PAPER LAID

By Sen. Billow Kerrow on Wednesday 16th July 2014.

REPUBLIC OF KENYA

THE SENATE

ELEVENTH PARLIAMENT – SECOND SESSION

REPORT OF THE SENATE STANDING COMMITTEE ON FINANCE, COMMERCE & BUDGET ON THE CONSIDERATION OF

THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL, 2014

PARLIAMENT BUILDINGS
NAIROBI

JULY, 2014

PREFACE

Mr. Speaker, Sir

The Standing Committee on Finance, Commerce and Budget is established pursuant to Standing Order No. 208 and is mandated, *to investigate, inquire into and report on all matters relating to coordination, control and monitoring of the county budgets and to:*

A. Discuss and review the estimates of County governments and make recommendations to the Senate;
B. Examine the Budget Policy Statement presented to the Senate;
C. Examine and report on the Budget allocated to constitutional commissions and independent offices
D. Examine bills related to the Counties
E. Examine the Budget, including the Division of Revenue Bill; and
F. Examine and consider all matters related to resolutions and Bills for appropriations, share of
national revenue amongst the counties and all matters concerning the National Budget, including public finance, monetary policies and public debt, trading activities and commerce, tourism, investment and divestitures policies, planning and development policy.

Mr. Speaker, Sir

The Committee on Finance, Commerce and Budget was constituted by the House on Thursday 13th March 2014 during the Second Session of the Eleventh (11th) Parliament and comprises of the following members:

1. The Hon. Sen. Billow Kerrow, MP. **-Chairperson**
2. The Hon. Sen. Peter Ole Mositet, MP. **-Vice-Chairperson**
3. The Hon. Sen. Moses Wetang'ula, MP.
4. The Hon. Sen. Beatrice Elachi, MP.
5. The Hon. Sen. Mutahi Kagwe, MP.
6. The Hon. Sen. Boni Khalwale, MP.
7. The Hon. Sen. (Prof.) Peter Anyang' Nyong'o, MP.

8. The Hon. Sen. Zipporah Kittony, MP.
9. The Hon. Sen. James Mungai, MP.
10. The Hon. Sen. Catherine Mukite Nabwala, MP.
11. The Hon. Sen. Mutula Kilonzo Junior, MP.
12. The Hon. Sen. (Prof.) John Lonyangapuo, MP.
13. The Hon. Sen. Paul Njoroge Ben, MP.
14. The Hon. Sen. (Dr.) Wilfred Machage, MP.

Mr. Speaker, Sir,

The Public Finance Management (Amendment) Bill, sponsored by Senator Kithure Kindiki, Sen. Beatrice Elachi, Sen Kipchumba Murkomen and Sen. Stephen Sang was published on 4th April, 2014 and subsequently tabled in the House for First Reading on 4th June, 2014 and thereafter committed to the Standing Committee on Finance, Commerce and Budget for consideration pursuant to Standing Order 130.

Mr. Speaker, Sir,

The principle object of the Bill is to amend section 15(2)(a) and section 107(2)(b) of the Public Finance Management Act, 2012. The amendment seeks to provide, as a county government fiscal responsibility principle, that a minimum of sixty percent of the budget of the county governments be allocated to development expenditure.

Mr. Speaker, Sir,

Pursuant to the provisions of Article 118 of the Constitution and Standing Order 130 (4), the Committee invited interested members of the public to submit representations on the Bill. The submissions were made both orally and through submission of written memoranda.

Mr. Speaker, Sir,

In examining the Bill, the Committee was in disagreement with the provisions of the Bill. The Committee made the following observations at its sitting held on 11th March 2014 where it had undertaken pre-publication scrutiny of the Bill:

1. On the advice of the Controller of Budget and government financial practice, the recurrent expenditures for most county governments' budgets were at 70% while development expenditure was at 30%.
2. The report of the Controller of Budget on Budget Implementation for County Governments indicated that most county governments had prepared their budgets according to the recommendations by the Office of the Controller of Budget and had set their recurrent budgets at 70% and development budget at 30%.
3. It would be economically unviable for the operations of County Governments, to have recurrent budgets and development budgets pegged at 40% and 60% respectively as proposed in the Bill.

In view of the above concerns, the Committee proposed that the legislative proposal be set aside to allow for comprehensive proposals for amendment to the Public Finance Management Act, 2012.

This Bill aims to amend the Public Finance Management Act, 2012 so as to make it mandatory for county governments to allocate 60% of their budget to development expenditure and 40% to recurrent expenditure as strategy towards ensuring fiscal responsibility by county governments.

Mr. Speaker, Sir,

The Committee received submissions from the Council of Governors, Commission on Revenue Allocation (CRA) and the Controller of Budget on this Bill.

The Council of Governors in its submissions to the Committee raised the following concerns:

1. The proposed 60:40 formula undermines service delivery which is the essence of devolution. The Bill is based on unprincipled excuse for cost cutting and is motivated by the

Constituency Development Fund (CDF), the management frameworks which do not consider the recurrent expenditure. For instance some county development portfolios are labour and service intensive thereby requiring significant recurrent expenditure.

2. The intended amendment is unnecessary restraint on the powers of the County Government and is not feasible as it does not appreciate the reality of running a government.
3. The wage bill is still a burden to Counties especially in light of workers absorbed from the National Government.
4. It is imperative that the Bill appreciates how operational expenditures relate with capital projects.

Mr. Speaker, Sir,

The Commission on Revenue Allocation in stated the following with regard to the effect the amendment would have on the county budgets:

1. County governments' functions are concerned mainly with service delivery. It therefore follows that a huge percentage of county budgets go towards service delivery and operational expenses.
2. County Governments inherited a huge workforce from the former local authorities and the national government. This has resulted in a huge wage bill that contributes substantively to county governments' recurrent expenditure. Until and unless the matter of the wage bill is resolved, county budgets will largely comprise of recurrent expenditure.

Mr. Speaker, Sir,

The Controller of Budget in her submission to the Committee noted the following:

3. In the FY 2014/15, Counties have allocated 42 per cent of total budgets to development expenditure. The allocation complies with the current fiscal responsibility principle that a minimum of 30 per cent of County governments budgets be allocated to development expenditure.

4. In order to increase development expenditure allocation, Counties will be required to cut down on the recurrent budget. Analysis of the recurrent expenditure by economic classification for the first nine (9) months of FY 2013/14 shows that about 58 per set of the expenditure goes towards Personal Emoluments, 39 per cent to operations and maintenance, while 3 per cent was spent on debt repayment and pending liabilities. There is need for a national policy to rationalise the wage bill. Lean and effective staff at the counties will free more resources to fund development projects.

The Controller of Budget in her conclusion noted that an increase of the development budget allocation from 30 percent to 60 percent is untenable in the short term. This she observed may result in fiscal stress. In addition, inadequate capacity to implement development projects may impose challenges in fund absorption. Her final recommendation in light of the foregoing was an increase of development expenditure allocation from 30 per cent to 40 per cent at this time. The Controller's full submission is annexed to this report.

Mr. Speaker, Sir,

The Committee will propose appropriate amendments to the Bill in clause 3 with a view to refining the Bill to better help it achieve its object.

Mr. Speaker, Sir,

The Committee is thankful to the Offices of the Speaker and the Clerk of the Senate for the logistical and technical support accorded to it during its sittings. The Committee wishes to thank all the stakeholders for their participation in scrutinising the Bill. Finally, I wish to express my appreciation to the Honourable Senators of the Committee who sacrificed their time to participate in the activities of the Committee and preparation of this report.

It is therefore my pleasant duty and privilege, on behalf of the Standing Committee on Finance, Commerce and Budget, to table its report in the House on the consideration of the Public Finance Management (Amendment) Bill, 2014 for consideration and adoption pursuant to Standing Order 134.

