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THE COUNTY ALLOCATION OF REVENUE BILL, 2023

A Bill for

AN ACT of Parliament to provide for the equitable allocation of revenue raised nationally among the county governments for the 2023/2024 financial year; the responsibilities of National and county governments pursuant to such allocation; and for connected purposes.

ENACTED by Parliament of Kenya, as follows—

1. This Act may be cited as the County Allocation of Revenue Act, 2023.

Short title.

2. In this Act —

Interpretation.

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to finance; and

“revenue” has the meaning assigned to it under section 2 of the Commission on Revenue Allocation Act.

No.16 of 2011.

3. The object of this Act is to—

Object.

(a) provide, pursuant to Article 218(1)(b) of the Constitution, for the allocation of an equitable share of revenue raised nationally among the county governments, in accordance with the resolution approved by Parliament under Article 217 of the Constitution for the financial year 2023/24; and

(b) facilitate the transfer of allocations made to counties under this Act from the Consolidated Fund to the respective County Revenue Funds.

4. (1) Each county government’s equitable share of revenue raised nationally, on the basis of the revenue sharing formula approved by Parliament in accordance with Article 217 of the Constitution in respect of the financial year 2023/24 shall be as set out in Column H of the First Schedule.

Equitable allocation of county governments’ share of revenue.

(2) Each county government’s allocation under subsection (1) shall be transferred to the respective County Revenue Fund in accordance with a payment schedule

approved by the Senate and published in the gazette by the Cabinet Secretary in accordance with section 17 of the Public Finance Management Act.

No. 18 of 2012.

5. The budget ceilings for recurrent expenditure for county governments for the financial year 2023/2024 shall be as set out in the Second Schedule.

Budget ceilings for recurrent expenditure.

6. (1) Where a county government has transferred functions to the National Government pursuant to Article 187 of the Constitution, the county executive in consultation with the National Government shall determine the cost of the transferred functions.

Funding of transferred functions.

(2) The respective county assembly shall appropriate such monies as may be required for the transferred functions in accordance with the determination made under subsection (1) and the allocation shall not be less than the amount appropriated by the county assembly in the preceding financial year.

(3) The monies appropriated under subsection (1), shall be transferred to the National Government.

(4) A National Government entity to which a county government function has been transferred shall submit a quarterly report to the Senate and the respective county assembly on the status of the discharge of the devolved function.

(5) The Auditor-General shall, no later than three months after the end of a financial year, prepare a special audit report on the financial and non-financial performance of an entity to which a county government function has been transferred.

(6) A report prepared under subsection (5) shall be submitted to the Senate and the respective county assembly.

7. The Cabinet Secretary shall publish a monthly report on actual transfers of all allocations to county governments.

Report on actual transfers.

8. (1) Each county treasury shall reflect all transfers by the National Government to the county governments in its books of accounts.

Books of accounts to reflect National Government transfers.

(2) The estimates of revenue of each county shall separately reflect the total equitable revenue share under section 4 of this Act transferred to the County Revenue Fund.

(3) A county treasury shall, as part of its consolidated quarterly and annual reports required under the Public Finance Management Act, report on actual transfers received by the county government from the National Government, up to the end of that quarter or year in the format prescribed by the Public Sector Accounting Standards Board or in the absence of a format prescribed by the Board, in the format prescribed by the National Treasury.

No. 18 of 2012.

9. Despite the provisions of any other law, any serious or persistent non-compliance with provisions of this Act constitutes an offence under the Public Finance Management Act.

Financial misconduct.

No. 18 of 2012.

10. For the avoidance of doubt the allocation of the equitable share of revenue to county governments under section 4 of this Act shall be in accordance with the third determination of the basis of the division of revenue among counties approved by Parliament pursuant to Article 217(7) of the Constitution.

Applicable revenue-sharing formula.

