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REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – THIRD SESSION – 2024
DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

REPORT ON:
THE CONSIDERATION OF THE EQUALISATION FUND (ADMINISTRATION) BILL, 2023
(SENATE BILLS NO. 14 OF 2023)

	
THE NATIONAL ASSEMBLY PAPERS LAID	
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LIST OF ABBREVIATIONS AND ACRONYMS

CECM	-	County Executive Committee Member
COB	-	Controller of Budget
COG	-	Council of Governors
COK	-	Constitution of Kenya
CRA	-	Commission on Revenue Allocation
EF	-	Equalisation Fund
ICPAK	-	Institute of Certified Accountants of Kenya
LSK	-	Law Society of Kenya
MP	-	Member of Parliament
NGEC	-	National Gender and Equality Commission
PFMA	-	Public Finance Management Act

ANNEXURES

Annexure 1: Adoption Schedule

Annexure 2: Minutes

Annexure 3: The Equalisation Fund (Administration) Bill, 2023 (Senate Bills No. 14 of 2023)

Annexure 5: Advertisement inviting the public to submit memoranda on the Bill

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Annexure 7: Letter from the Clerk of the National Assembly inviting relevant stakeholders to attend the public participation forum

Annexure 8: Memoranda by stakeholders

CHAIRPERSON'S FOREWORD

This report contains the proceedings of the Departmental Committee on Finance and National Planning on the consideration of the Equalisation Fund (Administration) Bill (Senate Bills No. 14 of 2023). The Bill was published in the Kenya Gazette Supplement No. 44 of 12th April, 2023 and passed by the Senate with amendments on 12th October, 2023. The Bill was committed to the Committee for consideration and tabling of the report to the House pursuant to Standing Order 127.

The principal object of the Bill is to provide for the administrative structures for the management of the Equalisation Fund as established under Article 204 of the Constitution. It establishes the Equalisation Fund Advisory Board. Additionally, the Bill seeks to outline the structure and responsibilities of bodies or officials tasked with administering the Fund. The Bill will help 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.

In compliance with Article 118(b) of the Constitution and Standing Order 127(3), the Clerk of the National Assembly placed an advertisement in the print media on 8th March 2024, inviting the public to submit memoranda by way of written statements on the Bill.

In addition, the Clerk of the National Assembly vide letter Ref. No.NA/DDC/F&NP/2024/041 dated 8th April 2024 invited key stakeholders to submit views on the Bill and attend a public participation forum on 16th April, 2024. The memoranda were to be received on or before 15th April, 2024 at 5.00 pm (East African Time). By the close of the submission deadline, the Committee had received seven memoranda.

On behalf of the Departmental Committee on Finance and National Planning and pursuant to the provisions of Standing Order 199(6), it is my singular honour to present to this House the Report of the Committee on its consideration of the Equalisation Fund (Administration) Bill, 2024 (Senate Bills No. 14 of 2023). 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 consideration of the Bill.

Finally, I wish to express my appreciation to the Honourable Members of the Committee and the Committee Secretariat who made invaluable contributions towards the preparation and production of this report.

It is my pleasure to report that the Committee has considered the Equalisation Fund (Administration) Bill, 2023 (Senate Bills No. 14 of 2023) and wish to report to

this August House with the recommendation that the House approves the Bill with amendments.

Hon. CPA. Kuria Kimani, M.P.
Chairperson, Departmental Committee on Finance and National Planning

CHAPTER ONE

1 PREFACE

1.1 ESTABLISHMENT AND MANDATE OF THE COMMITTEE

1. The Departmental Committee on Finance and National Planning is one of twenty departmental committees of the National Assembly established under **Standing Order 216** whose mandate pursuant to the **Standing Order 216 (5)** is as follows:
 - a) *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
 - b) *To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation;*
 - c) *To, on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;*
 - d) *To study and review all legislation referred to it;*
 - e) *To study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;*
 - f) *To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;*
 - g) *To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);*
 - h) *To examine treaties, agreements and conventions;*
 - i) *To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation;*
 - j) *To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
 - k) *To examine any questions raised by Members on a matter within its mandate.*
2. The Second Schedule to the National Assembly Standing Orders assigns the Committee the mandate to consider matters in relation to public finance, public audit policies, monetary policies, financial institutions, economy, investment policies, competition, banking, insurance, national statistics, population, revenue policies including taxation, national planning and development, digital finance, including digital currency.
3. In executing its mandate, the Committee oversees the following Ministries/Departments:

- a) The National Treasury and Planning.
- b) State Department for Economic Planning.
- c) The Commission on Revenue Allocation (CRA)
- d) Office of the Controller of Budget

1.2 COMMITTEE MEMBERSHIP

4. The Departmental Committee on Finance and National Planning was constituted by the House on 27th October, 2022 and comprises the following Members:

Chairperson

Hon. CPA Kuria Kimani, MP
Molo Constituency

UDA Party

Vice-Chairperson

Hon. (Amb.) CPA Langat Benjamin Kipkirui, CBS, MP
Ainamoi Constituency

UDA Party

Members

Hon. (Dr.) Keynan, W, Adan, CBS, MP
Eldas Constituency

Jubilee Party

Hon. Sunkuyia, R. George, MP
Kajiado West Constituency

UDA Party

Hon. CPA Oyula, Joseph H. Maero, MP
Butula Constituency

ODM Party

Hon. Joseph K. Munyoro, MP
Kigumo Constituency

UDA Party

Hon. Mboni, David Mwalika, MP
Kitui Rural Constituency

WDM Party

Hon. Sheikh Umul , MP
Mandera County

UDM Party

Hon. Okuome Adipo Andrew, MP
Karachuonyo Constituency

ODM Party

Hon. (Dr.) Shadrack Mwititi, MP
South Imenti Constituency

Jubilee Party

Hon. Kipkoros, Joseph Makilap, MP
Baringo North Constituency

UDA Party

Hon. (Dr.) Ariko John Namoiit, MP

Turkana South Constituency

ODM Party

Hon. CPA Rutto Julius Kipletting, MP
Kesses Constituency

UDA Party

Hon. Machele M. Soud, MP
Mvita Constituency

ODM Party

Hon. Biego Paul Kibichiy, MP
Chesumei Constituency

UDA Party

1.3 COMMITTEE SECRETARIAT

5. The Committee is facilitated by the following staff:

Mr. Benjamin Magut
Principal Clerk Assistant II /Head of Secretariat

Ms. Jennifer Ndeto
Deputy Director Legal Services

Mr. Benson Kamande
Clerk Assistant III

Mr. Salem Lorot
Legal Counsel I

Ms. Winfred Kambua
Clerk Assistant III

Mr. George Ndenjeshe
Fiscal Analyst III

Mr. James Macharia
Media Relations Officer

Mr. Andrew Jumanne Shangarai
Principal Serjeant-At-Arms

Ms. Joyce Wachera
Hansard Reporter III

Mr. Benson Muthuri
Assistant Serjeant-At-Arms

Ms. Nelly W. Ondieki
Research Officer III

Mr. Mwangi Muchiri
Audio Officer

CHAPTER TWO

2 OVERVIEW OF THE EQUALISATION FUND (ADMINISTRATION) BILL, 2023 (SENATE BILLS NO. 14 OF 2023)

2.1 Background

6. The Equalisation Fund (Administration) Bill, 2023, Senate Bills No. 14 of 2023, is a Senate Bill that was published in the Kenya Gazette Supplement No. 44 of 12th April, 2023 and passed by the Senate, with amendments, on 12th October, 2023. The Bill was then committed to the Committee for consideration and tabling of the report to the House pursuant to Standing Order 127.

