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NATIONAL ASSEMBLY BILLS, 2024

NAIROBI, 8th March, 2024

CONTENT

Bill for Introduction into the National Assembly—

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THE DIVISION OF REVENUE BILL, 2024

ARRANGEMENT OF CLAUSES

Clause

THE DIVISION OF REVENUE BILL, 2024

A Bill for

AN ACT of Parliament to provide for the equitable division of revenue raised nationally between the national and county governments in the 2024/25 financial year, and for connected purposes

ENACTED by Parliament of Kenya, as follows—

1. This Act may be cited as the Division of Revenue Act, 2024. Short title.

2. In this Act, unless the context otherwise requires, "revenue" has the meaning assigned to it under section 2 of the Commission on Revenue Allocation Act. Interpretation. Cap. 428

3. The object and purpose of this Act is to provide for the equitable sharing of revenue raised nationally between the national and county governments for the 2024/25 financial year in accordance with Article 203(2) of the Constitution. Object and purpose of the Act.

4. Revenue raised nationally in respect of the 2024/25 financial year shall be shared equitably among the national and county governments as set out in the Schedule to this Act. Allocations to national and county governments.

5. (1) If the actual revenue raised nationally in the financial year falls short of the expected revenue set out in the Schedule, the shortfall shall be borne by the national government. Variation in revenue.

(2) If the actual revenue raised nationally in the financial year exceeds the projected revenues set out in the Schedule, the excess revenue shall accrue to the national government, and may be used to reduce borrowing or pay debts.

SCHEDULE (s.4)

ALLOCATION OF REVENUE RAISED NATIONALLY BETWEEN THE NATIONAL GOVERNMENT AND COUNTY GOVERNMENTS FOR THE 2024/25 FINANCIAL YEAR

Type/level of allocation	Amount in KSh.	Percentage (%) of 2020/21 audited and approved Revenue i.e. KSh. 1,570,562,945,014
A. Total Sharable Revenue	**2,948,123,505,582**	
B. National Government	2,549,153,902,710	
C. Equalization Fund	7,852,814,725	0.50%
D. County equitable share	391,116,788,147	24.90%

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to provide for the equitable division of revenue raised nationally among the national and county levels of government as required by Article 218 of the Constitution in order to facilitate the proper functioning of governments and to ensure continuity of service delivery to the citizens.

Clauses 1 and 2 of the Bill provide for the short title of the Bill and the interpretation of terms used in the Bill, respectively.

Clause 3 of the Bill contains the provisions on the objects and purpose of the Bill.

Clause 4 of the Bill prescribes the allocations for the National Government and the county governments from the revenue raised nationally for the 2024/25 financial year.

Clause 5 of the Bill outlines the mechanisms for adjusting for variations in revenues emanating from revenue performance during the financial year in which this Bill relates to.

Dated the 7th March, 2024.

NDINDI NYORO,
Chairperson, Budget and Appropriations Committee.

EXPLANATORY MEMORANDUM TO THE DIVISION OF REVENUE BILL, 2024

Background

1. This memorandum has been prepared as an attachment to the Division of Revenue Bill (DoRB), 2024 in fulfilment of the requirements of Article 218(2) of the Constitution and section 191(5) of the Public Finance Management Act (Cap. 412A).

2. Article 218(2) of the Constitution requires that the Bill be submitted to Parliament every year together with a memorandum explaining:

(a) The proposed revenue allocation set out in the Bill;

(b) The extent to which the Bill has taken into account the provisions of Article 203(1) of the Constitution; and

(c) A summary of any significant deviation from the recommendations of the Commission on Revenue Allocation (CRA), with an explanation for each such deviation.