FIRST SCHEDULE
(s.4(1))
Allocation of Each County Governments' Equitable Share of Revenue Raised Nationally in Financial Year 2023/24

S/No.	County	2022/2023		2023/2024					
		Total Equitable Share		0.5 (Allocation Ratio*)		(Equitable Share** -0.5 Allocation Ratio) *(Formula***)		Grand Total Equitable Share	
		Allocation ratio		Allocation ratio	Equitable Share	Allocation ratio	(Equitable Share** -0.5 Allocation Ratio) *(Formula***)		
		column C	column D	column E	column F	column G	column H	column I	column J=F+H
1	Baringo	1.72	6,369,394,592	1.61	2,547,825,000	1.80	4,099,946,186	1.72	6,647,771,186
2	Bomet	1.81	6,691,099,118	1.74	2,753,550,000	1.86	4,224,374,070	1.81	6,977,924,070
3	Bungoma	2.88	10,659,435,192	2.81	4,446,825,000	2.93	6,665,158,608	2.88	11,111,983,608
4	Busia	1.94	7,172,162,009	1.9	3,006,750,000	1.97	4,468,835,295	1.94	7,475,585,295
5	Elgeyo/Marakwet	1.25	4,606,532,480	1.22	1,930,650,000	1.26	2,870,803,188	1.25	4,801,453,188
6	Embu	1.39	5,125,243,762	1.36	2,152,200,000	1.40	3,189,610,744	1.39	5,341,810,744
7	Garissa	2.14	7,927,212,254	2.22	3,513,150,000	2.08	4,735,598,101	2.14	8,248,748,101
8	Homa Bay	2.11	7,805,353,300	2.13	3,370,725,000	2.09	4,757,662,250	2.11	8,128,387,250
9	Isiolo	1.27	4,710,388,265	1.34	2,120,550,000	1.22	2,778,491,209	1.27	4,899,041,209
10	Kajiado	2.15	7,954,768,229	2.03	3,212,475,000	2.24	5,087,738,576	2.15	8,300,213,576
11	Kakamega	3.35	12,389,412,168	3.29	5,206,425,000	3.39	7,706,221,262	3.35	12,912,646,262
12	Kericho	1.74	6,430,664,924	1.7	2,690,250,000	1.77	4,012,879,925	1.74	6,703,129,925
13	Kiambu	3.17	11,717,525,720	2.98	4,715,850,000	3.31	7,511,702,449	3.17	12,227,552,449
14	Kilifi	3.15	11,641,592,941	3.3	5,222,250,000	3.03	6,886,950,498	3.14	12,109,200,498
15	Kirinyaga	1.40	5,196,177,952	1.34	2,120,550,000	1.45	3,299,667,528	1.41	5,420,217,528
16	Kisii	2.40	8,894,274,509	2.46	3,892,950,000	2.36	5,365,638,608	2.40	9,258,588,608
17	Kisumu	2.17	8,026,139,240	2.16	3,418,200,000	2.18	4,943,597,770	2.17	8,361,797,770

