


Approved for tabling in the House.

 THE NATIONAL ASSEMBLY REPUBLIC OF KENYA PAPERS LAID	
DATE: 31 MAR 2022	DAY:
TABLED BY:	
CLERK-AT THE TABLE:	



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SNA
31/3/2022

paper laid by
Chairperson BAC
on Thursday 31st
March, 2022

DAB

PARLIAMENT OF KENYA

TWELFTH PARLIAMENT – SIXTH SESSION

THE REPORT OF



THE MEDIATION COMMITTEE ON THE COUNTY GOVERNMENTS
GRANTS BILL (SENATE BILLS NO. 35 OF 2021)

PURSUANT TO ARTICLE 113 OF THE CONSTITUTION

JOINT CLERKS CHAMBERS,
PARLIAMENT BUILDINGS,
NAIROBI.

MARCH 2022

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1.0 INTRODUCTION

1.1 Establishment of the Committee

The Mediation Committee on the County Governments Grants Bill (Senate Bills no. 35 of 2021) was constituted by the Speaker of the Senate pursuant to standing order 160 (2) of Standing Orders of the Senate and the Speaker of the National Assembly pursuant to standing order 149 (2) of Standing Orders of the National Assembly on 21st December, 2021 and 23rd December, 2021 respectively.

The Committee membership was constituted as follows-

- | | | |
|---|---|------------------|
| 1. Sen. Charles Kibiru, MP | - | Chairperson |
| 2. Hon. Kanini Kega, CBS, MP | - | Vice-Chairperson |
| 3. Sen. Moses Wetangula Masika, EGH, MP | - | Member |
| 4. Sen. Mutula Kilonzo Junior, CBS, MP | - | Member |
| 5. Hon. (Dr.) Makali Mulu, MP | - | Member |
| 6. Sen. Rose Nyamunga, CBS, MP | - | Member |
| 7. Hon. Millie Odhiambo, CBS, MP | - | Member |
| 8. Sen. CPA Farhiya Haji, MBS, MP | - | Member |
| 9. Hon. Naisula Lesuuda, OGW, MP | - | Member |
| 10. Hon. (Dr.) Kanyuithia Mutunga, MP | - | Member |

1.2 Mandate of the Mediation Committee

The Mediation Committee derives its mandate from the provisions of Articles 112 and 113 of the Constitution, standing order 149 of Standing Orders of the National Assembly and standing order 160 of Standing Orders of the Senate which outlines the functions of the Committee as follows-

- i. *To consider Bills where the Houses do not agree on all or any of the amendments made by either Houses;*

- ii. *To consider Bills where either House rejects a Motion that a Bill which originated in the other House be read a Second or Third time; and,*
- iii. *To attempt to develop a version of the Bill that both Houses will pass.*

The Committee was established to develop an agreed version of the County Governments Grants Bill (Senate Bills no.35 of 2021).

The version would then be presented to both Houses for approval pursuant to standing order 149(6) of the Standing Orders of the National Assembly and standing order 161 (1) of the Standing Orders of the Senate.

1.3 Committee Meetings and Methodology

The Committee held a total of four (4) sittings to deliberate on the Bill in accordance with the Constitution and relevant provisions of the Standing Orders of the Senate and the National Assembly.

During the first sitting, the Committee appointed Sen. Charles Kibiru, MP and Hon. Kanini Kega, CBS, MP as the Chairperson and the Vice-Chairperson respectively pursuant to standing order 160 (4) of Standing Orders of the Senate and Standing Order 149(4) of Standing Orders of the National Assembly.

During deliberations, the Committee held a meeting with the following stakeholders-

- a) The National Treasury and Planning,
- b) The Commission on Revenue Allocation (CRA),
- c) The Council of Governors (CoG), and
- d) The Controller of Budget (COB).

Appended to this report is a version of the Bill developed by the Committee for consideration by both Houses.

1.4 Acknowledgements

The Mediation Committee extends its appreciation to the stakeholders who attended the meetings and made insightful contributions and recommendations. The Committee further appreciates the offices of the Speakers and the Clerks of both Houses of Parliament for the support extended to it in the execution of its mandate.

The Chairperson in particular extends his appreciation to all the Members of the Committee for their patience, sacrifice, endurance and commitment to their assignment under tight schedules which enabled the Committee to complete the task within the stipulated period of time.

Finally, it is now my pleasant duty and privilege, on behalf of the Mediation Committee on the County Governments Grants Bill (Senate Bills no. 35 of 2021), to present and commend this report including the agreed version of the Bill to the Houses for approval pursuant to Article 113(2) of the Constitution and standing order 161(1) of Standing Orders of the Senate and standing order 150(3) of standing order of the National Assembly.

Sen. Charles Kibiru, MP. - Chairperson

SIGNED 

DATE: 31/03/2022

Hon. Kanini Kega, CBS, MP - Vice Chairperson

SIGNED 

DATE: 31/03/2022

Pursuant to standing order 213 (2) of the Senate Standing Orders, and standing order 199(4) of the National Assembly Standing Orders, the Mediation Committee adopted the report on the County Governments Grants Bill (Senate Bills no. 35 of 2021). The Members of the Committee hereby affix their signatures to this Report to affirm the support for the Report –

1. Sen. Charles Kibiru, MP
2. Hon. Kanini Kega, CBS, MP
3. Sen. Mutula Kilonzo, MP
4. Sen. Moses Wetangula Masika, EGH, MP
5. Hon. (Dr.) Makali Mulu, MP
6. Sen. Rose Nyamunga, MP
7. Hon. Millie Odhiambo, CBS, MP
8. Sen. CPA Farhiya Haji, MBS, MP
9. Hon. Naisula Lesuuda, OGW, MP
10. Hon. (Dr.) Kanyuithia Mutunga, MP

2.0 BACKGROUND

The County Governments Grants Bill, (Senate Bills No. 35 of 2021) was published on 25th May, 2021 and introduced in the Senate on 6th July, 2021. The Bill intends to provide a mechanism or instrument for transfer of conditional or unconditional grants from national governments’ share of revenue and from proceeds of loans and grants from development partners to the county governments. The Bill is in compliance with the High Court ruling on Petition No.252 of 2016.

The Bill was passed by the Senate on 15th September, 2021 and transmitted to the National Assembly for concurrence. The National Assembly passed the Bill with amendments on 2nd December, 2021.

At a plenary sitting held on Tuesday, 21st December, 2021, the Senate considered the National Assembly amendments to the County Governments Grants Bill, (Senate Bills No. 35 of 2021) and rejected all the amendments.

Pursuant to Article 112 (2) (b) of the Constitution and Standing Orders of both Houses, the Bill was referred to a Mediation Committee under Article 113 of the Constitution.

3.0 CONSIDERATION OF THE COUNTY GOVERNMENTS GRANTS BILL, (SENATE BILLS NO. 35 OF 2021)

The Committee was established to develop an agreed version of the County Governments Grants Bill, (Senate Bills No. 35 of 2021).

The Committee held a meeting with key stakeholders who made presentation as summarized here below-

The National Treasury and Planning

- a) The National Assembly amended Clause 3 of the County Governments Grants Bill, 2021 by deleting 2021/2022, Clauses 4, 8 and 9, and deleted schedule 1 and 2. This makes the Bill a perpetual law instead of the Senate position of annual bill/law. This is the point of disagreement between the two Houses.
- b) The role of the National Treasury is limited to signing of Financing Agreements between the Government and the development partners/financiers.
- c) The National Treasury was in support of the National Assembly's position of making the Bill a perpetual.