Signed ....

(SEN. BILLOW KERROW, MP)

CHAIRPERSON,

STANDING COMMITTEE ON FINANCE, COMMERCE AND BUDGET

Date: 15th July 2014 ....

COMMITTEE RECOMMENDATIONS

The Committee proposes to introduce the following amendments to the Public Finance Management (Amendment) Bill, 2014.

1. **Section 107 sub section 2(b)** of the Public Finance Management Act, 2012 (hereinafter referred to as "the principal Act") is amended by deleting the words "thirty percent" appearing immediately after the words "minimum of" and substituting therefor with the words "forty percent".

   Justification

   This amendment proposes to reduce the percentage minimum allocation for development expenditure from 60% as proposed in the Bill to 40%, as the proposed minimum in the Bill is not an economically viable option.

MINUTES OF THE 75TH MEETING OF THE STANDING COMMITTEE ON FINANCE, COMMERCE AND BUDGET HELD ON TUESDAY 14TH JULY, 2014 AT THE GROUND FLOOR BOARDROOM, COUNTY HALL, PARLIAMENT BUILDINGS AT 9.00 AM

PRESENT

1. Sen. Billow Kerrow - **Chairman**
2. Sen. (Prof.) Peter Anyang' Nyongo
3. Sen. Mutahi Kagwe
4. Sen. Beatrice Elachi
5. Sen. Paul Njoroge Ben
6. Sen. Zipporah Kittony
7. Sen. Catherine Mukiite
8. Sen. Mutula Kilonzo Junior

ABSENT WITH APOLOGIES

1. Sen. Peter Ole Mositet - **Vice Chair**
2. Sen. Mungai James
3. Sen. Moses Wetang'ula
4. Sen. Boni Khalwale
5. Sen. (Dr.) Wilfred Machage
6. Sen. (Prof.) John Lonyangapuo

IN ATTENDANCE

The Kenya Senate

1. Mr. Okello Johnson - Deputy Director Legal Services
2. Ms. Emmy Chepkwony - Senior Clerk Assistant
3. Ms. Brenda Ogembo - First Clerk Assistant

MIN. NO. 214/2014: PRELIMINARIES

The proceedings commenced at 9.15 a.m. Thereafter a word of prayer was offered by the Committee Clerk.

MIN. NO. 215/2014: ADOPTION OF THE AGENDA

The agenda was adopted after being proposed by Sen. Zipporah Kittony and Seconded by Sen. Boni Khalwale.

MIN. NO. 216/2014: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTINGS

The minutes of the following sittings were confirmed as a true record of the sittings proceedings and signed by the acting Chairman:

i. Minute of the 74th sitting held on Thursday 10th July, 2014 after being proposed by Sen. Paul Njoroge Ben and seconded by Sen. Mutula Kilonzo (Junior).

ii. Minute of the 75th sitting held on Tuesday 14th July, 2014 after being proposed by Sen. Paul Njoroge Ben and seconded by Sen. Beatrice Elachi.

MIN. NO. 217/2014: DELIBERATION ON THE SUBMISSIONS ON THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL, 2014

1. **The Committee deliberated on the submissions by the Controller of Budget and noted that in her submission to the Committee noted the following:**

i. In the FY 2014/15, Counties have allocated 42 per cent of total budgets to development expenditure. The allocation complies with the current fiscal responsibility principle that a minimum of 30 per cent of County governments budgets be allocated to development expenditure.

ii. In order to increase development expenditure allocation, Counties will be required to cut down on the recurrent budget. Analysis of the recurrent expenditure by economic classification for the first nine (9) months of FY 2013/14 shows that about 58 per set of the expenditure goes towards Personal Emoluments, 39 per cent to operations and maintenance, while 3 per cent was spent on debt repayment and pending liabilities. There is need for a national policy to rationalise the wage bill. Lean and effective staff at the counties will free more resources to fund development projects.

The Committee observed that the Controller of Budget in concluding her recommendations noted that an increase of the development budget allocation from 30 percent to 60 percent is untenable in the short term. This she noted may result in fiscal stress. In addition, inadequate capacity to implement development projects may impose challenges in fund absorption. Her final recommendation in light of the foregoing was an increase of development expenditure allocation from 30 per cent to 40 per cent at this time. The Controller's full submission is annexed to this report.

2. **The Committee deliberated on the submissions by the Commission on Revenue Allocation with regard to the effect the amendment would have on the county budgets:**

i. County governments' functions are concerned mainly with service delivery. It therefore follows that a huge percentage of county budgets go towards service delivery and operational expenses.
ii. County Governments inherited a huge workforce from the former local authorities and the national government. This has resulted in a huge wage bill that contributes substantively to county governments' recurrent expenditure. Until and unless the matter of the wage bill is resolved, county budgets will largely comprise of recurrent expenditure.

MIN. NO. 218/2014: DELIBERATION AND ADOPTION OF THE COMMITTEE REPORT ON THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL, 2014

The Committee proposes to introduce the following amendments to the Public Finance Management (Amendment) Bill, 2014.

1. **Section107 sub section 2(b)** of the Public Finance Management Act, 2012 (hereinafter referred to as "the principal Act") is amended by deleting the words "thirty percent" appearing immediately after the words "minimum of" and substituting therefor the words "forty percent".

Justification

This amendment proposes to reduce the percentage minimum allocation for development expenditure from 60% as proposed in the Bill to 40%, as the proposed minimum in the Bill is not an economically viable option.

MIN. NO. 219/2014: DELIBERATION AND ADOPTION OF THE COMMITTEE REPORT ON THE PUBLIC PROCUREMENT AND DISPOSAL (AMENDMENT) BILL, 2013

The Committee proposes to introduce the following amendments to the Public Procurement and Disposal (Amendment) Bill, 2013.

1. **Clause 3** is amended by deleting the definition of the words "Public entity" and substituting therefor the words.

   Public entity means-

   1. the National Government or any department of the National Government;
   2. The County Government or any department of the County Government;
   3. the Courts;
   4. Commissions and independent offices established under the Constitution;
   5. a state corporation within the meaning of the State Corporations Act;
   6. the Central Bank of Kenya established under the Constitution
   7. a co-operative society established under the Co-operatives Societies Act;
   8. a public school within the meaning of the Education Act;
   9. a public university within the meaning of the Universities Act;
   10. a college or other educational institution maintained or assisted out of public funds; or
   11. an entity prescribed as a public entity for the purpose of this paragraph

Justification

This amendment proposes to include county governments and independent offices as procuring entities to ensure their compliance to the preferential and reservation schemes as proposed by the Bill. This was informed by public submissions raising concerns about the non-implementation of the 30% directive of procurement spend for disadvantaged groups by some County Governments. The amendment further refines the definition to delete reference to Local Authorities under the repealed Local Governments Act and amends to provide for the establishment of the Central Bank of Kenya under the Constitution and not an Act of Parliament.

2. **Clause 2** of the Public Procurement and Disposal Act, 2005 (hereinafter referred to as "the principal Act") is amended by inserting the following new paragraph immediately after paragraph (f)—

"(g) to facilitate affirmative action for disadvantaged groups in accordance with Articles 27, 54, 55 and 56 of the Constitution and also advance their participation in the procurement process in accordance with Article 227 of the Constitution".

Justification

This amendment proposes to include, for the purposes of affirmative action, women and persons with disabilities among disadvantaged groups as the previous clause had only catered for the youth

3. **Clause 39, paragraph (9)** inserted immediately after subsection (8) be replaced with,

Despite subsection (2) or any other provisions of this Act, every procuring entity shall ensure that at least thirty percent of its procurement value in every financial year is allocated to the disadvantaged groups.

Justification

This amendment proposes to include replace the terms youth, women and persons with disability as these groups have been defined in the Bill as disadvantaged groups.