S/No.	County	2022/2023		2023/2024					
		Allocation ratio	Total Equitable Share	0.5 (Allocation Ratio*)		(Equitable Share**0.5 Allocation Ratio) *(Formula***)		Grand Total Equitable Share	
				Allocation ratio	Equitable Share	Allocation ratio	(Equitable Share**0.5 Allocation Ratio) *(Formula***)		
		column C	column D	column E	column F	column G	column H	column I	column J=F+H
18	Kitui	2.81	10,393,970,413	2.79	4,415,175,000	2.82	6,414,311,936	2.81	10,829,486,936
19	Kwale	2.23	8,265,585,516	2.46	3,892,950,000	2.06	4,691,153,693	2.23	8,584,103,693
20	Laikipia	1.39	5,136,265,679	1.32	2,088,900,000	1.44	3,269,346,532	1.39	5,358,246,532
21	Lamu	0.84	3,105,649,643	0.82	1,297,650,000	0.85	1,939,700,707	0.84	3,237,350,707
22	Machakos	2.48	9,162,304,232	2.45	3,877,125,000	2.50	5,670,170,309	2.48	9,547,295,309
23	Makueni	2.20	8,132,783,562	2.34	3,703,050,000	2.09	4,752,410,962	2.19	8,455,460,962
24	Mandera	3.02	11,190,382,598	3.23	5,111,475,000	2.87	6,521,716,646	3.02	11,633,191,646
25	Marsabit	1.97	7,277,004,032	2.14	3,386,550,000	1.84	4,173,848,412	1.96	7,560,398,412
26	Meru	2.57	9,493,857,338	2.54	4,019,550,000	2.59	5,873,075,172	2.57	9,892,625,172
27	Migori	2.16	8,005,020,448	2.14	3,386,550,000	2.18	4,954,896,108	2.16	8,341,446,108
28	Mombasa	2.05	7,567,354,061	2.23	3,528,975,000	1.91	4,332,548,820	2.04	7,861,523,820
29	Murang'a	1.94	7,180,155,855	1.99	3,149,175,000	1.90	4,324,611,703	1.94	7,473,786,703
30	Nairobi	5.20	19,249,677,414	5.03	7,959,975,000	5.33	12,112,084,115	5.21	20,072,059,115
31	Nakuru	3.52	13,026,116,323	3.31	5,238,075,000	3.68	8,355,349,693	3.53	13,593,424,693
32	Nandi	1.89	6,990,869,041	1.69	2,674,425,000	2.04	4,630,869,033	1.90	7,305,294,033
33	Narok	2.39	8,844,789,456	2.54	4,019,550,000	2.28	5,176,726,899	2.39	9,196,276,899
34	Nyamira	1.39	5,135,340,036	1.52	2,405,400,000	1.29	2,928,798,486	1.38	5,334,198,486
35	Nyandarua	1.53	5,670,444,228	1.54	2,437,050,000	1.53	3,468,926,056	1.53	5,905,976,056
36	Nyeri	1.68	6,228,728,555	1.71	2,706,075,000	1.66	3,779,256,051	1.68	6,485,331,051

S/No.	County	2022/2023		2023/2024			
		Allocation ratio	Total Equitable Share	0.5 (Allocation Ratio*)		(Equitable Share** - 0.5 Allocation Ratio) * (Formula***)	Grand Total Equitable Share
				Allocation ratio	Equitable Share	Allocation ratio	Equitable Share
		column C	column D	column E	column F	column G	column H
		column C	column D	column E	column F	column G	column H
37	Samburu	1.45	5,371,346,037	1.46	2,310,450,000	1.45	3,283,862,489
38	Siaya	1.88	6,966,507,531	1.83	2,895,975,000	1.92	4,367,044,462
39	Taita/Taveta	1.31	4,842,174,698	1.34	2,120,550,000	1.29	2,919,877,430
40	Tana River	1.76	6,528,408,765	1.85	2,927,625,000	1.70	3,863,077,542
41	Tharaka-Nithi	1.14	4,214,198,593	1.24	1,962,300,000	1.06	2,415,934,821
42	Trans Nzoia	1.94	7,186,157,670	1.82	2,880,150,000	2.03	4,619,672,440
43	Turkana	3.41	12,609,305,994	3.33	5,269,725,000	3.47	7,874,221,933
44	Uasin Gishu	2.18	8,068,858,318	2	3,165,000,000	2.32	5,261,072,635
45	Vihiga	1.37	5,067,356,827	1.47	2,326,275,000	1.29	2,940,751,885
46	Wajir	2.56	9,474,726,151	2.7	4,272,750,000	2.46	5,580,906,422
47	West Pokot	1.70	6,297,284,329	1.58	2,500,350,000	1.79	4,073,516,403
	Total	100	370,000,000,000	100	158,250,000,000	100	227,174,616,067
							385,424,616,067

* This refers to the Shareable Revenue allocated to counties in the financial year 2019/ 20 of Ksh. 316.5 billion. Thus, the allocation to county governments under this component is one half of the equitable share allocated to county governments in FY 2019/20 amounting to Ksh. 158. 25 billion.