3. Section 191(5) of the Public Finance Management Act (Cap. 412A) requires that the Bill be accompanied by a memorandum which explains:

(a) how the Bill takes into account the criteria listed in Article 203(1) of the Constitution;

(b) the extent of the deviation from the Commission on Revenue Allocation's recommendations;

(c) the extent, if any, of deviation from the recommendations of the Intergovernmental Budget and Economic Council; and

(d) any assumptions and formulae used in arriving at the respective shares mentioned in subsections (2) and (3).

Explanation of the Allocations to the National and County Governments as Proposed in the Bill

County Governments' Equitable Share

4. The Bill proposes to allocate county governments KSh. 391.1 billion for the financial year 2024/25 as equitable share of revenue raised nationally, which is an increase from a base of KSh. 374.5 billion allocated in the financial year 2023/24.

5. In FY 2023/24, the Division of Revenue Act, 2023, allocated KSh. 385.4 billion to county governments as equitable share. This

allocation included KSh. 10.9 billion being proceeds from the Road Maintenance Fuel Levy (RMFL) and KSh. 425 million for Transfer of Library Services. The allocation of KSh. 425 million was attendant resources for the personnel emoluments relating to the library services transferred from the Kenya National Library Services in FY 2022/23 to the county governments.

6. The RMFL, which was initially a conditional allocation to county governments for maintenance of county roads, was folded up to be part of county governments equitable share in FY 2021/22. However, the national and county governments coordinating Summit meeting held on 10th – 12th February, 2023 resolved that RMFL allocation to counties shall be considered in FY 2024/25 through a restructured process. Further to this, a consensus has been built that attendant resources for RMFL be transferred to county governments as conditional allocations beginning FY 2024/25.

7. Taking into account these policy developments, the equitable share base has been revised from KSh. 385.4 billion allocated to counties in FY 2023/24, by netting off KSh. 10.9 billion related to RMFL to KSh. 374.5 billion.

8. *The DORB, 2024* has proposed an allocation of Kshs. 2,549.1 billion to the National Government; and KSh. 391.1 billion to county governments in FY 2024/25, translating to an increase of KSh. 16.6 billion (see Table 1)

Table 1: Equitable Revenue Share Allocation to County Governments, FY 2024/25

BUDGET ITEM	**Amount KSh. Million)**
1. Baseline (i.e. allocation in the previous FY 2023/24)	385,425
Less:	
2. Adjustment for RMFL	10,933
3. Adjusted Equitable share Base (1-2)	374,492
Add:	
4. Adjustment for Revenue Growth	16,625
Equitable Revenue Share allocation for FY 2024/25 (3+4)	**391,117**

Source: National Treasury

9. The proposed county governments' equitable revenue share allocation of KSh. 391.1 billion is informed by the following factors:

(a) Trends in the performance of revenue (this was taken into consideration in determining the KSh. 16.6 billion increase in equitable share of revenue in FY2024/25);

(b) Increased expenditures for National Government for purposes of debt servicing coupled with a weakening shilling against the dollar;

(c) The Government commitment to implement a fiscal consolidation plan targeting to reduce the fiscal deficit to 3.9 percent of GDP in FY 2024/25. This is designed to slow down accumulation of public debt;

(d) Financing constraints due to limited access to finance in the domestic and international financial markets;

(e) Low ordinary revenue collections attributed to the ongoing geopolitical shocks. This includes the Russia-Ukraine war and the US Federal Reserve's interest rate hike which has negatively affected the dollar exchange rate against the Kenya shilling and the international debt market; and

(f) The National Government continues to solely bear shortfalls in revenue in any given financial year. However, County Governments continue to receive their full allocation despite the budget cuts affecting the National Government entities.