- d) The responsibility of resolving disagreements should be assigned to the respective Ministry, Department and Agencies (MDAs) responsible for the conditional grants and to whom the grants are appropriated. This is because MDAs are in charge of the functions for the grants and are better placed to give policy direction and conditions for access to the grants by the county governments.
- e) The consideration and passage of a legal framework for disbursement of the conditional grants should be expedited since the donors may withdraw the Kshs39 billion meant for projects in counties.
- f) Donors have timeline on disbursement of the grants and reporting deadline.
- g) The National Treasury had not issued any county governments grants for the FY 2021/2022 and it's a concern from the development partners.
- h) There is need to come up with an alternative way to disburse the funds since the absorption rate has been low due to delays in disbursement.
- i) The CS requested the Members of Parliament from both Houses to quickly make final decision to resolve the flow of funds to counties because delayed disbursement of the funds has attracted concerns from the foreign donors. He further noted that even if the Committee resolved the Bill be annual, the Treasury would be satisfied as this would unlock the delayed disbursement of funds.

The Council of Governors (CoG)

- a) Noted that the proposal by the National Assembly- idea of a perpetual law on conditional grants would not be the best.
- b) The conditional grants have diverse conditions and these may need to be reviewed either annually or depending on nature agreements that that are entered to.
- c) He argued that it would be difficult to process grants provided in the middle of the budget cycle if the schedule would be attached to the BPS as pro-

posed by the National Assembly. He cited the desert locust emergency fund that took nine (9) months to be disbursed.

- d) Noted that disbursement of funds to the counties should not be administrative discretion since this would allow administrative manipulation, unnecessary delays and human/ system interferences.
- e) He requested the Mediation Committee to agree to take the Senate's annual Bill to disburse the funds for the FY 2021/2022 as it was the best option at the moment.

The Office of Controller of Budget

- a) Noted the need to harmonise the definition of 'grant' in the Bill with the definition provided in the Public Finance Management Act, 2012.
- b) Noted the need to harmonise the definition of 'loan' in the Bill with the definition provided in the Public Finance Management Act, 2012.
- c) Clause 7 should be amended on the reporting aspects to allow counties report on challenges and risks in implementation of projects funded by the conditional grants.

The Commission on Revenue Allocation

The Commission reiterated on the need to have a mechanism to unlock the delayed disbursement of conditional grant funds.

4.0 THE COMMITTEE'S RECOMMENDATIONS

- a) THAT, Clause 1 of the Bill be amended by deleting the word "Grants" and substituting therefor the following words "Additional Allocation". This is to align the provision with the phraseology of the Constitution under Article 202(2).

b) THAT, Clause 2 of the Bill be amended in the definition of “conditional allocation” by deleting the word “conditional” and substituting therefor the word “additional”. This is because the words ‘additional allocations’ would consist of additional allocations from both national government share of revenue and development partners.

c) Clause 3 be amended to read ‘The object of this Act is to provide, pursuant to Article 202 (2) of the Constitution, for additional allocations for the financial year 2021/22.

Further insert a new subclause to provide that the object of the Bill is to provide for transfer of additional allocations from proceeds of loans and grants from development partners.

d) Clause 4 should set out the specific conditional grants corresponding to the First and Second Schedule.

e) Introduce a new clause to provide for funding under this Act on the transferred functions from county governments to National government.

f) Clause 5 should obligate the Cabinet Secretary to provide monthly reports on the disbursement funds under this Act.

g) Clause 6 should obligate the county treasuries to include additional allocations in their books of accounts.

h) Clause 7 should obligate the county treasuries to, as part of consolidated quarterly and annual reports required under PFM Act, report on-

- i. Actual transfers,
- ii. Actual expenditures,
- iii. Extent of compliance with provisions in the intergovernmental agreement on specific additional allocations,
- iv. Explanations on any material challenges and risks in expenditure of any allocations under this Act, and
- v. Any other information that may be required by the under respective intergovernmental agreement.

- i) Clause 8 provide for consequential amendments to PFM Act as follows-
 - i. Section 42- to provide for consideration of county governments additional allocation bill along with other bills allocating revenues to the counties by Parliament.
 - ii. Section 191- to provide for submission of county governments additional allocation bill along with other bills allocating revenues to the counties.
 - iii. Inserting new sections 191A, 191B, 191C, 191D, 191E- to provide for process of dealing with intergovernmental agreements on any additional allocations, public participation, execution of agreements, publication of agreements and requisition of funds provided in the county governments additional allocations Act.
- j) Clause 9 should provide for transition period due to the ongoing conditional allocations.
- k) That the schedules be attached to the as stipulated in clause 4.
- l) The two Houses of Parliament to approve this report and its appendix thereof.

Approved for tabling in the House.



Pat SNA
31/3/2022

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 31 MAR 2022	DAY: _____
TABLED BY: CHAR, BAC	REPUBLIC OF KENYA
CLERK-AT THE-TABLE: R. K. TIAMATI	PARLIAMENT

SENATE BILLS
(Bill No. 35 of 2021)

THE COUNTY GOVERNMENTS ADDITIONAL ALLOCATIONS BILL, 2021

(A version of the County Governments Grants Bill, 2021 (Senate Bill No. 35 of 2021) as agreed on 31st March, 2022, by a Mediation Committee appointed pursuant to Article 113 of the Constitution.)

SSN /B/No. 35/2021

THE COUNTY GOVERNMENTS ADDITIONAL ALLOCATIONS BILL, 2021

ARRANGEMENTS OF CLAUSES

Clause

- 1 — Short title.
- 2 — Interpretation.
- 3 — Object.
- 4 — Conditional allocations to county governments.
- 5 — Report on actual transfers.
- 6 — Books of accounts to reflect national government transfers.
- 7 — Reporting.
- 8 — Consequential amendments.
- 9 — Transition.

THE COUNTY GOVERNMENTS ADDITIONAL ALLOCATIONS BILL, 2021

A Bill for

AN ACT of Parliament to provide for the additional allocations to county governments for the 2021/2022 financial year; the responsibilities of National Government and county governments pursuant to such allocation; and for connected purposes.

ENACTED by Parliament of Kenya, as follows—

Short title. 1. This Act may be cited as the County Governments Additional Allocations Act, 2022.

Interpretation. 2. In this Act —

“agreement” means an intergovernmental agreement entered into under section 191A of the Public Finance Management Act;

“authorized person”-

- (a) in relation to the National Government shall be the Principal Secretary responsible for matters relating to finance or a person appointed by that Principal Secretary, in writing;
- (b) in relation to a county government shall be the county executive committee member responsible for matters relating to finance or a person appointed by that county executive committee member, in writing;

“Cabinet Secretary” means the Cabinet Secretary responsible for finance;

“additional allocations” means additional resources allocated to county governments from the National Government’s share of revenue or in the form of loans and grants from development partners; and

“county executive committee member” means the county executive committee member in charge of matters relating to finance.

Object. 3. The object of this Act is to—

Additional
allocations to
county
governments

- (a) provide, pursuant to Article 202 (2) of the Constitution, for additional allocations for the financial year 2021/22;
- (b) provide for additional allocations from proceeds of loans and grants from development partners; and
- (c) facilitate the transfer of conditional and unconditional allocations made to counties under this Act from the Consolidated Fund to the respective County Revenue Funds and special purpose accounts.

4. (1) Additional grants shall be funds agreed upon by the National Assembly and the Senate during the consideration of the Budget Policy Statement and shall comprise of—

- (a) additional allocations from development partners required for transfer of functions to counties from the National Government as provided for under Article 187 of the Constitution;
- (b) additional allocations provided for under Article 202(2) of the Constitution; and
- (c) loans and grants from development partners.

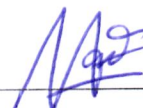
(2) Additional funds allocated under this section shall be included in the respective county governments' appropriation bills.

(3) The National Treasury shall facilitate any agreement between a county government and a development partner and shall table the agreements in the National Assembly and the Senate before inclusion in the Budget Policy statement.

Conditional
allocations to
county
governments.