SECOND SCHEDULE**(S.5)****County Government Budget Ceilings on Recurrent Expenditure in Financial Year 2023/2024 (Figures in Kenya Shillings)**

No.	County	County Assembly Ceilings		County Executive Ceilings	
		2022/23	2023/2024	2022/23	2023/2024
1	Baringo	712,229,059	828,250,102	607,049,529	628,507,168
2	Bomet	621,143,848	735,832,256	588,023,141	525,981,274
3	Bungoma	873,284,854	1,030,966,304	664,128,690	593,145,551
4	Busia	765,019,229	890,557,352	626,075,916	565,353,297
5	Elgeyo/Marakwet	592,408,337	688,567,522	568,996,754	540,143,817
6	Embu	594,786,279	655,164,072	568,996,754	470,665,205
7	Garissa*	815,801,264	928,822,377	607,049,529	517,163,240
8	Homa Bay	872,842,726	951,617,005	645,102,303	612,652,603
9	Isiolo	451,013,358	478,134,722	492,255,576	384,717,582
10	Kajiado	699,076,887	801,365,718	562,230,871	543,625,285
11	Kakamega**	1,097,653,117	1,400,821,103	721,207,850	702,976,417
12	Kericho	708,995,621	828,466,755	607,049,529	574,171,331
13	Kiambu	1,114,698,533	1,269,783,227	721,207,850	689,615,145
14	Kilifi	779,167,171	893,031,550	626,075,916	552,882,777
15	Kirinyaga	582,922,761	673,319,674	556,100,619	463,453,685
16	Kisii	940,958,856	1,112,890,743	664,128,690	635,010,868
17	Kisumu	718,886,210	827,121,358	626,075,916	548,429,020
18	Kitui	862,047,458	1,042,409,957	645,102,303	787,239,883
19	Kwale	617,790,583	667,712,409	568,996,754	436,816,651
20	Laikipia***	467,754,457	545,809,049	524,178,098	429,430,142
21	Lamu	419,261,939	493,148,394	492,255,576	349,978,277
22	Machakos	865,126,181	1,021,331,660	645,102,303	618,887,863
23	Makueni	729,754,316	857,052,960	607,049,529	597,330,868
24	Mandera	864,090,152	903,911,204	616,986,522	537,192,934
25	Marsabit	678,317,733	714,092,325	568,996,754	477,791,217
26	Meru	938,478,295	1,105,946,626	664,128,690	802,472,137
27	Migori	857,185,385	1,003,508,709	645,102,303	609,089,597
28	Mombasa	674,783,021	764,582,283	607,049,529	414,726,825
29	Murang'a	753,378,653	830,709,033	626,075,916	633,050,405

No.	County	County Assembly Ceilings		County Executive Ceilings	
		2022/23	2023/2024	2022/23	2023/2024
30	Nairobi City	1,446,962,393	1,694,120,608	816,339,786	640,180,465
31	Nakuru	1,006,312,104	1,160,413,432	702,181,463	703,777,688
32	Nandi	666,771,490	796,999,461	607,049,529	647,212,948
33	Narok	734,655,062	911,202,495	607,049,529	545,667,285
34	Nyamira	610,515,511	703,010,773	568,996,754	458,194,685
35	Nyandarua	651,697,338	770,438,804	588,023,141	533,107,285
36	Nyeri	692,693,761	776,126,610	607,049,529	605,347,631
37	Samburu	517,964,444	593,254,286	533,708,983	482,789,720
38	Siaya	683,152,880	775,678,151	607,049,529	540,322,777
39	Taita/Taveta	620,545,692	681,840,554	568,996,754	439,488,905
40	Tana River	582,990,790	571,922,609	537,074,233	436,641,663
41	Tharaka -Nithi	434,745,770	517,563,626	524,178,098	445,463,668
42	Trans Nzoia	643,357,859	685,259,476	588,023,141	427,107,865
43	Turkana****	818,680,328	966,834,859	607,049,529	526,961,505
44	Uasin Gishu	703,027,730	796,524,510	607,049,529	474,407,171
45	Vihiga	637,128,800	714,071,318	588,023,141	487,678,963
46	Wajir	853,371,986	853,813,146	597,112,535	599,569,960
47	West Pokot	603,044,748	683,634,469	568,996,754	589,135,145
	Total	34,576,474,969	39,597,635,636	28,486,731,667	25,825,556,396
	*Garissa County Assembly ceiling adjustment of Ksh. 48,000,000 is broken down as follows: Ksh. Furniture and fittings (Ksh. 13,000,000); computers, printers and photocopiers (Ksh. 10,000,000); air conditioners and fans (Ksh.2,000,000); fire system and other office equipment (Ksh. 5,000,000); and allocation to cater for nominated members mileage (Ksh. 18,000,000)				
	**Kakamega County Assembly ceiling adjustment of Ksh. 65,000,000 is broken down as follows: Hansard equipment (Ksh. 50,000,000); establishment of e-parliament infrastructure (Ksh. 15,000,000)				
	***Laikipia County Assembly ceiling adjustment of Ksh. 40,131,941 is broken down as follows: wages for security personnel (Ksh.7,503,941.2); general repair and maintenance (Ksh.2,250,000); furniture acquisition (Ksh. 22,500,000); utilities -one off (Ksh.				

