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REPUBLIC OF KENYA

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***KENYA GAZETTE SUPPLEMENT***

**SENATE BILLS, 2023**

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**NAIROBI, 12th April, 2023**

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**THE EQUALISATION FUND (ADMINISTRATION)  
BILL, 2023**

**A Bill for**

**AN ACT of Parliament to provide for the administrative structures for the management of the Equalisation Fund; to establish an Advisory Board; and for connected purposes.**

**ENACTED by the Parliament of Kenya, as follows—**

**PART I – PRELIMINARIES**

**1.** This Act may be referred to as the Equalisation Fund (Administration) Act, 2023 and shall be deemed to have come into effect immediately upon assent.

Short title and commencement.

**2.** In this Act –

Interpretation.

“Accounting Standard Board” has the meaning assigned to it under section 2 of the Public Finance Management Act;

“Board” means the Equalization Fund Advisory Board established under section 6;

“Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to Finance;

“county executive committee member” means the county executive committee member responsible for finance;

“county governments” means the County Governments in which marginalized areas identified by the Commission on Revenue Allocation exist for purposes of Article 204(2) of the Constitution;

“eligible county” means a county government identified as a beneficiary of the Fund by the Commission on Revenue Allocation in accordance with Article 216(4) of the Constitution;

“Fund” means the Equalization Fund established under Article 204 of the Constitution;

“fund administrator” means the person appointed under section 14;

“marginalized area” means an area identified under policy determined by the Commission on Revenue Allocation in accordance with Article 216 (4) of the Constitution.

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

“Second Policy” means the Second Policy determined by the Commission on Revenue Allocation under Article 216(4) of the Constitution in identifying marginalized areas for purposes of Article 204(2) of the Constitution; and

“unutilized balance” means –

- (a) amounts not withdrawn from the Fund at the end of financial year; and
- (b) any amount withdrawn from the Fund for purposes of provision of basic services under an Appropriations Act and not expended at the end of financial year;
- (c) amount earmarked for the First Policy with fourteen Counties ongoing projects; and
- (d) amount earmarked for the Second Policy with 34 Counties (New projects to be identified).

**3.** The purpose of this Act is to –

Purpose.

- (a) provide a framework for administration and management of the Equalization Fund in accordance with Article 204 of the Constitution;
- (b) provide for completion of ongoing projects under the First and Second policies; and
- (c) provide a framework for the identification, selection and implementation of projects for purposes of the Fund; and
- (d) suspend the application of Article 204(7) of the Constitution and extend the pendency of the Fund; and
- (e) provide for the procedures in relation to winding up of the Fund.

## **PART II – THE EQUALISATION FUND**

**4.** The Fund shall, pursuant to Article 204(1) of the Constitution, consist of one half of all revenue collected by

Source of the Fund.

the national government each year calculated on the basis of the most recent audited accounts of revenue received, as approved by the National Assembly.

**5.** The object of the Fund is to provide basic services including water, roads, health facilities and electricity to the marginalized areas to the extent necessary to bring the quality of those services to the level generally enjoyed by the rest of the nation, so far as possible in an equitable, efficient and transparent manner.

Object of the Fund.

### **PART III – ESTABLISHMENT OF ADVISORY BOARD**

**6.** (1) There is established a Board to be known as the Equalisation Fund Advisory Board which shall consist of—

Establishment of Equalisation Fund Advisory Board.

- (a) the Chairperson who shall be appointed by the Cabinet Secretary;
- (b) the Principal Secretary responsible for matters relating to finance;
- (c) the Principal Secretary responsible for matters relating to devolution or a representative designated in writing;
- (d) one person from a pastoralist community nominated by the National Assembly;
- (e) one person nominated by the Senate;
- (f) one person nominated by the Council of Governors drawn from areas identified as marginalized by the Commission on Revenue Allocation;
- (g) the Chairperson of the Commission on Revenue Allocation or a representative designated in writing;
- (h) the Controller of Budget or a representative designated in writing;
- (i) the Chief Executive Officer who shall be secretary of the Board.

(2) A person nominated under section (1)(d), (e) and (f) shall be appointed by the Cabinet Secretary by notice in the *Gazette*.

