

Approved for tabling in the House.

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23/11/2021



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – FIFTH SESSION – 2021
.....

SELECT COMMITTEE ON BUDGET AND APPROPRIATIONS


REPORT ON THE COUNTY GOVERNMENTS GRANTS BILL (*SENATE BILL NO. 35 OF
2021*)

Directorate of Audit, Appropriations & other Select Committees

The National Assembly

Parliament Buildings

NAIROBI

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 23 NOV 2021	DAY: Tuesday
TABLED BY:	Vice-chair - budget Hon. Bernard Shinya
CLERK-AT THE-TABLE:	Gertrude Chebet

NOVEMBER 2021

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CHAIRPERSON'S FOREWORD

This report contains proceedings of the Select Committee on Budget and Appropriations on its consideration of the County Governments Grants Bill (Senate Bill No. 35 of 2021) which was published on 25th May 2021.

The Bill has nine (9) clauses and seeks to provide for the additional allocations to county governments for 2021/2022 financial year, the responsibilities of the National Government and County Governments pursuant to such allocations; and for connected purposes.

The Bill has nine (9) clauses and seeks to provide for the additional allocations to County Governments for the FY 2021/2022 financial year, the responsibilities of the National Government and County Governments pursuant to such allocations; and for connected purposes.

Following placement of adverts in the print media on Wednesday, 3rd November 2021 requesting for comments on the Bill from the public and relevant stakeholders pursuant to Article 118(1)(b) of the Constitution and Standing Order 127(3), the Committee received one (1) written memoranda from stakeholders. The Committee discussed the Bill with four (4) key stakeholders on Monday, 15th November 2021 at Mini Chamber, County Hall, Parliament Building namely: Council of Governors, Commission on Revenue Allocation, Office of the Controller of Budget and the National Treasury.

While considering the Bill, the Committee noted if the Bill is passed as proposed by Senate it would be against Justice Makau ruling on Petition 252 of 2016 on 3rd December 2020. The ruling noted that National Government cannot appropriate any funds meant for Counties pursuant to Article 187 of the Constitution. The clauses that make the Bill an Annual Bill should therefore be removed. This will enable the Bill to provide for disbursement of both conditional and unconditional grants to counties pursuant to Article 207 of the Constitution. In addition, the Bill should provide for the procedures for implementation, reporting and accountability of the funds including the roles and responsibilities of various institutions.

The Committee is grateful to the Offices of the Speaker and Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee further wishes to thank all the stakeholders who participated in the consideration of the Bill. Finally, I wish to express my appreciation to the Honorable Members of the Committee and the Committee Secretariat who played a significant role towards scrutiny of the Bill and production of this report.

On behalf of the Select Committee on Budget and Appropriations and pursuant to the provisions of Standing Order 199(6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the County Governments Grants Bill (Senate Bill No. 35 of 2021). It is my pleasure to report that the Committee has considered the County Governments Grants Bill (Senate Bill No. 35 of 2021) and have the honour to report back to the House with recommendation that the Bill be **approved with amendments**.

Hon. Kanini Kega, CBS, M.P.

Chairperson, Budget, and Appropriations Committee

1 PREFACE

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 Honorable 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. Fatuma Gedi Ali, CBS, M.P.	Wajir County	PDR
6. Hon. Wangari Mwaniki, OGW, M.P.	Kigumo	Jubilee
7. Hon. CPA Moses K. Lessonet, CBS, M.P.	Eldama Ravine	Jubilee
8. Hon. Samwel Moroto, M.P.	Kapenguria	Jubilee
9. Hon. Millie Odhiambo, M.P.	Suba North	ODM
10. Hon. Richard Onyonka, M.P.	Kitutu Chache South	Ford Kenya
11. Hon. (Dr.) Makali Mulu Benson, M.P.	Kitui Central	Wiper
12. Hon. Twalib Bady, M.P.	Jomvu	ODM
13. Hon. Jude Njomo, M.P.	Kiambu Town	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, 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. Dr. Martin Masinde Senior Deputy Director, Parliamentary Budget Office
3. Mr. Robert Nyaga Deputy Director, Parliamentary Budget Office
4. Ms. Lucy Makara Deputy Director, Parliamentary Budget Office
4. Mr. Frederick Muthengi Chief Fiscal Analyst
5. Ms. Julie Mwithiga 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. Clarah Kimeli Legal Counsel
4. Ms. Winfred Kizia Media Relations
5. Mr. Benard Omondi Serjeant-at-arms
6. Mr. Eugene Luteshi Audio Officer
7. Mr. George Mbaluka Office Assistant

2. HIGHLIGHTS OF THE COUNTY GOVERNMENTS GRANTS BILL, 2021 (SENATE BILL NO. 35 OF 2021)

2.1 INTRODUCTION

1. As per National Assembly Standing Orders 41 (4), the Speaker received a message relating to the passage of the County Governments Grant Bill (Senate Bill No. 35 of 2021). Subsequently, the Bill after being read for the first time on Wednesday, 13th October 2021, was committed to the Budget and Appropriation Committee pursuant to provision of Standing Orders 127 (6). The Bill seeks to provide for the additional allocations to county governments for the FY 2021/2022 financial year, the responsibilities of the National Government and County Governments pursuant to such allocations; and for connected purposes.
2. Article 202(2) of the Constitution provides that County Governments may be given additional allocations from the National Government's share of revenue, either conditionally or unconditionally. This Bill therefore seeks to provide a framework for the transfer of additional allocations under Article 202(2) of the Constitution.
3. In addition, the Bill seeks to comply with the orders of the court in High Court Petition No. 252 of 2016. In the matter the court held that Article 202 of the Constitution as read with Article 218(1)(a) of the Constitution did not permit conditional or unconditional grants to be provided for in the Annual Division of Revenue Act. The court held that such conditional or unconditional grants could be issued to the county level of government under Article 190 of the Constitution or through an agreement between the two levels of government that respects the institutional and functional integrity of both levels of government but not in the Annual Division of Revenue Act.

2.2 ANALYSIS OF THE BILL

The Bill proposes the following:

4. Clause 1 gives the title of the Bill as the County Government Grants Act, 2021 which makes it an Annual Bill. Clause 2 gives the various interpretation that includes the conditional allocations which means additional resources allocated to County Governments from the National Governments share of revenue or in the form of loans and grants from development partners.
5. Clause 3 gives the object of the Bill which is to provide for conditional allocation for the Financial Year 2021/22 pursuant to Article 202 (2) of the constitution and to facilitate the transfer of conditional and unconditional allocations made to counties under the Bill from the Consolidated Fund Service to the respective County Revenue Funds and Special Purpose Accounts.
6. Clause 4 lists all grants to be disbursed in the Bill while Clause 4(1) gives the conditional allocation to County Government from the National Government share of revenue for the FY 2021/22 for the construction of county headquarters and leasing of medical equipment's; Clause

- 4(2) gives the conditional allocation financed by proceeds of loans or grants from development partners to each county government for the 2021/22 financial year. The Bill proposes that the County Government allocation will be transferred to respective County Revenue Fund in accordance with a payment schedule published in the Gazette by the Cabinet Secretary as per Section 17 of the PFM Act, 2012.
7. The County Government will get the allocation after meeting the conditions set by the Cabinet Secretary responsible for the function at the beginning of the financial year. The allocations will be included in the budget estimates of the National Government and submitted to Parliament for approval. This will be done after the National Government and the respective County Government have entered into an intergovernmental agreement and in case of a loan or grant by a development partner the Cabinet Secretary and the responsible development partner have agreed in writing that the funds shall be transferred to the County Government.
 8. The Cabinet Secretary is expected to publish by fifteenth (15th) day of each subsequent month a monthly report on actual transfers of all conditional allocations to County Governments disbursed and the County Governments shall reflect all transfers of conditional allocations by the National Government to the respective County Governments in its books of account as per clause 5 and 6 of the proposed Bill. The County Treasury shall report on the same as part of the consolidated quarterly and annual reports as per PFM Act, 2012.
 9. The Bill proposes to amend the PFM Act by deleting section 42 and substituting it with an inclusion of a Bill for the allocation and transfer of conditional or unconditional allocation under Article 202(2) of the Constitution. Parliament to consider the said Bill, the DoRB and the CARB not later than 30 days after the Bills have been introduced with a view to approve them with or without amendments. The proposed Bill is therefore to be an Annual Bill submitted together with Budget Policy Statement (BPS), Division of Revenue Bill (DoRB) and County Allocation Revenue Bill (CARB).
 10. The Bill further proposes to insert a section immediately after section 191 of the Public Finance Management (PFM) Act, 2012 on intergovernmental agreements, which should be approved by the County Assembly within 14 days of submission and have the same forwarded to the Controller of Budget within 7 days of approval. The County Executive Committee (CEC) member is expected to facilitate public participation on any agreements made, have the agreement signed by an authorized Officer and published in the Kenya Gazette within a period of seven days of the agreement. The National Treasury shall submit the agreements with any other documents to Senate and Controller of Budget within seven days of signing of the same and publish and publicize all agreements entered.
 11. The Bill proposes that the requisition of funds from the County Revenue Fund for the purposes of conditional grant shall be supported by the Intergovernmental Agreements approved. The proposed Bill however states that the conditional grants for the current financial year 2021/22 shall

be disbursed in accordance with the provisions of the PFM Act and therefore the proposed addition to section 191 will not apply for the current Financial Year.

12. The first and second schedules showing the conditional allocation to County Governments from National Government Revenue and conditional allocations from loans and grants from development partners for FY 2021/22 respectively are attached to the Bill.
13. Since 2013/14 financial year, counties have been receiving both conditional and non-conditional resources from both the Government of Kenya and development partners such as World Bank, European Union, IDA, SIDA among others. The conditional grants and loans both from the GOK and development partners were in addition to being included in the Annual Division of Revenue Bill and County Allocation of Revenue Bill each year were also put in the Annual Appropriation Bill up to 2020/21 Financial Year.
14. As noted earlier the High Court ruling on Petition No. 252 of 2016 provided that the conditional grants be transferred from the Consolidated Fund into the County Revenue Fund but barred the inclusion of conditional grants in DoRB and CARB. Thus in 2021/22 DoRB and CARB did not include the conditional grants that were only included in Appropriation Bill, this creates a lacuna as to what instrument or framework to be used to disburse the conditional grant and the role of Senate in the same as the county assemblies are barred from appropriating the resources.?? Not clear???
15. According to the Constitution, the instruments to enable the withdrawal of money from the Consolidated Fund Services is the Annual Appropriation Act, the Supplementary Appropriation Act or any other Act as authorized by Parliament. In this Bill its proposed that once the Appropriation Act is approved by Parliament those funds are credited to County Revenue Fund. Money can only be withdrawn from the County Revenue Fund after approval by Parliament or by an approval by the County Assembly hence the need of the Act to authorize the disbursement of funds. Article 207 section 4 allows Parliament to enact a law that allows withdrawal of funds from County Revenue Fund.

3.0 PUBLIC PARTICIPATION/STAKEHOLDERS CONSULTATION

16. Following the request for memoranda from the public and key stakeholders through the placement of adverts in the print media on Wednesday, 3rd November and vide letters Ref: NA/DCS//BAC/2021 (33, 35, 36 &37) dated 10th November 2021 inviting stakeholders for a meeting. The Committee received memoranda from the following stakeholders:

- i) Council of Governors
- ii) The Controller of Budget
- iii) The Commission on Revenue Allocation
- iv) The National Treasury

3.1 THE COUNCIL OF GOVERNORS

17. The Council of Governors appeared before the Committee on Monday, 15th November 2021. The Council was represented by the Director, Committee Services and other members of the Council and submitted the following observations and recommendations to the Committee

Clause/Provision	CoG's proposal	Rationale/Justification
Short Title The County Government Grants Bill	The County Government Conditional and Non-Conditional Grants Bill	Grants include Conditional, Non-Conditional and Appropriation in Aid. The Bill was envisaged to facilitate disbursement and expenditure of Conditional and Non-Conditional Grants as provided for in Article 202(2).
Interpretation	<p>Introduce a new clause to define the following terms:</p> <p>“Authorized Officer” means the Principal Secretary, National Treasury</p> <p>“Appropriation by County Assembly” means inclusion of Conditional Grant and Non-Conditional Grant in the County Appropriation Act for the purpose of expenditure and accountability”.</p>	It was imperative for the Bill to define who the authorizing officer was. County Appropriation Act is the legal instrument that guides utilization of funds at County level, and which the Controller of Budget can rely on in approving requisition for Conditional and Non conditional funds by County Governments. Further, appropriation in that case did not imply reallocation of conditional and non-conditional from the activities directly channeled to.

