After deliberations, the report was proposed by Hon. Sarah PaulataKorere, M.P. and seconded by Hon. Josephine NaisulaLesuuda, OGW, M.P. The committee **adopted** the report as follows:

A. INTRODUCTION

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	National Assembly	Senate
<i>2. Supplement for construction of county headquarters</i>	332,000,000	
C. Equalization Fund	6,825,317,433	6,825,317,433
D. County equitable share	370,000,000,000	370,000,000,000
Memo items		
1. County equitable share	370,000,000,000	
<i>2. Additional conditional allocations(National Government share of Revenue) of which;</i>	<i>7,537,000,000</i>	
<i>2.1. Leasing of Medical Equipment</i>	<i>7,205,000,000</i>	
<i>2.2. Supplement for construction of county headquarters</i>	<i>332,000,000</i>	
3. Allocation from Fuel Levy Fund (15%)	-	
4. Conditional allocations (Loans & grants) of which:	32,343,890,512	
<i>4.1 IDA-Kenya Devolution Support Program (KDSP) (Level 2)</i>	<i>4,600,000,000</i>	
<i>4.2 IDA-Transforming Health Systems for Universal Care Project</i>	<i>2,234,664,075</i>	
<i>4.3 DANIDA-Universal Healthcare For Devolved System Program</i>	<i>701,250,000</i>	
<i>4.4 IDA-National Agriculture & Rural Inclusive Growth Project (NARIGP)</i>	<i>6,394,997,407</i>	
<i>4.5 EU-Instruments for Devolution</i>	<i>230,730,934</i>	

Schedule 1: Allocation of revenue raised nationally among the national and county governments for the FY 2021/22		
Type/level of allocation	FY 2021/22- Amount in Kshs. Percentage (%) of 2016/17 audited and approved revenue i.e. Ksh. 1,357,698 Million	
	National Assembly	Senate
<i>Advice and Support (IDEAS)</i>		
<i>4.6 IDA (World Bank) - Kenya Climate Smart Agriculture Project (KCSAP)</i>	7,838,338,490	
<i>4.7 Kenya Informal Settlement Improvement Project (KISIP II)</i>	2,800,000,000	
<i>4.8 IDA- Water and Sanitation Development Project (WSDP)</i>	5,000,000,000	
<i>4.9 Sweden Agriculture Sector Development Programme II (ASDP II)</i>	1,300,042,902	
<i>4.10 Drought Resilience Programme in Northern Kenya</i>	370,000,000	
<i>4.11 Emergency Locust Response Project (ELRP)</i>	800,000,000	
<i>4.12 UNFPA- 9th Country Programme Implementation</i>	73,866,704	
Total County Allocations= (1+2+3+4)	409,880,890,512	

8. As indicated in the schedule above only the sharing of nationally raised resources to National Government, Equalization Fund and Equitable share will remain in the schedule.

C. COMMITTEE OBSERVATIONS

9. The committee made the following observations:
- The major point of departure between the National Assembly and the Senate is presentation of memo items in the Schedule of Division of Revenue Bill, 2021. There is no dispute between the amount to be allocated to counties and the removal of memo items

which does not materially change the flow of funds to counties as the memo items are already set aside in the National budget and will be appropriated accordingly.

- ii. Going forward, there is need to establish a legal framework for the transfer of conditional grants to the respective County Revenue Funds (CRFs) so as to ensure timely release of funds for implementation of programmes and projects at county level.
- iii. The National Treasury should develop a legal framework for the management, control and accounting of donor funds at county level as development partners usually sign agreements with the National government. This will enable county governments to borrow directly and ensure National Government guarantees.

D. COMMITTEE RECOMMENDATION

10. The Committee recommends that this House do concur with the proposed amendments by the Senate and therefore accepts deletion of Schedule as well as the accepting the substitution therefor the new schedule as proposed.

SCHEDULE

(s.4)

ALLOCATION OF REVENUE RAISED NATIONALLY AMONG THE NATIONAL AND COUNTY GOVERNMENTS FOR THE FINANCIAL YEAR 2021/22

Type/level of allocation	Amount in Ksh.	Percentage (%) of 2016/17 audited and approved Revenue i.e., Ksh. 1,357,698 Million
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B. National Government	1,398,798,856,427	
C. Equalization Fund	6,825,317,433	0.50%
D. County equitable share	370,000,000,000	27.3%

MIN.NO.NA/BAC/2021/300:ANY OTHER BUSINESS & ADJOURNMENT

There being no other matters to consider, the meeting was adjourned at 12.00 p.m. The next sitting will be communicated at a later date.

SIGNED



**HON. KANINI KEGA, CBS, M.P.
CHAIRPERSON, BUDGET AND APPROPRIATIONS COMMITTEE**

27th APRIL 2021

DATE