(3) A person appointed under section (1)(c) and (f) shall serve for a term of three years renewable for one further term.

**7.** A person is qualified for appointment under section 6(1)(d), (e) and (f) if that person-

Qualifications  
for appointment  
to the Board.

- (a) is a citizen of Kenya;
- (b) holds a degree from a university recognized in Kenya;
- (c) has at least five years' professional experience in the field of economics, banking, finance, law or any other field relevant to the functions of the Board; and
- (d) meets the requirements of Chapter Six of the Constitution.

**8.** A person appointed under section 6(1)(d), (e) and (f) shall hold office for a non-renewable term of six years.

Tenure of  
office.

**9.** A member of the Board appointed under section 6(1)(d), (e) and (f) may-

Vacation of  
office.

- (a) resign from office by notice in writing to the Cabinet Secretary;
- (b) be removed from office by the Cabinet Secretary if the member-
  - (i) has been absent from three consecutive meetings of the Board without permission from the Board;
  - (ii) is adjudged bankrupt or enters into a composition or scheme of arrangement with his creditors;
  - (iii) is convicted of an offense involving dishonesty or fraud;
  - (iv) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months;
  - (v) is incapacitated by prolonged physical or mental illness; or
  - (vi) is otherwise unfit or unable to discharge the functions of the office.



**10. (1) The Advisory Board shall —**

Functions of the Board.

- (a) advise and make recommendations to the Cabinet Secretary on the distribution of resources for the provision of the basic services to the marginalised areas under Article 204 of the Constitution in line with the recommendations of the Commission on Revenue Allocation;
- (b) appraise and evaluate projects proposed under the workplans submitted to the Advisory Board under section 15 to ensure compliance with the Constitution and the recommendations issued by the Commission on Revenue Allocation;
- (c) make recommendations on the priority areas requiring financing and implementation in accordance with the workplans considered under section (b) and in line with the recommendations of the Commission on Revenue Allocation;
- (d) oversee, in consultation with the County Governments, the implementation of the projects to ensure compliance with the Constitution;
- (e) monitor and evaluate the projects implemented by County Governments to determine their impact in addressing the factors contributing to the marginalisation of the areas identified in the counties;
- (f) put in place measures for transparency and accountability in the implementation of projects by County Governments;
- (g) establish a framework for collaboration between the National Government and County Governments in the implementation of projects in line with the Constitution, the recommendations of the Commission on Revenue Allocation and these Guidelines;
- (h) review the consolidated quarterly reports prepared by the officer administering the Fund on the implementation of the projects and make recommendations to the Cabinet Secretary on performance improvement;

- (i) review the annual estimates of expenditure of the Fund for approval by the Cabinet Secretary;
- (j) undertake project public participation in line with Article 201 of the Constitution; and
- (k) carry out such other functions that may be necessary for the achievement of the objects and purposes of this Act or that may be conferred by any other law.

**11.** (1) The CS shall take into account the recommendations of the Board Decisions of the

(2) Where Cabinet Secretary deviates from the recommendations of the Advisory Board, the Cabinet Secretary shall give reasons for the deviation in writing.

**12.** The Advisory Board may – Committees of the Board.

- (a) establish such committees as it considers necessary for the effective performance of its functions and exercise of its powers under these Guidelines;
- (b) invite to sit in a meeting of the Board, such other persons whose knowledge and skills are found necessary for the effective performance of the Board; and
- (c) by resolution either generally or in any particular case, delegate to a committee, the exercise of any of the powers or the performance of any of the functions of the Board under these Guidelines or any other written law.

**13.** (1) Subject to subsection (2), there shall be paid out of the Fund, expenses of the Advisory Board and such other expenses incurred pursuant to the object and purpose for which the Fund is established. Expenses of the Board.

(2) The expenditure incurred on the Fund shall be on the basis of and limited to annual work programmes and budget estimates prepared by the Administrator of the Fund and approved by the Advisory Board and the Cabinet Secretary at the beginning of the financial year to which they relate.

(3) The administrative costs and expenses of the Advisory Board shall not exceed three percent of the approved annual allocation to the Fund.

**14.** (1) The Chief Executive Officer of the Board shall be the administrator to the Fund and shall be competitively recruited by the Board.

