REPUBLIC OF KENYA

PARLIAMENT

NATIONAL ASSEMBLY BILLS

(*Bill No. 63 of 2019*)

THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL, 2019

(A Bill published in the Kenya Gazette Supplement No. 135 of 2nd August, 2019 and passed by the National Assembly, without amendments, on 18th September, 2019)

THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL, 2019

A Bill for

AN ACT of Parliament to amend the Public Finance Management Act, 2012

ENACTED by Parliament of the Republic of Kenya as follows—

Short title.

1. This Act may be cited as the Public Finance Management (Amendment) Act, 2019.

Insertion of a new section 191A in No. 18 of 2012.

2. The Public Finance Management Act, 2012 is amended by inserting the following new section immediately after section 191—

Access to the minimum revenue by county governments pending enactment of the Division of Revenue Act by Parliament.

191A. (1) The purpose of this section is to—

(a) put into place interim measures to allow county governments to access their minimum share of revenue already guaranteed and granted to them by Article 206(2) of the Constitution to enable them offer services to the public pending enactment of the Division of Revenue Bill by Parliament in the event the Bill is not enacted within the timelines specified in subsection (2).

(b) enable the county governments to access the guaranteed minimum allocation set aside by the Constitution of fifteen percent of national revenue based on the most recent audited accounts of revenue received as approved by the National Assembly pending the passage of the Division of Revenue Bill;

(c) enable the Controller of Budget to authorize withdrawals from the Consolidated Fund of the minimum amount of fifteen percent of all national revenue already charged on the Consolidated Fund by Article 203(2) of the Constitution;

(d) safeguard the fifteen percent of all national revenue guaranteed for allocation to the county governments from disagreement between the two Houses of Parliament and the subsequent defeat contemplated by Article 113(4) of the Constitution; and

(e) ensure the division of fifteen percent of all national revenue among county governments as contemplated under Article 203(2) of the Constitution in the event that the Division of Revenue Bill has not or is unlikely to be passed before the commencement of a financial year.

(2) In the event that the Division of Revenue Act for the next financial year has not been passed by Parliament by the tenth day of June of the preceding financial year, the Senate shall, by resolution, divide fifteen percent of all revenue collected by the national government among the county governments within seven days in accordance with the most recent resolution made by Parliament under Article 217 of the Constitution.

(3) The amount referred to in subsection (2) shall be calculated on the basis of the most recent audited accounts of revenue received by the national government as approved by the National Assembly.

(4) Within five days after the Senate passes a resolution under subsection (2) the Speaker of the Senate shall refer the resolution and a schedule outlining the division of the revenue among the county governments to the Speaker of the National Assembly.

(5) Within seven days after the Senate's resolution is referred under subsection (4), the National Assembly may consider the resolution, and vote to approve it, with or without amendment.

(6) If the National Assembly—

(a) does not vote on the resolution within seven days, the resolution shall be regarded as having been approved by the National Assembly without amendment; or

(b) votes on the resolution, the resolution shall have been—

(i) amended only if at least two-thirds of the members of the Assembly vote in support of the amendment; or

(ii) approved, in any other case.

(7) A resolution passed by Parliament under this section shall—

(a) be binding; and

(b) authorize the Controller of Budget to approve the disbursement of fifteen percent of all revenue collected by the national government to respective County Revenue Funds in accordance with the resolution.

(8) In passing the annual Division of Revenue Bill, Parliament shall take into account any revenue allocated to the county governments under this section.

(9) On the basis of the money disbursed to the County Revenue Fund under subsection (7)(b) each county government shall prepare and adopt its own interim budget and an interim appropriation Bill pending the enactment of the Division of Revenue Act and the County Allocation of Revenue Act by Parliament,.

(10) Upon passage of the Division of Revenue Act and the County Allocation of Revenue Act by Parliament, each county government shall pursuant to Article 224 of the Constitution prepare and adopt its own annual budget and appropriation Bill which shall take into account the interim budget and interim appropriation Bill under subsection (9).

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons for the Bill

Article 203(2) of the Constitution guarantees county governments an equitable allocation of a minimum of fifteen percent of all national revenue based on the most recent audited accounts of national revenue received as approved by the National Assembly. As such, this amount ought to be readily available to County Governments as it is already allocated by the Constitution and is readily ascertainable and ought not to be subjected to the bicameral legislative process between the two Houses of Parliament with the possibility of protracted disagreement between the Houses and possible defeat of the Division of Revenue Bill after referral to the mediation process.

The main objective of this Bill is to put into place interim measures to allow county governments to access their minimum share of revenue already guaranteed and granted to them by Article 206(2) of the Constitution to enable them offer services to the public pending enactment of the Division of Revenue Bill in the event the Bill is not enacted before the commencement of the next financial year.

This Bill is not in any way and must not be construed as an attempt to replace the Division of Revenue Bill contemplated by the Constitution. The Bill merely seeks to put into place interim measures for the financing of county governments in the event of delayed or protracted enactment of the Division of Revenue Bill by freeing the minimum amount already allocated to the County Government by the Constitution to flow to the Counties. The Bill provides for these interim measures to be regularized and be incorporated in the Division of Revenue Bill when it is finally passed by Parliament.

The Bill seeks to enable the county governments to access the guaranteed minimum allocation set aside by Article 206(2) Constitution by empowering the Controller of Budget to authorize withdrawals from the Consolidated Fund of this minimum amount already charged on the Consolidated Fund by Article 203(2) of the Constitution.

In addition, the Bill seeks to safeguard the fifteen percent of all national revenue guaranteed for allocation to the county governments from disagreement between the two Houses of Parliament and the possible defeat within the framework of Article 113(4) of the Constitution.

Clause 2 of the Bill proposes to insert a new section 191A in the Public Finance Management Act, 2012 to allow the Senate, by resolution, to divide the guaranteed fifteen percent among the county governments in the event that a Division of Revenue Bill has not been passed by the tenth day of June. This is in line with the Senate's role of approving the basis for allocation of national revenue among county governments every five years pursuant to Article 217 of the Constitution. Once the resolution is transmitted to the National Assembly, the Assembly must muster a two-thirds majority to amend the resolution and cannot reject the resolution. This is in line with the constitutional protections accorded to Special Bills concerning county governments under Article 110 of the Constitution.

The resolution as passed is to constitute Parliament's explicit authorization to the Controller of Budget to disburse funds to the county governments in time for the commencement of their financial year.

Statement as to whether the Bill concerns county governments

This Bill is a Bill concerning county governments in terms of Article110 of the Constitution.

The Bill relates to money which has already been charged on the Consolidated Fund by Article 203(2) of the Constitution.

I certify that this printed impression is a true copy of the Bill as passed by the National Assembly on Wednesday, 18th September, 2019.

Clerk of the National Assembly

Endorsed for presentation to the Senate in accordance with the provisions of Standing Order 142 of the National Assembly Standing Orders.

Speaker of the National Assembly