2.2 Summary of Legal Provisions

7. The principal object of the Bill is to provide administrative structures for the management of the Equalisation Fund as established under Article 204 of the Constitution. It establishes the Equalisation Fund Advisory Board and outlines the structure and responsibilities of bodies or officials tasked with administering the Fund. The Bill will help 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.
8. **PART I (Clauses 1-3)** of the Bill contains preliminary provisions.
9. **PART II (Clauses 4 and 5)** provides for the sources and objects of the Equalisation Fund.
10. **PART III (Clauses 6-15)** of the Bill provides for the establishment of the Equalisation Fund Advisory Board whose functions include advising and making recommendations to the Cabinet Secretary on the distribution of resources for the provision of the basic services to the marginalized areas under Article 204 of the Constitution in line with the recommendations of the Commission on Revenue Allocation; appraise and evaluate projects proposed under the workplans submitted to the Advisory Board to ensure compliance with the Constitution and the recommendations issued by the Commission on Revenue Allocation.
11. **PART IV (Clauses 16-30)** of the Bill provides for establishment of county technical committees, sub-county technical committee and Project Identification and Implementation Committee.
12. **PART V (Clauses 31 and 32)** of the Bill provides for the winding up of the Fund.
13. **PART VI (Clauses 33-38)** of the Bill provides for repeals, savings and transitions.
14. The salient provisions of the Bill are as follows:
 - i. Clause 3 of the Bill provides for the purpose of the Act as to—
 - (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 policies developed by the Commission on Revenue Allocation under Article 216(4) of the Constitution;
 - (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.
- ii. Clause 4 of the Bill provides that the Fund shall, pursuant to Article 204(1) of the Constitution, consist of one half of all revenue collected by the national government each year calculated on the basis of the most recent audited accounts of revenue received, as approved by the National Assembly.
- iii. Clause 5 of the Bill provides that 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.
- iv. Clause 6 of the Bill provides for the establishment of the Equalisation Fund Advisory Board which shall consist of—
 - (i) the Chairperson who shall be appointed by the Cabinet Secretary;
 - (ii) the Principal Secretary responsible for matters relating to finance;
 - (iii) the Principal Secretary responsible for matters relating to devolution or a representative designated in writing;
 - (iv) one person from a pastoralist community nominated by the National Assembly;
 - (v) one person nominated by the Senate;
 - (vi) two persons nominated by the Council of Governors drawn from areas identified as marginalized by the Commission on Revenue Allocation;
 - (vii) the Chairperson of the Commission on Revenue Allocation or a representative designated in writing;
 - (viii) one person representing persons with disabilities appointed by the Cabinet Secretary;
 - (ix) the Chief Executive Officer who shall be secretary of the Board.
- v. Clause 9 of the Bill provides for the functions of the Advisory Board which shall —
 - (a) advise and make recommendations to the Cabinet Secretary on the distribution of resources for the provision of basic services to the marginalized 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 the Act;
 - (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 the Act or that may be conferred by any other law.
- vi. Clause 12 of the Bill provides that the expenses of the Board shall be paid out of the Fund which shall be on the basis of and limited to annual work programmes and budget estimates prepared by the Administrator of the Fund. It also provides that the administrative costs and expenses of the Advisory Board shall not exceed three percent of the approved annual allocation to the Fund.
- vii. Clause 13 of the Bill provides for the Chief Executive Officer of the Board who shall be the administrator to the Fund and shall be competitively recruited by the Board. The Chief Executive Officer shall serve for a term of three years and shall be eligible for re-appointment for a final term of three years. The provision also stipulates the qualifications of a person to be appointed as a Chief Executive Officer and the roles of the officer administering the Fund.

- viii. Clause 16 of the Bill provides for the projects and programmes for financing under the Fund. The basic services to be funded in marginalized areas by the Commission on Revenue Allocation shall be;
 - (a) water and sanitation;
 - (b) roads;
 - (c) health and 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.
- ix. Clause 17 of the Bill provides for the establishment by the Board of a county technical committees in every eligible county comprising:
 - (a) the County Commissioner and the Governor who shall be co-chairpersons;
 - (b) the relevant county executive committee member for Finance;
 - (c) Constituency Development Fund Managers;
 - (d) a representative of the relevant County Assembly; and
 - (e) a public officer employed in the respective county government with technical expertise in areas that the prioritized projects fall.
- x. Clause 18 of the Bill provides that the County Technical Committee shall be responsible for approving all projects to be financed from the Fund.
- xi. Clause 24 of the Bill provides that the County Executive Committee Member responsible of matters relating to finance shall submit workplans through the respective county technical committee to the Board for approval.
- xii. Clause 27 of the Bill provides that the Board shall on a quarterly basis, submit a report to the Cabinet Secretary, the Commission and the Controller of Budget detailing—
 - (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.
- xiii. Clause 29 of the Bill provides that the administrator of the Fund shall open a designated Equalization Fund account at the Central Bank of Kenya. It provides, among others, that 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.
- xiv. Clause 30 of the Bill provides that the accounts of the Fund shall be audited and reported in accordance with the Public Finance Management Act and the Public Audit Act.
 - xv. Part V (clauses 31-32) of the Bill provides for winding up of the Fund. Particularly, clause 32 seeks to extend the expiry period of the Equalisation Fund to a further non-renewable term of 10 years from the date upon which the Fund would have lapsed under Article 204(6) of the Constitution
 - xvi. Part VI (clauses 33-38) of the Bill provides for repeals, savings and transition. Particularly, clause 34 of the Bill seeks to repeal the Public Finance Management (Equalization Fund Administration) Regulations, 2021.
 - xvii. The Schedule of the Bill provides for the provisions relating to meetings of the Advisory Board.

CHAPTER THREE

3. PUBLIC PARTICIPATION AND STAKEHOLDER ENGAGEMENT ON THE BILL

3.1 LEGAL FRAMEWORK ON PUBLIC PARTICIPATION

15. 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."

16. The National Assembly Standing Order 127 (3) and (3A) stipulates that:

*"(3) The Departmental Committee to which a Bill is committed shall **facilitate public participation on the Bill** through an appropriate mechanism including-*

- (a) inviting submission of memoranda;*
- (b) holding public hearings;*
- (c) consulting relevant stakeholders in a sector; and*
- (d) consulting experts on technical subjects.*

(3A) The Departmental Committee shall take into account the views and recommendations of the public under paragraph (3) in its report to the House."

3.2 MEMORANDA RECEIVED ON THE BILL

17. Pursuant to the aforementioned provisions of law, the Clerk of the National Assembly placed an advertisement in the print media on 8th March 2024 inviting the public to submit memoranda by way of written statements on the Bill. Further, the Clerk of the National Assembly vide letter Ref. No. NA/DDC/F&NP/2024/041 dated 8th April, 2024 invited key stakeholders to submit views on the Bill and attend a public participation forum on 16th April 2024 respectively.

18. The Committee received seven memoranda from the Controller of Budget (COB), Law Society of Kenya (LSK), Council of Governors (COG), Equalization Fund Board (National Treasury), Institute of Certified Accountants of Kenya (ICPAK), National Gender and Equality Commission (NGEC) and Commission on Revenue Allocation (CRA). The memoranda are annexed to this report as Annexure 8. They stated as follows:

Clause 2

19. **CRA** proposed to define "the commission" as the Commission on Revenue Allocation for clarity purposes.

Committee Observation

The Committee agreed with the stakeholder. Since the word "Commission" has been referred to in the Bill in clauses 23, 25, 27, defining the term will provide clarity.