Officer  
administering  
the Fund.

(2) A person is qualified for appointment as a Chief Executive Officer if the person -

- (a) has at least a Master's degree from a university recognized in Kenya;
- (b) has at least ten years' experience at a senior management level with skills in health insurance, health financing, financial management, health economics, healthcare, administration, law or business administration; and
- (c) meets the requirements of Chapter Six of the Constitution.

(3) The Chief Executive Officer shall serve for a term of three years and shall be eligible for re-appointment for a further and final term of three years.

(4) The officer administering the Fund shall -

- (a) open a separate account at the Central Bank of Kenya into which all monies raised under section 4 shall be paid into;
- (b) operate and maintain the bank account in (a) in a manner as prescribed by the National Treasury from time to time;
- (c) consult with Cabinet Secretary and the Advisory Board on matters relating to the administration of the Fund;
- (d) cause to be kept proper books of accounts and other books and records in relation to the Fund, of all activities and undertakings financed from the Fund;
- (e) prepare, sign and submit to the Auditor-General and Parliament, in respect of each financial and within three months after the end thereof, a statement of accounts relating to the Fund with a

copy to the Controller of Budget and the statements shall be prepared in a manner prescribed by the Accounting Standards Board;

- (f) furnish additional information as the officer considers to be proper and sufficient for the purpose of examination and audit by the Auditor-General in accordance with the provisions of the Public Audit Act; and
- (g) prepare quarterly reports on the receipts into issues and withdrawals from the Fund and submit it to the Cabinet Secretary for publication in the *Gazette* before or on the twenty first day of every third month of the financial year.

**15.** (1) There shall be a secretariat consisting of –

Secretariat.

- (a) the officer administering the Fund; and
  - (b) such other public officers as the Cabinet Secretary shall, in consultation with the Advisory Board, designate for the proper performance of the functions of the secretariat under this Act.
- (2) The functions of the Secretariat shall be to—
- (a) provide technical and administrative services to the Advisory Board;
  - (b) implement the decisions, strategies and work plan of the Advisory Board;
  - (c) make recommendations to the Advisory Board on the formulation and implementation of programmes for the carrying out of the functions of the Board;
  - (d) review and consolidate the work-plans received under these Guidelines for consideration by the Advisory Board;
  - (e) identify any challenges in the implementation of projects and make recommendations to the Advisory Board on the remedial measures required to be undertaken;
  - (f) maintain a data base setting out information on –
    - (i) projects, operations and programmes undertaken with respect to each County

Government in marginalised areas have been identified by the Commission on Revenue Allocation;

- (ii) monies appropriated from the Fund with respect to each project or programme; and
- (iii) status of each project or programme implemented;
- (g) prepare and ensure timely submission of reports to the Advisory Board and the Cabinet Secretary regarding the implementation of projects and programmes under the Fund;
- (h) make arrangements for periodical evaluation of the criteria, standards and programmes in relation to the objects and functions of the Advisory Board; and
- (i) perform such other functions as may be assigned to it by the Advisory Board.

#### **PART IV – COUNTY TECHNICAL COMMITTEES**

**16.** The Fund shall finance programmes or projects for the provision of the following basic services in areas identified as marginalised areas by the Commission on Revenue Allocation—

Projects and programmes for financing under the Fund.

- (a) water and sanitation;
- (b) roads;
- (c) health facilities;
- (d) electricity;
- (e) such other basic services as shall be identified by the Commission on Revenue Allocation as requiring implementation in a marginalized area.

**17.** Each County Commissioner of an eligible county shall establish and convene a county technical committee comprising of-

Establishment of county technical committees.

- (a) chairperson who shall be the County Commissioner;
- (b) the relevant county executive committee member for Finance;

- (c) Constituency Development Fund Managers;
- (d) a representative of the relevant County Assembly;
- (e) a public officer representing the implementing sector with prioritized projects
- (f) representative of the relevant County Assembly;

**18.** The County Technical Committee shall be responsible for approving all projects to be financed from the Fund.

Functions of the county technical committee.

**19.** The County Commissioner of an eligible county shall establish a sub-county technical committee comprising of-

Sub-county technical committee.

