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THE COUNTY ALLOCATION OF REVENUE ACT, 2013

No. 34 of 2013

Date of Assent: 9th August, 2013

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THE COUNTY ALLOCATION OF REVENUE ACT, 2013

AN ACT of Parliament to provide, pursuant to Article 202(2) and 218(1)(b) of the Constitution, for the division, among the counties, of conditional allocations and equitable share of revenue allocated to the county level of government on the basis determined in accordance with the resolution in force under Article 217 of the Constitution for the financial year 2013/14; to provide for the responsibilities of the national and county governments pursuant to such division; and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

Short title

1. This Act may be cited as the County Allocation of Revenue Act, 2013.

Interpretation

2. In this Act, unless the context otherwise requires-

"Cabinet Secretary" means the Cabinet Secretary responsible for finance;

No.16 of 2011

"revenue" has the same meaning assigned to it in section 2 of the Commission on Revenue Allocation Act, 2011;

"State Organ" has the same meaning assigned to it in Article 260 of the Constitution;

No. 1 of 2012

"Transition Authority" means the Transition Authority established under section 4 of the Transition to Devolved Government Act, 2012; and

No. 18 of 2012

"wasteful expenditure" has the same meaning assigned to it in section 2 of the Public Finance Management Act, 2012.

Object and purpose of the Act

3. The object and purpose of this Act is-

(a) to provide, pursuant to Article 202(2) and 218(1)(b) of the Constitution, for the division, among the counties, of conditional allocations and equitable share of revenue allocated to the county level of government on the basis determined in accordance with the resolution in force

under Article 217 of the Constitution for the financial year 2013/14; and

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

Shareable revenue and division of revenue

4. (1) The shareable revenue through the approved formula for the financial year 2013/2014 shall be as set out in the First Schedule.

(2) The division of revenue among county governments for the financial year 2013/2014 shall be as set out in the Second Schedule.

Allocation of the revenue allocated to the county level of government to each county government

5. The revenue allocated to the county level of government shall be allocated to each county government for the financial year 2013/2014 in the manner set out in Column C of the Third Schedule.

Conditional allocations to county governments

6. Conditional allocations to provide for the funding of regional referral hospitals and to ensure continuation of other essential services shall be made to the county governments in the manner set out in Column B of the Third Schedule.

Total allocations

No. 1 of 2012

7. (1) The functions to be gazetted by the Transition Authority for transfer to the county governments in accordance with section 23 of the Transition to Devolved Government Act shall form the basis for preparing the relevant county government's estimates of revenue and expenditure for the financial year 2013/2014.

(2) The allocations set out in the Third Schedule comprise the allocations for the performance of all the devolved functions which shall be implemented by the national or county government, as the case may be.

(3) The total estimated cost of the functions to be transferred which shall form the basis for the county budgets is set out in Column E of the Third Schedule.

(4) Where functions have not been gazetted for transfer by the Transition Authority in accordance with section 23 of the Transition to Devolved Government Act, the budget estimates for such functions shall be included in the budget estimates of the national government and shall

be submitted to Parliament for approval.

(5) Each county government's allocation under sections 5 and 6 shall be transferred to the respective County Revenue Fund in accordance with the payment schedule gazetted by the Cabinet Secretary in terms of section 17 of the Public Finance Management Act, provided the Transition Authority has gazetted, for transfer, the functions to be financed by those allocations.

No. 18 of 2012

(6) Where the allocation of monies to a county results in a county being allocated an amount that is less than the amount commensurate to the cost of the functions devolved to the county, the national government shall allocate part of its share of revenue to provide the additional resources needed.

Transfers made erroneously or fraudulently

8. (1) Notwithstanding the provisions of any other law, where it is determined that the transfer of funds to a county government was made erroneously or fraudulently, such transfer shall be regarded as not legally due to that county government.