Clause/Provision	CoG's proposal	Rationale/Justification
Clause 3 Provide, pursuant to Article 187(2) and 202(2) of the Constitution, for conditional allocation for Financial Year 2021/2022	To amend to include Article 190 (1) as follows: "Provide, pursuant to Article 187(2), 190(1) and 202(2) of The Constitution, for conditional allocation for Financial Year 2021/2022;"	In line with the legislative obligation of Parliament to ensure that County Governments had adequate support to enable them to perform their functions.
Clause 4 Intergovernmental agreements	Delete clause 4(3-5)	The County Assembly had no role in the approval of Intergovernmental Agreements.
4(3) Where a county government intends to enter into an agreement under subsection (1), the County Executive Committee Member shall submit the agreement to the respective County Assembly for approval.		
4(4) The County Assembly shall, within seven days of submission of an agreement under subsection (3), approve or reject the agreement.		
4(5) Where a County Assembly fails to consider an agreement under subsection (3) within seven days, the agreement shall be deemed to be approved		

Clause/Provision	CoG's proposal	Rationale/Justification
<p>Clause 6 An agreement under section 4 shall be—(b) published in the Kenya Gazette and county gazette</p>	<p>Amend to delete the County Gazette</p>	<p>The Office of the County Printer had not been established in Law and therefore it would not be possible to comply with the specific provision.</p>
<p>Clause 8(3)</p>	<p>Introduce a new clause 8(3)</p>	<p>To enable County Governments to access and utilize the funds.</p>
<p>Each county government's allocation under subsection (1)(a) shall be transferred to the respective County Revenue Fund, in accordance with a payment schedule published in the Gazette by the Cabinet Secretary In accordance with section 17 of the Public Finance Management Act No. 18 of 2012.; and (b) Only be accessed by each county government after meeting conditions set by the Cabinet Secretary responsible for that function at the beginning of the financial year.</p>	<p>to read as follows: - County Assembly shall include County Government's allocation under subsection (1)(a) in County Appropriation Act. Rearrange Clause 8 (3)(a) to read (3)(b) and (3)(b) to read as (3)(c)</p>	
<p>Clause 8(6) 8(6) A County Governments' allocation under subsection (2) shall be transferred to the respective County Revenue Fund in accordance with a payment schedule published in the Kenya Gazette by the Cabinet Secretary in accordance with section 17 of the Public Finance Management Act.</p>	<p>Introduce a new clause to read as follows. 6(1) County Assembly shall include County Government's allocation under subsection (2) in County Appropriation Act.</p>	<p>To enable County Governments to access and utilize the funds.</p>

3.2 THE CONTROLLER OF BUDGET

18. The Controller of Budget submitted as follows:

Clause/ Provision	Controller of Budget Proposal	Rationale/Justification
<p>Interpretation Definition of conditional allocations “Conditional allocations” means additional resources allocated to County Governments from the National Government’s share of revenue or in the form of loans and grants form development partners;</p>	<p>Amend the term “conditional allocations” to “additional allocations” and define it mean “Additional resources allocated to County Governments from the national government’s share of the revenue, either conditionally or unconditionally</p>	<p>The bill should exclude conditional allocations outside national government share and loans and grants. To align this with Article 202(2) of the Constitution and Section 138 of the Public Finance Management Act(PFMA). Article 202(2) provides that a County Government may be given conditional or unconditional allocations from the national government’s share of revenue. While Section 138 of PFMA defines “grants” to mean “ The provision of financial or other assistance by a development partner which is not repayable and — (i) under which public money is paid to or used by a grant recipient; (ii) which is intended to finance or facilitate the development of projects or delivery of services or otherwise assist the grant recipient to achieve goals that are consistent with the policy objectives of the national government; and (iii) under which the grant recipient is required to act in accordance with any terms or conditions specified in a grant agreement.</p>
<p>Interpretation Introduce the definition of the term “grants”</p>	<p>‘Grants’ Define grant by aligning it to Section 47(1) and 138(1) of the Public Finance Management Act which defines the term grant</p>	<p>To promote legislative harmony. grants” to mean “The provision of financial or other assistance by a development partner which is not repayable and — (i) under which public money is paid to or used by a grant recipient; (ii) which is intended to finance or facilitate the development of projects or delivery of services or otherwise assist the</p>

Clause/ Provision	Controller of Budget Proposal	Rationale/Justification
		grant recipient to achieve goals that are consistent with the policy objectives of the national government; and (iii) under which the grant recipient is required to act in accordance with any terms or conditions specified in a grant agreement.
Clause 3 (b) Object of the Bill	Introduce a third object to provide for the facilitation of loans and grants	To provide for the facilitation of loans and grants and to differentiate the objective 3 (a) from 3(b)
Clauses 4(2) (b), (e) (j) Conditional allocations to County Governments	The clauses make reference to “credit” and not “loans or grants” The clause introduces the use of the term ‘credit’ which has not been defined in the Bill.	Synchronize the use of words for uniformity and clarity. In the alternative provide for the definition of the term “credit”
Clause 5 Reports on actual transfers	Amend by changing “conditional allocations” to “additional allocations” And provide for reporting on loans and grants which should be aligned to the provisions of section 138 of the PFMA	The scope of reporting for loans and grants has been provided for under section 138 of the PFMA and should hence be differentiated from the additional allocations from the national share of revenue.
Clause 7 Quarterly and annual reporting	Introduce a new clause 7(2) to ensure that the reports are submitted to the Controller of Budget.	Article 228(6) mandates the Controller of Budget to report on budget implementation to Parliament. The reports under clause 7 will enable the Controller of Budget to comprehensively report to Parliament on budget implementation and give recommendations to Parliament on measures to improve budget implementation.
8(a), (b) The use of the word “conditional allocation” should be limited to the proposed definition of conditional allocation	Consider amending “ a bill for the allocation and transfer of conditional or unconditional allocations” to reflect the proposed definition in the	To align with the provisions of Article 202(2) of the Constitution and Section 138 of the PFMA

Clause/ Provision	Controller of Budget Proposal	Rationale/Justification
	interpretation section	

3.3. THE COMMISSION ON REVENUE ALLOCATION

19. The Chairperson, Commission on Revenue Allocation submitted as follows to the Committee:
20. The Bill under clause 2 defines “conditional allocation” to mean additional resources allocated to County Governments from the National Government’s share of revenue or in the form of loans and grants from development partners. The Bill under clause 3 outlines one of the objects of the Bill as to provide, pursuant to Article 202 (2) of the Constitution, for conditional allocations for the financial year 2021/2022. There is need to separate matters loans and grants from additional allocations which are mixed up in this definition of the Bill. Loans or grants do not form part of conditional grants to counties as elaborated below-
21. Article 202 of the Constitution provides that County Governments may be given additional allocations from the national government’s share of the revenue either conditionally or unconditionally. Such additional allocations are part of the National Government’s equitable share drawn from the Consolidated Fund. Loans and grants from donors towards County Governments should therefore be handled separately out of the Consolidated Fund and not mixed with such funds. Moreover, this Bill should be grounded on the conditional grants policy framework that was published by the National Treasury in the year 2015.
22. Articles 211 to 214 of the Constitution clearly articulate matters of borrowing by both levels of government including public debt and how it should be operationalized. Such issues are therefore separate and distinct from grants or additional allocations enshrined under Article 202. The National Government should hence adopt a legislation premised on the current Loans and Grants Borrowing Policy framework to include an annual schedule of the loans granted to the counties to increase transparency.
23. Sections 47 (1)(b)& 138 (1)(b) of the Public Finance and Management Act (PFMA), 2012 define a ‘grant’ to mean- financial or other assistance by a development partner to a national or county government respectively which is not repayable and under which public money is paid to or used by a grant recipient;which is intended to finance or facilitate the development of projects or delivery of services or otherwise assist the grant recipient to achieve goals that are consistent with the policy objectives of the national government; and under which the grant recipient is required to act in accordance with any terms or conditions specified in a grant agreement.
24. Sections 48 and 139 of the PFMA on the other hand provide for regulations on grant administration for grants for national and County Governments respectively. Specifically, grants are defined as emanating from development partners who are identified as foreign entities. Such grants are therefore separate from and not part of equitable share.

25. These three terminologies i.e. loan, grant and additional allocations are therefore separate and distinct and have specific meanings under the Public Finance Management Act, 2012. Marrying them in one definition as per the Bill creates confusion and they should be tackled separately.

3.4. THE NATIONAL TREASURY

26. The Principle Administrative Secretary, National Treasury and Planning submitted the following to the Committee as follows:

27. The Principle Administrative Secretary, National Treasury and Planning submitted the following to the Committee as follows:

28. The Bill be changed to County Governments Additional Allocations Bill. The title is in line with Article 190 of the Constitution which provides that Parliament may legislate for additional support to county governments, in this case the support would be financial which may take the form of conditional or unconditional allocation. This proposed change be will in line with proposed consequential amendment of sections 42 and 191 of PFMA to include additional allocation in section 8 (a) and (b)of the Bill.

29. The Bill has not provided for funds flow from the respective County Revenue Fund Accounts to the operational accounts of the County Governments and for expenditures on the intended purpose. The Clause 3 should take into account section 109 (3) of the PFM Act, 2012 that ensures that the county government complies with the provisions of Article 207 of the Constitution.

30. Section 4(3) (b) provides that conditional grants can only be accessed by each county government after meeting conditions set by the Cabinet Secretary responsible for that function at the beginning of the financial year. This is because the conditions will be set through a consultative process by different stakeholders, and once they are agreed upon, they will be included in an agreement and approved by respective county assemblies.

31. Section 7 on reporting should report information on the following: (a)financial and non-financial information with regard to intended objectives of the grants; mitigations measures that were put in place in case of material problems identified in (d); and(b)all the requirements of Regulation 131 (1) (d) of the Public Finance Management (National Government) Regulations, 2015.

32. Section 8 (c) on public participation which provides that the county executive shall facilitate public participation on Intergovernmental Agreements. However, the provision does not provide for timelines when public participation should be conducted. Further, it compels the National Treasury to submit the agreements to the Senate within 7 days after they been dully entered into. However, the responsibility for submission of these agreement to the Senate should be placed on the respective MDAs responsible for the conditional grants.

33. In addition, Section 8(c) requires the National Treasury to publish and publicize all agreements entered into. The section should be modified to provide that all MDAs to submit to the National Treasury all approved agreements for consolidation and facilitate release of funds upon notification by the MDAs once the set conditions are met. The National Treasury can then publish and publicise the consolidated agreements.

5. COMMITTEE OBSERVATIONS

34. In considering the Bill, the Committee observed as follows:

- 1) If the Bill is passed as proposed by Senate would be against Justice Makau ruling on Petition 252 of 2016 on 3rd December 2020. The ruling noted that National Government cannot appropriate any funds meant for counties pursuant to Article 187 of the Constitution.
- 2) The clauses that make it an annual Bill should be removed. This will enable the Bill to provide for disbursement of conditional and unconditional grants to counties pursuant to Article 207 of the Constitution; and
- 3) The Bill provides for the procedures for implementation, reporting and accountability of the funds including the roles and responsibilities of various institutions.

6 COMMITTEE RECOMMENDATION

35. The Committee having considered the County Governments Grant Bill, 2021 (Senate Bill No. 35 of 2021) recommends that the House **approves with amendments** as proposed in the schedule below.


7 SCHEDULE OF PROPOSED AMENDMENTS

36. The Committee proposed the following amendments to be considered by the House in the Committee Stage:

- 1. Title of the Bill 'County Governments Additional Allocations Bill, 2021'
- 2. Clause 2 Interpretation of the various terms
- 3. Object of the Bill Amend clause 3(a) by deleting the word "FY2021/22" to remove the annual enactment of the Bill
- 4. Delete and replace clause 4 as follows:
 - a) With additional allocations shall be funds agreed upon during the consideration of Budget Policy Statement (BPS) and shall comprise of resources required for transfer of functions to counties from the National Government as provided for under Article 187 of Constitution; Conditional or unconditional allocations as per Article 202; Loans and Grants from development partners;
 - b) The National Treasury shall facilitate the agreements between the county governments and development partners, and these shall be tabled in Parliament before inclusion in the Budget Policy Statement;
 - c) The additional allocations with respect to loans and grants, the National Treasury shall include in the Budget Policy Statement the indicative amounts to County Governments on loans and grants; and
 - d) These additional allocations to counties shall be included in the respective County Governments Appropriations Bills

Delete Clauses 8 (a) and (b).