- (a) the sub-county Commissioner who shall be the Chairperson;
- (b) not more than four technical officers from ministries relevant to the funding project;
- (c) the chairpersons of the Project Identification and Implementation Committees within the sub-county; and
- (d) the secretary of the Constituency Development Fund.

**20.** The functions of the sub-county technical committee shall be to-

Functions of the sub-county technical committee.

- (a) receive project funding proposals from respective Project Identification and Implementation Committees;
- (b) evaluate and prioritize all development proposals from the Project Identification and Implementation Committees;
- (c) access the feasibility and cost all project proposals;
- (d) submit project proposals and funding requests received from the Project Identification and Implementation Committees;
- (e) monitor all projects;
- (f) prepare quarterly reports on funds received and implementation status for submission to the county technical committee and the member of the county

executive; and

- (g) prepare and submit to the county technical committee and the member of the county executive annual reports on implementation of all projects.

**21.** The County Commissioner of an eligible county shall establish a Project Identification and Implementation Committee comprising of-

Project Identification and Implementation Committee.

- (a) the Assistant Sub-County Commissioner who shall be the Chairperson;
- (b) the village administrators of areas defined by the Commission as marginalised;
- (c) a representative of women, youth and persons with disabilities from marginalised areas;
- (d) a representative of faith-based groups and non-governmental organisations.

**22.** The functions of the Project Identification and Implementation Committee shall be to-

Functions of Project Identification and Implementation Committee.

- (a) undertake public participation in beneficiary counties;
- (b) identify and prioritize project in beneficiary areas in line with guidelines issued by the administrator of the Fund;
- (c) prepare and submit project funding proposals to sub-county technical committee; and
- (d) provide oversight on project implementation.

**23.** (1) The county executive committee member in each eligible county shall-

Functions of the county executive committee member.

- (a) consolidate all projects approved by the county technical committee and submit to the Secretary of the Board for funding with copy to the Commission;
- (b) prepare financial statements for the Fund for each financial year in a form prescribed by the Accounting Standards Board in accordance with the Act and submit to the Secretary of the Board;
- (c) prepare quarterly financial reports for the Fund in

a form prescribed by the Accounting Standards Board and submit to the Secretary of the Board;

- (d) prepare quarterly reports on funds received and implementation status of all projects financed by the Fund with a copy to the Secretary of the Board, the Commission and the Controller of Budget; and
- (e) prepare annual report on implementation of all projects financed by the Fund with a copy to the Secretary of the Board, the Commission and the Controller of Budget.

(2) A report prepared under section (1)(e) shall include-

- (a) information relating to the procurement of services and works in relation to the projects and programmes under the workplan;
- (b) a schedule of the works required to be undertaken and status of the implementation of projects and programmes;
- (c) the timelines for completion of specific phases of projects and programmes;
- (d) the manner in which the funds received from the Fund have been utilised in relation to any project or programme;
- (e) the monies disbursed and any balance of unspent funds; and
- (f) such other information as the Board may require.

**24.** The County Executive Committee Member responsible for matters relating to finance shall submit workplans through the respective county technical committee to the Board for approval.

Approval of  
workplan.

**25. (1)** The county executive committee member shall, upon the identification of projects and programmes under section 24, prepare a workplan setting out —

Preparation of  
workplans.

- (a) a schedule of projects and programmes proposed to be undertaken by the county government in the areas identified by the Commission;



- (b) a technical assessment of the viability of the projects and programmes;
- (c) a report on the public participation undertaken during the process of identification of programmes and projects;
- (d) an assessment of the manner in which the programmes or projects would be expected to address the shortcomings identified by the Commission on Revenue Allocation in the provision of the identified basic needs;
- (e) an assessment of how the programmes and projects identified impact on the County Integrated Development Plan; and
- (f) the approximate cost of the works to be undertaken in relation to a project or programme identified in the workplan.

(2) In identifying programs and projects for inclusion in the workplan, the county executive committee member shall —

- (a) take into account —
  - (i) the criteria and other recommendation made by the Commission on Revenue Allocation;
  - (ii) the costing of the project and the time required for the implementation of the project on a priority basis;
  - (iii) recommendations, standards and guidelines issued by the Advisory Board;
  - (iv) the interventions required to be undertaken on a priority basis in order to address the needs identified by the Commission on Revenue Allocation for the provision of identified basic services; and
  - (v) the recommendations of the respective Ministry or State Department;
- (b) undertake public participation using the structures established for citizen participation under section 91 of the County Governments Act; and

(c) collaborate with the relevant Ministry or State Department.