10. The above proposed Equitable Share for FY 2024/25 of KSh. 391.1 billion is equivalent to 24.90 per cent of the actual revenues raised nationally of KSh. 1,573,418 million for FY 2019/20, as per the records of the National Treasury. However, the last audited revenue raised nationally, as approved by the National Assembly is KSh. 1,673 billion implying an overstatement of KSh. 100 billion. This discrepancy has since then been raised with the Office of Auditor-General and the Office of the Auditor-General has since responded to the National Treasury modifying the audited revenues for the FY 2019/20, to KSh. 1,578,035,418,993. On revenue resulting from AMISON Grant of KSh. 4.6 billion, the Auditor-General has determined that it is within the purview of the National Treasury to determine the sharable and non-sharable revenue/receipts with regard to the UN/AMISOM receipts in accordance with legislation. The modification to KSh. 1,578,035,418,993 and the determination on the AMISON Grant of KSh. 4.6 billion has since been communicated to Parliament for a resolution of the House.

Evaluation of the Bill against Article 203(1) of the Constitution

11. Article 218(2)(b) of the Constitution requires division of revenue between the two levels of government and among county governments to take into account the criteria set out in Article 203(1) of the Constitution. The criteria include factors such as: national interest, public debt and other national obligations and needs of the disadvantaged groups and areas, among others.

12. Table 2 provides an assessment of the extent to which the requirements of Article 203(1) of the Constitution have been taken into consideration in estimating the division of revenue between the national and county levels of Government in the financial year 2024/25.

Table 2: Evaluation of the Bill against Article 203(1) of the Constitution

	ITEM DESCRIPTION (KSh. Millions)	FY2020/21	FY2021/22	FY2022/23	FY2023/24	FY2024/25
	ORDINARY REVENUE (EXCLUDING AIA)	**1,574,009**	**1,775,624**	**2,141,584**	**2,565,959**	**2,948,124**
A	**National Interest** [Article 203 (1)(a)]	**86,753**	**83,197**	**92,466**	**97,853**	**106,830**
	Enhancement of security operations (police vehicles, helicopters, defense etc.)	24,816	22,261	24,299	23,969	23,968
	National irrigation	11,375	11,199	16,800	24,654	28,415
	Youth Empowerment	16,127	14,548	15,290	13,087	15,243
	National social safety net - (for older persons, OVC, child welfare, presidential bursary, severe disability)	28,832	29,286	31,074	31,120	34,181
	Primary School Digital Literacy Program	1,500	1,800	-	-	-
	School Examination Fees (KSCE & KCPE & Grade 6 (CBC Examination)	4,103	4,103	5,003	5,023	5,024
B	**Public debt** (Art. 203 [1][b])	**829,906**	**1,174,013**	**930,354**	**1,187,784**	**1,352,610**
C	**Other National obligations** (Article. 203 [1][b])	**518,356**	**557,863**	**595,269**	**691,149**	**719,092**
	Pensions, constitutional salaries & other	124,451	136,978	145,951	211,019	181,393
	Constitutional commissions (Art. 248(2)) i.e., CRA, SRC, NLC, NPSC, IEBC, TSC	281,099	299,333	321,968	332,497	378,456
	Independent offices (Art. 248(3)) - i.e., AG & CoB	6,295	6,499	6,981	8,756	9,358
	Parliament	36,222	37,883	38,477	41,002	41,623
	Other constitutional institutions- State Law Office and DPP	8,154	8,371	8,713	10,054	10,188
	Other statutory bodies (e.g., EACC, RPP, WPA, CAJ, IPOA, NGEC)	6,674	7,036	8,462	9,002	9,101
	Judiciary	14,150	17,918	18,297	22,287	23,690
	Earmarked Strategic Interventions	41,311	43,845	46,420	56,532	65,283
D	**Emergencies** [Art. 203 (1)(k)]	**5,000**	**5,000**	**5,000**	**1,200**	**5,000**
	Contingencies	5,000	5,000	5,000	1,200	5,000
	Strategic grain reserve	-	-	-	-	-
E	**Equalization Fund** [Art. 203 (1) (g) and (h)]	**6,532**	**6,825**	**7,068**	**10,867**	**11,400**