4. **Clause 39, paragraph (14)** inserted immediately after subsection (8) be replaced with,

The Cabinet Secretary shall prescribe the preferences <u>*with the approval of Parliament*</u> *that shall facilitate the attainment of the quota specified in subsection (9) in order for the State to achieve the objectives of Articles 55 and 227(2) of the Constitution.*

<u>**Justification**</u>

This amendment proposes to that the Cabinet Secretary shall table in Parliament for its approval the prescribed preferences to facilitate the attainment of the quota specified in subsection (9).

5. **Clause 39, paragraph 15 (b)** inserted immediately after subsection (8) be replaced with,

The preferences referred to in subsection (14) shall-

(b) be subject to such conditions as the Cabinet Secretary may specify therein but such shall not pose any unnecessary impediment to the <u>*disadvantaged groups*</u> *from participating in public procurement.*

<u>**Justification**</u>

This amendment proposes to include, in the development of preferences, women and persons with disabilities among disadvantaged groups as listed in Clause 3 of the amendment Bill.

6. **Clause 39, paragraph 16 (a) and (b)** inserted immediately after sub-section (8) be replaced with,

(a) *Facilitating affirmative action to ensure that the disadvantaged groups access employment and have opportunities to participate in economic spheres of line as contemplated by Articles 54, 55, 56 and 227 of the Constitution.*

(b) Protection or advancement of the disadvantaged groups in accordance with Article 227 of the Constitution who have previously been disadvantaged by unfair competition or discrimination in the procurement process

Justification

This amendment proposes to include, in the development of preferences, women and persons with disabilities among disadvantaged groups as listed in Clause 3 of the amendment Bill.

INSERTING NEW CLAUSES

7. NEW CLAUSE 3 SUB CLAUSE 12 (C)

THAT the Bill be amended in Clause 3 by inserting the following new Sub Clause 12 (C)–

"(c) *Provide explanation for failure to comply with the provisions of this section and efforts made by the entity to ensure future compliance."*

8. **NEW CLAUSE 4**

Section 3 of the Principal Act is amended by deleting the definition of the words accounting officer and substituting therefor with the following new definition

"accounting officer" means-

(a) For a Public entity other than a county government, the person appointed by the principal secretary to the Treasury as the accounting officer or, if there is no such person, the chief executive of the public entity.

(b) For the County Government a person appointed by the County Executive Committee Member responsible for Finance or if there is no such person, the chief executive of the public entity.

9. NEW **CLAUSE 5**

That the Principal Act be amended by deleting the word "Minister" wherever it appears and re-placing therefor with the word "Cabinet Secretary"

MIN. NO. 230/2014: DATE OF NEXT MEETING

The date of the next meeting was agreed as Thursday 17th July, 2014 from 9.00 am at the Ground Floor, Boardroom of County Hall.

<u>MIN. NO. 231/2014: ADJOURNMENT</u>

There being no other business and the time being fifty minutes past Eleven O'clock in the morning, the meeting adjourned.

SIGNED: ....**DATE:** 15th July 2014...

CHAIRPERSON –Sen. Billow Kerrow

MINUTES OF THE 73RD MEETING OF THE STANDING COMMITEE ON FINANCE, COMMERCE AND BUDGET, HELD AT THE GROUND FLOOR BOARD ROOM, COUNTY HALL, HARAMBEE AVENUE, PARLIAMENT BUILDINGS, NAIROBI ON THURSDAY, 3RD JULY, 2014 AT 9.00 A.M.

PRESENT:

1. Sen. Billow Kerrow, MP -**Chairperson**
2. Sen. Peter Ole Mositet, MP -Vice Chairperson
3. Sen. Katherine Nabwala, MP -Member
4. Sen. Mutahi Kagwe, MP -Member
5. Sen. Paul Njoroge Ben, MP -Member

ABSENT WITH APOLOGY

1. Sen. Prof. John Lonyangapuo, MP -Member
2. Sen. Moses Wetang'ula, MP -Member
3. Sen. Zipporah Kittony, MP -Member
4. Sen. (Prof.) Anyang' Nyong'o, MP -Member
5. Sen. Dr. Wilfred Machage, MP -Member
6. Sen. Dr. Boni Khalwale, MP -Member
7. Sen. Beatrice Elachi, MP -Member
8. Sen. James Mungai, MP -Member
9. Sen. Mutula Kilonzo Junior, MP -Member

THE SENATE:

1. Ms. Emmy Chepkwony -Senor Clerk Assistant
2. Ms. Brenda Ogembo -First Clerk Assistant
3. Ms. Carol Cheruiyot -Legal Counsel

Min. No. 201/2014: Preliminaries

The Chairperson called the meeting to order at twenty minutes past Eleven o'clock in the morning. Prayers were said by the Committee chairman.

Min. No. 202/2014: Adoption of the Agenda

The agenda presented was adopted as follows, after being proposed by Sen. Catherine Mukite, MP and Seconded by Sen. Paul Njoroge Ben, MP.

MIN. NO. 203/2014: SCRUTINY OF SUBMISSIONS FROM THE COUNCIL OF GOVERNORS ON THE PUBLIC PROCUREMENT AND DISPOSALS MANAGEMENT (AMENDMENT) BILL, 2013

The Committee deliberated on the submission by the Council of Governors on the Public Procurement and Disposal (Amendment) Bill, 2013 as annexed to the minutes.

MIN. NO. 204/2014: SCRUTINY OF SUBMISSIONS FROM THE COUNCIL OF GOVERNORS ON THE PUBIC FINANCE MANAGEMENT (AMENDMENT) BILL, 2014- Senate Bill No.11 of 2014

The Committee deliberated on the submission by the Council of Governors on the Public Finance Management (Amendment) Bill, 2013 as follows
The Bill Seeks to amend section 15(2) (a) and section 107(2) (b) of the Public Finance Management Act, 2012 (PFM) in order to provide, as a county government fiscal responsibility principal, that a minimum of sixty percent of the budget of the count governments be allocated to development expenditure.
Specific recommendations are as follows:

- The proposed 60:40 formula undermines service delivery which is the essence of the devolution. The Bill is based on unprincipled excuse for cost cutting and is motivated by Constituency Development Fund the management frameworks which do not consider the recurrent expenditure. For instance some county development portfolios are labour and service intensive thereby requiring significant recurrent expenditure. There is need to re-define development expenditure to make it realistic. The presumptions in the Bill are based on the CDF framework which does not capture the recurrent expenditure.

- The intended amendment is unnecessary restraint on the powers of the County Government and is not feasible as it does not appreciate the reality of running a government.

- Wage still a burden to Counties especially in light of workers absorbed from the National Government.

- Ensure that the Bill appreciates how operational expenditure relates with Capital Projects.

- Provide for amendments on how Counties can access funds in the event of a delay of release of funds.

- Provide for revenue raising measures by the County Governments

Min. No. 205/2014: Any Other Business
The Committee reviewed its work programme and confirmed that it will conduct a public hearing on the Public Finance Management (Amendment) Bil, 2014 on Monday 7th July, 2014 and Shimba Hall, Senate Old Chamber, KICC Buildings from 8.00am.

Min. No. 206/2014: Adjournment

Having dispensed with the business for the day, the Committee adjourned its sitting at half past twelve O'clock in the afternoon.

SIGNED: ....

CHAIRPERSON- SEN. BILLOW KERROW, MP

DATE: 10/7/2014 ....