20. **The EF Board** recommended establishment of an Incorporated Fund Board as opposed to an Advisory Board that is unincorporated Fund Board.

Committee Observation

The Committee was of the view that the Board is time-bound under Article 204(6) of the Constitution hence there was no need for the Board to be a State Corporation. Even though clause 32 of the Bill proposes the extension of the period for a further ten years, the time-bound nature of the Fund cannot be wished away. Therefore, the Committee recommended the retention of the provision in the Bill.

21. **The EF Board** recommended the addition of a new objective to provide for the definition of "implementing agency" to mean either a National or County government entity implementing projects on behalf of the Fund.

Committee Observation

The Committee noted that clause 9(1) (g) of the Bill provides for one of the functions of the Advisory Board, which shall be to 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 the Act. The Committee observed that the provisions of the Bill were adequate, and therefore, it felt that providing for additional objectives or defining the term "implementing agency" would amount to over-legislation.

Clause 3

Clause 3(b)

22. **The EF Board** proposed amending the clause to "*provide for completion of ongoing projects under the First, Second Policies and subsequent policies.*"

Committee Observation

The Committee noted that clause 36 of the Bill provides that any ongoing projects under the repealed Regulations shall be finalized in accordance with the provisions of the Act. Further, clause 3(b) provides for the purpose of the Act as to "provide for completion of projects under policies developed by the Commission on Revenue Allocation under Article 216(4) of the Constitution". The provision was elegant, adequate and it addresses the fears of the stakeholder.

23. Additionally, it proposed to provide for a new objective "*provide for direct and indirect implementation of the Fund*" since Article 204(3) of the Constitution provides that the national government may use the Equalisation Fund either **directly** or **indirectly** through conditional grants to counties in which marginalized communities exist.

Committee Observation

The Committee observed that paragraph (a) of clause 3 was crisp and adequate as it provides that the Act seeks to "provide a framework for administration and management of the Equalization Fund in accordance with Article 204 of the Constitution.

Clause 3(d)

24. LSK proposed amending the clause to specify the number of years for which the suspension is effective, as Article 204(7) of the Constitution grants Parliament the power to suspend Article 204(6) of the Constitution through legislation for a fixed period of time.

Committee Observation

The Committee agreed in principle with the stakeholder but noted that whereas clause 3(d) rightly states the objective generally, clause 32(2) specifies that 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) of the Constitution.

Clause 4

25. CRA proposed amending the clause to include one half **percent** instead of one half of all revenue to align it with Article 204(1) of the Constitution.
26. ICPAK proposed amending the clause to include one half **percent** instead of one half of all revenue to provide clarity.

Committee Observation

The Committee agreed to the proposals. The clause was erroneous as it referred to "one half of all revenue" instead of "one half percent of all revenue" as provided for in Article 204(1) of the Constitution.

Clause 6

27. The EF Board recommended the establishment of an incorporated Equalisation Fund Board.
28. ICPAK noted that the bill lacks representation from a professional body. To enhance financial oversight and promote adherence to high standards of governance and accountability they proposed amending it to read as follows;

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

- (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) a member from the professional body regulating Accountants;
- (j) the Chief Executive Officer who shall be secretary of the Board.

Committee Observation

The Committee was of a different view that the Board is time-bound under Article 204(6) of the Constitution hence there was no need for the Board to be a State Corporation. Even though clause 32 of the Bill proposes the extension of the period for a further ten years, the time-bound nature of the Fund cannot be wished away. Therefore, the Committee recommended the retention of the provision in the Bill.

Clause 6 (1) (d)

29. The **COB** was of the view that the Clause is discriminatory and contrary to Article 27 of the Constitution of Kenya and proposed its deletion.
30. **NGEC** proposed to delete clause 6(1)(d) & (e) to read as follows (one woman and one youth" nominated by pastoralists organizations from the marginalized areas and appointed by the Cabinet Secretary. They noted that the nominations by Senate and National Assembly interferes with the principle of separation of powers.

Committee Observation

The Committee was of a different view that having one person from a pastoralist community nominated by the National Assembly was not discriminatory. Further, Article 27(6) provides as follows—

(6) To give full effect to the realisation of the rights guaranteed under this Article, the State shall take legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination.

Clause 6(1)(f)

31. The **COG** was of the view that there is need for adequate representation of the devolved units given that implementation will take place in marginalized areas identified within counties. This will bolster the county governments' engagement in the administration of the Fund and its associated services. They proposed amending the clause to read as follows;

"three persons nominated by the Council of Governors drawn from an eligible county identified as a beneficiary of the fund by the Commission on Revenue Allocation."

Committee Observation

The Committee noted that the provision proposes two persons nominated by the Council of Governors. The Committee was of the view that this was adequate representation.

Clause 6(1)(g)

32. The **EF Board** noted that the CRA and COB are independent offices which do not play a role in the executive office besides the oversight role over the fund and could potentially raise conflict of interest in the board. They proposed deleting clause 6 (1)(g) and 6(1)(h) and replacing them with;

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

a) the Chairperson who shall be appointed by the President;

b) the Principal Secretary responsible for matters relating to finance or a representative designated in writing;

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 CRA

g) Three people nominated from organizations working in equalization fund beneficiary counties and special interest groups appointed by the Cabinet Secretary

h) the Chief Executive Officer who shall be Secretary of the Board

Committee Observation

The Committee agreed with the stakeholder to delete paragraph (g) in clause 6(1) and replacing it with three persons nominated by organisations working in equalisation fund beneficiary counties and special interest groups of whom one should be a person representing persons with disabilities. As a consequent of this, the Committee recommended deletion of paragraph (h). However, the Committee retained the other proposed members in the clause.

Clause 6(1) (i)

33. LSK proposed amending the clause to specify the CEO who is being referred to. The framing of the clause is ambiguous since section 2 of the Bill does not define the term Chief Executive officer.

34. Additionally, it proposed to introduce clause 6(4) to read "the composition of the board shall at all times comply with gender rule contemplated in Article 27(8) of the Constitution "as gender equality is a guiding principle in the constitutional dispensation post-2010.

Committee Observation

The Committee noted that clause 6(1)(i) was not ambiguous since clause 13 clarifies that the Chief Executive Officer shall be the administrator of the Fund. The Committee agreed with the proposal on gender equality and recommended an insertion of a subclause to provide that the nomination and appointment of the members of the Board shall take into account the gender, regional and ethnic diversities of the people of Kenya, youth and persons with disabilities.

Clause 6(2)

35. CRA proposed the deletion of subclauses (1) (d), (e) and (f) and replacing them with (1) (a) (d), (e) (f) and (h) to include all persons appointed under these clauses to be gazetted.

Committee Observation

The Committee agreed with the proposal.

Clause 6(3)

36. **CRA** proposed the deletion of subclauses (1) (d), (e) and (f) and replacing them with (1) (a) (d), (e) (f) and (h) for the tenure of office to apply to all persons appointed under these sub-clauses.
37. **ICPAK** noted that the provision limits representation from a professional body. They recommended a three-year term, with the possibility of renewal, to provide the board with sufficient time to effectively implement and realize its vision.

Committee Observation

The Committee agreed with the proposal.

Clause 7

38. **CRA** proposed the deletion of subclauses (1) (d), (e) and (f) and replacing them with (1) (a) (d), (e) (f) and (h) for the qualification for appointment to apply to all persons appointed under these sub-clauses.