	ITEM DESCRIPTION (KSh. Millions)	FY2020/21	FY2021/22	FY2022/23	FY2023/24	FY2024/25
	(a) Allocation in FY 2024/25					7,852.8
	(b) Arrears					3,547.1
F	**BALANCE TO BE SHARED BY THE 2 LEVELS OF GOVERNMENT**	**127,462**	**(51,274)**	**511,427**	**577,106**	**753,192**
	County Government allocation from revenue raised nationally of which; -	**330,231**	**377,537**	**375,654**	**391,661**	**410,177**
	(a) Equitable Share of Revenue	316,500	370,000	370,000	380,645	391,117
	(b) Additional conditional allocations financed from revenues raised nationally	13,731	7,537	5,654	11,016	19,060
G	**Balance left for the National Government**	**(202,769)**	**(428,811)**	**135,773**	**185,445**	**343,015**

13. **National Interest:** These are expenditures which relate to projects and programmes that:

- are critical to the achievement of the country's economic development objectives;
- potentially will have significant impact on social well-being of citizens;
- are anchored in the Vision 2030 and the Medium-Term Plan IV (2022 – 2027);
- are addressing the Bottom-Up Economic Transformation Agenda (BETA) of the Government;
- have significant resource investment requirements and whose benefits accrue nationwide; and
- are contained in the 2024 Budget Policy Statement.

The identified programmes of national interest include: activities aimed at enhancing security operations; national irrigation and fertilizer subsidy initiatives; Youth Empowerment; provision of national social safety net for vulnerable groups, and school examination fees subsidy. Allocations for these programs is expected to increase significantly from KSh. 97,854 million in 2023/24 to KSh. 106,830 million in 2024/25 on account of increased allocation to fertilizer subsidy, youth empowerment and National social safety net programs.

14. **Public Debt:** The Bill has taken into account public debt related costs. These comprise the annual debt redemption cost as well as the interest payment for both domestic and external debt. In financial year 2024/25, the allocation for payment of public debt related costs is expected to increase from KSh. 1,187,784 million allocated in financial year 2023/24 to KSh. 1,352,610 million allocated in the financial year 2024/25.

15. **Other National Obligations:** As provided for under Article 203(1) (b) of the Constitution, the Bill has also taken into account the requirements for other national obligations, such as, mandatory pension contributions and/or payments, financing for Constitutional Offices, including Parliament and Judiciary as well as expenses relating to other statutory bodies. These are estimated to cost KSh. 719,092 million in financial year 2024/25 up from KSh. 691,148 million the financial year 2023/24.

16. **Fiscal Capacity and Efficiency of County Governments:** The DORB, 2024 has proposed an increase of KSh. 16.6 billion equitable share to county governments. Similarly, it is expected that the county governments will also grow their Own Source Revenue (OSR). The National Treasury has further instituted measures to support county governments enhance their revenue collection. These include development of the National Rating Bill, the County Governments Revenue Raising Process Bill, the Model Tariffs and Pricing policy for adoption by county governments and recommendation for an Integrated County Revenue Management System. The National Treasury recommends that the Senate considers reinstating the fiscal effort parameter intended to enhance OSR collection by the Counties in order to incentivize the attainment of the intended objectives of the above measures.

17. County governments' ability to perform the functions assigned to them and meet other developmental needs of the county governments: As explained above, the baseline for the equitable share allocation for the financial year 2024/25 was derived from the ***Division of Revenue Act, 2023***. This base line is informed by costing of expenditure for devolved functions done at onset of devolution, which has been the basis for equitable share over the years.

18. **Developmental needs of the county governments and their ability to perform the functions assigned to them:** County governments are allocated equitable share of revenue which is an unconditional allocation to enable counties have autonomy to plan, budget and implement development projects based on county priorities and account for the same. In addition, Article 209 of the Constitution has assigned

counties revenue raising powers and as such counties are expected to improve and maintain sustained collection of their own source revenues.