MINUTES OF THE 70TH MEETING OF THE STANDING COMMITTEE ON FINANCE, COMMERCE AND BUDGET HELD ON THURSDAY 26TH JUNE, 2014 AT THE GROUND FLOOR BOARDROOM, COUNTY HALL, PARLIAMENT BUILDINGS AT 9.00 AM

Present

1. Sen. Billow Kerrow - **Chairman**
2. Sen. (Dr.) Wilfred Machage -**Chairing**
3. Sen. (Prof.) Peter Anyang' Nyongo
4. Sen. Beatrice Elachi
5. Sen. Zipporah Kittony
6. Sen. Paul Njoroge Ben
7. Sen. Catherine Mukiite
8. Sen. Moses Wetang'ula

Absent with Apologies

1. Sen. Peter Ole Mositet - **Vice Chairman**
2. Sen. Mutahi Kagwe
3. Sen. Mungai James
4. Sen. Mutula Kilonzo Junior
5. Sen. Boni Khalwale
6. Sen. (Prof.) John Lonyangapuo

In Attendance

The Kenya Senate

1. Mr. Njenga Njuguna - Director Committee Services
2. Ms. Emmy Chepkwony - Senior Clerk Assistant
3. Ms. Brenda Ogembo - First Clerk Assistant
4. Mr. Gichohi Mwaniki - Fiscal Analyst
5. Mr. Hussein Salat - Fiscal Analyst
6. Ms. Carol Cheruiyot - Legal Counsel

Min. No. 181/2014: Preliminaries

The proceedings commenced at 9.30 a.m. Thereafter a word of prayer was offered by Senator Machage who was chairing the meeting. Those in Secretariat advised the Committee that due to urgent matters requiring the attention of the Fiscal Analyst making the presentation, they would begin with agenda item four and then return to agenda item three. The Chairman accepted the proposal and invited the officer from the Budget Office to make his presentation.

Min. No. 182/2014: Adoption of the agenda

The agenda presented was adopted as follows:-

1. **Preliminaries**
    1. *Prayer*
    2. *Introductions*
    3. *Remarks by the Chairperson*
2. **Adoption of the Agenda**
3. **Briefing by Parliamentary Budget Office on the Public Procurement and Disposal (Amendment) Bill, 2013**
4. **Deliberation of matters outstanding before the Committee**
    1. *Progress Report on Mediation on the Division of Revenue Bill*
    2. *Statements*
    3. *Bills*
5. **Consideration of the Public Finance Management (Amendment) Bill, 2014**
6. **Any Other Business**
7. **Adjournment**

Min. No. 183/2014: Briefing by Parliamentary Budget Office on the Public Procurement and Disposal (Amendment) Bill, 2013

The budget officer took the Committee through a brief on the Public Procurement and Disposal (Amendment) Bill, 2013 as follows;

I. Overview of the Bill

The Public Procurement and Disposal (Amendment) bill, 2013 is a bill for an Act of Parliament to amend the Public Procurement and Disposal Act, 2005 to provide for affirmative action

II. Situational Analysis

The Public Procurement System in Kenya has evolved from a crude system with no regulations to an orderly legally regulated procurement system. The Government's Procurement system was originally contained in the Supplies Manual of 1978, which was supplemented by circulars that were issued from time to time by the Treasury. The Director of Government Supply Services was responsible for ensuring the proper observance of the provisions of the Manual. The Manual created various tender boards for adjudication of tenders and their awards.

A review of the country's public procurement systems was undertaken in 1999 and established that:

i. There was no uniform procurement system for the public sector as a whole

ii. It did not have sanctions or penalties against persons who breached the regulations in the Supplies Manual, other than internal disciplinary action. Consequently application of the rules was not strict and many of the norms were not followed

iii. The Supplies Manual did not cover procurement of works

iv. The dispute settlement mechanisms relating to the award procedures as set out in the Manual were weak and unreliable for ensuring fairness and transparency

v. Records of procurement transactions in many cases were found to be inaccurate or incomplete or absent, which led to suspicions of dishonest dealings at the tender boards.
vi. The systems had other institutional weaknesses that not only undermined its capacity for carrying out their mandates effectively but also led to a public perception that the public sector was not getting maximum value for money spent on procurement.
In view of the above shortcomings it was found necessary to have a law to govern the procurement system in the public sector and to establish the necessary institutions to ensure that all procurement entities observe the provisions of the law for the purpose of attaining the objectives of an open tender system in the sector. Consequently the establishment of the Exchequer and Audit (Public Procurement) Regulations 2001 which created the Public Procurement Directorate (PPD) and the Public Procurement Complaints, Review and Appeals Board (PPCRAB).

The PPD and PPCRAB, though largely independent in carrying out their activities, had been operating as departments in the Ministry of Finance on which they relied for staff, facilities and funding. Since these institutional arrangements have a potential for undermining the impartiality of these bodies in the long run it was found necessary to create an oversight body whose existence was based on a law. The Public Procurement and Disposal Act, 2005 was thus enacted and it become operational on 1st January, 2007 with the gazettement of the Public Procurement and Disposal Regulations, 2006.

The Public Procurement and Disposal Act, 2005 created the Public Procurement Oversight Authority (PPOA), the Public Procurement Advisory Board (PPAB) and the continuance of the Public Procurement Complaints, Review and Appeals Board as the Public Procurement Administrative Review Board (PPARB). The PPAB and PPARB are autonomous bodies.

The PPOA is mandated with the responsibility of:
1. Ensuring that procurement procedures established under the Act are complied with;
2. Monitoring the procurement system and reporting on its overall functioning;
3. Initiating public procurement policy
4. Assisting in the implementation and operation of the public procurement system by:
   - preparing and distributing manuals and standard tender documents,
   - providing advice and assistance to procuring entities, and
   - develop, promote and support training and professional development of staff involved in procurement

Observations

The Following issues are noted with regard to the Bill:

1. **Amendment to clause 2 of the Act**: The bill introduce a new objective into the Public Procurement and Disposal Act, 2005 that provide for affirmative action for the youth in accordance with Article 55 of the constitution and also advance-

ment of youth participation in the procurement process in accordance with Article 227 of the constitution. This will ensure the youth to engage in income generating activities and access to employment thus result into economic growth.

2. **Amendment to clause 3 of the Act**: The bill seeks to amends the Principal Act by introducing a new definition that includes: disadvantaged group, persons with disability, women and youth. These are the marginalized groups in the society thus this amendment caters for them hence provide for preference and reservation in public procurement in accordance with Article 227 2(a, b) of the Constitution.

3. **Amendment to clause 9 of the Act**: The bill seeks to amend clause 9 of the principal Act, 2005 by introducing a new function of the Public Procurement Oversight Authority (PPOA) which give the Authority the mandate to implement the preference and reservation and to provide data to the Authority disaggregate to indicate the number of disadvantaged groups that have benefitted. This ensures economic freedom for the disadvantages group and overall economic growth.

4a. Amendment to clause 39 of the Act: The bill introduces a new amendment into the Act by separating clause 39 4(a) into two sub-sections that is, candidates such as disadvantaged groups and micro, small and medium enterprises that were initially one sub-section in the Act.

b. The bill introduces new regulations and guidelines into the act by including new sub-sections (9, 10,11,12,13,14,15,16 and 17) into clause 39 of the Act which include:

i. That every procuring public entity shall ensure that at least thirty percent (30%) of its procurement in every financial year be allocated to the youth, women and persons with disability .This regulation will enable disadvantaged groups to fully participate in public procurement process

ii. That every public procuring entity shall ensure that all money paid out to an enterprise owned by youth, women and persons with disability is paid into account where mandatory signatory is a youth, woman or persons with disability. This will ensures transparency in public procurement allocations.

iii. That public procuring entities at the national and county level shall make a quarterly report to the public procurement oversight Authority (PPOA) this is a new regulations that that was not provided for in the Act and will ensures efficiency, transparency and accountability in the Public Procurement process which ensures proper resources allocations thus improve the economy.

iv. That the report in sub-section 11 shall certify compliance with provision of this Act and shall provide data disaggregated to indicate the number of youth, women and persons with disability whose goods and service have been procured by the procuring entity.