5. (1) Conditional allocations to each county government from National Government share of revenue for the financial year 2021/22 shall be as set out in Column D of the First Schedule, comprising —

- (a) conditional allocations for the construction of county headquarters as set out in Column B of the First Schedule; and
- (b) conditional allocations for the leasing of medical equipment as set out in Column C of the First Schedule



(2) Conditional allocations financed by proceeds of loans or grants from development partners to each county government for the financial year 2021/22 shall be as set out in Column N of the Second Schedule, comprising of—

- (a) conditional allocations financed by a grant from the World Bank to finance Transforming Healthcare Systems for Universal Care Project (THSUCP) as set out in Column B of the Second Schedule;
- (b) conditional allocations financed by a World Bank credit to finance Agricultural and Rural Inclusive Growth Project (NARIGP) as set out in Column C of the Second Schedule;
- (c) conditional allocation financed by a World Bank loan to finance the Kenya Climate Smart Agriculture Project (KCSAP) as set out in Column D of the Second Schedule;
- (d) conditional allocations from EU grant to finance Instruments for Devolution Advice and Support (IDEAS) program as set out in Column E of the Second Schedule;
- (e) conditional allocations from a World Bank credit to finance Water and Sanitation Development Project (WSDP) as set out in Column F of the Second Schedule;
- (f) conditional allocations from a grant by DANIDA to finance Universal Healthcare in Devolved System Program as set out in Column G of the Second Schedule;
- (g) conditional allocations financed by a grant from the World Bank for Kenya Devolution Support Programme (KDSP) – level 2 known as KDSP Capacity Building (“level 2”) Grant as set out in Column H of the Second Schedule;
- (h) conditional allocations financed by a loan from Government of Sweden to finance Agriculture Sector Development Support Programme II (ASDSP II) as set out in Column I of the Second Schedule;
- (i) conditional allocations financed by both loan and grant from the German Development Bank (KfW) to finance Drought Resilience Programme in Northern Kenya (DRPNK) as set out in Column J of the Second Schedule;
- (j) conditional allocations financed by a credit from World Bank to finance Emergency Locust Response Project (ELRP) as set out in Column K of the Second Schedule;

(k) conditional allocations financed by a loan from the World Bank to finance Kenya Informal Settlement Improvement Project (KISIP II) as set out in Column L of the Second Schedule; and

(l) conditional allocations financed by United Nations Fund for Population Activities (UNFPA) to finance the 9th Country Programme Implementation as set out in Column M of the Second Schedule.

(3) Each county government's allocation under subsection (1)(a) shall —

(a) be transferred to the respective County Revenue Fund, in accordance with a payment schedule published in the Gazette by the Cabinet Secretary in accordance with section 17 of the Public Finance Management Act; and

(b) only be accessed by each county government after meeting conditions set by the Cabinet Secretary responsible for that function at the beginning of the financial year.

(4) A county governments' allocation under subsection (2) shall be transferred to the respective County Revenue Fund in accordance with a payment schedule published in the Kenya Gazette by the Cabinet Secretary in accordance with section 17 of the Public Finance Management Act.

(5) The county governments' allocations under subsections (1) and (2) shall, subject to subsection (6), be included in the budget estimates of the National Government and shall be submitted to Parliament for approval.

(6) Allocations shall not be included in the budget estimates under subsection (4) unless —

(a) the National Government and the respective county governments have entered into an intergovernmental agreement in accordance with this Act; or

(b) in the case of a loan or grant by a development partner, the Cabinet Secretary and the responsible development partner have agreed in writing that the funds shall be transferred to the county government.

No. 18 of 2012.



Report on actual transfers.

6. The Cabinet Secretary shall publish, by the 15th day of each subsequent month, a monthly report on actual transfers of all conditional allocations to county governments disbursed pursuant to this Act.

Books of accounts to reflect national government transfers.

7. Each county treasury shall reflect all transfers of conditional allocations by the National Government to the respective county government in its books of accounts.

Reporting.
No. 18 of 2012

8. A county treasury shall, as part of its consolidated quarterly and annual reports required under the Public Finance Management Act, report on-

- (a) actual transfers received by the county government from the National Government, up to the end of that quarter or year in the format prescribed by the Public Sector Accounting Standards Board or in the absence of a format prescribed by the Board, in the format prescribed by the National Treasury;
- (b) the actual expenditure by the county government of the allocations made under section 4(1) and (2);
- (c) the extent of compliance with the provisions of this Act and with the conditions of allocations as set out in the intergovernmental agreement entered into by the national government, the development partner and the county government;
- (d) an explanation of any material problems in the expenditure of any allocations made under this Act or compliance with any conditions of allocations set out in an intergovernmental agreement; and
- (e) any other information that may be required by the relevant intergovernmental agreement.

Consequential amendments.
No. 18 of 2012.

9. The Public Finance Management Act is amended-

- (a) by deleting section 42 and substituting therefor the following new section-

Consideration by Parliament of Bills allocating revenue and additional allocations.

42. Parliament shall consider the Division of Revenue Bill, the County Allocation of Revenue Bill, and a County Governments Additional Allocations Bill not later than thirty days after the Bills have

been introduced with a view to approving them, with or without amendments.

(b) in section 191 by –

(i) deleting the marginal note and substituting therefor the following new marginal note –

Bills allocating revenue and additional allocations.

(ii) deleting subsection (1) and substituting therefor the following new subsection-

(1) Each year when the Budget Policy Statement is introduced, the Cabinet Secretary shall submit to Parliament a Division of Revenue Bill, a County Allocation of Revenue Bill and a County Governments Additional Allocations Bill prepared by the National Treasury as provided in this Act for the financial year to which that Budget relates.

(iii) deleting subsection (3)(b);

(iv) inserting the following new subsection immediately after subsection (3) –

(3A) A Bill making allocations under Article 202(2) of the Constitution shall specify any other allocations to the counties from the National Government's share of that revenue and any conditions to which those allocations shall be made.

(c) by inserting the following sections immediately after section 191-

Intergovernmental agreements.

191A (1) The National Treasury shall enter into an agreement with the respective county government for the transfer of the respective conditional allocation made to the county government pursuant to this Act.

(2) An agreement under subsection (1) shall set out any conditions that may be



attached to the conditional allocations made under this Act.

(3) Where a county government intends to enter into an agreement under subsection (1), the county executive committee member shall submit the agreement to the respective County Assembly for approval.

(4) The County Assembly shall, within fourteen days of submission of an agreement under subsection (3), approve or reject the agreement.

(5) Where a County Assembly fails to consider an agreement under subsection (3) within fourteen days, the agreement shall be deemed to be approved.

(6) An agreement under subsection (1) shall set out all conditions attached to an allocation made under this Act.

(7) The respective county government shall forward the agreement approved under this section to the Controller of Budget within seven days of approval.

Public participation.

191 B The county executive committee member shall facilitate public participation on any agreement made pursuant to section 191A.

Execution of agreement for conditional allocation.

191 C An agreement under section 191A shall be –

- (a) signed by an authorized person or officer; and
- (b) published in the Kenya Gazette within a period of seven days of the agreement.

Submission to Senate.

191 D (1) The National Treasury shall, within seven days of entering into an agreement under section 191A, submit to the Senate and the Controller of Budget, the

agreement together with any other documents relating to the agreement.

(2) The National Treasury shall publish and publicize all agreements entered into pursuant to section 191A.

Requisition of funds.

191E Requisition of funds from the county revenue fund for the purposes of a conditional grant shall be supported by the intergovernmental agreement approved under section 191A.

Transition.

9. (1) The requirements under sections 191A to 191D of the Public Finance Management Act shall not apply to the 2021/2022 and 2022/2023 financial year.

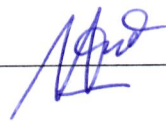
(2) The conditional grants for the financial year 2021/2022 shall be disbursed in accordance with the provisions of the Public Finance Management Act.