Committee Observation

The Committee agreed with the proposal

Clause 8

39. **CRA** proposed the deletion of subclauses (1) (d), (e) and (f) and replacing them with (1) (a) (d), (e) (f) and (h) for the vacation of office to apply to all persons appointed under these sub-clauses.
40. **The EF Board** noted that individuals appointed under clause 6 (1)(a) and (d) shall hold office for a term of three years, renewable once. This is a common practice for good governance in the public sector, which is three years renewable once.
41. **ICPAK** noted that in subclause iii, seeking permission from the Board is somewhat ambiguous. To align with Mwongozo code of Governance, they proposed amending to read as follows;
(i)has been absent from three consecutive meetings of the board without permission of the Chairperson.

Committee Observation

The Committee agreed with proposals.

Clause 8

Clause 8 b (iii & iv)

42. The **COB** noted that clause 8 b (iii & iv) are related and proposed merging the two sub-clauses

Committee Observation

The Committee agreed with the proposal.

Clause 8

43. The **COB** proposed amending clause 8 by including sub-clause (d) on bankruptcy and (e) on does not meet the requirements of Chapter 6 of the Constitution. This will provide a precise mechanism for appointing the Board whilst ensuring transparency and accountability.
44. **NGEC** proposed deletion of clause 8(b) (v) in its entirety since the provisions are prejudicial and discriminatory to persons with various forms of disabilities.

Committee Observation

The Committee noted that clause 8(b)(ii) of the Bill already provides for bankruptcy whereas cumulatively, clause 8(b)(iii), (iv) and (vi) speak to not meeting the requirements of chapter 6 of the Constitution.

Clause 9 (1) (a) &(c)

45. The **EF Board** noted that provisions in Article 216(4) and 204(4) of the Constitution mandates the role of identifying and providing recommendations on the distribution of resources for provision of basic services to the marginalised areas to CRA. Therefore, the board recommended the deletion of these subclauses.
46. **ICPAK** proposed amending the clause to align the board mandate, hence using the revenue appropriation instead of revenue distribution. They proposed to read as follows;
- (a) Advise and make recommendations to the cabinet secretary on the appropriation of resources for the provision of basic services to the marginalized areas under Article 204 of the constitution in line with the recommendations of the Commission on Revenue Allocation*

Committee Observation

The Committee agreed with the stakeholder's submission.

Clause 9(e)

47. The **EF Board** proposed amending the clause to provide for both direct and indirect implementation of EF projects.

Committee Observation

The Committee noted that the Fund caters for both the indirect and direct projects.

Clause 12(4)

48. The **COB** was of the view that there shouldn't be an exemption for the 3% capping on the administrative expenses and proposed deletion of the clause in its entirety. In the absence of the Equalization Fund Act, the Public Finance Management Act (PFMA) applies.

49. **The EF Board** proposed amending the clause by adding a new sub clause 4 to include administrative expenses for the implementing agencies which should not be more than 2% of the annual allocation to the beneficiary county.

Committee Observation

The Committee noted that clause 12(4) was a transitional provision for seamless implementation of clause 12. Further, the Committee noted that the clause was adequate in its provision for administrative expenses which would also be utilized by the implementing agencies through the Board.

Clause 13 (2) (b)

50. The **COB** proposed to amend the clause by adding the phrase "... or any related field" to the education qualifications to expand the eligibility for appointment in other related academic disciplines.
51. **The EF Board** was of the view that the qualifications of the CEO are biased to the health sector leaving water, energy and infrastructure which are priority sectors provided in Article 204 of the CoK. They proposed the qualification of the CEO to be prescribed in the Human Resource Instrument.
52. **ICPAK** proposed amending this to be in line with Mwongozo guidelines and best practices observed in public entity bodies.

Committee Observation

The Committee noted that clause 13(2)(b) of the Bill provides for one of the qualification requirements as having at least ten years' experience at senior management level in financial management, business administration, economics or law. The stated fields are proposed because it requires someone with financial competence and experience. Expanding it to "any related field" may defeat this purpose. The qualifications as stated are not biased to the health sector as indicated by the stakeholder. The Committee was therefore of the opinion that the proposal in the Bill was adequate.

Clause 13(3)

53. **The EF Board** proposed amending the CEO's term to Five years and reappointment for a further and final term of five years. The technicality of Fund administration is that a CEO's term should be 5 years and eligible for a further 5 years for consistency, good governance, and stability of the Fund.

Committee Observation

The Committee noted that the Mwongozo Code of Governance for State Corporations provides for the tenure of a Board member which shall not exceed a cumulative term of six years or two terms of three years each. The Committee, therefore, was of a different view of retaining the proposal in the Bill.

Clause 13(4) (a)

54. The **COB** was of the view that Clause 13(4) (a) be amended by including "The Officer administering the Fund shall, *in consultation with the National Treasury*". This will provide for the role of the National Treasury in opening the bank account and will be in line with Section 18(2) of the Public Finance Management Act (PFMA).

Committee Observation

The Committee noted that the clause was adequate. Similarly, section 18 of the PFMA provides that the National Treasury shall administer the Equalisation Fund in accordance with Article 204. This should be read together with clause 29 of the Bill providing for withdrawals from the Fund which provisions are similar to those in section 18 of PFMA. Therefore, the Committee was of the view that section 18 of PFMA ought to be repealed to avoid conflict and overlap of the two provisions.

Clause 13(4) (b)

55. The **COB** proposed deletion of the phrase "*from time to time*" and replacing it with "*in accordance with this Act*". The Equalization Fund is an independent Fund not under the National Treasury's control. The role of the National government under Article 204 of the Constitution and Section 18 of the PFMA is limited to operational aspects of the establishment and maintenance of an account for the Equalization Fund.

Committee Observation

The Committee noted that the Bill designates the Chief Executive Officer of the Board as the administrator of the Fund. Similarly, section 18 of the PFMA provides that the National Treasury shall administer the Equalisation Fund in accordance with Article 204. This should be read together with clause 29 of the Bill providing for withdrawals from the Fund which provisions are similar to those in section 18 of PFMA. Therefore, the Committee was of the view that section 18 of PFMA ought to be repealed to avoid conflict and overlap of the two provisions. The Committee agreed with the stakeholder.

Clause 15(1)

56. The **EF Board** was of the view that the board should be incorporated with the mandate to appoint and constitute the secretariat through the fund while complying with the applicable public employment and Human Resource laws in Kenya. They proposed the clause to read as follows;

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

a) administrator of the Fund; and

b) such other public officers as the Fund shall, in consultation with the Board, designate for the proper performance of the functions of the secretariat under this Act.

Committee Observation

The Committee noted that there were inconsistencies in the use of "administrator to the Fund", "Fund Administrator", and "Officer administering the Fund" in the Bill. Whereas clause 2 of the Bill defines "Fund administrator", this is not consistently applied. Therefore, the Committee agreed with the stakeholder to ensure consistency and proposes the use of "Fund administrator" consistently in the Bill. The Committee agreed with the stakeholder's second proposal to amend clause 15(1) (b) of the Bill for the independence and efficient performance of the Board's functions.

Clause 15(2) (d)

57. **CRA** noted there was an editorial issue and proposed deletion of "Guidelines" and replacing it with "Bill"

Committee Observation

The Committee agreed to the proposal.

Clause 15 (2) (f) (i)

58. **CRA** noted there was an editorial issue and proposed deletion of the phrase "have been."

Committee Observation

The Committee agreed to the proposal.

Clause 16

59. **The EF Board** proposed amending the clause by reducing the number of committees to two committees at the county level with representation from the three committees.

Committee Observation

The Committee noted that the Bill proposes the establishment of a county technical committee, a sub-county technical committee, and a Project Identification and Implementation Committee. The Committee agreed to reduce the committees from three to two to provide for a county technical committee and a sub-county technical committee. The Committee recommended the removal of the Project Identification and Implementation Committee and its functions to be included in the functions of a sub-county technical committee.