(3) The county executive committee member shall ensure that a workplan prepared under section (1) is aligned to the annual development plan of the county prepared under the Public Finance Management Act.

(4) The County Executive Committee Member shall ensure that a workplan prepared under subsection (1) is aligned to the annual development plan of the county.

(5) The relevant Ministry or State Department shall make its recommendations to the County Executive Committee Member on the proposed workplan within fourteen days of receipt of a request under subsection 2(c) of this Act.

**26.** (1) The county executive committee shall, upon approval of a workplan, submit the workplan to the Board.

Submission of  
workplan to the  
Advisory Board.

(2) Upon receipt of the workplan, the Board shall –

- (a) appraise the workplan to ensure compliance with this Act;
- (b) ensure that the workplan adequately addresses the needs identified by the Commission on Revenue Allocation;
- (c) identify the programmes or projects that require to be implemented on a priority basis; and
- (d) make its recommendations to the Cabinet Secretary.

**27.** (1) The Board shall, on a quarterly basis, submit a report to the Cabinet Secretary detailing—

Quarterly  
reports on  
projects and  
disbursements.

- (a) a summary of the project and programmes approved for financing in the preceding year indicating the funding status of such projects, if any;
- (b) a summary of the status of disbursements of funds to the various projects and implementation progress;
- (c) a summary of the status of disbursements from the Fund to the respective county governments or any

agency involved in implementation of any projects financed from the Fund; and

- (d) any restriction imposed on a county government or any agency involved in the implementation of the projects or programmes by the county government.

(2) A copy of a report prepared under subsection (1) shall be submitted to the Commission and the Controller of Budget.

**28.** (1) The county executive committee member shall—

Report by the county executive committee member.

- (a) prepare and submit to the Advisor Board quarterly reports on the implementation of the projects or programs under the workplan in the format prescribed by the Advisory Board; and
- (b) ensure that any projects undertaken under the workplan are carried out in accordance with the Public Procurement and Asset Disposal Act and any other law.

(3) The officer administering the Fund shall consolidate the reports submitted under section (2) for consideration by the Advisory Board and the Cabinet Secretary.

**29.** (1) The administrator of the Fund shall open a designated Equalisation Fund account at the Central Bank of Kenya.

Withdrawals from the Fund

(2) Where a withdrawal from the Fund is authorized under an Act of Parliament that approves the appropriation of money, the officer administering the Fund shall make a requisition for the withdrawal and submit it to the Controller of Budget for authorization.

(3) The authorization by the Controller of Budget of a withdrawal from the Fund, together with written instructions from the officer administering the Fund requesting for withdrawal, shall be sufficient authority for the Central Bank of Kenya to pay amounts from the Equalization Fund account in accordance with the authorization and instructions given.

(4) All withdrawals made from the Fund under subsection (1) shall be deposited into the respective spending agencies account.

(5) Any unutilized balances in the Equalisation Fund shall not lapse at the end of the Financial year but shall be retained for use for the purpose for which the Fund is established.

**30.** The accounts of the Fund shall be audited and reported upon in accordance with the Public Finance Management Act and the Public Audit Act.

Audit.

No. 18 of 2012

No. 34 of 2015

## **PART V – WINDING UP OF THE FUND**

**31.** (1) At least eighteen months before the expiry of the term specified under Article 204(6) of the Constitution or in legislation enacted by Parliament pursuant to Article 204(7) of the Constitution —

Reports to the  
Advisory Board.

- (a) the Advisory Board shall prepare a status report on all existing pending projects and their funding requirements in line with the submitted workplans; and
- (b) the Cabinet Secretary shall –
  - (i) make the necessary requisition for the transfer of monies to the county governments for the completion of the projects; and
  - (ii) shall ensure that monies required for the completion of the projects has been transferred to the respective county governments.