FIRST SCHEDULE

(s. 4(1))

Conditional allocations to County Governments from National Government Revenue in Financial year 2021/22(Kenya Shillings)

S/N	County	FY 2020/21	2021/22 FY		
		Total Conditional Grants from the National Government Revenue	Supplement for construction of county headquarters	Conditional Grant-Leasing of Medical Equipment	Total Conditional Grants from the National Government Revenue
		Column A	Column B	Column C	Column D
1	Baringo	318,526,073	-	153,297,872	153,297,872
2	Bomet	361,373,348	-	153,297,872	153,297,872

The County Governments Additional Allocations Bill, 2022

3	Bungoma	499,669,894	-	153,297,872	153,297,872
4	Busia	388,217,282	-	153,297,872	153,297,872
5	Elgeyo/Marakwet	283,800,930	-	153,297,872	153,297,872
6	Embu	613,874,883	-	153,297,872	153,297,872
7	Garissa	717,044,187	-	153,297,872	153,297,872
8	Homa Bay	395,535,074	-	153,297,872	153,297,872
9	Isiolo	365,357,737	68,000,000	153,297,872	221,297,872
10	Kajiado	368,033,501	-	153,297,872	153,297,872
11	Kakamega	1,014,514,769	-	153,297,872	153,297,872
12	Kericho	334,767,128	-	153,297,872	153,297,872
13	Kiambu	1,060,769,036	-	153,297,872	153,297,872
14	Kilifi	554,005,433	-	153,297,872	153,297,872
15	Kirinyaga	297,552,826	-	153,297,872	153,297,872
16	Kisii	879,284,082	-	153,297,872	153,297,872
17	Kisumu	771,446,538	-	153,297,872	153,297,872
18	Kitui	510,802,514	-	153,297,872	153,297,872
19	Kwale	431,815,791	-	153,297,872	153,297,872
20	Laikipia	303,695,016	-	153,297,872	153,297,872
21	Lamu	316,841,615	38,000,000	153,297,872	191,297,872
22	Machakos	842,088,971	-	153,297,872	153,297,872
23	Makueni	436,722,040	-	153,297,872	153,297,872
24	Mandera	477,240,570	-	153,297,872	153,297,872
25	Marsabit	354,066,748	-	153,297,872	153,297,872
26	Meru	837,284,031	-	153,297,872	153,297,872
27	Migori	394,818,918	-	153,297,872	153,297,872
28	Mombasa	784,013,153	-	153,297,872	153,297,872

The County Governments Additional Allocations Bill, 2022

29	Murang'a	442,598,480	-	153,297,872	153,297,872
30	Nairobi	702,891,009	-	153,297,872	153,297,872
31	Nakuru	901,451,849	-	153,297,872	153,297,872
32	Nandi	338,393,049	-	153,297,872	153,297,872
33	Narok	380,949,944	-	153,297,872	153,297,872
34	Nyamira	351,822,008	-	153,297,872	153,297,872
35	Nyandarua	371,922,709	75,000,000	153,297,872	228,297,872
36	Nyeri	754,409,397	-	153,297,872	153,297,872
37	Samburu	266,665,895	-	153,297,872	153,297,872
38	Siaya	372,931,392	-	153,297,872	153,297,872
39	Taita /Taveta	326,074,867	-	153,297,872	153,297,872
40	Tana River	369,347,509	75,000,000	153,297,872	228,297,872
41	Tharaka-Nithi	366,125,130	76,000,000	153,297,872	229,297,872
42	Trans Nzoia	369,864,846	-	153,297,872	153,297,872
43	Turkana	485,437,183	-	153,297,872	153,297,872
44	Uasin Gishu	373,139,609	-	153,297,872	153,297,872
45	Vihiga	349,554,070	-	153,297,872	153,297,872
46	Wajir	416,579,339	-	153,297,872	153,297,872
47	West Pokot	310,945,251	-	153,297,872	153,297,872
	TOTAL	23,164,265,625	332,000,000	7,205,000,000	7,537,000,000




The County Governments Additional Allocations Bill, 2022

SECOND SCHEDULE		(s. 4(2))													
		Conditional allocations from loans and grants from development partners for financial year 2021/2022 (Figures in Kenya Shillings)													
		2021/22 FY													
S/N	County	2020/21 FY											Total Loans and Grants		
		Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J	Column K		Column L	Column M
1	Baringo	434,339,263	51,439,168	-	300,000,000	36,744,378	-	11,290,125	75,822,872	25,115,290	-	27,905,333	-	-	528,317,166
2	Bomet	470,975,357	98,737,242	-	349,999,960	-	12,201,750	167,353,974	24,888,732	-	-	-	-	-	653,181,658
3	Bungoma	376,922,526	52,969,787	280,530,114	-	-	19,705,125	112,815,048	26,752,122	-	-	50,000,000	-	-	542,772,196
4	Busia	457,658,804	42,178,872	-	295,795,506	-	13,323,750	69,825,044	26,009,940	-	-	-	-	-	447,133,112
5	Elgeyo/Marakwet	451,406,116	37,021,153	-	350,000,000	-	8,555,250	184,795,683	23,843,630	-	47,838,667	50,000,000	-	-	702,054,383
6	Embu	384,183,435	5,714,632	387,946,601	-	-	9,537,000	-	22,224,624	-	28,398,667	-	-	453,821,524	
7	Garissa	934,781,540	33,361,734	-	348,172,365	-	15,567,750	64,613,906	35,533,363	-	40,478,667	-	-	1,087,727,785	
8	Homa Bay	309,416,619	70,450,834	279,115,289	-	-	14,936,625	-	31,096,673	-	-	50,000,000	8,864,000	454,463,421	
9	Isiolo	577,117,295	20,444,468	-	330,699,130	-	9,396,750	120,374,189	26,387,350	-	76,030,667	-	-	592,196,554	
10	Kajiado	559,702,274	33,348,868	-	321,108,120	-	14,235,375	132,797,633	24,714,544	-	-	50,000,000	-	576,204,540	