Clause 16 (a)

60. **CRA** noted that there was need to align the clause with Article 204(2) of the Constitution and proposed the deletion of the word "sanitation."

Committee Observation

The Committee agreed to the proposal.

Clause 17 (a)

61. **CRA** proposed the deletion of "Governor" and replacing it with "County Administrator" since this is a technical Committee and the Governor should be represented by the County Administrator.
62. **ICPAK** proposed having representation from a professional body to enhance financial oversight and promote adherence to high standards of governance and accountability.
63. **NGEC** noted that the Committee does not comprise Non-state actors. They proposed the expansion of the Technical Committee to include non-state actors in the same order as proposed in the Advisory Board.

Committee Observation

The Committee noted that the County Governments Act, Cap. 265, does not provide for a County Administrator but the Office of the sub-county administrator by dint of section 50 of the Act. If the stakeholder meant a sub-county administrator, the Committee observed that the sub-county administrator is one of the co-chairpersons as provided for in clause 19 of the Bill. The Committee agreed with the stakeholders that since the County Technical Committee is a technical one, another person other than the Governor should be proposed. The Committee recommended the county secretary in place of the Governor.

Clause 17(d) and (f)

64. **LSK** proposed amending clauses 17 (d) and (f) to maintain one provision eliminating duplication of roles.

Committee Observation

The Committee noted that paragraph (f) the stakeholder referring to was non-existent. However, if the stakeholder meant to refer to paragraph (e), the Committee agreed to delete the paragraph since county governments have representatives through relevant county executive committee members for finance in the clause and the proposal to include a county secretary in place of the Governor. The Committee further noted that paragraph (e) needed to be amended to specify that the public officer will be one in charge of planning appointed by the Cabinet Secretary.

Clause 19

65. **The EF Board** observed that there is need to ensure efficient and effective implementation of the Fund and the two committees (County Technical Committee and the Sub-County technical Committee) should be responsible for project identification and oversight project implementation at the county level.

Committee Observation

The Committee agreed with the stakeholder.

Clause 20 (c)

66. **CRA** noted there was an editorial oversight and proposed deleting "access" and replacing it with "assess".

Committee Observation

The Committee agreed to the proposal to correct the topographical error.

Clauses 21 and 22

67. **The EF Board** proposed the deletion of the clauses as they create bureaucracy.

Committee Observation

The Committee agreed with the stakeholder.

Clauses 22(a) and 25(2) (b)

68. The **COG** noted that the clauses are duplicitous and could lead to wastage of public resources. Clause 9(1)(j) already assigns the responsibility of conducting public participation in the projects to the Board. They proposed amending the clauses to harmonize with clause 9(1)(j) of the bill.
69. **NGEC** proposed amending the clause to include the phrase "civic education" before the phrase "public" to ensure individuals or groups of the locals get the first opportunity to better their livelihoods through economic empowerment.

Committee Observation

The Committee noted that clause 9(1)(j) of the Bill provides that the Board shall "undertake project public participation in line with Article 201 of the Constitution". Clause 22 of the Bill provides that the Project Identification and Implementation Committee shall "undertake public participation in beneficiary counties". Clause 25(1)(c) of the Bill provides that the county executive committee member shall, upon the identification of projects and programmes, prepare a workplan setting out "a report on the public participation undertaken during the process of

identification of programmes and projects". The Bill provides that the workplan shall be submitted to the Board. The Committee, therefore, agreed with the stakeholder that the provisions were duplicitous to the extent that the Board performs the same function. Therefore, the Committee recommended that clause 9(1)(1)(j) be amended to provide that the Board shall oversight public participation.

Clause 23(1) (a)

70. The COB proposed amending clause 23(1) (a) to provide for under clause 15(1) (a) that the officer administering the Fund shall be the secretary to the Board. Further, they proposed under clause 2 defining that the "Commission" means the Commission on Revenue Allocation. This will provide clarity on who the Secretary to the Board is and the Commission referred to.

Committee Observation

The Committee agreed to the proposal.

Clause 24

71. The EF Board observed that to ensure efficiency, clause 24 provides that the CECM responsible for matters relating to finance shall submit plans through the respective county technical committees to the Board for approval; therefore, there is no need for approval by CS National Treasury after the board's approval. They proposed the clause to read as follows;

24(1) the CEC Member responsible for matters relating to finance shall submit workplans through the respective county technical committee to the Board for approval

24 (2) upon receipt and approval of the workplan, the Board shall make its recommendation to the Cabinet Secretary.

Committee Observation

The Committee noted that clause 26(2)(d) of the Bill provides that upon receipt of the workplan, the Board shall make its recommendations to the Cabinet Secretary. Although this caters to the stakeholder's proposal, the Committee was of the view that paragraph (d) should be deleted in line with the concerns of stakeholders under clause 26.

Clause 25

72. CRA observed that it is after the county executive Committee Member has prepared a work plan that it can be submitted hence the proposed amending the clause to come before clause 24.

Committee Observation

The Committee agreed to the proposal since it will be a logical flow of clauses 24 and 25 which provide for approval of workplans and preparation of workplans respectively.

Clause 25 (1)

73. CRA proposed deleting "under section 24" in the clause and replacing it with "section 22" to align it with the correct clause.

Committee Observation

The Committee agreed with the proposal since it corrects a cross-referencing error.

Clause 26

74. The EF Board proposed the deletion of the clause in its entirety.

Committee Observation

The Committee noted that the provision contains clear directions on the role of the Board after receipt of the workplan. Therefore, the Committee was of a different view of retaining the clause.

Clause 26(2) (d)

75. The COB proposed deletion of clause 26(2) (d) in its entirety. The Advisory Board and not the Cabinet Secretary should make decisions regarding the projects to be undertaken by the Equalization Fund.

Committee Observation

The Committee agreed to the proposal.

Clause 28(1) (a)

76. The COB noted there was a typing oversight and proposed amending the clause by adding "y" to the Advisor Board to be the Advisory Board.

77. ICPAK also noted the typing error on the word Advisory and proposed amending it.

Committee Observation

The Committee agreed to the proposal.

Clauses 28 & 29

78. The COB proposed amending the clauses by choosing either the officer administering the fund or the fund administrator. This will ensure clarity on the correct term of use.

79. **ICPAK** proposed amending the clause to align with Article 204(9) to ensure legal compliance and reinforce the authority of the actions taken. They proposed it to read as follows;

29. 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, in accordance with Article 204(9) of the Constitution.

Committee Observation

The Committee agreed to the proposal.

Clause 29

80. The **COB** proposed amending clause 29 to provide for a two-tier withdrawal process as follows:

(a) *Withdrawal from the Consolidated Fund to the Equalisation Fund whereby the National Treasury makes the requisition to the Controller of Budget.*

(b) *Withdrawal from the Equalisation Fund to the Counties Spending account whereby the Officer administering the Fund Shall Make the requisition to the Controller of Budget.*

81. Further, the Controller of Budget shall develop guidelines for the withdrawal of funds from the Equalisation Fund.

82. According to Article 206 of the constitution, the Consolidated Fund is the First entry point of all the money raised or received on behalf of the national government. Article 228 of the Constitution requires the Controller of Budget to be satisfied that the withdrawal is in line with the law. These guidelines will assist the Controller of Budget in ensuring the office gets assurance and satisfaction that the withdrawal is authorised by law.

Committee Observation

The Committee agreed to the proposal.

Clause 29(2) & (3)

83. **COB** noted that the clauses contradict section 18(3) & (4) of the PFMA, which provides that the National Treasury shall make a requisition to withdraw funds from the Equalisation Fund. The amendments should be made to the PFMA.