Delete amendment to section 191(b) of PFMA on Public Participation on conditional grants.

SIGNED.......... DATE...23/11/2021.....

**HON. BENARD SHINALI, M.P.
VICE CHAIRPERSON**

SELECT COMMITTEE ON BUDGET AND APPROPRIATION

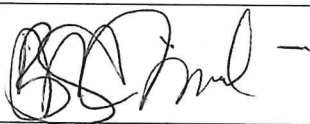
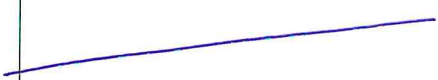
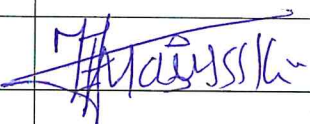

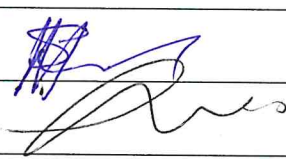
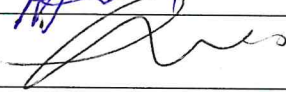



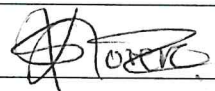

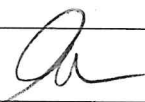

ANNEXURES

1. Adoption Schedule
2. Minutes of the 44th Sitting
3. Minutes of the 45th Sitting
4. A copy of the advert

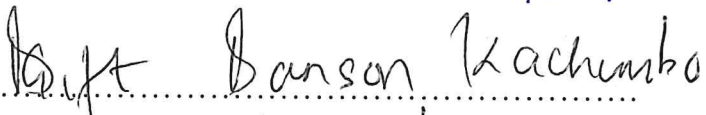
ADOPTION SCHEDULE

Budget and Appropriations Committee

Date: 23.11.21 Time: 10:00 Sitting: 1st

Name	Signature
1. The Hon. Kanini Kega, CBS, M.P.- Chairperson	Virtual
2. The Hon. Benard Masaka Shinali, M.P.- Vice Chairperson	
3. The Hon. (CPA) John Mbadi, EGH, CBS, M.P.	
4. The Hon. Emmanuel Wangwe, CBS, M.P.	
5. The Hon. (CPA) Moses K. Lessonet, CBS, M.P.	
6. The Hon. Samwel Moroto, M.P.	
7. The Hon. Millie Odhiambo, M.P.	
8. The Hon. Alfred Kiptoo Keter, M.P.	
9. The Hon. Richard Onyonka, M.P.	
10. The Hon. (Dr.) Makali Mulu, M.P.	Virtual
11. The Hon. Badi Twalib, M.P.	
12. The Hon. Jude Njomo, M.P.	Virtual
13. The Hon. Sarah Paulata Korere, M.P.	
14. The Hon. Fatuma Gedi Ali, CBS, M.P.	
15. The Hon. Wangari Mwaniki, OGW, M.P.	
16. The Hon. Josephine Naisula Lesuada, OGW, M.P.	

Name	Signature
17. The Hon. Sakwa Bunyasi, M.P.	
18. The Hon. Florence C. K. Bore, M.P.	
19. The Hon. James Gichuki Mugambi, MBS M.P.	
20. The Hon. Danson Mwashako, MP	
21. The Hon. (Eng.) Mark Nyamita, MP	
22. The Hon. Paul Abuor, MP	Virtual.
23. The Hon. Mercy Wanjiku Gakuya, M.P.	
24. The Hon. (CPA) Francis Kuria Kimani, M.P.	
25. The Hon. Samuel Atandi, M.P.	
26. The Hon. Joseph Manje, M.P.	
27. The Hon. Masalino Arbelle, M.P.	

Signed..... 
Date..... 23. 11. 21.
Committee Clerk

Signed.....

Date.....

Director of Audit, Appropriations & Other Select Committees

MINUTES OF THE 44th SITTING OF THE BUDGET AND APPROPRIATIONS COMMITTEE HELD AT INNER PIER, ENGLISH POINT, MOMBASA COUNTY ON THURSDAY, 28TH OCTOBER 2021, AT 9.30 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. Millie Odhiambo, M.P.
5. Hon. Alfred Kiptoo Keter, M.P.
6. Hon. (Dr.) Makali Mulu, M.P.
7. Hon. Badi Twalib, M.P.
8. Hon. Samwel Moroto, M.P.
9. Hon. Fatuma Gedi Ali, CBS, M.P.
10. Hon. Jude Njomo, M.P.
11. Hon. Josephine Naisula Lesuuda, OGW, M.P.
12. Hon. Sakwa Bunyasi, M.P.
13. Hon. James Gichuki Mugambi, MBS, M.P.
14. Hon. Florence C. K. Bore, M.P.
15. Hon. Danson Mwashako, M.P.
16. Hon. Joseph Manje, M.P.
17. Hon. Masalino Arbelle, M.P.

ABSENT WITH APOLOGY:

1. Hon. (CPA) John Mbadi, EGH, CBS, M.P.
2. Hon. Richard Onyonka, M.P.
3. Hon. (CPA) Moses K. Lessonet, CBS, M.P.
4. Hon. Sarah Paulata Korere, M.P.
5. Hon. Wangari Mwaniki, OGW, M.P.
6. Hon. Paul Abuor, M.P.
7. Hon. (Eng.) Mark Nyamita, M.P.
8. Hon. Mercy Wanjiku Gakuya, M.P.
9. Hon. Samuel Atandi, M.P.
10. Hon. (CPA) Francis Kuria Kimani, M.P.

SPONSORS OF LEGISLATIVE PROPOSAL

- 1) Hon. Michael Muchira, M.P.
- 2) Hon. Capt. Ruweida Obo, M.P.
- 3) Hon. Peter Francis Masara, M.P.

PARLIAMENTARY BUDGET OFFICE

- | | |
|----------------------------|-----------------------------|
| 1) Mrs. Phyllis Makau, OGW | Director, PBO |
| 2) Dr. Martin Masinde | Senior Deputy Director, PBO |
| 3) Ms. Lucy Makara | Deputy Director, PBO |
| 4) Mr. Robert Nyaga | Deputy Director, PBO |
| 5) Ms. Millicent Makina | Fiscal Analyst I |
| 6) Ms. Julie Mwithiga | Fiscal Analyst I |
| 7) Ms. Judith Kiproop | Fiscal Analyst III |
| 8) Mr. Benard Adera | Fiscal Analyst III |
| 9) Mr. Robert Langat | Office attendant, CNA |

COMMITTEE SECRETARIAT

- | | |
|-------------------------|------------------------------|
| 1) Mrs. Florence Abonyo | Director, Select Committees |
| 2) Mr. Joseph Ndirangu | Fiscal Analyst I/ Lead Clerk |
| 3) Mr. Danson Kachumbo | Fiscal Analyst I |
| 4) Mr. Eugene Luteshi | Audio Officer |
| 5) Mr. Benard Omondi | Sergeant at Arms |
| 6) Mr. George Mbaluka | Office Attendant |

AGENDA

1. Preliminaries & Confirmation of Agenda
2. **Consideration and Discussion of the County Grants Bill (Senate Bill No. 35 of 2021)**
3. Any Other Business (A.O.B)

MIN. NO. NA/BAC/2021/297: PRELIMINARY

The Chairperson welcomed the committee members to the meeting and called the meeting to order at 10.00 a.m. Thereafter, led the committee through a word of prayer. The Chairperson invited the Parliamentary Budget Office to make a presentation on its analysis on the County Governments Grants Bill (Senate Bill No. 35 of 2021).

MIN. NO. NA/BAC/2021/298: THE COUNTY GOVERNMENTS GRANTS BILL (SENATE BILL NO. 35 OF 2021).

The Presentation from the Parliamentary Budget Office highlighted the following:

A. Introduction

As per Standing Orders 41 (4) of the National Assembly Speaker received a message relating to the passage of the County Governments Grant Bill,2021 (Senate Bill No. 35 of 2021) subsequently the Bill after being read for the first time on October 13, 2021, was committed to the Budget and Appropriation Committee pursuant to provision of Standing Orders 127 (6). In as much as the committee is expected to apply itself to the provision of Article 109 (5) and 114 of the constitution relating to origination and definition of a “Money Bill” and make recommendations to the House as per the Constitution.

It’s important to note that this bill is supposed to pronounce itself to the court ruling on petition No. 252 of 2016 that provided that the conditional grants be transferred from the Consolidated Fund Services to County Revenue Fund. It however, barred the County Assemblies from appropriating the same.

B. Brief Overview

The Bill seeks to provide additional allocation to county government for the 2021/22 financial year and the responsibilities of National Government and County Governments pursuant to the allocations.

Clause 1 gives the title of the Bill as the County Government Grants Act, 2021 which makes it an annual Bill. Clause 2 gives the various interpretation that includes the conditional allocations which means additional resources allocated to County Governments from the National Governments share of revenue or in the form of loans and grants from development partners.

Clause 3 gives the object of the Bill which is to provide for conditional allocation for the Financial Year 2021/22 pursuant to Article 202 (2) of the constitution and to facilitate the transfer of conditional and unconditional allocations made to counties under the Bill from the Consolidated Fund to the respective County Revenue Funds and Special Purpose Accounts.

Clause 4 Lists all grants to be disbursed in the Bill while Clause 4(1) gives the conditional allocation to county government from the National Government share of revenue for the 2021/22 for the construction of county headquarters and leasing of medical equipment's; Clause 4(2) gives the conditional allocation financed by proceeds of loans or grants from development partners to each county government for the 2021/22 financial year. The Bill proposes that the County Government allocation will be transferred to respective County Revenue Fund in accordance with a payment schedule published in the Gazette by the Cabinet Secretary as per Section 17 of the PFM Act, 2012.

The County Government will get the allocation after meeting the conditions set by the Cabinet Secretary responsible for the function at the beginning of the financial year. The allocations will be included in the budget estimates of the National Government and submitted to Parliament for approval. This will be done after the National Government and the respective County Government have entered into an intergovernmental agreement and in case of a loan or grant by a development partner the Cabinet Secretary and the responsible development partner have agreed in writing that the funds shall be transferred to the County Government.

The Cabinet Secretary is expected to publish by 15th day of each subsequent month a monthly report on actual transfers of all conditional allocations to County Governments disbursed and the County Governments shall reflect all transfers of conditional allocations by the National Government to the respective County Governments in its books of account as per clause 5 and 6 of the proposed Bill. The County Treasury shall report on the same as part of the consolidated quarterly and annual reports as per PFM Act, 2012.

The Bill proposes to amend the PFM Act by deleting section 42 and substituting it with an inclusion of a Bill for the allocation and transfer of conditional or unconditional allocation under Article 202(2) of the Constitution. Parliament to consider the said Bill, the DORB and the CARB not later than 30 days after the Bills have been introduced with a view to approve them with or without amendments. The proposed Bill is therefore to be an annual Bill submitted together with BPS, DORB and CARB.

The Bill further proposes to insert a section immediately after section 191 of the PFM Act, 2012 on intergovernmental agreements, which should be approved by the County Assembly within 14 days of submission and have the same forwarded to the Controller of Budget within 7 days of approval. The CEC member is expected to facilitate public participation on any agreements made, have the agreement signed by an authorized Officer and published in the Kenya Gazette within a period of seven days of the agreement. The National Treasury shall submit the agreements with any other documents to Senate and Controller of budget within seven days of signing of the same and publish and publicize all agreements entered.

The Bill proposes that the requisition of funds from the County Revenue Fund for the purposes of conditional grant shall be supported by the Intergovernmental Agreements approved. The proposed Bill however states that the conditional grants for the current financial year 2021/22 shall be disbursed in accordance with the provisions of the PFM Act and therefore the proposed additional to section 191 will not apply for the current Financial Year.

The first and second schedules showing the conditional allocation to County Governments from National Government Revenue and conditional allocations from loans and grants from development partners for FY 2021/22 respectively are attached to the Bill.

C. Evaluation

Since 2013/14 financial year counties have been receiving both conditional and non-conditional resources from both the Government of Kenya and development partners such as World Bank, European Union, IDA, SIDA among others. The conditional grants and loans both from the GOK and development partners were in addition to being included in the Annual Division of Revenue Bill (DORB) and County Allocation of Revenue Bill (CARB) each year were also put in the Annual Appropriation Bill up to year 2020/21 Financial Year.