The County Governments Additional Allocations Bill, 2022

11	Kakamega	485,462,055	73,144,291	-	338,783,306	-	-	23,071,125	78,009,910	28,082,288	-	150,000,000	691,090,920
12	Kericho	445,266,392	75,948,635	-	350,000,000	-	-	11,921,250	102,491,953	28,692,485	-	-	569,054,323
13	Kiambu	357,387,255	11,433,390	402,836,649	-	-	-	20,897,250	73,731,600	30,340,365	-	50,000,000	589,239,254
14	Kilifi	1,253,234,710	36,935,995	254,610,493	-	-	1,500,000,000	23,141,250	102,491,953	27,964,926	-	200,000,000	2,154,008,617
15	Kirinyaga	295,037,247	47,498,316	344,612,512	-	-	-	9,396,750	146,608,512	25,522,510	-	-	573,638,600
16	Kisii	364,718,901	63,079,905	324,295,427	-	16,140,145	-	17,250,750	128,507,146	26,370,204	-	-	575,643,577
17	Kisumu	425,782,038	51,833,637	-	274,627,706	15,626,168	-	15,147,000	82,682,844	29,715,378	-	300,000,000	769,632,733
18	Kitui	323,076,845	14,548,168	283,089,026	-	-	-	19,564,875	112,815,048	28,857,290	-	7,386,704	505,225,111
19	Kwale	732,337,859	9,438,302	278,050,378	-	-	600,000,000	17,250,750	102,491,953	27,464,844	-	50,000,000	1,084,696,427
20	Lanikipia	412,138,832	28,777,132	-	349,961,100	15,626,168	-	9,256,500	167,353,974	23,833,630	-	-	594,808,504
21	Lamu	453,357,718	42,427,244	-	300,102,326	-	-	5,750,250	25,109,992	-	-	10,000,000	387,821,812
22	Machakos	405,961,434	9,399,935	-	321,468,007	-	-	17,180,625	161,906,472	25,492,885	-	28,384,000	563,831,924
23	Makueni	388,984,714	87,593,306	284,347,300	-	-	-	16,409,250	184,795,683	27,068,180	-	-	600,213,719
24	Mandera	681,208,984	54,586,272	-	298,883,700	-	-	22,650,375	141,844,646	32,096,096	-	-	607,418,422
25	Marsabit	616,904,659	8,210,555	-	306,870,917	16,140,048	-	15,006,750	116,524,635	31,621,584	-	170,000,000	753,314,489
26	Meru	320,613,089	36,886,029	398,724,835	-	-	-	17,811,750	141,844,646	25,100,278	-	110,000,000	778,344,871
27	Migori	332,385,398	48,944,473	276,072,733	-	15,626,168	-	15,006,750	-	31,009,120	-	4,432,000	391,091,244
28	Mombasa	1,292,389,448	18,129,227	-	-	-	800,000,000	15,637,875	156,635,628	23,499,950	-	300,000,000	1,313,902,680
29	Murang'a	423,235,015	81,798,466	335,683,961	-	-	-	13,954,875	-	23,492,070	-	-	454,929,372
30	Nairobi City	166,720,323	87,492,037	-	-	-	-	35,272,875	-	36,639,733	-	700,000,000	866,791,349
31	Nakuru	327,483,267	79,792,976	269,563,385	-	-	-	23,211,375	120,374,189	26,343,334	-	300,000,000	819,285,259
32	Nandi	433,775,389	59,482,857	297,105,136	-	-	-	11,851,125	82,682,844	23,676,246	-	50,000,000	524,798,208
33	Narok	404,396,552	49,785,426	398,148,737	-	-	-	17,811,750	141,844,646	30,988,725	-	7,386,704	645,965,988
34	Nyamira	549,161,906	90,226,074	275,417,324	-	-	-	10,659,000	112,815,048	24,250,072	-	50,000,000	563,367,518
35	Nyandarua	484,866,657	94,478,706	-	289,609,680	31,223,224	-	10,799,250	184,795,683	22,983,146	-	50,000,000	683,889,689
36	Nyeri	413,326,122	48,739,220	-	352,822,250	-	-	11,991,375	184,795,683	21,917,144	-	60,000,000	680,265,672
37	Samburu	335,728,670	5,601,594	212,277,520	-	15,626,168	-	10,238,250	102,491,953	32,990,533	-	91,713,333	470,939,351

The County Governments Additional Allocations Bill, 2022

38	Siaya	482,259,557	76,115,752	-	314,639,880	-	-	-	12,832,875	112,815,048	23,749,120				540,152,675
39	Taita Taveta	794,169,323	47,631,029	-	290,416,775	15,624,929	950,000,000	9,396,750	9,396,750		26,612,835	40,000,000			1,379,682,318
40	Tana River	550,425,744	57,525,672	-	350,271,530	14,727,370	-	12,973,125	8,695,500	137,242,250	33,065,790				468,563,507
41	Tharaka Nithi	489,787,815	32,426,873	-	350,000,000	-	-	12,762,750	105,802,077	24,025,084	22,357,452	20,000,000	29,566,667		600,288,742
42	Trans Nzoia	363,274,338	80,437,623	298,658,950	-	-	-	14,025,000	112,815,048	23,441,718	200,000,000	50,000,000			571,686,484
43	Turkana	809,914,377	12,776,238	270,565,502	-	-	-	10,308,375	93,307,470	22,632,350	43,577,943	120,206,667	2,954,593		786,247,616
44	Uasin Gishu	504,253,916	33,080,799	-	354,491,402	11,000,000	-	18,933,750	66,268,057	34,504,000	60,000,000				608,853,967
45	Vihiga	388,286,930	47,721,396	243,345,337	-	-	-	11,079,750	701,250,000	4,599,999,996					417,314,928
46	Wajir	871,896,369	33,852,983	-	346,040,790	15,626,168	600,000,000	600,000,000	18,933,750	40,580,823	50,598,667	50,000,000	4,432,000		1,160,065,181
47	West Pokot	502,634,431	51,216,786	-	333,574,020	11,000,000	-	701,250,000	11,079,750	66,268,057	32,310,513	800,000,001			559,953,126
	Total	30,204,347,508*	2,234,664,077	6,394,997,409	7,838,338,490	230,730,934	5,000,000,000	701,250,000	4,599,999,996	1,300,042,904	370,000,000	2,800,000,000	73,866,705		32,343,890,516

*This includes an allocation of ksh. 6,366,000,000 for IDA (World Bank) credit; Kenya Urban Support Project (KUSP) - Urban Development Grant (UDG) to be allocated to 45 county governments in FY 2020/21 using a criterion prescribed in Section 5 (2) (e) (i)-(iii) of the County Allocation of Revenue Act, 2020

MINUTES OF THE 4th MEETING OF THE MEDIATION COMMITTEE ON THE COUNTY GOVERNMENTS GRANTS BILL (SENATE BILLS NO.35 OF 2021) HELD ON THURSDAY, 31ST MARCH 2022 IN THE SENATE CHAMBER, MAIN PARLIAMENT BUILDINGS AT 11:30 A.M.

PRESENT

- | | | |
|--|---|------------------|
| 1. Sen. Charles Kibiru, MP | - | Chairperson |
| 2. Hon. Kanini Kega, CBS, MP | - | Vice-Chairperson |
| 3. Sen. CPA Farhiya Haji, MBS, MP | - | Member |
| 4. Hon. Naisula Lesuuda, OGW, MP | - | Member |
| 5. Sen. Rose Nyamunga, CBS, MP | - | Member |
| 6. Sen. Mutula Kilonzo Junior, CBS, MP | - | Member |

ABSENT WITH APOLOGY

- | | | |
|--------------------------------------|---|--------|
| 1. Hon. (Dr.) Makali Mulu, MP | - | Member |
| 2. Hon. Millie Odhiambo, CBS, MP | - | Member |
| 3. Hon. (Dr.) Kanyuithia Mutunga, MP | - | Member |
| 4. Sen. Moses Wetangula, EGH, MP | - | Member |

PARLIAMENTARY BUDGET OFFICE

- | | | |
|----------------------------|---|------------------------|
| 1. Mrs. Phyllis Makau, OGW | - | Director, PBO |
| 2. Dr. Martin Masinde | - | Senior Deputy Director |
| 3. Ms. Lucy Makara | - | Deputy Director, PBO |
| 4. Ms. Amran Yunis | - | Fiscal Analyst |
| 5. Mr. William Wambiru | - | Fiscal Analyst |

SECRETARIAT

- | | | |
|----------------------------|---|--------------------------------|
| 1. Mr. Christopher Gitonga | - | Clerk Assistant |
| 2. Mr. Joseph Ndirangu | - | Clerk Assistant/Fiscal Analyst |
| 3. Ms. Beverlyne Chivadika | - | Clerk Assistant |
| 4. Mr. Danson Kachumbo | - | Clerk Assistant/Fiscal Analyst |
| 5. Ms. Lucy Radoli | - | Legal Counsel |
| 6. Mr. Ronald Walala | - | Legal Counsel |
| 7. Mr. Daniel Kirwa | - | Serjeant-at-Arms |

8. Ms. Angela Bonaya

- Legal Pupil

MIN. NO. 15/03/2022: PRELIMINARIES

The meeting was called to order at 11:45 a.m. and thereafter followed by a word of prayer.