Committee Observation

The Committee agreed to the proposal.

Clause 29(4)

84. The **COB** was of the view that to remove ambiguity, the spending agency account is not defined and the funds should be utilized in the counties hence proposed amending the clause by including "*respective counties spending agencies account*".

Committee Observation

The Committee was of a different view to retain clause 29(4) as there was no ambiguity.

New clause

85. The **COB** proposed the creation of a section on monitoring and evaluation and reporting to ensure proper accountability for the implementation of the programs.

Committee Observation

The Committee agreed to the proposal.

Clause 31

Clause 31 (1) (b)

86. **COB** was of the view that the National Treasury and not the Cabinet Secretary is responsible for ensuring that the Equalisation Fund is funded according to the Constitution. They proposed to replace the phrase "Cabinet Secretary" with "National Treasury".

87. Further, the **COB** proposed to replace "County governments" with "Equalisation Fund" in subparagraphs (i) and (ii). This is because the National Treasury's responsibility is to make requisition for the transfer of Funds into the Equalisation Fund and not transfer of funds to the county governments, since that is the purview of the fund administrator.

88. In subparagraph (ii), the National Treasury shall ensure that monies required for project completion are transferred to the "Equalization Fund", not the respective county governments.

Committee Observation

The Committee noted that the Cabinet Secretary referred to is the one for finance; therefore, it was proper. However, the Committee agreed with the stakeholders on the second proposal as the funds should be transferred to the Equalization Fund.

Clause 32(2)

89. The COB proposed the deletion of the clause because the law already provides mechanisms for enhancing the fund's life in Article 204(7) and (8) of the Constitution.

Committee Observation

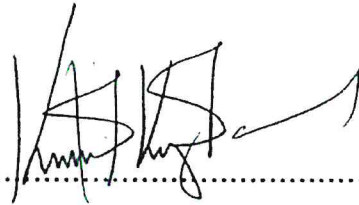
The Committee noted that Article 204(7) provides that, "*Parliament may enact legislation suspending the effect of clause (6) for a further fixed period of years, subject to clause (8).*" Clause 6 provides is a sunset clause for the Fund which is twenty years whereas clause 8 provides for the voting threshold for the legislation that seeks to extend the life of the Fund after its lapse. The Committee was therefore not persuaded by the stakeholder since clause 32 seeks to suspend the effect of clause 6 of Article 204 of the Constitution which is contemplated under clause 7 of Article 204 of the Constitution.

CHAPTER FOUR

4 COMMITTEE RECOMMENDATION

90. The Committee having considered the Equalisation Fund (Administration) Bill, 2023 (Senate Bills No. 14 of 2023) recommends that the House approves the Bill with amendments as proposed in the schedule.

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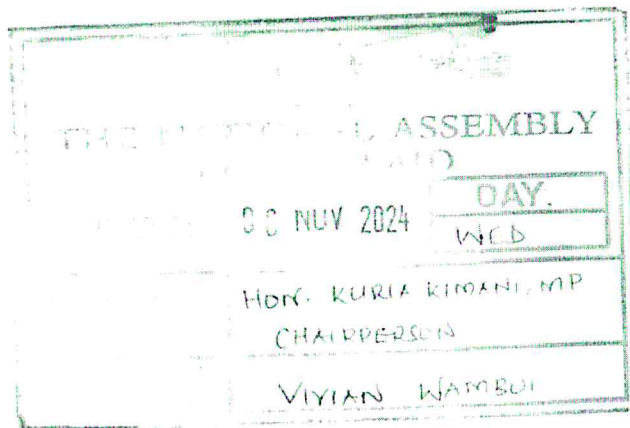


DATE.....

6th Nov, 2024

HON. CPA KURIA KIMANI, MP
CHAIRPERSON

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING



CHAPTER FIVE
5 SCHEDULE OF PROPOSED AMENDMENTS

91. The Committee proposed the following amendments to be considered by the House in the Committee stage:

CLAUSE 2

THAT, clause 2 of the Bill be amended by inserting the following definitions in its proper alphabetical sequence—

“Commission” means the Commission on Revenue Allocation;

Justification:

Since the word “Commission” has been referred to in the Bill in clauses 23, 25, 27, defining the term will provide clarity.

CLAUSE 4

THAT, clause 4 of the Bill, be amended by inserting the word “per cent” immediately after the words “one half”.

Justification:

The clause was erroneous as it referred to “one half of all revenue” instead of “one half percent of all revenue” as provided for in Article 204(1) of the Constitution.

CLAUSE 6

THAT, clause 6 of the Bill be amended—

(a) in subclause (1)—

(i) by deleting paragraph (g) and substituting therefor the following new paragraph—

“(g) three persons nominated by organizations working in equalization fund beneficiary counties and special interest groups of whom one shall be a person representing persons with disabilities;”

(ii) by deleting paragraph (h).

(b) in subclause (2) by deleting the words “section (1)(d), (e) and (f)” and substituting therefor the words “subsection (1)(d)(e), (f) and (g)”.

(c) in subclause (3) by deleting the words “subsection (1)(d), (e), (f) and (h)” and substituting therefor the words “subsection (1)(d)(e), (f) and (g)”.

(d) by inserting the following new subclause immediately after subclause (3)—

"(4) In appointing persons under subsection (1) (d), (e), (f) and (g), the Cabinet Secretary shall take into account the gender, regional and ethnic diversities of the people of Kenya, youth and persons with disabilities."

Justification

The proposed amendments seek to remove the chairperson of the Commission on Revenue Allocation from membership since CRA is an independent office. Consequently, the amendment seeks to include three persons nominated by organizations working in equalization fund beneficiary counties and special interest groups of whom one shall be a person representing persons with disabilities. This is intended to make the Board more representative and inclusive. In addition, the amendments seek to align the cross-referencing in light of the proposed amendments. Finally, the proposed insertion of a new subclause seeks to ensure that the Board membership is aligned to the Constitution.

CLAUSE 7

THAT, clause 7 of the Bill be amended by deleting the words "section 6(1)(d), (e) and (f)" and substituting therefor the words "section 6(1) (a), (d), (e), (f) and (g)".

Justification

This is a consequential amendment to amendments made to clause 6 of the Bill.

CLAUSE 8

THAT, clause 8 of the Bill be amended—

- (a) in the introductory statement by deleting the words "section 6(1)(d), (e) and (f)" and substituting therefor the words "section 6(1) (a), (d), (e), (f) and (g)".

Justification

This is a consequential amendment to amendments made to clause 6 of the Bill.

- (b) in paragraph (b) by deleting subparagraph (iii);

Justification

Subparagraph (iv) covers subparagraph (iii). Further, retaining both subparagraphs could elicit different interpretations.

CLAUSE 9

THAT, clause 9(1) of the Bill be amended—

- (a) by deleting paragraph (a);
- (b) by deleting paragraph (c);

Justification

Report of the Departmental Committee on Finance and National Planning on the Consideration of The Equalisation Fund (Administration) Bill, 2023

Articles 216(4) and 204(4) of the Constitution bestows the CRA with the role of identifying and providing recommendations on the distribution of resources for provision of basic services to the marginalised areas.

- (c) in paragraph (j) by deleting the word "undertake" and substituting therefor the word "oversight".

Justification

Clause 9(1)(j) of the Bill provides that the Board shall "undertake project public participation in line with Article 201 of the Constitution". Clause 22 of the Bill provides that the Project Identification and Implementation Committee shall "undertake public participation in beneficiary counties". Clause 25(1)(c) of the Bill provides that the county executive committee member shall, upon the identification of projects and programmes, prepare a workplan setting out "a report on the public participation undertaken during the process of identification of programmes and projects". These provisions were duplicitous to the extent that the Board performs the same function in regard to public participation and might lead to wastage of public resources. Therefore, amendment seeks to provide that the Board shall oversight public participation.