As noted earlier the High Court ruling on Petition No. 252 of 2016 provided that the conditional grants be transferred from the Consolidated Fund into the County Revenue Fund but barred the inclusion of conditional grants in DORB and CARB. Thus in 2021/22 DORB and CARB did not include the conditional grants that were only included in Appropriation Bill this creates a lacuna as to what instrument or framework to be used to disburse the conditional grant and the role of Senate in the same as the county assemblies are barred from appropriating the resources.

According to Kenya Constitution the instruments to enable the withdrawal of money from the Consolidated Fund Services is the Annual Appropriation Bill, the supplementary Appropriation Bill or any other Act as authorized by Parliament. In this particular Bill its proposed that once the Appropriation Act is approved by Parliament those funds are credited to County Revenue Fund. Money can only be withdrawn from the County Revenue Fund after approval by Parliament or by an approval by the County Assembly hence the need of the Act to authorize the disbursement of funds. Article 207 section 4 allows Parliament to enact a law that allows withdrawal of funds from County Revenue Fund.

D. Options

- i) Amend the Bill and remove the clauses that makes it annual Bill by providing provision for conditional and unconditional grant further, amend to ensure the Bill provides for the procedures for implementation, reporting and accountability of the funds including the roles and responsibilities of various institutions.
- ii) Allow the Bill to continue as it is which will;
 - a) Make Senate provide the way to have the disbursement from the County Revenue Fund and will make it a second appropriation.
 - b) Delay will occur as this particular piece of legislation can only go through after an Appropriation Bill is accented to.
 - c) There will be issues of in-year changes as development partners give funds in the course of a Financial Year which creates delay.

After the presentation, the Committee made the following comments and observations:

1. It was observed that the Bill was forwarded against the provisions of article 114 of the Constitution through an advisory opinion of the speaker that BAC is the relevant committee to handle the Bill.
2. It was observed that there is lack of legal framework for disbursing conditional grants to counties. Based on this, the Senate went to court in 2019 and the court ruled that Division of Revenue and County Allocation of Revenue should not include the conditional grants and that national assembly should appropriate the grants exclusively. However, with lack of a framework for disbursement, in 2021/22 the national treasury disbursed the money through the ministries and there was no clear way of how

counties got the funds making it hard for oversight both by the senate and the county assembly.

COMMITTEE RECOMMENDATION

Amend the Bill and remove the clause that makes it annual bill by providing provision for condition and unconditional grant further, amend to ensure the Bill provides for the procedures for implementation, reporting and accountability of the funds including the roles and responsibilities of various institutions.

MIN.NO.NA/BAC/2021/299: ANY OTHER BUSINESS & ADJOURNMENT

There being no other matters to consider, the meeting was adjourned at 1.00 p.m. The next sitting will be communicated later.

SIGNED


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

23/11/2021

.....
DATE

MINUTES OF THE 45th SITTING OF THE BUDGET AND APPROPRIATIONS COMMITTEE HELD AT MINI CHAMBER, FIRST FLOOR, COUNTY HALL, PARLIAMENT BUILDINGS ON MONDAY, 15TH NOVEMBER 2021, AT 9.30 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. (Dr.) Makali Mulu, M.P.
5. Hon. Jude Njomo, M.P.
6. Hon. Josephine Naisula Lesuuda, OGW, M.P.
7. Hon. Sarah Paulata Korere, M.P.
8. Hon. Wangari Mwaniki, OGW, M.P.
9. Hon. James Gichuki Mugambi, MBS, M.P.
10. Hon. Florence C. K. Bore, M.P.
11. Hon. (Eng.) Mark Nyamita, M.P.
12. Hon. Danson Mwashako, M.P.
13. Hon. Mercy Wanjiku Gakuya, M.P.
14. Hon. Joseph Manje, M.P.
15. Hon. Masalino Arbelle, M.P.

ABSENT WITH APOLOGY:

1. Hon. (CPA) John Mbadi, EGH, CBS, M.P.
2. Hon. Richard Onyonka, M.P.
3. Hon. Millie Odhiambo, M.P.
4. Hon. Badi Twalib, M.P.
5. Hon. (CPA) Moses K. Lessonet, CBS, M.P.
6. Hon. Samwel Moroto, M.P.
7. Hon. Alfred Kiptoo Keter, M.P.
8. Hon. Paul Abuor, M.P.
9. Hon. Samuel Atandi, M.P.
10. Hon. Sakwa Bunyasi, M.P.
11. Hon. Fatuma Gedi Ali, CBS, M.P.
12. Hon. (CPA) Francis Kuria Kimani, M.P.

COUNCIL OF GOVERNORS

- | | |
|--------------------------------|------------------------------|
| 1) Mr. Kizito Wangaliwa | Director, Committees |
| 2) Mr. Stephen Momanyi | Finance and Planning Officer |
| 3) Mr. James Maina | Finance officer |

COMMISSION ON REVENUE ALLOCATION

- | | |
|-----------------------------|---------------------------|
| 1) Dr. Jane Kiringai | Chairperson |
| 2) Dr. Moses Sichei | CEO/ Commission Secretary |
| 3) Ms. Evelyne Kimani | Manager, Legal Affairs |

CONTROLLER OF BUDGET

- | | |
|---------------------------------|------------------------------|
| 1) Dr. Margaret Nyakongo | Controller of Budget |
| 2) Mr. Stephen Masha | Deputy, Controller of Budget |
| 3) Ms. Rhoda Rutto | Director, Legal Services |
| 4) Mr. Mane Kipkoech | Chief Fiscal Analyst |

THE NATIONAL TREASURY

- | | |
|----------------------------------|---|
| 1) Mr. Amos Gathecha, EBS | Principal Administrative Secretary |
| 2) Ms. Josephine Kanyi | Senior Deputy Director |
| 3) Mr. Samuel K. Kiptoros | Senior Deputy Director |
| 4) Mr. Geoffrey Momanyi | Senior State Counsel |
| 5) Ms. Isabella Kogei | Parliamentary Liaison Officer |

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

- | | |
|--------------------------------|--------------------------|
| 1. Mr. Wafula Chebukati | Chairperson, IEBC |
| 2. Mr. Francis Wanderi | Commissioner |
| 3. Mr. Marjam Hussein | Ag. CEO |
| 4. Mr. Dickson Kwanusu | PA. Chairman |
| 5. Mr. Daniel Mathenge | CCA |

- | | |
|------------------------|------------|
| 6. Mr. Obadiah Keitany | Ag. DCS/DF |
| 7. Mr. Micheal Ouma | Ag/ ICT |
| 8. Mr. Jason Akoyo | MB |
| 9. Mr. Rasi Masudi | DVREO |
| 10. Mr. Harley Mutisya | DSCM |

PARLIAMENTARY BUDGET OFFICE

- | | |
|-----------------------|-----------------------------|
| 1) Dr. Martin Masinde | Senior Deputy Director, PBO |
| 2) Ms. Lucy Makara | Deputy Director, PBO |
| 3) Ms. Julie Mwithiga | Fiscal Analyst 1 |

COMMITTEE SECRETARIAT

- | | |
|------------------------|------------------------------|
| 1) Mr. Joseph Ndirangu | Fiscal Analyst I/ Lead Clerk |
| 2) Mr. Danson Kachumbo | Fiscal Analyst I |
| 3) Mr. Sidney Lugaga | Legal Counsel |
| 4) Mr. Eugene Luteshi | Audio Officer |
| 5) Mr. George Mbaluka | Office Attendant |
| 6) Mr. Collins Oluoch | Legal Counsel Intern |
| 7) Mr. Bismark Lumumba | Legal Counsel Intern |
| 8) Mr. Dorothy Kandie | Legal Counsel Intern |
| 9) Mr. Rakia Ibrahim | Legal Counsel Intern |

AGENDA

1. Preliminaries & Confirmation of Agenda
2. *Receiving submissions on the County Governments Grants Bill (Senate Bill No. 35 of 2021) from the following:*
 - a) *The Council of Governors*
 - b) *The Controller of Budget*
 - c) *The Commission on Revenue Allocation*
 - d) *The National Treasury*
3. *A follow up meeting with the Independent Electoral and Boundaries Commission (IEBC) to discuss the budget for the 2022 General Elections.*
4. Any Other Business (A.O.B)

MIN. NO. NA/BAC/2021/300: PRELIMINARY

The Vice-Chairperson welcomed the committee members to the meeting and called the meeting to order at 10.00 a.m. Thereafter, led the committee through a word of prayer. The vice-chairperson invited the stakeholders to make a presentation on proposed amendments to specific clauses (if any) on the County Governments Grants Bill (Senate Bill No. 35 of 2021).

MIN. NO. NA/BAC/2021/301: SUBMISSION BY THE COUNCIL OF GOVERNORS

The Council of Governors submitted the following observations and recommendations to the Committee:

Clause/Provision	CoG's proposal	Rationale/Justification
Short Title The County Government Grants Bill	The County Government Conditional and Non-Conditional Grants Bill	Grants include Conditional, Non-Conditional and Appropriation in Aid. The Bill was envisaged to facilitate disbursement and expenditure of Conditional and Non-Conditional Grants as provided for in Article 202(2).

Clause/Provision	CoG's proposal	Rationale/Justification
<p>Interpretation</p>	<p>Introduce a new clause to define the following terms: “Authorized Officer” means the Principal Secretary, National Treasury “Appropriation by County Assembly” means inclusion of Conditional Grant and Non-Conditional Grant in the County Appropriation Act for the purpose of expenditure and accountability”.</p>	<p>It was imperative for the Bill to define who the authorizing officer was. County Appropriation Act is the legal instrument that guides utilization of funds at County level, and which the Controller of Budget can rely on in approving requisition for Conditional and Non conditional funds by County Governments. Further, appropriation in that case did not imply reallocation of conditional and non-conditional from the activities directly channeled to.</p>
<p>Clause 3 Provide, pursuant to Article 187(2) and 202(2) of the Constitution, for conditional allocation for Financial Year 2021/2022; and</p>	<p>To amend to include Article 190 (1) as follows: “Provide, pursuant to Article 187(2), 190(1) and 202(2) of The Constitution, for conditional allocation for Financial Year 2021/2022;”</p>	<p>In line with the legislative obligation of Parliament to ensure that County Governments had adequate support to enable them to perform their functions.</p>
<p>Clause 4 Intergovernmental agreements</p>	<p>Delete clause 4(3-5)</p>	<p>The County Assembly had no role in the approval of Intergovernmental Agreements.</p>

Clause/Provision	CoG's proposal	Rationale/Justification
4(3) Where a county government intends to enter into an agreement under subsection (1), the County Executive Committee Member shall submit the agreement to the respective County Assembly for approval.		
4(4) The County Assembly shall, within seven days of submission of an agreement under subsection (3), approve or reject the agreement.		
4(5) Where a County Assembly fails to consider an agreement under subsection (3) within seven days, the agreement shall be deemed to be approved		
<p>Clause 6</p> <p>An agreement under section 4 shall be—(b) published in the Kenya Gazette and county gazette</p>	Amend to delete the County Gazette	The Office of the County Printer had not been established in Law and therefore it would not be possible to comply with the specific provision.
Clause 8(3)	Introduce a new clause 8(3)	To enable County Governments to access and utilize the funds.

Clause/Provision	CoG's proposal	Rationale/Justification
<p>Each county government's allocation under subsection (1)(a) shall be transferred to the respective County Revenue Fund, in accordance with a payment schedule published in the Gazette by the Cabinet Secretary In accordance with section 17 of the Public Finance Management Act No. 18 of 2012.; and (b) Only be accessed by each county government after meeting conditions set by the Cabinet Secretary responsible for that function at the beginning of the financial year.</p>	<p>to read as follows: - County Assembly shall include County Government's allocation under subsection (1)(a) in County Appropriation Act.</p> <p>Rearrange Clause 8 (3)(a) to read (3)(b) and (3)(b) to read as (3)(c)</p>	
<p>Clause 8(6) 8(6) A county governments' allocation under subsection (2) shall be transferred to the respective County Revenue Fund in accordance with a payment schedule published in the Kenya Gazette by the Cabinet Secretary in accordance with section 17 of the Public Finance Management Act.</p>	<p>Introduce a new clause to read as follows.</p> <p>6(1) County Assembly shall include County Government's allocation under subsection (2) in County Appropriation Act.</p>	<p>To enable County Governments to access and utilize the funds.</p>

After the presentation,

- 1) *The Committee queried the justification of the renaming the Bill as proposed despite conditional grants are appropriated by the National Assembly.*
- 2) *It was further observed that the proposed amendment under clause 8(3)(b) will therefore imply that monies appropriated by the National Assembly must*

be also appropriated by the respective County Assemblies. This will contravene the High court ruling that ruled that both the National Government and the County governments to come up with a framework of disbursement.