19. Additionally, the equitable share to county governments is proposed to increase from an adjusted baseline of KSh. 374.5 billion in FY 2023/24 to KSh. 391.1 billion in FY 2024/25, an increase of KSh. 16.6 billion, which is meant to facilitate county governments enhance service delivery in performance of their assigned functions under the second part of the Fourth Schedule of the Constitution.

20. It should also be noted that, in order to balance between priority development and performance of the assigned functions, the Third Basis formula is premised on eight parameters which relate to devolved functions assigned to county governments in Part II of the Fourth Schedule of the Constitution. Accordingly, counties will have to allocate a prescribed minimum to specific functions contained in the Third Basis.

21. Thus, the proposed vertical division of revenue proposed in the Division of Revenue Bill, 2024, therefore, takes into account the cost of County Governments' developmental needs and it is expected that county governments will have the ability to perform the functions assigned and transferred to them as contemplated under Article 203(1) (f).

22. **Economic Disparities within and among counties and the need to remedy them:** Allocation of the sharable revenue (i.e., equitable share of KSh. 391.1billion) among counties is based on the Third-generation formula approved by Parliament in September, 2020 pursuant to provisions of Article 217 and paragraph 16 of the Sixth Schedule of the Constitution. The Third Basis formula which is applicable from FY 2020/21 to FY 2024/25 has taken into account the following parameters; (i) Population (18%); (ii) Health Index (17%); (iii) Agriculture Index (10%); (iv) Urban Index (5%); (v) Poverty Index (14%); (vi) Land Area Index (8%); (vii) Roads Index (8%), and; (viii) Basic Share index (20%). The horizontal distribution of County Governments' equitable revenue share allocation of Ksh.391.1 billion for FY 2024/25 shall be based on the Third Basis Formula. It should be noted that the Third basis formula applied in FY 2024/25, takes into account disparities among counties and aims at equitable distribution of resources across counties.

23. Further, it should be noted that KSh. 7.852 billion has also been set aside for the Equalization Fund in FY 2024/25, which for purposes of Division of Revenue in FY 2024/25 translates to 0.5 per cent of the actual revenue for FY 2020/21, as per the records of the National Treasury. This Fund is used to finance development programmes that aim at reducing regional disparities among beneficiary counties.

24. **Need for Economic Optimization of Each County:** Allocation of resources to County Governments was guided by the historical costing of expenditures for functions assigned to the County Governments. The equitable share of revenue allocated to County Governments in the FY 2024/25 is KSh. 391.1 billion, an allocation which is KSh. 16.6 billion higher than the adjusted allocation of KSh. 374.5 billion for FY 2023/24. This is an unconditional allocation which means that the County Governments can plan, budget and spend the funds independently. With the resources, therefore, County Governments are in a position to prioritize projects and consequently allocate resources, thus optimizing their potential for economic development.

25. **Stable and Predictable Allocations of County Governments' Vertical Share of Revenue:** The county governments' equitable share of revenue raised nationally has been protected from cuts that may be occasioned by shortfall in revenue raised nationally more so in the advent of the effects of projected global economic downturn in 2024. According to Clause 5 of the *Division of Revenue Bill (DoRB) 2024*, any shortfall in revenue raised nationally is to be borne by the National Government.

26. **Need for Flexibility in Responding to Emergencies and Other Temporary Needs:** Included in the equitable share of revenue for the National Government is an allocation of KSh. 5 billion for the Contingencies Fund established pursuant to Article 208 of the Constitution. This Fund will be used to meet the demands arising from urgent and unforeseen needs in all Counties that suffer from calamities in the manner contemplated under Sections 19 - 21 of the Public Finance Management Act, 2012. In addition, the Public Finance Management Act, 2012 requires each county government to set up a County Emergency Fund. County governments are, therefore, expected to set aside at least 2 % of their budget as part of their allocation for this purpose.