v. That the Authority shall make a quarterly report to parliament for consideration by the relevant committee responsible for equalization of opportunities for youth, women and persons with disability, of which the report shall contain details of the procuring entities and how they have complied with the provision of this Act.

vi. That the Cabinet Secretary shall prescribe the preference that shall facilities the attainment of the quota specified in sub-section (9) in order to achieve the objectives of Article 55 and 227(2) of the Constitution. This will enhance both the national and county government procurement process to be underline with section (9).

vii. That the preference under sub-section 14 shall be prescribed within 90 days after commencement of this Act and the conditions the Cabinet Secretary may specify, such conditions shall not pose any unnecessary impediment to the youth from participating in public procurement.

viii. That the right of equality and freedom from discrimination under Article 27 of the constitution shall be limited as specified under this section for the purpose of facilitating affirmative action to ensure that the youth access employment and have opportunities to participate in economic spheres of life as contemplated in Articles 54,55,56 and 227b of the constitution and also protect ion or advancement of the youth in accordance with Article 227 of the constitution who have previously been disadvantaged by unfair competition or discrimination in the procurement process.

ix. That the Cabinet Secretary to devise mechanisms that safeguards against possible abuse in the legislative endeavor for the attainment of the objects specified in paragraphs (a) and (b) of subsection (12) and the principles and standards applicable to the regulations made under this subsections are set out in this Act.

5. Amendment to clause 129 of the Act: The bill introduce a new method of disposing of which the disposal committee shall recommend to the Accounting officer that radioactive or electronic waste shall be disposed only to a person licensed to handle the respective waster under section 88 of the Environmental Management and Co-ordination Act ,1999.This regulation will minimize environmental pollution that results from this radioactive or electronic wastes.

Salient Issues requiring consideration

1. Thresholds for the various adhoc committees
2. Number of Committees
3. Speed of Procurement
4. Value for Money- Market Prices

III. Policy Options

1. The following policy options are available for the Committee's consideration

No.	Policy Option	Impact
1.	Pass the Bill as Draft	The will lead to affirmative action where thirty percent of public procurement will benefit the disadvantaged groups.

2.	Reject the Bill	The present situation where the youth, women and persons with disabilities are not catered for public procurement process will still exist

Min. No. 184/2014: Committee Deliberation on the Public Procurement and Disposal (Amendment) Bill, 2013

The Committee sought guidance on the issue of dealing with suppliers when during procurement process only one tender comes in and the procuring entity is forced to cancel and proceed to re-tender. The Budget Office advised that one of the amendments that could be considered to address this issue was the application of fixed price procurement that would allow procuring entities to make a determination even with the submission of only one tender.

The Committee noted that the issue on value for money in the procurement process was an issue of key importance and it was important to put in place measures to ensure that exploitation of Ministry's is stopped.

The Committee also sought to know how the amendment would ensure fair distribution of the 30% preferential procurement among the three identified disadvantaged groups. They Committee deliberated on how the amendments proposed would ensure that all three identified groups achieve equal opportunities in the preferential earmarked procurement. The Committee was advised that the danger with a ring fenced amount for each identified disadvantaged group would lead to complications in instances where one marginalised groups does not take up its procurement allocation at all. The Committee was advised that the best way to address their concerns was to task the Cabinet Secretary with developing regulations for the Bill that would define the criteria for preferential allocation and table the same before the Committee and the Committee on delegated legislation for review prior to gazettement.

The Committee also sought to know if an amendment or legislation could be passed that would mandate procuring entity tender committees to determine fair market prices for tendered goods and make a decision at that level. The Committee was advised that the best way to address this issue would be for the Public Procurement Oversight Authority to issue guidelines on fair market prices for goods that would guide the procurement of commonly sourced items used by government. This list would then be reviewed from time to time to ensure a true reflection of listed items and their current market prices.

The Committee was informed by the Secretariat that the civil society advocacy group, Transparency international had submitted a memorandum proposing amendments to the Public Procurement and Disposal (amendment) Bill, 2013. The organisation in its memorandum had noted that the Bill sought to amend the Act to provide for allocation of at least thirty percent of total annual public procurement to youth. The organisations concerns lay in the fact that women and persons with disabilities had not been included in the Bill. The memorandum stated that this departed from constitutional provisions seeking to protect and advance not only youth but also, women and persons with disabilities and marginalised groups. The memorandum recommended that women and persons with disabilities be included in the Bill for them to have equal legal status in the same capacity as youths. The Committee noted that the act had been amended and did incorporate the concerns listed in the memorandum. It was however noted that certain clauses in the Bill still needed to have the language refined to ensure it provided for all disadvantaged groups and not just the youth. The submitted memorandum is annexed to these minutes.

Min. No. 185/2014: Deliberation of matters outstanding before the Committee

On the first issue of the formation of a mediation committee on the Division of Revenue Bill, the Committee was informed by the Director of Committee Services that Mediation Committee had been established and was scheduled to have its first meeting the following week on Monday morning at 9 A.M.

The Committee was also briefed on the two Statements outstanding before the Committee and advised that the same had been shared with Chair to issue to the House. The Committee was informed that on the further information sought from the Ministry on the Statement by the Committee, a letter had been dispatched and the Ministry's response was being awaited.

The Committee noted the procurement challenges facing the Counties and which was resulting in challenges of Counties absorbing their allocations. The Committee noted that the issue of procurement challenges in the counties was one that required urgent action to ensure counties are able to absorb their allocations as budgeted.

On the Public Finance Management (Amendment) Bill, 2014 the secretariat advised the Committee that during the pre-publication scrutiny, the Committee had advised that the Bill was ill advised and unenforceable. The Committee had further advised that the Bill should not proceed to publication. The Secretariat advised the Committee that the Bill had however proceeded to publication and now stood committed to the Committee. The Secretariat presented a schedule to the Committee proposing how the Committee should process the two Bills currently committed it. The Committee endorsed the proposed schedule.

Min. No. 186/2014: Any Other Business

The Committee noted that there was need for urgent action to draw regulations to guide the distribution of the Equalisation fund.

Min. No. 187/2014: Date of Next Meeting

The date of the next meeting was agreed as Tuesday 1st July from 10.00 am at the Ground Floor, Boardroom of County Hall.

Min. No. 188/2014: Adjournment

There being no other business and the time being thirty minutes past eleven o'clock in the morning, the meeting adjourned.

SIGNED: ....

CHAIRPERSON- SEN. BILLOW KERROW, MP

DATE: ....10/7/2014...

COUNCIL OF GOVERNORS

LEGISLATIVE MEMORANDUM CONCERNING THE PUBLIC FINANCE MANAGEMENT (AMENDMENT BILL) 2014

To

THE SENATE

From

SECTORAL COMMITTEE ON PUBLIC FINANCE

THE COUNCIL OF GOVERNORS, a non – partisan organization established in accordance with the provision of Section 19 of The Intergovernmental Relations Act, of P.O. Box Number 40401-00100, Nairobi (Hereinafter referred to as "the Council", which expression shall where the context admits so include its successors and assigns) on the other part;

In recognition of the fact that the Constitution sets out the principles of public finance and that the Public Finance Management Act, 2012 generally provides the legislative framework for the management of public finance at the National and County level;

In further recognition of the need to align the legislation that affects the public finance for effective implementation in the counties; and

Aware of the need for coordinated action between the national and county governments to ensure that these legislations properly respond to the key issues facing the sector, and further reflects the spirit and purpose of the devolution process.
The Council recommends as follows:

A. The Public Finance Management (Amendment Bill) 2014-Senate Bill No.11 OF 2014

The Bill seeks to amend section 15(2) (a) and section 107(2) (b) of the Public Finance Management Act, 2012 (PFM) in order to provide, as a county government fiscal responsibility principle, that a minimum of sixty percent of the budget of the county governments be allocated to development expenditure.