(2) At least twelve months before the expiry of the period specified under Article 204(6) of the Constitution or in legislation enacted by Parliament pursuant to Article 204(7) of the Constitution the county executive committee members in the respective county governments shall submit to the Advisory Board —

- (a) a schedule of the programmes and projects implemented pursuant to Article 204 of the Constitution and the expected completion date;
- (b) an assessment report of the impact of the programmes and projects that have been implemented pursuant to Article 204 of the Constitution; and

(c) a financial report on the projects and programmes.

(3) The Advisory Board shall prepare the winding up report of the Fund not later than three months from the period specified under Article 204(6) of the Constitution or in legislation enacted by Parliament pursuant to Article 204(7) of the Constitution for approval by the Cabinet Secretary.

(4) The Cabinet Secretary shall, submit the winding up report to the National Assembly and the Senate within fourteen days of the receipt of the report under section (3).

**32.** (1) Notwithstanding the provisions of section 31, the period referred to under Article 204(6) is suspended.

Suspension  
under Article  
204(8).

(2) The Fund shall remain in force for a further non-renewable term of ten years from the date upon which the Fund would have lapsed under Article 204(6).

## **PART VI - REPEALS, SAVINGS AND TRANSITIONS**

**33.** (1) In this part-

“Advisory Board” means the Advisory Board established under regulation 4(1) of the Public Finance Management (Equalization Fund Administration) Regulations, 2021;

“repealed Regulations” means the Public Finance Management (Equalization Fund Administration) Regulations, 2021

(2) The Board shall be the successor to the Advisory Board existing immediately before the commencement of this Act.

**34.** The Public Finance Management (Equalization Fund Administration) Regulations, 2021, is repealed.

Interpretation of  
part.

Repeal of Legal  
Notice No. 54  
of 2021.

**35.** (1) Any rights and obligations of the Advisory Board existing at the commencement of this Act shall, by virtue of this subsection, vest in the Board established under section 6 of this Act.

Transitional  
provisions.

(2) Any reference in any written law, document or instrument to the Advisory Board shall be deemed to be a reference to the Board.

(3) Any rights and obligations vested in or enforceable by or against the Advisory Board shall, by virtue of this

subsection, be vested in or become enforceable by or against the Board.

(4) Any asset and liability held or imposed on the Advisory Board shall, by virtue of this subsection vest in the Board.

**36.** Any ongoing projects under the repealed Regulations shall be finalized in accordance with the provisions of this Act.

On-going  
projects.

**37.** A person who was a member of the Advisory Board immediately before the commencement of this Act shall be deemed to be a member of the Board for the unexpired period of that person's tenure.

Members of the  
Advisory Board.

**38.** A person who immediately before the commencement of this Act was an officer or employee of the Advisory Board shall be deemed to be a member of staff of the Board for the unexpired period of that person's tenure.

Staff of the  
Advisory Board

## **MEMORANDUM OF OBJECTS AND REASONS**

### **Statement of the Objects and Reasons for the Bill**

Article 204(1) of the Constitution establishes the Equalisation Fund whose purpose is to finance the provision of certain services in order to bring the quality of these services in marginalised areas to the level generally enjoyed by the rest of the country. The principal object of this Bill is therefore to provide the administrative structure for the management of the Equalisation Fund and to establish the criteria through which projects contemplated under Article 204(2) of the Constitution are identified.

A critical provision in the Bill also seeks to extend the pendency of the Fund in accordance with Article 204(8) of the Constitution. Cognizant that the period contemplated under Article 204(7) on the life of the Fund will soon come to an end before the Fund has achieved its purpose, it is critical to extend the time limit for the Fund in order to ensure the purpose of the Fund is met.

### **Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms**

The Bill does not limit fundamental rights and freedoms nor does it delegate legislative powers.

### **Statement on how the Bill concerns county governments**

Article 204(2) of the Constitution provides that the Equalisation Fund shall be used only to provide basic services including water, roads electricity and health facilities. The services to which the Fund applies are functions of the county governments under Part 2 of the Fourth Schedule to the Constitution. The Bill therefore affects the powers and functions of the county government and it is therefore a Bill that concerns counties in terms of Article 110(1)(a) of the Constitution.

### **Statement that the Bill is not a money Bill, within the meaning of Article 114 of the Constitution**

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 8th March, 2023.

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