MIN. NO. NA/BAC/2021/302: SUBMISSION BY THE CONTROLLER OF BUDGET

The Controller of Budget submitted as follows to the Committee:

Clause/ Provision	Controller of Budget Proposal	Rationale/Justification
<p>Interpretation Definition of conditional allocations “Conditional allocations” means additional resources allocated to county governments from the National Government’s share of revenue or in the form of loans and grants form development partners;</p>	<p>Amend the term “conditional allocations” to “additional allocations” and define it mean “Additional resources allocated to county governments from the national government’s share of the revenue, either conditionally or unconditionally</p>	<p>The Bill should exclude conditional allocations outside national government share and loans and grants. To align this with Article 202(2) of the Constitution and Section 138 of the Public Finance Management Act (PFMA).</p> <p>Article 202(2) provides that a County Government may be given conditional or unconditional allocations from the national government’s share of revenue. While Section 138 of PFMA defines “grants” to mean “<i>The provision of financial or other assistance by a development partner which is not repayable and — (i) under which public money is paid to or used by a grant recipient; (ii) which is intended to finance or facilitate the development of projects or delivery of services or otherwise assist the grant recipient to</i></p>

Clause/ Provision	Controller of Budget Proposal	Rationale/Justification
		<i>achieve goals that are consistent with the policy objectives of the national government; and (iii) under which the grant recipient is required to act in accordance with any terms or conditions specified in a grant agreement.</i>
<p>Interpretation</p> <p>Introduce the definition of the term “grants”</p>	<p>‘Grants’ Define grant by aligning it to Section 47(1) and 138(1) of the Public Finance Management Act which defines the term grant</p>	<p>To promote legislative harmony. “grants” to mean “<i>The provision of financial or other assistance by a development partner which is not repayable and — (i) under which public money is paid to or used by a grant recipient; (ii) which is intended to finance or facilitate the development of projects or delivery of services or otherwise assist the grant recipient to achieve goals that are consistent with the policy objectives of the national government; and (iii) under which the grant recipient is required to act in accordance with any terms or conditions specified in a grant agreement.</i></p>
<p>Clause 3 (b)</p> <p>Object of the Bill</p>	<p>Introduce a third object to provide for the facilitation of loans and grants</p>	<p>To provide for the facilitation of loans and grants and to differentiate the objective 3 (a) from 3(b)</p>

Clause/ Provision	Controller of Budget Proposal	Rationale/Justification
Clauses 4(2) (b), (e) (j) Conditional allocations to county governments	The clauses make reference to “credit” and not “loans or grants” The clause introduces the use of the term ‘credit’ which has not been defined in the Bill.	Synchronize the use of words for uniformity and clarity. In the alternative provide for the definition of the term “credit”
Clause 5 Reports on actual transfers	Amend by changing “conditional allocations” to “additional allocations” And provide for reporting on loans and grants which should be aligned to the provisions of section 138 of the PFMA	The scope of reporting for loans and grants has been provided for under section 138 of the PFMA and should hence be differentiated from the additional allocations from the national share of revenue.
Clause 7 Quarterly and annual reporting	Introduce a new clause 7(2) to ensure that the reports are submitted to the Controller of Budget.	Article 228(6) mandates the Controller of Budget to report on budget implementation to Parliament. The reports under clause 7 will enable the Controller of Budget to comprehensively report to Parliament on budget implementation and give recommendations to Parliament on measures to improve budget implementation.
8(a), (b) The use of the word “conditional allocation” should	Consider amending “a bill for the allocation and transfer of conditional or unconditional	To align with the provisions of Article 202(2) of the Constitution and Section 138 of the PFMA

Clause/ Provision	Controller of Budget Proposal	Rationale/Justification
be limited to the proposed definition of conditional allocation	allocations” to reflect the proposed definition in the interpretation section	

After the presentation,

- 1) *The Committee queried the proposal of amending the term “conditional allocations” to “additional allocations” as per Article 202 (2) of the Constitution and Sections 47(1) and 138 (1) of the PFM Act, 2012. The Committee sought clarification on whether amending the definition will be subject to general budgeting at county level.*
- 2) *Members of the Committee further queried the purpose of defining credit in the proposed Bill as this is a conditional grant from the World Bank to finance various projects.*

MIN. NO. NA/BAC/2021/303: THE COMMISSION ON REVENUE ALLOCATION

The Chairperson, Commission on Revenue Allocation submitted as follows to the Committee:

The Bill under clause 2 defines “*conditional allocation*” to mean *additional resources allocated to county governments from the National Government’s share of revenue or in the form of loans and grants from development partners*. The Bill under clause 3 outlines one of the objects of the Bill as to provide, pursuant to Article 202 (2) of the Constitution, for conditional allocations for the financial year 2021/2022. There is need to separate matters loans and grants from additional allocations which are mixed up in this definition of the Bill. Loans or grants do not form part of conditional grants to counties as elaborated below;

Article 202 provides that county governments may be given additional allocations from the national government’s share of the revenue either conditionally or unconditionally. Such additional allocations are part of the National Government’s equitable share drawn from the Consolidated Fund. Loans and grants from donors towards county governments should therefore be handled separately out of the Consolidated Fund and not mixed with such funds. Moreover, this Bill should be

grounded on the conditional grants policy framework that was published by the National Treasury in the year 2015.

Articles 211 to 214 clearly articulate matters of borrowing by both levels of government including public debt and how it should be operationalized. Such issues are therefore separate and distinct from grants or additional allocations enshrined under Article 202. The National Government should hence adopt a legislation premised on the current Loans and Grants Borrowing Policy framework to include an annual schedule of the loans granted to the counties to increase transparency.

Sections 47 (1)(b) & 138 (1)(b) of the Public Finance and Management Act (PFMA) define a ‘grant’ to mean- financial or other assistance by a development partner to a national or county government respectively which is not repayable and—

- i. under which public money is paid to or used by a grant recipient.
- ii. which is intended to finance or facilitate the development of projects or delivery of services or otherwise assist the grant recipient to achieve goals that are consistent with the policy objectives of the national government; and
- iii. under which the grant recipient is required to act in accordance with any terms or conditions specified in a grant agreement.

Sections 48 and 139 of the PFMA on the other hand provide for regulations on grant administration for grants for national and county governments respectively. Specifically, grants are defined as emanating from development partners who are identified as foreign entities. Such grants are therefore separate from and not part of equitable share.

These three terminologies i.e. loan, grant and additional allocations are therefore separate and distinct and have specific meanings under the Public Finance Management Act, 2012. Marrying them in one definition as per the Bill creates confusion and they should be tackled separately.

Other Comments on the Bill-

Clause	Recommendation	Justification for Change
Clause 4 <i>Include a requirement for the Commission on Revenue Allocation to be consulted</i>	CRA is required to make recommendations on such financial matters concerning county governments.	To align with Article 202 to promote equitability, Article 205 financial consultation and Articles 205 & 216 on CRA mandate to make recommendations on

		financial matters concerning county governments
<p>Clause 8</p> <p>Section 191B</p> <p><i>The county executive shall facilitate public participation on any agreement made pursuant to section 191A</i></p>	<p>There should be a provision specifying a set timeline prior to the signing of the agreement for such a public participation process to take place.</p>	<p>For clarity</p>

After the presentation, the Committee observed that:

- 1) *The National Government should adopt a legislation premised on the current Loans and Grants Borrowing Policy framework to include an annual schedule of the loans granted to the counties to increase transparency.*
- 2) *As per the Accra Accord, there is need to synchronize the disbursement of donors funds based with the Kenya's PFM system.*

MIN. NO. NA/BAC/2021/304: SUBMISSION BY THE NATIONAL TREASURY

The Principle Administrative Secretary, National Treasury and Planning submitted the following to the Committee:

Title: - The Bill is titled County Governments Grants Bill. However, it is our considered opinion that the word grant has a limitation in its definition and maybe construed as “free money”. Section 138(1)(b) defines grants as “*grant*” means the provision of financial or other assistance by a development partner which is not repayable”

In this regard, we are proposing the title of the Bill be changed to: “*County Governments Additional Allocations Bill*”. This title is in line with Article 190 of the Constitution which provides that Parliament may legislate for additional support to county governments, in this case the support would be financial which may take the form of conditional or unconditional allocation. This proposed change be will in line with proposed consequential amendment of sections 42 and 191 of PFMA to include additional allocation in section 8 (a) and (b)of the bill

Section 3 on Object of the Act: -This Section provides that the Object of the resultant Act is to *“provide, pursuant to Article 202 (2) of the Constitution, for conditional allocations for the financial year 2021/22”*.

However, in the High Court ruling on petition No. 252 of 2016, a determination was made that conditional grants should be issued under Article 190 of the Constitution which is not referenced in this Bill or through Intergovernmental Agreement as provided for in Article 187 of the Constitution. Section 3 (a) and (b) on the object of this Act should be assessed against Article 114 (2) of the Constitution on Money Bills.

The other objective is to *“facilitate the transfer of conditional allocations made to counties under this Act from the Consolidated Fund to the respective County Revenue Funds”*. However, and in line with the High Court determination that County Assemblies should not appropriate for conditional grants, the Bill has not provided for funds flow from the respective County Revenue Fund Accounts to the operational accounts of the County Governments and for expenditures on the intended purpose. The provision should take into account section 109 (3) of the PFMA provides that, *“The County Treasury shall administer the County Revenue Fund and ensure that the county government complies with the provisions of Article 207 of the Constitution”*.

Section 4(3)(b) on Conditional allocations to county government: Section 4(3) (b) provides that conditional grants can only be accessed by each county government after meeting conditions set by the Cabinet Secretary responsible for that function at the beginning of the financial year. It is our considered opinion that the words *“set by the Cabinet Secretary responsible for the function”* should be replaced by the following words *“Conditions set out in the agreement and as approved by respective County Assembly”*. This is because the conditions will be set through a consultative process by different stakeholders, and once they are agreed upon, they will be included in an agreement and approved by respective county assemblies.

Section 7 (d) also compels the County Treasury to include in its report any material *problems* faced in the expenditure of the allocated conditional grants and compliance with the conditions set therein. In our opinion it’s not clear what kind of problems the section anticipates nor the scope of what may be deemed a problem. Our recommendation is that the term “problem” be replaced with the term “challenges” or “risks” because challenges are specific and can have specific mitigation measures. We also propose that the section be modified to require that as the County Treasury reports on challenges, they also include the mitigations measures that were put in place.

We are also of the opinion that this section should also compel the County Treasury to have in its report both financial and non-financial information with regard to intended objectives of the grants. This section can also be cross referenced to the Regulation 131 (1) (d) on minimum requirements to be contained in reports of the accounting officer of the county governments.

(2) Section 7 on reporting: we propose that this section should report information on the following: (a) financial and non-financial information with regard to intended objectives of the grants;

mitigations measures that were put in place in case of material problems identified in (d); and (b) all the requirements of Regulation 131 (1) (d) of the Public Finance Management (National Government) Regulations, 2015.

Section 8 (a) on Consequential amendments: - The proposed new section 42 b (1) of the Public Finance Management Act, 2012 requires the Cabinet Secretary while introducing to Parliament the Budget Statement, Division of Revenue Bill and County Allocation of Revenue Bill to also introduce *a Bill for the allocation and transfer of conditional or unconditional allocations made under Article 202(2) of the Constitution* prepared by the National Treasury as provided in this Act for the financial year to which that Budget relates. This section only refers to additional allocation from the National Government share of revenue envisaged in Article 202 (2) and doesn't cover allocations from loans and grants. There is therefore need to reference Article 190 of the Constitution to include support to county governments through conditional grants financed from proceeds of loans and grants by development partners.

You may also consider anchoring the Bill under auspices of *Article 190* of the Constitution as guided by the High Court in its ruling of *petition No. 252 of 2016*. This would cater for financial additional support to county governments through conditional and unconditional allocations whose sources maybe as provided for in Article 202(2) of the Constitution and from proceeds of loans and grants by development partners.

Section 8 (c) on Intergovernmental Agreements: Section 8 (c) provides that "*The National Treasury shall enter into an agreement with the respective county government for the transfer of the respective conditional allocation made to the county government pursuant to this Act*"

Regulation 129 to 135 of the PFM (National Government) Regulations, 2015 provides for among others the duties of the accounting officers of the national and county governments on Intergovernmental Transfers. In this regard, it is our considered opinion that Intergovernmental agreements should be entered into by the

respective county governments and the respective Ministries, State Departments and Agencies (MDAs) responsible for the conditional grants and to whom they are appropriated. The role of the National Treasury should be transfer of conditional grants from the Consolidated Fund to respective County Revenue Fund Accounts, so long as there are written instructions from the national government accounting officer responsible, confirming that the conditions set thereof have been met. The other role of the National Treasury is to sign financing agreements with respective development partners where a conditional grant is financed using a loan or a grant.