MIN. NO. 16/03/2022: CONFIRMATION OF MINUTES OF PREVIOUS SITTING

1. Minutes of the 1st sitting held on Tuesday, 15th March 2022 were confirmed as a true record of the Mediation Committee proceedings after being proposed by Sen. Mutula Kilonzo Junior, CBS, MP and seconded by Hon. Naisula Lesuuda, OGW, M.P.
2. Minutes of the 2nd sitting held on Tuesday, 22nd March 2022 were confirmed as a true record of the Mediation Committee proceedings after being proposed by Hon. Naisula Lesuuda, OGW, M.P. and seconded by Sen. CPA Farhiya Haji, MBS, M.P.
3. Minutes of the 3rd sitting held on Thursday, 31st March 2022 were confirmed as the Mediation Committee proceedings after being proposed by Sen. Rose Nyamunga, CBS, M.P. and seconded by Hon. Naisula Lesuuda, OGW, M.P.

MIN. NO. 17/03/2022: CONSIDERATION AND ADOPTION OF THE MEDIATION COMMITTEE REPORT ON THE COUNTY GOVERNMENTS GRANTS BILL (SENATE BILLS NO. 35 OF 2021)


The Mediation Committee considered the report on the County Governments Grants Bill, (Senate Bills No. 35 Of 2021). The report was unanimously adopted after it was proposed by Sen. Mutula Kilonzo Junior, CBS and seconded by Hon. Kanini Kega, CBS, M.P. with the following recommendations-

- a) THAT, Clause 1 of the Bill be amended by deleting the word “Grants” and substituting therefor the following words “Additional Allocation”. This is to align the provision with the phraseology of the Constitution under Article 202(2).
- b) THAT, Clause 2 of the Bill be amended in the definition of “conditional allocation” by deleting the word “conditional” and substituting therefor the word “additional”. This is because the words ‘additional allocations’ would consist of additional allocations from both national government and development partners.
- c) Clause 3 be amended to read ‘The object of this Act is to provide, pursuant to Article 202 (2) of the Constitution, for additional allocations for the financial year 2021/22.

- d) Clause 4 should set out the specific conditional grants corresponding to the First and Second Schedule.
- e) Clause 5 should obligate the Cabinet Secretary to provide monthly reports on the disbursement funds under this Act.
- f) Clause 6 should obligate the county treasuries to include additional allocations in their books of accounts.
- g) Clause 7 should obligate the county treasuries to, as part of consolidated quarterly and annual reports required under PFM Act, report on-
 - i. Actual transfers,
 - ii. Actual expenditures,
 - iii. Extent of compliance with provisions in the intergovernmental agreement on specific additional allocations,
 - iv. Explanations on any material challenges and risks in expenditure of any allocations under this Act, and
 - v. Any other information that may be required by the under respective intergovernmental agreement.
- h) Clause 8 provide for consequential amendments to PFM Act as follows-
 - i. Section 42- to provide for consideration of county governments additional allocation bill along with other bills allocating revenues to the counties by Parliament.
 - ii. Section 191- to provide for submission of county governments additional allocation bill along with other bills allocating revenues to the counties.
 - iii. Inserting new sections 191A, 191B, 191C, 191D, 191E- to provide for process of dealing with intergovernmental agreements on any additional allocations, public participation, execution of agreements, publication of agreements and requisition of funds provided in the county governments additional allocations Act.
- i) Clause 9 should provide for transition period due to the ongoing conditional allocations.
- j) The two Houses of Parliament to approve this report and its appendix thereof.

MIN. NO.18 /03/2022: ADJOURNMENT

There being no other business, the Chairperson adjourned the meeting at 12.00 p.m.

SIGNATURE: 

CHAIRPERSON:
SEN. CHARLES KIBIRU, MP.

DATE: 31/03/2022

SIGNATURE: 

VICE CHAIRPERSON
HON. KANINI KEGA, CBS, MP

DATE: 31/3/2022

MINUTES OF THE 1ST MEETING OF THE MEDIATION COMMITTEE ON THE COUNTY GOVERNMENTS GRANTS BILL (SENATE BILLS NO.35 OF 2021) HELD ON TUESDAY, 15TH MARCH, 2022 AT COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDING AT 10:00 A.M.

PRESENT

- | | | |
|--|---|------------------|
| 1. Sen. Charles Kiburu, MP | - | Chairperson |
| 2. Hon. Kanini Kega, CBS, MP | - | Vice-Chairperson |
| 3. Sen. Mutula Kilonzo Junior, CBS, MP | - | Member |
| 4. Sen. Rose Nyamunga, CBS, MP | - | Member |
| 5. Sen. CPA Farhiya Haji, MBS, MP | - | Member |
| 6. Hon. Naisula Lesuuda, OGW, MP | - | Member |
| 7. Hon. Millie Odhiambo, CBS, MP | - | Member |

ABSENT WITH APOLOGY

- | | | |
|---|---|--------|
| 8. Sen. Moses Wetangula Masika, EGH, MP | - | Member |
| 9. Hon. (Dr.) Makali Mulu, MP | - | Member |
| 10. Hon. (Dr.) Kanyuithia Mutunga, MP | - | Member |

SECRETARIAT

- | | | |
|----------------------------|---|---|
| 1. Mr. Nicholas Emejen | - | Deputy Director,
Committee Services (NA) |
| 2. Mr. Christopher Gitonga | - | Clerk Assistant |
| 3. Ms. Beverlyne Chivadika | - | Clerk Assistant |
| 4. Ms. Lucy Makara | - | Deputy Director, PBO |
| 5. Mr. Joseph Ndirangu | - | Fiscal Analyst |
| 6. Mr. Danson Kachumbo | - | Fiscal Analyst |
| 7. Ms. Lucy Radoli | - | Legal Counsel |
| 8. Mr. Ronald Walala | - | Legal Counsel |
| 9. Mr. William Wambiru | - | Fiscal Analyst |
| 10. Mr. Daniel Kirwa | - | Searjeant-at-Arms |

MIN. NO. 01/03/2022: PRELIMINARIES

The meeting was called to order at 10:27 a.m. and thereafter followed by a word of prayer.

MIN. NO. 02/03/2022: ADOPTION OF THE AGENDA

The agenda was adopted after it was proposed by Sen. Mutula Kilonzo Junior, CBS, MP, and seconded by Hon. Kanini Kega, CBS, MP.

MIN. NO. 03/03/2022: ELECTION OF THE CHAIRPERSON AND VICE-CHAIRPERSON

The Deputy Director, Committees Services, (National Assembly) informed the Mediation Committee that being the first meeting, the Committee was required to elect a Chairperson and Vice-Chairperson pursuant to standing order 160 (4) and (5) of the Senate Standing Orders and standing order 149 (4) and (5) of the National Assembly Standing Orders. Thereafter, he requested for nominations for position of Chairperson and Vice Chairperson and election was as follows-

Sen. Kibiru Charles, MP, was unanimously elected as the Chairperson of the Mediation Committee after being proposed by Hon. Kanini Kega, CBS, MP, and seconded by Sen. CPA Farhiya Haji, MBS, MP.

Hon. Kanini Kega, CBS, MP, was unanimously elected as the Vice-Chairperson after being proposed by Hon. Naisula Lesuuda, OGW, MP, and seconded by Sen. Charles Kibiru, MP.

MIN. NO. 04/03/2022: REMARKS BY CHAIRPERSON AND VICE CHAIRPERSON

The Chairperson welcomed everyone to the meeting and thanked the Members for availing themselves. He implored the Committee to expedite consideration of the Bill for the interest of the Country and devolution.

The Vice-Chairperson thanked the Members present in the meeting and informed them that there was need to expedite the consideration of the Bill to enable counties to access the additional allocations earmarked for the FY 2021/2022.

MIN. NO. 05/03/2022: BRIEFING ON THE COUNTY GOVERNMENTS GRANTS BILL (SENATE BILLS NO. 35 OF 2021)

The Mediation Committee was briefed by the Legal Counsel on the status of the County Governments Grants Bill (Senate Bills No.35 of 2021). That-

- a) The Bill seeks to comply with the Ruling in High Court Petition No. 252 of 2016.
- b) In the matter, the court held that Article 202 of the Constitution as read with Article 218(1)(a) of the Constitution did not permit conditional or unconditional grants to be provided for in the Annual Division of Revenue Bill and by extension in the County Allocation of Revenue Bill.