Specific recommendations are as follows:

- The proposed 60:40 formula undermines service delivery which is the essence of the devolution. The Bill is based on unprincipled excuse for cost cutting and is motivated by Constituency Development Fund the management frameworks which do not consider the recurrent expenditure. For instance some county development portfolios are labour and service intensive thereby requiring significant recurrent expenditure. There is need to re-define development expenditure to make it realistic. The presumptions in the Bill are based on the CDF framework which does not capture the recurrent expenditure.

- The intended amendment is unnecessary restraint on the powers of the County Government and is not feasible as it does not appreciate the reality of running a government.

- Wage still a burden to Counties especially in light of workers absorbed from the National Government.

- Ensure that the Bill appreciates how operational expenditure relates with Capital Projects.

REPUBLIC OF KENYA

OFFICE OF THE CONTROLLER OF BUDGET

PRESENTATION TO THE SENATE STANDING COMMITTEE ON FINANCE, COMMERCE AND BUDGET

ON

THE PUBLIC FINANCE MANAGEMENT (Amendment) BILL 2014

July 2014

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ABBREVIATIONS

CA	County Assembly
CRA	Commission on Revenue Allocation
CG	County Governments
FY	Financial Year
OCOB	Office of the Controller of Budget
O&M	Operations and Maintenance
PE	Personnel Emoluments
PFMA	Public Finance Management Act

1.0 INTRODUCTION AND OBJECTIVE

The Constitution of Kenya 2010 established a devolved system of government consisting of the National Government and 47 county governments. The Fourth Schedule of the Constitution allocates functions to each tier of government and specifies that both levels of government are entitled to an equitable share of the revenue raised by the National government to perform assigned functions. Further, Chapter twelve of the Constitution outlines the Public Finance Management Framework.

Article 201 of the Constitution provides the principles and framework of public finance. This is buttressed by Section 107 (2) (b) of the Public Finance Management Act, 2012 which requires the County Treasury to ensure that the County Government allocates at least 30 per cent of the County Government's budget to development expenditure.

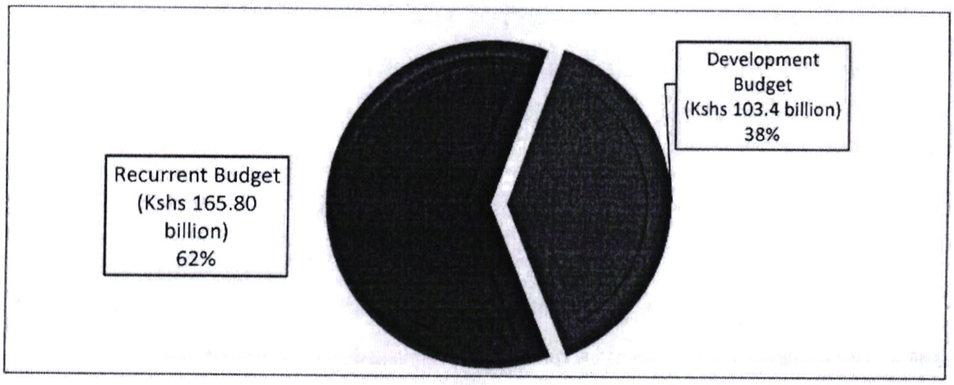
This report provides analysis of County Governments performance against this fiscal responsibility principle which came into effect in the 2013/14 financial year. Section two of the report analyses allocation of resources to development expenditure in FY 2013/14 and also reviews actual performance for the nine months to March 31, 2014. Section three provides an analysis of the overall development expenditure allocations for FY 2014/15. The overall goal is to provide insight into how County Governments allocated resources for development activities in the FY 2013/14 and FY 2014/15, and the actual implementation of the development budget for the nine months period of the FY 2013/14. Section 5 provides the conclusion and recommendations.

2.0 OVERVIEW OF COUNTY BUDGETS FY 2013/14

Budget allocation to Development Expenditure FY 2013/14

County Governments started implementing their first annual budgets in July, 2013. The budgets were reviewed by oversight institutions such as the Commission on Revenue Allocation (CRA) and the Office of the Controller of Budget (OCOB) in order to ensure compliance with fiscal responsibility principles as par Article 201 of the Constitution and Section 107 of the Public Finance Management Act, 2012. These reviews necessitated revision of all County budgets to comply with various fiscal responsibility principle such as: i) on balanced budgets, ii) meeting the minimum threshold of 30 per cent allocation to development expenditure, and, iii) to eliminate borrowing pending the development of a borrowing framework. Upon revision, the FY 2013/14 gross county governments' budgets met the fiscal responsibility principle requiring that a minimum of thirty percent of the budget be allocated to development expenditure over the medium term. A summary of the allocations to recurrent and development expenditure is shown in Figure 1.

Figure 1: FY 2013/14 Overall Budget Allocations to Recurrent and Development Activities



Source: County Treasuries

The actual allocation was Kshs. 165.8 billion (61.6 %) to recurrent expenditure and Kshs. 103.4 billion (38.4%) to development expenditure. A total of five counties did not meet the minimum threshold of allocation to development expenditure. These were; Nakuru, Kshs. 2.9 billion (28.9%); Laikipia, Kshs. 962.7 million (29.0%); Kisumu, Kshs. 2.5 billion (29.7%); Narok, Kshs. 2.4 billion (29.7%), and Migori Kshs. 1.7 billion (29.9%). Mandera County allocated the highest proportion of funds for development expenditure at Kshs. 4.0 billion (56.9%); followed by Kakamega, Kshs. 7.1 billion (53.8%); Bomet Kshs. 2.0 billion (52.6%), and Machakos, Kshs. 4.2 billion (51.9%) as shown in Table 1.

Table 1: Development and Recurrent Expenditure Allocation for FY 2013/14

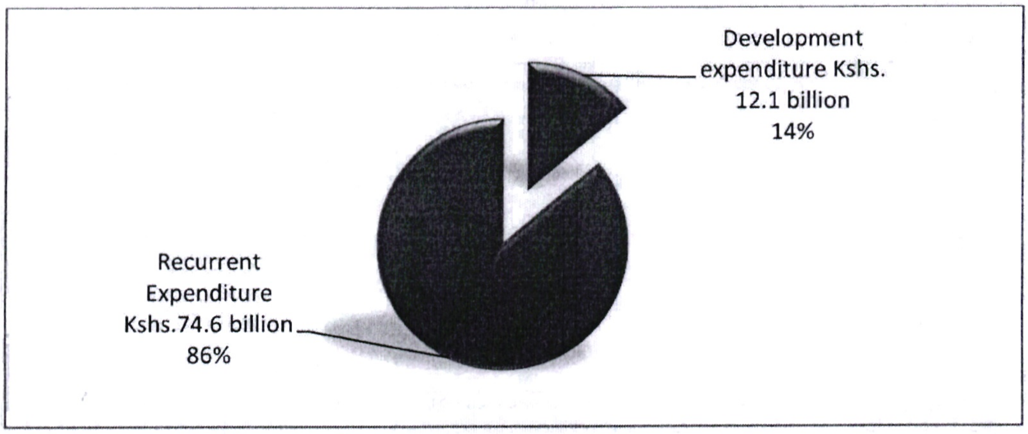
County Title	Budget Amount (Kshs)	Recurrent Budget (Kshs)	Development Budget (Kshs)	% of Recurrent Budget	% of Development Budget
Baringo	3,744,080,566	2,584,313,721	1,159,766,845	69.0	31.0
Bomet	3,821,800,000	1,810,400,000	2,011,400,000	47.4	52.6
Bungoma	8,853,866,627	5,178,478,693	3,675,387,934	58.5	41.5
Busia	4,303,541,093	2,595,434,438	1,708,106,655	60.3	39.7
Elgeyo/Marakwet	2,603,670,555	1,818,434,969	785,235,586	69.8	30.2
Embu	4,023,446,437	2,814,605,691	1,208,840,746	70.0	30.0
Garissa	4,847,000,000	3,275,744,000	1,571,256,000	67.6	32.4
Homa Bay	5,314,684,836	3,183,484,836	2,131,200,000	59.9	40.1
Isiolo	2,784,624,946	1,740,684,871	1,043,940,075	62.5	37.5