		County Assembly Ceilings		County Executive Ceilings	
No.	County	2022/23	2023/2024	2022/23	2023/2024
	7,500,000); Utilities annually (Ksh.378,000)				
	****Turkana County Assembly ceiling adjustment of Ksh. 121,774,706 is broken down as follows: Personnel emoluments (Ksh. 93,774,705.89) and public participation (Ksh. 28,000,000)				

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to make provision for the allocation of revenue raised nationally among the county governments for the financial year 2023/24.

Section 1 of the Bill provides for the short title while Section 2 defines the various terms used in the Bill.

Section 3 of the Bill contains the objects and the purpose of the Bill which is to provide for the allocation of revenue raised nationally for the financial year 2023/24 as well as the transfer of the county allocations from the Consolidated Fund to the respective County Revenue Fund.

Section 4 of the Bill deals with the allocation of equitable share of revenue raised nationally to each county government.

Section 5 of the Bill provides for Budget ceilings for recurrent expenditure for county governments in accordance with Section 107 (2) (a) of the Public Finance Management Act No. 18 of 2012.

Section 6 of the Bill provides for the modalities of funding of transferred functions.

Section 7 of the Bill provides for the publishing of monthly reports by the national government, on actual transfers of all allocations to county governments.

Section 8 of the Bill provides for the respective county treasury to reflect the total allocations from the national government separately in the County Finance Bill and reflect all transfers in the books of accounts.

Section 9 of the Bill provides for the actions constituting financial misconduct.

Section 10 of the Bill provides for use of the third determination of the basis of the allocation of revenue among counties as approved by Parliament pursuant to Article 217 (7) of the Constitution.

Dated the 25th April , 2023.

ALI ROBA,
*Chairperson,
Committee on Finance and Budget.*

APPENDIX

EXPLANATORY MEMORANDUM TO THE COUNTY ALLOCATION OF REVENUE BILL, 2023

Background

1. This memorandum is prepared as an attachment to the County Allocation of Revenue Bill (CARB), 2023 in fulfilment of the requirements of Article 218(2) of the Constitution and section 191 of the Public Finance Management Act, 2012, which require that the County Allocation of Revenue Bill tabled in Parliament be accompanied by a memorandum that:

- (a) explains the revenue allocation as proposed by the Bill;
- (b) evaluates the Bill against the criteria set out in Article 203(1) of the Constitution;
- (c) provides a summary of significant deviations from the recommendations of the Commission on Revenue Allocation (CRA) together with the explanation for such deviations;
- (d) explains the extent, if any, of deviation from the recommendations of the Intergovernmental Budget and Economic Council (IBEC); and
- (e) explains any assumptions and formulae used in arriving at the respective shares under the County Allocation of Revenue Bill, 2023.

2. The memorandum is also prepared based on the approved third basis for revenue allocation among county governments pursuant to Article 217 of the Constitution. In September 2020, Parliament approved the third basis for allocation of the share of national revenue among the County Governments.