(2) An erroneous or fraudulent transfer made to a county government under subsection (1) shall be recovered immediately from the county government or shall be set-off against future transfers to that county government which would otherwise become due in accordance with the payment schedule gazetted by the Cabinet Secretary in terms of section 17 of the Public Finance Management Act, 2012.

No. 18 of 2012

Duties of the national and county treasuries
No. 18 of 2012

9. For the avoidance of doubt, the duties of the national treasury and the county treasuries shall be as provided for in the Public Finance Management Act.

Report on actual transfers

10. The national treasury shall publish a quarterly report on actual transfers of allocations to the county governments.

Books of accounts to reflect national government transfers

11. (1) Each county treasury shall reflect all transfers by the national government to the county government in its books of accounts.

(2) The Finance Bill of each county shall reflect the total allocations from the national government separately.

(3) A county treasury shall, as part of its consolidated quarterly and annual reports required under the Public

No. 18 of 2012

Finance Management Act, report on actual transfers received by the county government from the national government up to the end of that quarter or year, as the case may be, in the format prescribed by the Public Sector Accounting Standards Board or in the absence of the Board, in the format prescribed by the National Treasury.

Resolution of disputes and payment of wasteful expenditure

12. (1) Any state organ involved in an intergovernmental dispute regarding any provision of this Act or any matter concerning the division or allocation of revenue shall, in accordance with Article 189(3) and (4) of the Constitution, before approaching a court to resolve such dispute, make every effort to settle the dispute with the other state organ concerned, including exhausting all alternative dispute resolution mechanisms provided for in the Intergovernmental Relations Act.

No. 2 of 2012

(2) If a court is satisfied that a state organ in an attempt to resolve a dispute has not exhausted all the mechanisms provided for alternative dispute resolution in the Intergovernmental Relations Act and refers the dispute back to the state organ for the reason that the state organ has not complied with subsection (1), the expenditure incurred by that state organ in approaching the court shall be regarded as wasteful expenditure.

No. 2 of 2012

(3) The costs in respect of such wasteful expenditure referred to in subsection (2) shall, in accordance with a prescribed procedure, be recovered without delay from the person who caused the state organ not to comply with the requirements of subsection (1).

Financial Misconduct No. 18 of 2012

13. Despite the provisions of any other law, any serious or persistent non-compliance with the provisions of this Act shall constitute a financial misconduct under the Public Finance Management Act.

Amendment of section 17 of No. 8 of 2012

14. The Public Finance Management Act is amended in section 17 by deleting sub-section (6) and replacing it with the following new sub-section-

(6) The National Treasury shall, at the beginning of every month, and in any event not later than the fifteenth day from the commencement of the month, disburse monies to the county governments for the expenditure of the following month.

Regulations

15. (1) The Cabinet Secretary, with the approval of

Parliament, may make Regulations on—

(a) any matter in respect of which Regulations require to be made under this Act;

(b) any subsidiary or incidental administrative or procedural matter necessary for the proper implementation or administration of this Act.

(2) In making the Regulations under sub-section (1), the Cabinet Secretary shall take into account the recommendations of the Intergovernmental Budget and Economic Council established under section 187 of the Public Finance Management Act.

No. 18 of 2012

Explanatory memorandum not to bind Parliament

16. The Memorandum accompanying the Bill giving rise to this Act pursuant to Article 218(2) of the Constitution shall not be binding on Parliament in subsequent proceedings relating to the budget estimates and the annual Appropriation Bill for a particular financial year.

FIRST SCHEDULE [3A(1)]

SHAREABLE REVENUE THROUGH APPROVED FORMULA FOR 2013-2014 FINANCIAL YEAR – KSHS.190,000,000,000

NO.	PARAMETER	%	SHS.
1.	Population	45%	85,500,000,000
2.	Basic Equal Share	25%	47,500,000,000
3.	Poverty	20%	38,000,000,000
4.	Land Area	8%	15,200,000,000
5.	Fiscal Responsibility	2%	3,800,000,000
		TOTAL	**190,000,000,000**