- c) This is a deviation from the tradition where conditional or unconditional grants used to be provided for in both the Annual Division of Revenue Bill and by extension in the County Allocation of Revenue Bill.
- d) The court held that such conditional or unconditional grants could be issued to the county level of government under Article 190 of the Constitution or through an agreement between the two levels of government that respects the institutional and functional integrity of both levels of government but not in the Annual Division of Revenue Act.
- e) Following the High Court judgment, the Senate Committee on Finance and Budget resolved to come up with legislation on conditional or unconditional grants to allow county governments to access the conditional allocation/grants earmarked for the FY 2021/2022.
- f) This was after holding consultative meetings with key stakeholders including the National Treasury, Auditor-General, Commission on Revenue Allocation (CRA), Council of Governors (CoG), and the Attorney-General.
- g) Clause 9 provides for consequential amendments to the Public Finance Management Act whose effect shall be the simultaneous submission and consideration of the Division of Revenue Bill, the County Allocation of Revenue Bill, and the County Governments Grants Bill to ensure accountability.

**MIN. NO. 06/03/2022: CONSIDERATION OF THE COUNTY
GOVERNMENTS GRANTS BILL (SENATE
BILLS NO. 35 OF 2021)**

The Mediation Committee considered the County Governments Grants Bill, 2021, as follows-

- a) That clause 1 of the Bill be amended by deleting the word “Grants” and substituting therefor the following words “Additional Allocation” to align it to the phraseology of the Constitution under Article 202 (2).
- b) That clause 2 of the Bill be amended in the definition of “conditional allocation” by deleting the word “conditional” and substituting therefor the word “additional”. Additional allocations to mean additional resources allocated to county governments from the National Government’s share of revenue or proceeds of loans and grants from development partners.
- c) Clause 3- The National Assembly had amended the clause by deleting the phrase- “for the Financial Year 2021/2022”.

After deliberations, the Committee resolved to allow for more time to consult on details of this clause.


The Committee further resolved to invite key stakeholders to the next meeting to deliberate on this Bill. The stakeholders identified were-

- a) The National Treasury,
- b) The Commission on Revenue Allocation (CRA),
- c) The Council of Governors (CoG), and
- d) The Controller of Budget (COB).

Date of the next meeting- Tuesday, 22nd March, 2022 at 10:00 a.m.


MIN. NO. 06/03/2022: ADJOURNMENT

The Chairperson adjourned the meeting at 12:20 p.m. until Tuesday, 22nd March, 2022 at 10:00 a.m.

SIGNATURE: _____


CHAIRPERSON:
SEN. CHARLES KIBIRU, MP.

DATE: 31/03/2022

SIGNATURE: _____


VICE CHAIRPERSON
HON. KANINI KEGA, CBS, MP

DATE: 31/03/2022

MINUTES OF THE 2ND MEETING OF THE MEDIATION COMMITTEE ON THE COUNTY GOVERNMENTS GRANTS BILL (SENATE BILLS NO.35 OF 2021) HELD ON TUESDAY, 22ND MARCH, 2022 IN THE SENATE CHAMBER, MAIN PARLIAMENT BUILDINGS AT 10:00 A.M.

PRESENT

- | | | |
|-----------------------------------|---|------------------|
| 1. Sen. Charles Kibiru, MP | - | Chairperson |
| 2. Hon. Kanini Kega, CBS, MP | - | Vice-Chairperson |
| 3. Sen. Moses Wetangula, EGH, MP | - | Member |
| 4. Hon. (Dr.) Makali Mulu, MP | - | Member |
| 5. Sen. CPA Farhiya Haji, MBS, MP | - | Member |
| 6. Hon. Naisula Lesuuda, OGW, MP | - | Member |
| 7. Hon. Millie Odhiambo, CBS, MP | - | Member |

ABSENT WITH APOLOGY

- | | | |
|--|---|--------|
| 8. Hon. (Dr.) Kanyuithia Mutunga, MP | - | Member |
| 9. Sen. Mutula Kilonzo Junior, CBS, MP | - | Member |
| 10. Sen. Rose Nyamunga, CBS, MP | - | Member |

SECRETARIAT

- | | | |
|----------------------------|---|--------------------------------|
| 1. Mr. Christopher Gitonga | - | Clerk Assistant |
| 2. Mr. Joseph Ndirangu | - | Clerk Assistant/Fiscal Analyst |
| 3. Ms. Beverlyne Chivadika | - | Clerk Assistant |
| 4. Mr. Danson Kachumbo | - | Clerk Assistant/Fiscal Analyst |
| 5. Ms. Lucy Makara | - | Deputy Director, PBO |
| 6. Ms. Lucy Radoli | - | Legal Counsel |
| 7. Mr. Ronald Walala | - | Legal Counsel |
| 8. Ms. Amran Yunis | - | Fiscal Analyst |
| 9. Mr. William Wambiru | - | Fiscal Analyst |
| 10. Mr. Daniel Kirwa | - | Searjeant-at-Arms |

IN ATTENDANCE

A. THE NATIONAL TREASURY

- | | | |
|----------------------------|---|---|
| 1. Hon. (Amb.) Ukur Yatani | - | The Cabinet Secretary |
| 2. Mr. Albert Mwenda | - | Director-General, Fiscal and Economic Affairs |
| 3. Ms. Isabela Kogei | - | Parliamentary Liaison Officer |
| 4. Mr. Samuel K. Kiptorus | - | Director, Intergovernmental Fiscal Affairs |

B. THE COMMISSION ON REVENUE ALLOCATION (CRA)

- | | | |
|------------------------|---|--------------------|
| 1. Dr. Jane Kiringai | - | Chairperson |
| 2. CPA. James Katule | - | CEO |
| 3. Ms. Sheila Yieke | - | Director, Legal |
| 4. Ms. Jecinter Hezron | - | Personal Assistant |

C. THE COUNCIL OF GOVERNORS (COG)

- | | | |
|--------------------------|---|--|
| 1. Hon. Ndiritu Muriithi | - | Chairperson, Technical
Committee on Finance and
Economic Affairs |
| 2. Mr. Kizito Wangalwa | - | Director, Committees |
| 3. Mr. James Maina | - | Program Officer, Finance
Committee |

D. The Controller of Budget

- | | | |
|-----------------------------|---|----------------------|
| 1. Dr. Margret M. Nyakang'o | - | Controller of Budget |
|-----------------------------|---|----------------------|

MIN. NO. 07/03/2022: PRELIMINARIES

The meeting was called to order at 10:30 a.m. and thereafter followed by a word of prayer.

MIN. NO. 08/03/2022: ADOPTION OF THE AGENDA

The agenda was adopted after it was proposed by Sen. CPA Farhiya Haji, MBS, MP, and seconded by Hon. Kanini Kega, CBS, MP.

MIN. NO. 09/03/2022: DELIBERATION ON THE COUNTY GOVERNMENTS GRANTS BILL (SENATE BILLS NO. 35 OF 2021)

After introduction, the Chairperson of the Mediation Committee welcomed all the stakeholders present to the meeting.

Upon invitation, the Cabinet Secretary (CS) for National Treasury and Planning informed the Mediation Committee that the National Treasury, Commission on Revenue Allocation (CRA), and Office of Controller of Budget (OCoB) had harmonized comments or memorandum on the County Governments Grants Bill, 2021.

1) The Cabinet Secretary presented as follows-

- a) The National Assembly amended Clause 3 of the County Governments Grants Bill, 2021 by deleting 2021/2022, Clauses 4, 8 and 9, and deleted schedule 1 and 2. This makes the Bill a perpetual law instead of the Senate

position of annual bill/law. This is the point of disagreement between the two Houses.