County Title	Budget Amount (Kshs)	Recurrent Budget (Kshs)	Development Budget (Kshs)	% of Recurrent Budget	% of Development Budget
Kajiado	3,758,180,741	2,515,581,899	1,242,598,842	66.9	33.1
Kakamega	13,205,550,421	6,100,750,421	7,104,800,000	46.2	53.8
Kericho	3,632,603,754	2,448,603,754	1,184,000,000	67.4	32.6
Kiambu	9,323,002,943	6,511,918,517	2,811,084,426	69.8	30.2
Kilifi	6,701,156,247	4,610,562,725	2,090,593,522	68.8	31.2
Kirinyaga	3,267,958,728	2,278,747,778	989,210,950	69.7	30.3
Kisii	7,053,212,180	4,247,374,394	2,805,837,786	60.2	39.8
Kisumu	8,345,000,000	5,868,327,514	2,476,672,486	70.3	29.7
Kitui	6,548,246,241	3,716,105,952	2,832,140,289	56.7	43.3
Kwale	4,391,361,019	2,869,637,884	1,521,723,134	65.3	34.7
Laikipia	3,314,772,184	2,352,053,209	962,718,975	71.0	29.0
Lamu	1,648,526,161	1,148,059,778	500,466,383	69.6	30.4
Machakos	8,015,656,492	3,856,116,492	4,159,540,000	48.1	51.9
Makueni	5,071,201,931	3,105,089,206	1,966,112,725	61.2	38.8
Mandera	6,987,632,929	3,009,069,023	3,978,563,906	43.1	56.9
Marsabit	3,840,008,898	2,152,649,677	1,687,359,221	56.1	43.9
Meru	5,681,680,382	2,791,093,056	2,890,587,326	49.1	50.9
Migori	5,530,654,457	3,874,680,405	1,655,974,052	70.1	29.9
Mombasa	11,686,014,896	6,975,726,407	4,710,288,489	59.7	40.3
Murang'a	5,621,869,067	2,721,919,667	2,899,949,400	48.4	51.6
Nairobi City	25,225,181,329	17,625,681,329	7,599,500,000	69.9	30.1
Nakuru	10,038,042,113	7,141,550,723	2,896,491,390	71.1	28.9
Nandi	3,899,794,019	2,657,355,641	1,242,438,378	68.1	31.9
Narok	8,083,853,311	5,681,245,870	2,402,607,441	70.3	29.7
Nyamira	3,415,715,932	1,763,134,130	1,652,581,802	51.6	48.4
Nyandarua	3,639,860,739	1,764,085,340	1,875,775,399	48.5	51.5
Nyeri	4,550,415,709	2,638,719,374	1,911,696,335	58.0	42.0
Samburu	2,906,460,855	1,940,533,655	965,927,200	66.8	33.2
Siaya	4,264,097,958	2,944,887,945	1,319,210,013	69.1	30.9
Taita/Taveta	2,858,870,449	1,940,550,350	918,320,099	67.9	32.1
Tana River	3,206,097,123	2,026,642,022	1,179,455,101	63.2	36.8
Tharaka -Nithi	2,518,590,070	1,546,427,946	972,162,124	61.4	38.6
Trans Nzoia	4,424,512,783	3,062,624,547	1,361,888,236	69.2	30.8
Turkana	8,145,087,939	4,157,862,930	3,987,225,009	51.0	49.0
Uasin Gishu	5,727,883,679	3,781,083,679	1,946,800,000	66.0	34.0
Vihiga	3,263,931,119	2,274,304,440	989,626,679	69.7	30.3
Wajir	5,413,561,682	2,697,961,682	2,715,600,000	49.8	50.2
West Pokot	3,631,252,476	1,982,136,713	1,649,115,763	54.6	45.4
Total	269,134,214,016	165,782,437,294	103,351,776,722	61.6	38.4

Budget Performance as at end of Quarter Three of FY 2013/14

In the nine months period of the 2013/2014 Financial Year, county governments spent Kshs.12.1 billion on development and Kshs.74.6 billion on recurrent activities representing 14 per cent and 86 per cent of the total budget respectively as shown in Figure 2.

Figure 2: Development and Recurrent Expenditure in the FY 2013/14 as at March 2014



Source: County Treasuries

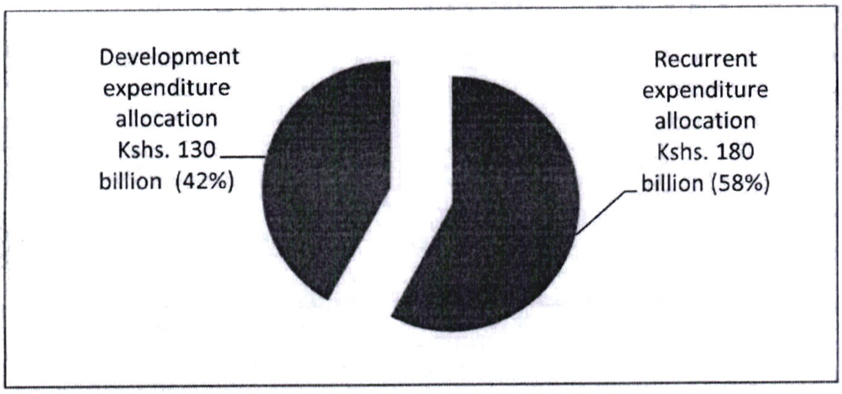
While County Governments allocated 38.4 per cent of their budgets to development expenditure, in the period July 2013 to March 2014, actual expenditure showed that a mere 14 per cent of the total expenditure was spent on development projects. The challenges that contributed to low absorption of development expenditure included:

a) Inadequate staff capacity at county-level to implement development projects.
b) Lack of framework to identify and prioritize development projects.
c) Failure to appropriately plan and procure for development projects.
d) Cash flow problems associated with unrealistic estimation of local revenue sources. This meant that nondiscretionary costs such as salary related costs took priority over development expenditure.
e) Long procurement process, which delayed implementation of development projects.
f) Lack of PFM regulations to facilitate smooth processing of activities.

3.0 OVERVIEW OF COUNTY BUDGETS FY 2014/15

A review of FY 2014/15 approved county budgets shows that 42 per cent of the county resources have been allocated to development expenditure. Counties have allocated Kshs. 130 billion to development expenditure against the total cumulative budget of Kshs. 310 billion as shown in Figure 3.

Figure 3: Development and Recurrent Expenditure in the FY 2014/15 County Budget Estimates



A total of 45 counties allocated a minimum of 30 per cent of their budget to development expenditure, while only two counties failed to adhere to this fiscal principle. The three Counties with the highest allocation to development expenditure are: Turkana (69%), Garissa (63%), and Mandera (60%). The two counties with the lowest allocations were Nyeri (19%), and Mombasa (29%). Table 2 details budget allocations to development and recurrent expenditure in the 47 Counties.