27. It should be noted that after taking into account all the other factors contemplated under Article 203(1) of the Constitution, including the needs of county governments, there is minimal resources left to finance other National Government needs, such as defense, roads, energy etc. In fact, this leaves a balance of KSh. 343.billion. This may occasion additional borrowing which may distort the fiscal framework already set out in the 2024 Budget Policy Statement.

Summary of Deviations from the Recommendations of the Commission on Revenue Allocations

28. The Division of Revenue Bill, 2024 proposes to allocate county governments an equitable share of KSh. 391.1 billion from the shareable revenue raised nationally. The CRA, on the other hand, recommends

County Governments' equitable share of revenue of KSh. 398.14 billion as an unconditional allocation to be shared among county governments on the basis of the formula for sharing revenue approved by Parliament under Article 217 of the Constitution. The difference between the proposed allocation by the DORB, 2024 and CRA is occasioned by:

(a) **Adjustment for the base of Equitable share with RMFL:** whereas *the DORB, 2024* has adjusted the base of Equitable share for FY 2023/24 of KSh. 385. 425 billion by netting off an allocation of KSh. 10.933 billion to RMFL in FY 2024/25 as reported by the Kenya Roads Board, CRA has adjusted it by . KSh. 9.8 billion allocated to RMFL in FY 2020/21; and which was then the amount converted to equitable share.

(b) **Adjustment for Revenue Growth:** - given the above difference in the base, *the DORB, 2024* has proposed an increase of KSh. 16.6 billion to county governments' equitable share, CRA has proposed an increase of KSh. 22.5 billion, in FY 2024/25.

29. Table 3 analyses the approaches by CRA and the DORB, 2024 in computing the proposal on the Division of Revenue between the national and county governments in FY 2024/25.

Table 3: Comparison of approaches towards recommendations of the Commission on Revenue Allocation and *the DORB, 2024* on the equitable share of revenue proposed for FY 2024/25

Expenditure Item	CRA A (Million)	*The DORB, 2024* B (Million)	Variance C=(A-B (Million))
Equitable Revenue Share FY 2023/24	385,425	385,425	-
Less			
1.1 Adjustment for RMFL	*9,800	**10,933	(1,133)
Adjusted Equitable Share Base (1-1.1)	375,625	374,492	1,133
Add:			
Increase in revenue Allocation	22,520	16,625	5,895
TOTAL EQUITABLE OF REVENUE =(2+3)	398,145	391,117	7,028

Source: The National Treasury

*Allocations to RMFL in FY 2020/21; and which was then the amount converted to equitable share while

** Projected allocations to RMFL in FY 2023/24 as reported by the Kenya Roads Board.

Assumptions Used in Arriving at the Respective Shares

30. In arriving at the above allocations, the DORB, 2024 was informed by the following assumptions:

(i) Funds for maintenance of county roads will be transferred as conditional grants.

(ii) The Equalization Fund arrears will be financed from the National Government's share of revenue.

(iii) That there will be no major economic shocks that may negatively affect revenue collection.

(iv) The government will mobilize enough resources from the domestic market to finance the deficit.

(v) Depreciation of the shilling against the dollar will stabilize.

(vi) Counties will continue to enhance their own sources of revenue to promote economic growth at the local levels.

Conclusion

31. The proposals contained in the Bill take into account the fiscal framework set out in the 2024 BPS and are intended to ensure fiscal sustainability specifically against the backdrop of escalating expenditure pressure on the fiscal framework occasioned by increase in Consolidated Fund Services (CFS) and the persistent under performance of the ordinary revenue.

32. The proposed equitable share allocated to county governments in the Division of Revenue Bill, 2024 has also taken into account the approved Third Basis Formula for Revenue Allocation. The proposed KSh. 391.1 billion allocations among county governments pursuant to Article 217 of the Constitution is equivalent to 24.90 per cent of the actual revenue for FY 2020/21, as per the records of the National Treasury and as confirmed by the Office of the Auditor General. This is above the minimum threshold required under Article 203(2) of the Constitution.