- b) The National Treasury was in support of the National Assembly's position of making the Bill a perpetual Bill.
 - c) The role of the National Treasury is limited to signing of Financing Agreements between the Government and the development partners/financiers.
 - d) In view of the above, the responsibility of resolving disagreements should be assigned to the respective Ministry, Department and Agencies (MDAs) responsible for the conditional grants and to whom the grants are appropriated. This is because MDAs are in charge of the functions for the grants and are better placed to give policy direction and conditions for access to the grants by the county governments.
 - e) The consideration and passage of a legal framework for disbursement of the conditional grants should be expedited since the donors may withdraw the Kshs39 billion meant for projects in counties.
 - f) Donors have timeline on disbursement of the grants and reporting deadline.
 - g) The National Treasury had not issued any county governments grants for the FY 2021/2022 and it's a concern from the development partners.
 - h) There is need to come up with an alternative way to disburse the funds since the absorption rate has been low due to delays in disbursement.
- 2) The Senate resolution was that the main objective of the Bill was espoused on Clause 3. Therefore, amendment to this clause and deletion of the schedule 1 and 2 would jeopardize and delude the purpose of the Bill. In addition, this would erode the Senate's oversight role on how counties spend the conditional grants.
- 3) The National Assembly proposed that the grants will be included in the Budget Policy Statement (BPS) that is usually tabled yearly in Parliament. The Senate however noted that the BPS is not a legally binding document and it would also be difficult to monitor the projects been implemented by such funds.
- 4) The Council of Governors (CoG) Chairperson of the Technical Committee on Finance and Budget noted that the idea of a perpetual law would not be the best.
- a) The conditional grants have diverse conditions and these may need to be reviewed either annually or depending on nature agreements that that are entered to.

- b) He argued that it would be difficult to process grants provided in the middle of the budget cycle if the schedule is attached to the BPS. He cited the desert locust emergency fund that took nine (9) months to be disbursed.
 - c) He asked the Mediation Committee to agree to take the Senate's annual Bill to disburse the funds for the FY 2021/2022 while giving room for further talks.
- 5) The CS, National Treasury asked the Members of Parliament from both Houses to quickly make final decision to resolve the flow of funds to counties because delayed disbursement of the funds has attracted concerns from the foreign donors. He noted that even if the Committee resolved the Bill be annual, the Treasury would be satisfied as this would unlock the delayed disbursement of funds.

After deliberations, the Mediation Committee resolved to hold further meeting in order to come up with a version of the Bill agreeable by the two Houses.


MIN. NO.10 /03/2022: ADJOURNMENT

There being no other business, the Chairperson adjourned the meeting at 11:52 a.m. Next meeting will be by Notice.

SIGNATURE: _____


CHAIRPERSON:
SEN. CHARLES KIBIRU, MP.

DATE: 31/03/2022

SIGNATURE: _____


VICE CHAIRPERSON
HON. KANINI KEGA, CBS, MP

DATE: 31/03/2022

MINUTES OF THE 3RD MEETING OF THE MEDIATION COMMITTEE ON THE COUNTY GOVERNMENTS GRANTS BILL (SENATE BILLS NO.35 OF 2021) HELD ON THURSDAY, 31ST MARCH 2022 IN THE SENATE CHAMBER, MAIN PARLIAMENT BUILDINGS AT 10:00 A.M.

PRESENT

- | | | |
|--|---|-------------------------|
| 1. Sen. Charles Kibiru, MP | - | Chairperson |
| 2. Hon. Kanini Kega, CBS, MP | - | Vice-Chairperson |
| 3. Sen. CPA Farhiya Haji, MBS, MP | - | Member |
| 4. Hon. Naisula Lesuuda, OGW, MP | - | Member |
| 5. Sen. Rose Nyamunga, CBS, MP | - | Member |
| 6. Sen. Mutula Kilonzo Junior, CBS, MP | - | Member |

ABSENT WITH APOLOGY

- | | | |
|--------------------------------------|---|--------|
| 1. Hon. (Dr.) Makali Mulu, MP | - | Member |
| 2. Hon. Millie Odhiambo, CBS, MP | - | Member |
| 3. Hon. (Dr.) Kanyuithia Mutunga, MP | - | Member |
| 4. Sen. Moses Wetangula, EGH, MP | - | Member |

PARLIAMENTARY BUDGET OFFICE

- | | | |
|----------------------------|---|------------------------|
| 1. Mrs. Phyllis Makau, OGW | - | Director, PBO |
| 2. Dr. Martin Masinde | - | Senior Deputy Director |
| 3. Ms. Lucy Makara | - | Deputy Director, PBO |
| 4. Ms. Amran Yunis | - | Fiscal Analyst |
| 5. Mr. William Wambiru | - | Fiscal Analyst |

SECRETARIAT

- | | | |
|----------------------------|---|--------------------------------|
| 1. Mr. Christopher Gitonga | - | Clerk Assistant |
| 2. Mr. Joseph Ndirangu | - | Clerk Assistant/Fiscal Analyst |
| 3. Ms. Beverlyne Chivadika | - | Clerk Assistant |
| 4. Mr. Danson Kachumbo | - | Clerk Assistant/Fiscal Analyst |
| 5. Ms. Lucy Radoli | - | Legal Counsel |
| 6. Mr. Ronald Walala | - | Legal Counsel |
| 7. Mr. Daniel Kirwa | - | Serjeant-at-Arms |

MIN. NO. 11/03/2022: PRELIMINARIES

The meeting was called to order at 10:30 a.m. and thereafter followed by a word of prayer.

MIN. NO. 12/03/2022: ADOPTION OF THE AGENDA

The agenda was adopted after it was proposed by Sen. CPA Farhiya Haji, MBS, MP, and seconded by Hon. Naisula Lesuuda, OGW, MP.

MIN. NO. 13/03/2022: CONSIDERATION OF THE COUNTY GOVERNMENTS GRANTS BILL (SENATE BILLS NO. 35 OF 2021)

The Mediation Committee considered the County Governments Grants Bill, 2021, as follows and made the following recommendations-

- a) THAT, Clause 1 of the Bill be amended by deleting the word “Grants” and substituting therefor the following words “Additional Allocation”. This is to align the provision with the phraseology of the Constitution under Article 202(2).
- b) THAT, Clause 2 of the Bill be amended in the definition of “conditional allocation” by deleting the word “conditional” and substituting therefor the word “additional”. This is because the words ‘additional allocations’ would consist of additional allocations from both national government and development partners.
- c) Clause 3 be amended to read ‘The object of this Act is to provide, pursuant to Article 202 (2) of the Constitution, for additional allocations for the financial year 2021/22.
- d) Clause 4 should set out the specific conditional grants corresponding to the First and Second Schedule.
- e) Clause 5 should obligate the Cabinet Secretary to provide monthly reports on the disbursement funds under this Act.
- f) Clause 6 should obligate the county treasuries to include additional allocations in their books of accounts.
- g) Clause 7 should obligate the county treasuries to, as part of consolidated quarterly and annual reports required under PFM Act, report on-

- i. Actual transfers,
- ii. Actual expenditures,
- iii. Extent of compliance with provisions in the intergovernmental agreement on specific additional allocations,
- iv. Explanations on any material challenges and risks in expenditure of any allocations under this Act, and
- v. Any other information that may be required by the under respective intergovernmental agreement.

h) Clause 8 provide for consequential amendments to PFM Act as follows-

- i. Section 42- to provide for consideration of county governments additional allocation bill along with other bills allocating revenues to the counties by Parliament.

MIN. NO.14/03/2022: ADJOURNMENT

There being no other business, the Chairperson adjourned the meeting at 11:30 a.m.

SIGNATURE: _____



CHAIRPERSON:
SEN. CHARLES KIBIRU, MP.

DATE: 31/03/2022

SIGNATURE: _____



VICE CHAIRPERSON
HON. KANINI KEGA, CBS, MP

DATE: 31/03/2022