Section 8 (c) should clarify the role of County Assemblies in managing conditional grants including approval of budgets funded by conditional grants. The Attorney General's legal opinion on this issue will greatly be appreciated. In addition, we propose that the Bill provides that the County Assemblies approve Intergovernmental agreements with or without amendments instead of rejecting them.

Section 8 (c) on Public Participation: Section 8 (c) on public participation which provides that the county executive shall facilitate public participation on Intergovernmental Agreements. However, the provision does not provide for timelines when public participation should be conducted i.e., should it be before submitting to County Assembly or after. Secondly, can the County Assemblies also conduct the participation before approving the agreements?

Section 8(c) on Submission of Agreements to Senate: -Section 8(c) compels the National Treasury to submit the agreements to the Senate within 7 days after they been dully entered into. However, as discussed above on section 8 (c) of the Bill, it is our considered opinion that the responsibility for submission of these agreement to the Senate should be placed on the respective MDAs responsible for the conditional grants.

Section 8(c) requires the National Treasury to publish and publicize all agreements entered into. It is our considered opinion that this section should be modified to provide that all MDAs to submit to the National Treasury all approved agreements for consolidation and facilitate release of funds upon notification by the MDAs once the set conditions are met. The National Treasury can then publish and publicise the consolidated agreements.

Other comments:

- 1) From the definition of money Bill, this can be a money Bill since the only one excluded by the Constitution is Division of Revenue Bill (DoRB) and County Allocation of Revenue Bill (CARB).
- 2) The National Treasury are of the view that the conditional grants are already provided for in the section of the 38(1)(b)(iii) and 130(1)(b) (iii PFMA). What is lacking is the regulations to operationalize those sections of PFM to provide for budgeting, funds flow, form, frequency, content, and timing as you have rightly put it. We therefore propose developments of required e regulations to provide for the gaps as well as provide for conditional grants both donor funded, and government of Kenya funded.
- 3) Since the Bill is dealing with mainly conditional allocations in line with Article 202 (2) and Article 190 of the Constitution and these were operationalized through PFMA and IGRA, the originators of the required legislation should be the same originators of the two Acts depending on the legislation required.
- 4) The draft bill provides that the County Governments Grants Bill will be submitted together with DORB and CARB, so does this mean that they will be determined at the same time?

After the presentation, the Committee observed that:

The presentation made by the National Treasury did not provide for any tangible solutions or suggestions to better the Bill. The presentation focused mainly on the pitfalls of the Bill. Particularly on the Judgment rendered by the High Court restricting county assemblies from exercising oversight on the conditional or unconditional allocations to the county.

Committee Recommendations:

1. *The Committee reiterated the need for a legal framework to govern allocations to county governments under Article 202 of the Constitution of Kenya.*
2. *The National treasury was requested to re-draft their submissions to the committee by Wednesday 17th of November and provide solutions to the foreseen challenges.*
3. *Further the Committee directed that all stakeholders including the Parliamentary Budget Office to sit at a technical level and to harmonise their proposed amendments.*

MIN. NO. NA/BAC/2021/305: A FOLLOW-UP MEETING WITH THE INDEPENDENT AND ELECTORAL BOUNDARIES COMMISSION (IEBC)

Follow up meeting with the IEBC to discuss the 2022 General Election budget of Kshs. 40.9 billion. In response to the letter, the IEBC came forward to present the status of procurement and their budget for the 2022 general elections. The IEBC presented their procurement budget and the status of procurement for various goods and services. The total figure amounted to approximately 9.2 billion Kenya Shillings. However, in Mombasa the total budget was approximated to be about Kshs. 41 billion. The CEO explained that the deficit was because of the cash transactions that do not appear in the procurement list.

The Committee was informed that the procurement of one ballot paper would cost Kshs. 23 (inclusive of tax) and not Kshs. 35 as earlier budgeted for. The Kims kit would cost Ksh. 1.7 billion.

The Committee queried the details regarding the extended registration period mandated by order of the High court. The IEBC informed the committee that they spent an approximately Kshs. 72 million for the 3-day exercise and managed to register about 70,000 voters.

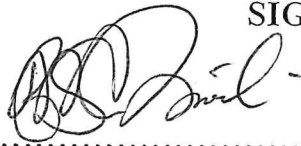
Committee Recommendations:

- 1) IEBC was directed to prepare a detailed budget for Ksh. 40.9 billion meant for 2022 General Elections and to exclude the budget allocations of the day to day running of the Commission.*
- 2) Commission was requested to provide for a detailed budgetary allocation for 2022 General Elections for FY 2021/22 and 2022/23.*
- 3) In addition, a comparison itemised budget for 2017 general elections budget vis a vie 2022 budget.*

MIN.NO.NA/BAC/2021/306: ANY OTHER BUSINESS & ADJOURNMENT

There being no other matters to consider, the meeting was adjourned at 2.00 p.m.
The next sitting will be communicated later.

SIGNED



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HON. KANINI KEGA, CBS, M.P.

CHAIRPERSON, BUDGET AND APPROPRIATIONS COMMITTEE

23/11/2021

.....
DATE

MINUTES OF THE 46th SITTING OF THE BUDGET AND APPROPRIATIONS COMMITTEE HELD AT MINI CHAMBER, FIRST FLOOR, COUNTY HALL, PARLIAMENT BUILDINGS ON TUESDAY, 23rd NOVEMBER 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. Samwel Moroto, M.P.
5. Hon. Millie Odhiambo, M.P.
6. Hon. (Dr.) Makali Mulu, M.P.
7. Hon. Jude Njomo, M.P.
8. Hon. Sarah Paulata Korere, M.P.
9. Hon. Wangari Mwaniki, OGW, M.P.
10. Hon. James Gichuki Mugambi, MBS, M.P.
11. Hon. Paul Abuor, M.P.
12. Hon. Danson Mwashako, M.P.
13. Hon. (CPA) Francis Kuria Kimani, M.P.
14. Hon. Mercy Wanjiku Gakuya, M.P.
15. Hon. Samuel Atandi, M.P.
16. Hon. Masalino Arbelle, M.P.

ABSENT WITH APOLOGY:

1. Hon. (CPA) John Mbadi, EGH, CBS, M.P.
2. Hon. (CPA) Moses K. Lessonet, CBS, M.P.
3. Hon. Alfred Kiptoo Keter, M.P.
4. Hon. Richard Onyonka, M.P.
5. Hon. Badi Twalib, M.P.
6. Hon. Josephine Naisula Lesuuda, OGW, M.P.
7. Hon. Florence C. K. Bore, M.P.
8. Hon. (Eng.) Mark Nyamita, M.P.
9. Hon. Joseph Manje, M.P.
10. Hon. Sakwa Bunyasi, M.P.
11. Hon. Fatuma Gedi Ali, CBS, M.P.

PARLIAMENTARY BUDGET OFFICE

- | | |
|-----------------------|-----------------------------|
| 1) Dr. Martin Masinde | Senior Deputy Director, PBO |
| 2) Ms. Lucy Makara | Deputy Director, PBO |
| 3) Ms. Julie Mwithiga | Fiscal Analyst 1 |

COMMITTEE SECRETARIAT

- | | |
|------------------------|------------------------------|
| 1) Mr. Joseph Ndirangu | Fiscal Analyst I/ Lead Clerk |
| 2) Mr. Danson Kachumbo | Fiscal Analyst I |
| 3) Mr. Sidney Lugaga | Legal Counsel |
| 4) Mr. Eugene Luteshi | Audio Officer |
| 5) Mr. George Mbaluka | Office Attendant |
| 6) Mr. Collins Oluoch | Legal Counsel Intern |
| 7) Mr. Bismark Lumumba | Legal Counsel Intern |
| 8) Mr. Dorothy Kandie | Legal Counsel Intern |
| 9) Mr. Rakia Ibrahim | Legal Counsel Intern |

AGENDA

1. Preliminaries & Confirmation of Agenda
2. *Adoption of the Committee draft report on the County Governments Grant Bill (Senate Bill no. 35 of 2021)*
3. Any Other Business (A.O.B)

MIN. NO. NA/BAC/2021/307: PRELIMINARY

The Vice-Chairperson welcomed the committee members to the meeting and called the meeting to order at 10.00 a.m. Thereafter, led the committee through a word of prayer.

MIN. NO. NA/BAC/2021/308: CONFIRMATION AND ADOPTION OF THE PREVIOUS MINUTES

The committee confirmed and adopted minutes in the following manner:

- i. Minutes to the 44th sitting* were proposed by *Hon. Samuel Atandi, M.P.* and seconded by *Hon. James Gichuki Mugambi, MBS, M.P.*
- ii. Minutes to the 45th sitting* were proposed by *Hon. Wangari Mwaniki, M.P.* and seconded by *Hon. Sarah Paulata Korere, M.P.*

MIN. NO. NA/BAC/2021/309: ADOPTION OF THE COMMITTEE DRAFT REPORT ON THE COUNTY GOVERNMENTS GRANT BILL (SENATE BILL NO. 35 OF 2021)

The vice-chairperson invited the Parliamentary Budget Office to submit the draft report. After deliberations, the Committee adopted the report with the following observations and recommendations

COMMITTEE OBSERVATIONS

In considering the Bill, the Committee observed as follows:

1. If the Bill is passed as proposed by Senate would be against Justice Makau ruling on Petition 252 of 2016 on 3rd December 2020. The ruling noted that National Government cannot appropriate any funds meant for counties pursuant to Article 187 of the Constitution.
2. The clauses that make it an annual Bill should be removed. This will enable the Bill to provide for disbursement of conditional and unconditional grants to counties pursuant to Article 207 of the Constitution; and
3. The Bill provides for the procedures for implementation, reporting and accountability of the funds including the roles and responsibilities of various institutions.

COMMITTEE RECOMMENDATION

The Committee having considered the County Governments Grant Bill, 2021 (Senate Bill No. 35 of 2021) recommends that the House approves **with amendments as proposed in the schedule below.**

SCHEDULE OF PROPOSED AMENDMENTS

The Committee proposed the following amendments to be considered by the House in the Committee Stage:

Title of the Bill	‘County Governments Additional Allocations Bill, 2021’
Clause 2	Interpretation of the various terms
Object of the Bill	Amend clause 3(a) by deleting the word “FY2021/22” to remove the annual enactment of the Bill

Delete and replace clause 4 as follows:

- a) With additional allocations shall be funds agreed upon during the consideration of Budget Policy Statement (BPS) and shall comprise of resources required for transfer of functions to counties from the National Government as provided for under Article 187 of Constitution; Conditional or unconditional allocations as per Article 202; Loans and Grants from development partners;
- b) The National Treasury shall facilitate the agreements between the county governments and development partners, and these shall be tabled in Parliament before inclusion in the Budget Policy Statement;
- c) The additional allocations with respect to loans and grants, the National Treasury shall include in the Budget Policy Statement the indicative amounts to County Governments on loans and grants; and
- d) These additional allocations to counties shall be included in the respective County Governments Appropriations Bills

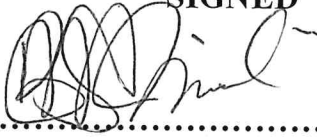
Delete Clauses 8 (a) and (b).

Delete amendment to section 191(b) of PFMA on Public Participation on conditional grants.

MIN.NO.NA/BAC/2021/310: ANY OTHER BUSINESS & ADJOURNMENT

There being no other matters to consider, the meeting was adjourned at 1.00 p.m.
The next sitting will be communicated later.

SIGNED



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HON. BENARD SHINALI, M.P.

VICE CHAIRPERSON, BUDGET AND APPROPRIATIONS COMMITTEE

23 / 11 / 2021

.....

DATE

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY
TWELFTH PARLIAMENT – FIFTH SESSION

In the matter of consideration by the National Assembly:-
The County Governments Grants Bill (Senate Bill No. 35 of 2021)

PUBLIC PARTICIPATION/SUBMISSION OF MEMORANDA

Article 118(1)(b) of the Constitution provides that, "Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees". Further, the National Assembly Standing Order 127(3) provides that, "the Committee to which a Bill is committed shall facilitate public participation and take into account the views and recommendations of the public when the Committee makes its report to the House".