CLAUSE 13

THAT, clause 13 of the Bill be amended—

- (a) in subclause (1) by deleting the words "administrator to the Fund" and substituting therefor the words "Fund administrator";

Justification

Clause 2 of the Bill defines the term "Fund administrator". Therefore, the amendment seeks to provide for consistency in the use of the term.

- (b) in subclause (4)—

- (i) in the introductory statement by deleting the words "officer administering the Fund" and substituting therefor the words "Fund administrator";

Justification

Clause 2 of the Bill defines the term "Fund administrator". Therefore, the amendment seeks to provide for consistency in the use of the term.

- (ii) by deleting the words "from time to time" and substituting therefor the words "in accordance with this Act".

Justification

Report of the Departmental Committee on Finance and National Planning on the Consideration of The Equalisation Fund (Administration) Bill, 2023

The Equalisation Fund is an independent Fund. The role of the National Treasury is limited to operational aspects of the establishment and maintenance of an account for the Equalisation Fund.

CLAUSE 15

THAT, clause 15 be amended—

- (a) by deleting subclause (1) and substituting therefor the following new subclause—

“(1) There shall be a secretariat consisting of -

- (a) administrator of the Fund; and

- (b) such other public officers as the Fund shall, in consultation with the Board, designate for the proper performance of the functions of the secretariat under this Act.”

Justification

Firstly, clause 2 of the Bill defines the term “Fund administrator”. Therefore, the amendment seeks to provide for consistency in the use of the term. Secondly, the Amendment to clause 15(1) (b) of the Bill seeks to ensure the independence and efficient performance of the Board's functions.

- (b) in subclause (2)—

- (i) by deleting the words “these Guidelines” appearing in paragraph (d) and substituting therefor the words “this Act”;

Justification

The amendment seeks to correct an editorial error.

- (ii) by deleting the words “have been” appearing in paragraph (f) (i);

Justification

The amendment seeks to correct an editorial error.

- (iii) by deleting the words “on Revenue Allocation” appearing in paragraph (f)(i).

Justification

The amendment seeks to maintain consistency in the use of the term “Commission” which is proposed to be defined in clause 2 of the Bill.

CLAUSE 16

THAT, clause 16 of the Bill be amended—

- (a) in the introductory statement by deleting the words “on Revenue Allocation”;

Justification

The amendment seeks to maintain consistency in the use of the term "Commission" which is proposed to be defined in clause 2 of the Bill.

(b) by deleting the words "and sanitation" appearing in paragraph (a);

Justification

The proposed amendment seeks to align the paragraph to Article 204(2) of the Constitution.

(c) by deleting the words "on Revenue Allocation" appearing in paragraph (e).

Justification

The amendment seeks to maintain consistency in the use of the term "Commission" which is proposed to be defined in clause 2 of the Bill.

CLAUSE 17

THAT, clause 17 of the Bill be amended—

- (a) in paragraph (a) by deleting the word "Governor" and substituting therefor the words "county secretary";
- (b) in paragraph (c) by inserting the words "from areas defined by the Commission as marginalised";
- (c) by deleting paragraph (d);
- (d) by deleting paragraph (e) and substituting therefor the following new paragraph—
"(e) a public officer responsible for county planning appointed by the Cabinet Secretary."

Justification

The proposed amendments seek to replace the Governor with County Secretary since the County Technical Committee is a technical one. Further, the amendments address the duplication of representation from the County Governments and seeks to provide a balanced membership.

CLAUSE 19

THAT, clause 19 of the Bill be amended--

- (a) in paragraph (b) by deleting the words "not more than two" and substituting therefor the word "one";
- (b) in paragraph (c) by deleting the words "not more than two" and substituting therefor the word "one";
- (c) by deleting paragraph (d) and substituting therefor the following new paragraphs—
"(d) ward administrators of areas defined by the Commission as marginalised;

(da) a representative of women, youth and persons with disabilities from marginalised areas;

(db) a representative of faith-based groups and non-governmental organisations; and"

Justification

The proposed amendments are consequential after reducing the committees from three to two. The membership seeks to include some members proposed in Project Identification and Implementation Committee since the Committee is proposed to be deleted.

CLAUSE 20

THAT, the Bill be amended by deleting clause 20 and substituting therefor the following new clause—

Functions of the sub-county technical committee.	20. The functions of the sub-county technical committee shall be to—
	<ul style="list-style-type: none">(a) undertake public participation in beneficiary counties;(b) identify and prioritize project in beneficiary areas in line with guidelines issued by the Fund administrator;(c) prepare and evaluate project funding proposals;(d) assess the feasibility and cost all project proposals;(e) submit project proposals and funding requests to the County Technical Committee;(f) monitor all projects;(g) prepare quarterly reports on funds received and implementation status for submission to the county technical committee and the county executive committee member;(h) prepare and submit to the county technical committee and the county executive committee member annual reports on implementation of all projects.

Justification

The amendment merges and realigns the functions of the Project Identification and Implementation Committee with those of the sub-county technical committee due to the proposed deletion of the Project Identification and Implementation Committee. The three committees are proposed to be reduced to two.

CLAUSE 22

THAT, clause 22 of the Bill be deleted.

Justification

This is a consequential amendment arising from the deletion of clause 21 of the Bill.

CLAUSE 23

THAT, clause 23 of the Bill be amended in subclause (1)—

- (a) by deleting the words "Secretary of the Board" appearing in paragraph (a) and substituting therefor the words "Fund administrator";
- (b) by deleting the words "Secretary of the Board" appearing in paragraph (b) and substituting therefor the words "Fund administrator";
- (c) by deleting the words "Secretary of the Board" appearing in paragraph (c) and substituting therefor the words "Fund administrator";
- (d) by deleting the words "Secretary of the Board" appearing in paragraph (d) and substituting therefor the words "Fund administrator";
- (e) by deleting the words "Secretary of the Board" appearing in paragraph (e) and substituting therefor the words "Fund administrator".

Justification

The amendments seek to clarify who the Secretary of the Board is.

CLAUSE 24

THAT, clause 24 of the Bill be deleted.

Justification

The amendment seeks to rearrange the flow of clauses 24 and 25 of the Bill so that preparation of workplans is provided for first then the approval of workplans.

CLAUSE 25

THAT, clause 25 of the Bill be deleted.

Justification

The amendment seeks to rearrange the flow of clauses 24 and 25 of the Bill so that preparation of workplans is provided for first then the approval of workplans.

NEW CLAUSES

THAT, the Bill be amended by inserting the following new clauses immediately after clause 23—

Preparation
workplans.

of **23A.** (1) The county executive committee member shall, upon the identification of projects and programmes under section 22, prepare a workplan setting out —

- (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 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;
 - (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 for the provision of identified basic services; and
	(v)	the recommendations of the respective Ministry or State Department;
Cap. 265.	(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.
Cap. 412A.	(3)	The county executive committee member shall ensure that a workplan prepared under subsection (1) is aligned to the annual development plan of the county prepared under the Public Finance Management Act.
	(4)	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.
Approval of workplan.	of	23B. The County Executive Committee Member shall submit workplans through the respective county technical committee to the Board for approval.