Explanation of Revenue Allocation as Proposed by the Bill

3. The bill proposes to allocate and transfer to County Governments Ksh. 385.425 billion for the financial year 2023/24 as equitable share of revenue raised nationally. The equitable share allocation has been proposed to increase from a base of Kshs. 370 billion allocated in the financial year 2022/23, to an allocation of Ksh. 385.425 billion in FY 2023/24.

4. The county governments' equitable share of revenue amounting to Ksh. 385.425 billion was allocated among the county governments on

the third basis of the revenue allocation criteria approved by Parliament in accordance with Article 217 of the Constitution.

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

5. Fiscal Capacity and Efficiency of County Governments: Fiscal capacity for county governments refers to the potential revenues that can be generated from the tax bases assigned to the counties when a standard average level of effort is applied. In its recommendations to Parliament on the Third Basis for Sharing Revenue Among County Governments, the Commission on Revenue Allocation (CRA) included a ‘fiscal effort’ parameter with a 2% weight intended to incentivize OSR collection by the Counties. This is consistent with the approach in other jurisdictions, where the formula for horizontal revenue distribution among subnational governments typically incorporates measures of fiscal capacity alongside those of expenditure need. CRA’s fiscal effort parameter was defined in terms of each County Government’s actual revenue collection relative to the County’s Gross County Product (GCP) as computed by the Kenya National Bureau of Statistics (KNBS).

6. In approving CRA’s recommendations however, Parliament did not include the fiscal effort parameter, effectively shifting the 2% weight to other parameters. The formulae, therefore, does not incentivize counties to strengthen their local revenue collection efforts. There is, therefore, need for County Assemblies, in conducting their oversight role to ensure that county governments enhance their own source revenue collection. It is expected that future revenue sharing formulae may consider reinstating the fiscal effort parameter to incentivize counties to collect more own source revenues.

7. 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.

8. Economic Disparities within and among counties and the need to remedy them: Allocation of the sharable revenue (i.e., equitable share of Ksh.385.425 billion) among counties is based on the Third-generation formula approved by Parliament in September, 2020 pursuant to provisions of Article 217 and Section 16 of the Sixth Schedule of the Constitution. The Third Basis formula which should be 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%); (iii) Urban Index (5%); (iv) Poverty Index (14%); (v) Land Area Index (8%); (vi) Roads Index (8%), and; (vii) Basic Share index (20%). The horizontal distribution of County Governments' equitable revenue share allocation of Ksh.385.425 billion for FY 2023/24 shall be based on the Third Basis Formula. It should be noted that the Third basis formula applied in FY 2023/24, takes into account disparities among counties and aims at equitable distribution of resources across counties.

9. Additionally, the equitable share to county governments is proposed to increase from Ksh. 370 billion in FY 2022/23 to Ksh. 385.425 billion in FY 2023/24, an increase of Ksh. 15.425 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.

10. Stability and Predictability of County Revenue Allocations:

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 2023. According to clause 5 of the Division of Revenue Bill (DoRB) 2023, any shortfall in revenue raised nationally is to be borne by the National Government, to the extent of the threshold prescribed in Regulations by the Cabinet Secretary.

Conclusion

11. The proposals contained in the Bill take into account the fiscal framework set out in the 2023 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.

12. The proposed equitable share allocated to county governments in the County Allocation of Revenue Bill, 2023 has also taken into account the approved Third Basis for Revenue Allocation. The proposed Kshs 385.425 billion allocation among county governments pursuant to Article 217 of the Constitution is equivalent to 24.5 per cent of the FY 2019/20 revenue which is the most recent audited and approved revenue by the National Assembly. This is above the minimum threshold required under Article 203(2) of the Constitution.

13. The Bill has also taken into account the approved Third Basis for Revenue Allocation among county governments pursuant to Article 217 of

the Constitution, whose application in the FY 2023/24 was preceded by a Ksh.15.425 billion increase in the Counties' equitable revenue share. It is expected with successful implementation of the Third Basis formula in FY 2023/24, county governments will be able to plan, budget and spend in accordance with areas of need as envisaged in the formula as well as achieve their developmental needs.