The County Governments Grants Bill (Senate Bill No.35 of 2021) introduced by the Chairperson, Select Committee on Budget and Appropriations, Hon. Kanini Kega, CBS, MP, seeks to provide for additional allocations to county governments for the 2021/22 financial year and the responsibilities of both the national government and county governments pursuant to such allocations.

The Bill has undergone First Reading pursuant to Standing Order 127(1) of the National Assembly and has been committed to the **Select Committee on Budget and Appropriations** for consideration and thereafter report to the House.

Pursuant to the provisions of Article 118(1)(b) of the Constitution and Standing Order 127(3), the Committee invites interested members of the public to submit any representations they may have on the said Bill.

Representations or written submissions may be forwarded to the Clerk of the National Assembly, P.O. Box 1842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or mailed to clerk@parliament.go.ke; to be received on or before **Tuesday, 9th November, 2021 at 5.00 pm.**

Copies of the Bill are available at the National Assembly Table Office or be accessed from the parliamentary website www.parliament.go.ke/the-national-assembly/house-business/bills.

MICHAEL R. SIALAI, CBS
CLERK OF THE NATIONAL ASSEMBLY

3rd November, 2021



COUNCIL OF GOVERNORS

Westlands Delta House 2nd Floor, Waiyaki Way.
P.O. BOX 40401-00100,
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Our Ref: COG/6/11 Vol.3 (27)

9th November, 2021

Mr. Michael Sialai
Clerk of the National Assembly
Parliament Buildings
NAIROBI

Dear Mr. Sialai

LEGISLATIVE MEMORANDUM ON THE COUNTY GOVERNMENTS GRANTS BILL, (SENATE BILL NO. 35 OF 2021)

The above subject matter refers.

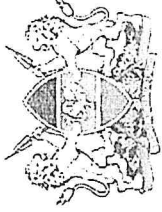
The Council of Governors appreciates that in realizing the objects of Devolution, the principles of consultation and cooperation under Article 6(2) and Article 189 of the Constitution are inevitable.

Based on these principles, the Council of Governors has reviewed the County Governments Grants Bill, (Senate Bills No. 35 Of 2021), and has hereby attached the memorandum for your consideration.

Please be assured of our highest esteem and consideration.

Yours sincerely,

Mary Mwiti
Ag. Chief Executive Officer



COUNCIL OF GOVERNORS

LEGISLATIVE MEMORANDUM ON THE COUNTY GOVERNMENTS (THE COUNTY GOVERNMENTS GRANTS BILL) BILL, 2021

From
THE COUNCIL OF GOVERNORS

MEMORANDUM ON (THE COUNTY GOVERNMENTS GRANTS) BILL, 2021

The Council of Governors,

In recognition of Article 1(4) of the Constitution of Kenya, that sovereign power of the people is exercised at the national level and the county level;

In further recognition of Article 6 (2) that governments at the national and county levels are distinct; and

Aware of the need for coordination and consultation between the National Government and County Governments to ensure that legislation responds to the key issues facing devolution, and further reflects the spirit and objects of devolution.

Specific Concerns

Section	Provision	CoG's proposal	Rationale/Justification
Short Title	The County Government Grants Bill	The County Government Conditional and Non-Conditional Grants Bill	Grants include Conditional, Non-conditional and Appropriation in Aid. The bill is envisaged to facilitate disbursement and expenditure of Conditional and Non-Conditional Grants as provided for in Article 202(2).
Interpretation		Introduce a new clause to define the following terms: "Authorised Officer" means the Principal Secretary, National Treasury	It is imperative for the Bill to define who the authorizing officer is.

		<p>“Appropriation by County Assembly” means inclusion of Conditional Grant and Non-Conditional Grant in the County Appropriation Act for the purpose of expenditure and accountability.</p>	<p>County Appropriation Act is the legal instrument that guides utilization of funds at County level, and which the Controller of Budget can rely on in approving requisition for Conditional and Non conditional funds by County Governments.</p> <p>Further, appropriation in this case does not imply reallocation of conditional and non-conditional from the activities directly channeled to.</p>
<p>Clause 3 Object</p>	<p>3(a) The object of the Act is to - Provide, pursuant to Article 187(2) and 202(2) of the Constitution, for conditional allocation for Financial Year 2021/2022; and</p>	<p>To amend to include Article 190 (1) as follows: “Provide, pursuant to Article 187(2), 190(1) and 202(2) of the Constitution, for conditional allocation for Financial Year 2021/2022;”</p>	<p>In line with the legislative obligation of Parliament to ensure that County Governments have adequate support to enable them perform their functions.</p>
<p>Clause 4 Intergovernmental agreements</p>	<p>4(3) Where a county government intends to enter into an agreement under subsection (1), the county executive committee member shall submit the agreement to the respective County Assembly for approval. 4(4) The County Assembly shall, within seven days of submission of an agreement under</p>	<p>Delete clause 4(3-5)</p>	<p>The County Assembly has no role in the approval of intergovernmental agreements.</p>

		<p>subsection (3), approve or reject the agreement.</p> <p>4(5) Where a County Assembly fails to consider an agreement under subsection (3) within seven days, the agreement shall be deemed to be approved</p>	
<p>Clause 6</p>	<p>Amend to delete the County Gazette</p>	<p>An agreement under section 4 shall be—</p> <p>(b) published in the Kenya Gazette and county gazette</p>	<p>The Office of the County Printer has not yet been established in Law and therefore it will not be possible to comply with the specific provision.</p>
<p>Clause 8(3)</p>	<p>Introduce a new clause 8(3) (a) to read as follows;</p> <p>County Assembly shall include County Government's allocation under subsection (1)(a) in County Appropriation Act.</p> <p>Rearrange Clause 8 (3)(a) to read (3)(b) and (3)(b) to read as (3)(c)</p>	<p>8(3)</p> <p>(3) Each government's county allocation under subsection (1)(a) shall—</p> <p>) be transferred to the respective County Revenue Fund, in accordance with a payment schedule published in the Gazette by the Cabinet Secretary</p> <p>In accordance with section 17 of the Public Finance Management Act No. 18 of 2012.</p> <p>; and</p> <p>(b) Only be accessed by each county government</p>	<p>To enable County Governments to access and utilize the funds.</p>

<p>Clause 8(6)</p>	<p>after meeting conditions set by the Cabinet Secretary responsible for that function at the beginning of the financial year.</p>	<p>8 (6)A county governments' allocation under subsection (2) shall be transferred to the respective County Revenue Fund in accordance with a payment schedule published in the Kenya Gazette by the Cabinet Secretary in accordance with section 17 of the Public Finance Management Act.</p>	<p>Introduce a new clause to read as follows; 6(1) County Assembly shall include County Government's allocation under subsection (2) in County Appropriation Act.</p>	<p>To enable County Governments to access and utilize the funds.</p>
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OFFICE OF THE CONTROLLER OF BUDGET



Tel: 020 2211068, 0738466721, 0709910000
 Email: cob@cob.go.ke/info@cob.go.ke
 Website: www.cob.go.ke



Bima House, 12th Floor
 Harambee Avenue
 P.O.Box 35616-00100
 Nairobi Kenya

CONTROLLER OF BUDGET COMMENTS TO THE COUNTY GOVERNMENTS GRANTS BILL, 2021

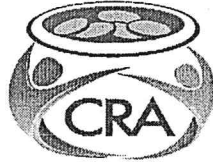
Clause	Provision	Controller of Budget Proposal	Rationale/Justification
<p>Interpretation</p>	<p>Definition of conditional allocations “Conditional allocations” means additional resources allocated to county governments from the National Government’s share of revenue or in the form of loans and grants form development partners;</p>	<p>Amend the term “conditional allocations” to “additional allocations” and define it mean “additional resources allocated to county governments from the national government’s share of the revenue, either conditionally or unconditionally</p>	<p>The bill should exclude conditional allocations outside national government share and loans and grants.</p> <p>To align this with Article 202(2) of the Constitution and Section 138 of the Public Finance Management Act(PFMA).</p> <p>Article 202(2) provides that a County Government may be given conditional or unconditional allocations from the national government’s share of revenue. While Section 138 of PFMA defines “grants” to mean “</p> <p><i>The provision of financial or other assistance by a development partner which is not repayable and — (i) under which public money is paid to or</i></p>

			<p>used by a grant recipient; (ii) which is intended to finance or facilitate the development of projects or delivery of services or otherwise assist the grant recipient to achieve goals that are consistent with the policy objectives of the national government; and (iii) under which the grant recipient is required to act in accordance with any terms or conditions specified in a grant agreement.</p>
<p>Interpretation</p>	<p>Introduce the definition of the term “grants”</p>	<p>‘Grants’ Define grant by aligning it to Section 47(1) and 138(1) of the Public Finance Management Act which defines the term grant</p>	<p>To promote legislative harmony.</p> <p>grants” to mean “</p> <p><i>The provision of financial or other assistance by a development partner which is not repayable and — (i) under which public money is paid to or used by a grant recipient; (ii) which is intended to finance or facilitate the development of projects or delivery of services or otherwise assist the grant recipient to achieve goals that are consistent with the policy objectives of the national government; and (iii) under which the grant recipient is required to act in accordance with any terms or conditions specified in a grant agreement.</i></p>
<p>Clause 3 (b)</p>	<p>Object of the Bill</p>	<p>Introduce a third object to</p>	<p>To provide for the facilitation of loans and grants</p>

			provide for the facilitation of loans and grants	and to differentiate the objective 3 (a) from 3(b)
4(2) (b), (e) (j)	Conditional allocations to county governments		The clauses make reference to "credit" and not "loans or grants" The clause introduces the use of the term 'credit' which has not been defined in the Bill.	Synchronize the use of words for uniformity and clarity. In the alternative provide for the definition of the term "credit"
5	Reports on actual transfers		Amend by changing "conditional allocations" to "additional allocations" And provide for reporting on loans and grants which should be aligned to the provisions of section 138 of the PFMA	The scope of reporting for loans and grants has been provided for under section 138 of the PFMA and should hence be differentiated from the additional allocations from the national share of revenue.
7	Quarterly and annual reporting		Introduce a new clause 7(2) to ensure that the reports are submitted to the Controller of Budget.	Article 228(6) mandates the Controller of Budget to report on budget implementation to Parliament. The reports under clause 7 will enable the Controller of Budget to comprehensively report to Parliament on budget implementation and give recommendations to Parliament on measures to improve budget implementation.
8(a), (b)	The use of the word "conditional allocation" should be limited to the proposed definition of conditional allocation		Consider amending " a bill for the allocation and transfer of conditional or unconditional allocations" to reflect the proposed definition in the interpretation section	To align with the provisions of Article 202(2) of the Constitution and Section 138 of the PFMA

Signed on this day of2021

CONTROLLER OF BUDGET



**PROPOSED AMENDMENTS TO THE COUNTY GOVERNMENTS GRANTS
BILL, 2021**

1. Introduction

As per its long title, the Bill proposes to provide for additional allocations to county governments for the 2021/2022 financial year; the responsibilities of national and county governments pursuant to such allocations; and for connected purposes.

The despite some amendments to the Bill while at the Senate, the Commission notes the following issues in the Bill that still need clarity-

2. General Comments:

The Bill under clause 2 defines “*conditional allocation*” to mean *additional resources allocated to county governments from the National Government’s share of revenue or in the form of loans and grants from development partners*. The Bill under clause 3 outlines one of the objects of the Bill as to provide, pursuant to Article 202 (2) of the Constitution, for conditional allocations for the financial year 2021/2022. There is need to separate matters loans and grants from additional allocations which are mixed up in this definition of the Bill. Loans or grants do not form part of conditional grants to counties as elaborated below-

Rationale:

- **Article 202** provides that county governments may be given additional allocations from the national government’s share of the revenue either conditionally or unconditionally. Such additional allocations are part of the National Government’s equitable share drawn from the Consolidated Fund. Loans and grants from donors towards county governments should therefore be handled separately out of the Consolidated Fund and not mixed with such funds. Moreover, this Bill should be grounded on the

PFMA. Marrying them in one definition as per the Bill creates confusion and they should be tackled separately.