Table 2: Budget Allocation to Development and Recurrent Expenditure For The FY2014/15

County	Total FY 2014/15 Budget	Recurrent Expenditure Allocations	Development Expenditure Allocations	Recurrent Exp. Allocations as % of Total Budget	Development Exp. Allocation as % of Total Budget
Baringo	4,563,151,255	2,904,288,425	1,658,862,830	64%	36%
Bomet	4,341,840,000	2,037,600,000	2,304,240,000	47%	53%
Bungoma	8,269,819,488	4,113,360,117	4,156,459,371	50%	50%
Busia	5,496,490,546	3,087,410,725	2,409,079,821	56%	44%
Elgeyo/Marakwet	3,288,478,784	1,901,950,541	1,386,528,243	58%	42%
Embu	4,015,021,446	2,620,616,517	1,394,404,929	65%	35%
Garissa	7,918,388,230	2,945,032,809	4,973,355,421	37%	63%
Homa Bay	5,293,000,000	3,603,400,000	1,689,600,000	68%	32%
Isiolo	2,968,945,502	1,901,707,403	1,067,238,099	64%	36%
Kajiado	5,834,311,404	3,837,611,404	1,996,700,000	66%	34%
Kakamega	10,321,289,747	5,686,889,747	4,634,400,000	55%	45%
Kericho	4,553,131,520	3,094,824,792	1,458,306,728	68%	32%
Kiambu	9,985,190,795	6,723,816,685	3,261,374,110	67%	33%
Kilifi	8,434,931,381	4,745,847,493	3,689,083,888	56%	44%
Kirinyaga	4,259,605,053	2,559,499,995	1,700,105,058	60%	40%
Kisii	8,085,830,675	4,864,087,000	3,221,743,675	60%	40%
Kisumu	11,430,817,037	5,620,006,375	5,810,810,662	49%	51%
Kitui	7,693,137,357	4,601,853,077	3,091,284,280	60%	40%
Kwale	5,620,000,000	2,738,738,011	2,923,131,189	49%	52%
Laikipia	4,179,401,346	2,811,682,128	1,367,719,217	67%	33%
Lamu	1,956,760,052	1,242,009,178	714,750,874	63%	37%

Machakos	8,899,178,992	4,911,146,837	3,988,032,155	55%	45%
Makueni	5,613,546,104	3,608,176,861	2,005,369,243	64%	36%
Mandera	11,567,254,762	4,604,469,895	6,962,784,867	40%	60%
Marsabit	4,466,767,634	2,595,967,634	1,870,800,000	58%	42%
Meru	6,400,000,000	3,926,044,653	2,473,955,347	61%	39%
Migori	5,269,503,098	2,930,126,455	2,339,436,643	56%	44%
Mombasa	13,117,353,681	9,300,471,757	3,816,881,924	71%	29%
Murang'a	6,303,922,000	2,863,132,000	3,440,790,000	45%	55%
Nairobi City	28,762,590,000	19,349,390,000	9,413,200,000	67%	33%
Nakuru	9,553,926,197	6,585,619,047	2,968,309,150	69%	31%
Nandi	5,360,313,940	2,679,716,539	2,680,597,401	50%	50%
Narok	8,575,845,905	4,730,964,052	3,844,881,853	55%	45%
Nyamira	3,760,000,000	2,641,943,453	1,118,056,547	70%	30%
Nyandarua	3,701,975,304	2,435,844,519	1,266,130,785	66%	34%
Nyeri	4,688,126,959	3,889,995,223	907,351,727	83%	19%
Samburu	3,439,613,878	2,065,148,044	1,374,465,834	60%	40%
Siaya	4,601,484,989	3,208,484,989	1,393,000,000	70%	30%
Taita/Taveta	3,414,670,058	2,325,253,916	1,089,416,142	68%	32%
Tana River	3,586,517,358	1,783,213,731	1,803,303,627	50%	50%
Tharaka -Nithi	2,931,310,382	1,830,893,621	1,319,690,000	62%	45%
Trans Nzoia	5,020,818,964	2,695,955,353	2,324,863,611	54%	46%
Turkana	12,994,806,146	4,046,449,166	8,948,356,980	31%	69%
Uasin Gishu	5,612,616,676	3,644,752,676	1,967,864,000	65%	35%
Vihiga	3,775,743,491	2,310,744,866	1,464,998,625	61%	39%
Wajir	6,278,070,000	3,133,227,742	3,144,842,257	50%	50%
West Pokot	3,779,436,855	2,259,796,171	1,519,640,684	60%	40%
Total	**309,984,934,991**	**179,999,161,621**	**130,356,197,797**	**58%**	**42%**

4.0 CONCLUSSION AND RECOMMENDATION

1. In the FY 2013/14, though counties allocated a total of 38 per cent of their budgets to development expenditure, actual expenditure as at end of the third quarter shows that the development expenditure was a mere 14 per cent of total expenditures and 11.5 per cent of the gross development expenditure allocation.
2. There is need to build the capacity of Counties to facilitate absorption of the funds allocated to development expenditure. This will ensure that allocations are in line with County capability to implement development projects.
3. In the FY 2014/15, Counties have allocated 42 per cent of total budgets to development expenditure. This allocation complies with the current fiscal responsibility principle that a minimum of 30 per cent of County governments budgets be allocated to development expenditure.

4. In order to increase development expenditure allocation, Counties will be required to cut down on the recurrent budget. Analysis of the recurrent expenditure by economic classification for the first 9 months of FY 2013/14 shows that about 58 per cent of the expenditure goes towards Personnel Emoluments (PE), 39 per cent to Operations and Maintenance (O&M), while 3 per cent was spent on debt repayment and pending liabilities. There is need for a national policy to rationalize the wage bill. A lean and effective staff at the county will free more resources to fund development projects.
5. Based on the foregoing, an increase of the development budget allocation from 30 percent to 60 per cent is untenable in the short term. This may result in fiscal stress. In addition, inadequate capacity to implement development projects may impose challenges in fund absorption. We recommend an increase of budget expenditure allocation from 30 per cent to 40 percent at this time.

Stephen Masha
For CONTROLLER OF BUDGET

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COMMISSION ON REVENUE ALLOCATION

OUR REF: CRA/P& S/14/Vol. 3/(60) **DATE:** 14th July 2014

Mr. Jeremiah M. Nyegenye
Clerk of the Senate
2nd Floor County House
NAIROBI

Dear Mr. Nyegenye

RE: THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL 2014

We refer to the above mentioned Bill that is currently undergoing discussion in the Senate. The Bill seeks to amend section 15(2) of the Public Finance Management Act 2012 so that the minimum expenditure for development for both the national and county governments is increased from 30% to 60%.

We wish to state the following with regard to the effect the amendment would have on county budgets:

1. County governments' functions are concerned mainly with service delivery. It therefore follows that a huge percentage of county budgets go towards service delivery and operational expenses.

2. County governments inherited a huge workforce from the former local authorities and the national government. This has resulted in a huge wage bill that contributes substantively to county governments' recurrent expenditure. Until and unless the matter of the wage bill is resolved, county budgets will largely comprise of recurrent expenditure.

For the above reasons, we therefore feel that the proposed minimum of 60% for development expenditure may not be attainable. The current ratio in PFM of 30% development and 70% recurrent expenditure is based on international best practice.

Yours sincerely

Fatuma Abdulkadir
VICE CHAIRPERSON

Copy to: Mr. Charles Nyachae
Chairman
Commission for the Implementation of the Constitution
Parklands Plaza, Chiromo Lane, Westlands
NAIROBI

THE SENATE

MEMO

To : **The Clerk**

Thro' : Director Committee Services

From : Senior Clerk Assistant

Date : 15th July, 2014

Sir, Endorsed and Forwarded for your Consideration & Approval for Tabling
15/07/14.

SUBJECT: **REPORTS ON BILLS**

At the Committee sitting held on today Tuesday 15th July, 2014, the Standing Committee on Finance Commerce and Budget adopted its two (2) reports for tabling in the Senate.

This is to request for your approval and forwarding to the Speaker for approval the Report on the Public Finance Management (Amendment) Bill, 2014

Emmy Chepkwony

Hon. Speaker
You may approve for tabling.
15/07/14

Approved
16/7/14