Justification

The amendments seek to rearrange the flow of clauses 24 and 25 of the Bill so that preparation of workplans is provided for first then the approval of workplans. Further, since clause 2 of the Bill defines county executive committee member to mean the county executive committee member responsible for finance, the words "responsible for matters relating to finance" is deleted to remove the repetition. Also, the words "Commission on Revenue Allocation" are replaced with "Commission" to align them to the proposed amendments to clause 2 of the Bill to define Commission. In addition, a cross-referencing error in clause 25(1) has been corrected to refer to clause 22 of the Bill.

CLAUSE 26

THAT, clause 26 of the Bill be amended in subclause (2)—

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- (a) by deleting the words "on Revenue Allocation" appearing in paragraph (b);
- (b) by deleting paragraph (d).

Justification

The words "Commission on Revenue Allocation" are replaced with "Commission" to align them to the proposed amendments to clause 2 of the Bill to define Commission.

Further, the amendment seeks to align the functions to the Advisory Board's functions which makes decisions regarding the projects to be undertaken by the Equalization Fund.

CLAUSE 28

THAT, clause 28 of the Bill be amended in subclause (3) by deleting the words "The officer administering the Fund" and substituting therefor the words "Fund administrator".

Justification

There were inconsistencies in the use of "administrator to the Fund", "Fund Administrator", and "Officer administering the Fund" in the Bill. Whereas clause 2 of the Bill defines "Fund administrator", this is not consistently applied. Therefore, the amendment seeks to ensure consistency in the use of "Fund administrator" in the Bill.

CLAUSE 29

THAT, clause 29 of the Bill be amended—

- (a) in subclause (1) by deleting the words "The administrator of the Fund" and substituting therefor the words "Fund administrator".

Justification

There were inconsistencies in the use of "administrator to the Fund", "Fund Administrator", and "Officer administering the Fund" in the Bill. Whereas clause 2 of the Bill defines "Fund administrator", this is not consistently applied. Therefore, the amendment seeks to ensure consistency in the use of "Fund administrator" in the Bill.

- (b) by deleting subclause (2) and substituting therefor the following new subclauses—

"(2) Where a withdrawal from the Fund is authorized under an Act of Parliament that approves the appropriation of money, The National Treasury shall make a requisition for withdrawal from the Consolidated Fund to the Equalisation Fund to the Controller of Budget for authorization.

(2A) The Fund administrator shall make a requisition to the Controller of Budget for withdrawal from the Equalisation Fund to the respective spending agencies' accounts."

Justification

The amendment seeks to provide for a two-tier withdrawal process to clearly delineate the role of the National Treasury and the Fund administrator.

(c) in subclause (3) by deleting the words "the officer administering the Fund" and substituting therefor the words "Fund administrator";

Justification

There were inconsistencies in the use of "administrator to the Fund", "Fund Administrator", and "Officer administering the Fund" in the Bill. Whereas clause 2 of the Bill defines "Fund administrator", this is not consistently applied. Therefore, the amendment seeks to ensure consistency in the use of "Fund administrator" in the Bill.

(d) by inserting the following new subclause immediately after subclause (4)—
"(4) The Controller of Budget shall develop regulations for withdrawal of funds from the Equalisation Fund.

Justification

According to Article 206 of the constitution, the Consolidated Fund is the First entry point of all the money raised or received on behalf of the national government. Article 228 of the Constitution requires the Controller of Budget to be satisfied that the withdrawal is in line with the law. These regulations will assist the Controller of Budget in ensuring the office gets assurance and satisfaction that the withdrawal is authorised by law.

NEW CLAUSE

THAT, the Bill be amended by inserting the following new clause immediately after clause 30—

Monitoring
evaluation.

and

30A. (1) Not later than three months after the end of each financial year, 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;

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

(2) The Advisory Board shall prepare the report for approval by the Cabinet Secretary.

(3) The Cabinet Secretary shall submit the report to the National Assembly and the Senate within fourteen days of receipt of the report under subsection (3).

Justification

The amendment seeks to provide for monitoring and evaluation of the Fund to ensure its effective utilization and information on its progress.

CLAUSE 31

THAT, clause 31 of the Bill be amended by deleting paragraph (b) and substituting therefore the following new paragraphs—

"(b) The National Treasury shall make a requisition to the Controller of Budget for authorization for withdrawal of funds from the Consolidated Fund to the Equalisation Fund for the completion of the projects;

(c) The Fund administrator shall make a requisition to the Controller of Budget for authorization for withdrawal from the Equalisation Fund to the respective spending agencies' accounts of monies required for the completion of the projects."

Justification

The National Treasury's responsibility is to make requisition for the transfer of funds into the Equalisation Fund and not transfer of funds to the county governments, since that is the purview of the Fund administrator.

NEW CLAUSE

THAT, the Bill be amended by inserting the following clause immediately after clause 32—

Repeal of section 18 of Cap.
412A.

32A. Section 18 of the Public
Finance Management Act is repealed.

Justification

This is a consequential amendment as result of amendments to clause 29 of the Bill which provides for a two-tier withdrawal process to clearly delineate the role of the National Treasury and the Fund administrator. It is proposed that the National Treasury shall make a requisition for withdrawal from the Consolidated Fund to the Equalisation Fund to the Controller of Budget for authorization whereas the Fund administrator shall make a requisition to the Controller of Budget for withdrawal from the Equalisation Fund to the respective spending agencies' accounts.

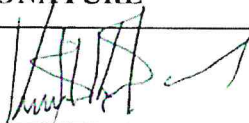
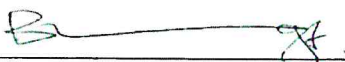
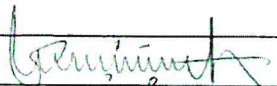
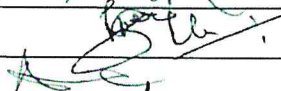
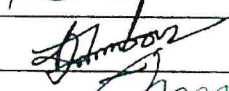


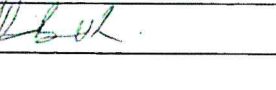
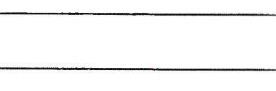
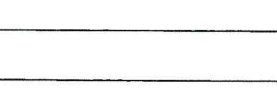



THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - THIRD SESSION - 2024

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING.
ADOPTION LIST

REPORT ON THE THE EQUALISATION FUND (ADMINISTRATION) BILL, 2023
(SENATE BILLS NO. 14 OF 2023)

We, the Members of the Departmental Committee on Finance and National Planning have pursuant to Standing Order 199, adopted this Report and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity today, Wednesday, 6th November 2024.

S/NO.	NAME	SIGNATURE
1.	HON. (CPA). KURIA KIMANI, MP - CHAIRPERSON	
2.	HON. (AMB). BENJAMIN KIPKIRUI LANGAT, MP - VICE CHAIRPERSON	
3.	HON. DR. ADAN KEYNAN WEHLIYE, MP	
4.	HON. GEORGE SUNKUYIA RISA, MP	
5.	HON. (CPA) JOSEPH MAERO OYULA, MP	
6.	HON. ANDREW ADIPO OKUOME, MP	
7.	HON. DAVID MWALIKA MBONI, MP	
8.	HON. JOSEPH MAKILAP KIPKOROS, MP	
9.	HON. JOSEPH KAMAU MUNYORO, MP	
10.	HON. (CPA) JULIUS KIPLETING RUTTO, MP	
11.	HON. PAUL KIBICHIY BIEGO, MP	
12.	HON. UMUL KER SHEIKH KASSIM, MP	
13.	HON. DR. SHADRACK MWITI ITHINJI, MP	
14.	HON. DR. JOHN ARIKO NAMOIT, MP	
15.	HON. MOHAMED SOUD MACHELE, MP	