3. Other Comments on the Bill-

Number	Clause	Recommendation	Justification for Change
1.	<p>Clause 4 <i>Include a requirement for the Commission on Revenue Allocation to be consulted</i></p>	<p>CRA is required to make recommendations on such financial matters concerning county governments.</p>	<p>To align with Article 202 to promote equitability, Article 205 financial consultation and Articles 205 & 216 on CRA mandate to make recommendations on financial matters concerning county governments</p>
2.	<p>Clause 8 Section 191B <i>The county executive shall facilitate public participation on any agreement made pursuant to section 191A</i></p>	<p>There should be a provision specifying a set timeline prior to the signing of the agreement for such a public participation process to take place.</p>	<p>For clarity</p>



REPUBLIC OF KENYA
THE NATIONAL TREASURY & PLANNING

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FINANCE – NAIROBI
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THE NATIONAL TREASURY
P.O. Box 30007 - 00100
NAIROBI
KENYA

When replying please quote

Ref: MOF/TE 200/01 'D' (31)

Date: 12th November, 2021

Michael Sialai, CBS
Clerk of National Assembly
Parliament of Kenya.
Nairobi.

Dear *Sialai,*

**RE: APPOINTMENT OF REPRESENTATION TO THE MEETING WITH THE BUDGET
AND APPROPRIATIONS COMMITTEE**

Reference is made to letter No. NA/DCS//BAC/2021(035) dated 10th November, 2021 on the above subject matter. I have been invited to a meeting with the National Assembly Budget and Appropriations Committee to make a presentation on proposed amendments to specific clauses if any, to the County Governments Grant Bill (Senate Bill No. 35 of 202d1). The meeting is scheduled for **Monday, 15th November, 2021 at 10.00a.m** in the Mini Chamber, First Floor, County Hall, Parliament Buildings .

I will be out of office on official duties on this date and therefore, not in a position to attend the said meeting. The purpose of this letter is to seek your indulgence to request the committee to allow the Cabinet Secretary be represented by the **Principal Administrative Secretary, Amos N. Gathecha, EBS, ndc (K), who is currently acting for the Principal Secretary, in the meeting.**

Yours

[Signature]
HON. (AMB.) UKUR YATANI, EGH

CABINET SECRETARY/ THE NATIONAL TREASURY AND PLANNING

THE NATIONAL TREASURY & PLANNING



INTERNAL MEMORANDUM

OFFICE OF THE PRINCIPAL SECRETARY

To: Director General/PDMO
Director General/AS
Director General/PPPU
Director General /BFEA
Director General /PIPM
All Directors

PAS

DATE: October 29th, 2021

RE: ABSENCE FROM OFFICE

This is to inform you that I will be away on official duty from 29th October, 2021 to 15th November, 2021.

During my absence Mr. Amos Gathecha, EBS, Principal Administrative Secretary will be in-charge of the Affairs of the National Treasury.

JULIUS MUIA, PhD, CBS
PRINCIPAL SECRETARY/THE NATIONAL TREASURY

c.c. Cabinet Secretary/NT

Chief Administrative Secretary

Principal Administrative Secretary





REPUBLIC OF KENYA
THE NATIONAL TREASURY AND PLANNING

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THE NATIONAL TREASURY
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NAIROBI
KENYA

When Replying Please Quote

Ref. IGFR/CG/NA/A (22)

12th November, 2021

Mr. Michael Sialai, EBS
Clerk of the National Assembly
P.O. Box 41842 – 00100
Parliament Buildings
NAIROBI

Dear *Sialai,*

**RE: INVITATION TO ATTEND BUDGET AND APPROPRIATIONS
COMMITTEE MEETING TO DISCUSS THE COUNTY GOVERNMENTS
GRANTS BILL (SENATE BILLS NO. 35 OF 2021)**

Reference is made to your letter Ref. No. NA/DCS/BAC/2021(035) dated 10th November, 2021 on the above subject matter.

The High Court ruled on Petition No. 252 of 2016 that conditional grants should not be included in Division of Revenue Act and County Allocation of Revenue Act. Consequently, the Senate approved the Division of Revenue Bill, 2021 **without the conditional grants** and directed that a sub-committee looks into the legal framework for disbursing these conditional grants. The membership of the Committee was drawn from Parliament, Commission on Revenue Allocation, Controller of Budget, Council of Governors, the Attorney General and the National Treasury.

In compliance with the High Court ruling, the Division of Revenue Act, 2021 and County Allocation of Revenue Act, 2021 **do not include conditional grants**. In order to fill the gap, the Senate has originated a Bill No. 35 of 2021 to provide for a legal instrument for conditional grants.

In your letter, you invited the Cabinet Secretary to the National Treasury and Planning to the meeting with the Budget and Appropriations Committee to make presentation on specific amendments if any.

In view of the above, we have reviewed the bill and have following comments: -

I. Specific comments:-

- i) **Title:** - The Bill is titled County Governments Grants Bill. However, it is our considered opinion that the word grant has a limitation in its definition and maybe construed as “free money”. Section 138(1)(b) defines grants as ***“grant” means the provision of financial or other assistance by a development partner which is not repayable”***

In this regard, we are proposing the title of the Bill be changed to: ***“County Governments Additional Allocations Bill”***. This title is in line with Article 190 of the Constitution which provides that Parliament may legislate for additional support to county governments, in this case the support would be financial which may take the form of conditional or unconditional allocation. This proposed change will be in line with proposed consequential amendment of section 42 and 191 of PFMA to include additional allocation in section 8 (a) and (b) of the bill.

- ii) **Section 3 on Object of the Act:** -This Section provides that the Object of the resultant Act is to ***“provide, pursuant to Article 202 (2) of the Constitution, for conditional allocations for the financial year 2021/22”***.

However, in the High Court ruling on petition No. 252 of 2016, a determination was made that **conditional grants should be issued under Article 190 of the Constitution which is not referenced in this Bill** or through Intergovernmental Agreement as provided for in Article 187 Section 3 (a) and (b) on the object of this Act should be assessed against Article 114 (2) of the Constitution on Money Bills.

The other objective is to ***“facilitate the transfer of conditional allocations made to counties under this Act from the Consolidated Fund to the respective County Revenue Funds”***. However, and in line with the High Court determination that **County Assemblies should not appropriate for conditional grants, the Bill has not provided for funds flow from the respective County Revenue Fund Accounts** to the operational accounts of the County Governments and for expenditures on the intended purpose.—The provision should take in to account section 109 (3) of the PFMA provides that, ***“The County Treasury shall administer the County Revenue Fund and ensure that the county government complies with the provisions of Article 207 of the Constitution”***

- iii) **Section 4(3)(b) on Conditional allocations to county government:** Section 4(3) (b) provides that conditional grants can only be accessed by each county government after meeting conditions set by the Cabinet Secretary responsible for that function at the beginning of the financial year. It is our considered opinion that the words ***“set by the Cabinet Secretary responsible for the function”*** should be replaced by the following words ***“Conditions set out in the agreement and as approved by respective County Assembly”***. This is because the conditions will be set through a consultative process

by different stakeholders, and once they are agreed upon, they will be included in an agreement and approved by respective county assemblies.

Section 7 (d) also compels the County Treasury to include in its report any material *problems* faced in the expenditure of the allocated conditional grants and compliance with the conditions set therein. In our opinion it's not clear what kind of problems the section anticipates nor the scope of what may be deemed a problem. Our recommendation is that the term "problem" be replaced with the term "challenges" or "risks" because challenges are specific and can have specific mitigation measures. We also propose that the section be modified to require that as the County Treasury reports on challenges, they also include the mitigations measures that were put in place.

We are also of the opinion that this section should also compel the County Treasury to have in its report both financial and non-financial information with regard to intended objectives of the grants.

This section can also be cross referenced to the Regulation 131 (1) (d) on minimum requirements to be contained in reports of the accounting officer of the county governments.

- iv) **Section 7 on reporting:** we propose that this section should report information on the following: -
- (a) financial and non-financial information with regard to intended objectives of the grants; mitigations measures that were put in place in case of material problems identified in (d); and
 - (b) all the requirements of Regulation 131 (1) (d) of the Public Finance Management (National Government) Regulations, 2015.
- v) **Section 8 (a) on Consequential amendments:** - The proposed new section 42 b (1) of the Public Finance Management Act, 2012 requires the Cabinet Secretary while introducing to Parliament the Budget Statement, Division of Revenue Bill and County Allocation of Revenue Bill to also introduce *a Bill for the allocation and transfer of conditional or unconditional allocations made under Article 202(2) of the Constitution* prepared by the National Treasury as provided in this Act for the financial year to which that Budget relates. This section only refers to additional allocation from the National Government share of revenue envisaged in Article 202 (2) and doesn't cover allocations from loans and grants. There is therefore need to reference Article 190 of the Constitution to include support to county governments through conditional grants financed from proceeds of loans and grants by development partners.

You may also consider anchoring the Bill under auspices of *Article 190* of the Constitution as guided by the High Court in its ruling of *petition No. 252 of 2016*. This would cater for financial additional support to county governments through conditional and unconditional allocations whose sources maybe as provided for in

Article 202(2) of the Constitution and from proceeds of loans and grants by development partners.

- vi) **Section 8 (c) on Intergovernmental Agreements:** Section 8 (c) provides that *“The National Treasury shall enter into an agreement with the respective county government for the transfer of the respective conditional allocation made to the county government pursuant to this Act”*

Regulation 129 to 135 of the PFM (National Government) Regulations, 2015 provides for among others the duties of the accounting officers of the national and county governments on Intergovernmental Transfers. In this regard, **it is our considered opinion that Intergovernmental agreements should be entered into by the respective county governments and the respective Ministries, State Departments and Agencies (MDAs) responsible for the conditional grants and to whom they are appropriated.** The role of the National Treasury should be transfer of conditional grants from the Consolidated Fund to respective County Revenue Fund Accounts, so long as there are written instructions from the national government accounting officer responsible, confirming that the conditions set thereof have been met. The other role of the National Treasury is to sign financing agreements with respective development partners where a conditional grant is financed using a loan or a grant.

Section 8 (c) should clarify the role of County Assemblies in managing conditional grants including approval of budgets funded by conditional grants. The Attorney General’s legal opinion on this issue will greatly be appreciated. In addition, we propose that the Bill provides that the County Assemblies approve Intergovernmental agreements with or without amendments instead of rejecting them.

- vii) **Section 8 (c) on Public Participation:** Section 8 (c) on public participation which provides that the county executive shall facilitate public participation on Intergovernmental Agreements. However, **the provision does not provide for timelines when public participation should be conducted** i.e., should it be before submitting to County Assembly or after. Secondly, can the County Assemblies also conduct the participation before approving the agreements?

- viii) **Section 8(c) on Submission of Agreements to Senate:** -Section 8(c) compels the National Treasury to submit the agreements to the Senate within 7 days after they been dully entered into. However, as discussed above on section 8 (c) of the Bill, **it is our considered opinion that the responsibility for submission of these agreement to the Senate should be placed on the respective MDAs responsible for the conditional grants.**

Section 8(c) requires the National Treasury to publish and publicize all agreements entered into. It is our considered opinion that this section should be modified to provide that all MDAs to submit to the National Treasury all approved agreements for consolidation and facilitate release of funds upon notification by the MDAs once the set conditions are met. The National Treasury can then publish and publicise the consolidated agreements.

II. General comments

1) Will the County Governments Grants Bill (the Bill) be a Money Bill?

From the definition of money Bill, this can be a money Bill since the only one excluded by the Constitution is Division of Revenue Bill (DoRB) and County Allocation of Revenue Bill (CARB).

2) Is there a risk if the content and frequency is not anchored on any law?

We are of the view that the conditional grants are already provided for in the section of the 38(1)(b)(iii) and 130(1)(b) (iii PFMA). What is lacking is the regulations to operationalize those sections of PFM to provide for budgeting, funds flow, form, frequency, content and timing as you have rightly put it. We therefore propose developments of required e regulations to provide for the gaps as well as provide for conditional grants both donor funded and government of Kenya funded.

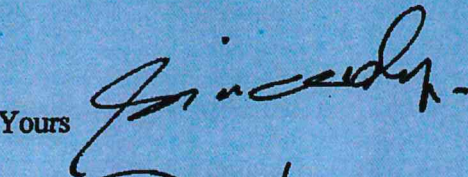
3) The Originator of a Bill on conditional grants

Since the bill is dealing with mainly conditional allocations in line with Article 202 (2) and Article 190 of the Constitution and these were operationalized through PFMA and IGRA, the originators of the required legislation should be the same originators of the two Acts depending on the legislation required

4) At what time will the allocation of the conditional grants be determined

The draft bill provides that the County Governments Grants Bill will be submitted together with DORB and CARB, so does this mean that they will be determined at the same time?

Yours



HON. (AMB.) UKUR YATANI, EGH
CABINET SECRETARY/NATIONAL TREASURY AND PLANNING

