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SCHEDULE
A Bill for

AN ACT of Parliament to provide for the equitable division of revenue raised nationally among the county governments for the 2013/14 financial year and the responsibilities of national and county governments pursuant to such division and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the County Allocation of Revenue Act, 2012.

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

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

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

“State Organ” has the meaning assigned to it in Article 260 of the Constitution;

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

“Wasteful expenditure” has the meaning assigned to it in section 2 of the Public Finance Management Act, 2012.

3. The object and purpose of this Act is to provide for the allocation of revenue raised nationally among the county governments for the financial year 2013/2014, and to facilitate the transfer of county allocations in this Act from the Consolidated Fund to the relevant County Revenue Fund.

4. (1) Each county government allocation of the county governments’ equitable share of revenue raised nationally in respect of the financial year 2013/2014 shall be as set out in Column A of the Schedule.

(2) The Transition Authority shall identify and gazette functions for immediate transfer following the first election under the Constitution.

(3) The gazetted functions shall form the basis for preparing the relevant county estimates of revenue and expenditure for the financial year 2013/2014.
(4) The allocations set out in the Schedule comprise of 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.

(5) Each county government's equitable share allocation under sub-section (1) shall be transferred to the respective County Revenue Fund in accordance with a payment schedule gazetted by the Cabinet Secretary in terms of section 17 of the Public Finance Management Act, 2012.

5. (1) Special allocations shall be made to county governments as set out in Column B of the Schedule to ensure the continuation of service delivery in regional referral hospitals.

(2) Each county government's allocation under sub-section (1) shall be transferred to the respective County Revenue Fund in accordance with a payment schedule prepared by the National Treasury.

(3) The national government may allocate part of its equitable share of revenue raised nationally to provide additional resources to county governments as a conditional or an unconditional allocation as contemplated in Article 202 (2) of the Constitution.

6. (1) Notwithstanding the provisions of any other law, where it is determined that the transfer of funds to a county government or county public entity was done in error or fraudulently, such a transfer shall be regarded as not legally due to that county government or county public entity, as the case may be.

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

7. For the avoidance of doubt the duties of the National Treasury and County Treasuries shall be as provided for in the Public Finance Management Act, 2012.
8. The National Treasury shall publish a quarterly report on actual transfers of all allocations to county governments.

9. (1) The county treasury shall reflect the total allocations from the national government separately in the county governments Finance Bill and reflect all transfers in its books of accounts.

(2) A county treasury shall as part of its consolidated quarterly and annual reports required by the Public Finance Management Act, 2012, in the format prescribed by the Public Sector Accounting Standards Board established under section 192 of the Public Finance Management Act, 2012, or in its absence the National Treasury, report on—

(a) actual transfers received by the county government from the national government;

(b) actual expenditure relating to the transfers, up to the end of that quarter or year as the case may be.

10. (1) Any State Organ involved in an intergovernmental dispute regarding any provision of this Act or any division of revenue or allocation shall, before instituting court proceedings to resolve such dispute, make every effort to settle the dispute with the other State Organ concerned, including exhausting all intergovernmental alternative mechanisms provided for resolving disputes in relevant legislation.

(2) If a court is satisfied that a State Organ, in an attempt to resolve a dispute has not exhausted all the mechanisms for alternative dispute resolutions as contemplated in section 35 of the Intergovernmental Relations Act, 2012 and refers the dispute back 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.

(3) The costs in respect of 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).
11. Despite anything to the contrary contained in any law, any serious or persistent non-compliance with provisions of this Act constitutes a financial misconduct under the Public Finance Management Act, 2012.

12. The Cabinet Secretary may, by notice in the Kenya Gazette, make Regulations regarding—

(a) anything which may be prescribed in terms of this Act; and

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

(2) In making 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, 2012.
MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to make provision for the equitable division of revenue raised nationally among the county governments for the 2013/14 financial year and the responsibilities of national and county governments in accordance to such division of revenue.

Clause 1 of the Bill provides for the short title while Clause 2 defines the various terms used in the Bill.

Clause 3 of the Bill contains the objects and the purpose of the Bill which is to provide for the allocation of revenue raised nationally among the county governments for the financial year 2013/14, and to facilitate the transfer of county allocations in this Act from the Consolidated Fund to the relevant County Revenue Fund.

Clause 4 of the Bill deals with the actual allocation of county governments share of revenue.

Clause 5 of the Bill provides for special allocations to be made to county governments as set out in Column B of the Schedule to ensure the continuation of service delivery in regional referral hospitals.

Clause 6 of the Bill sets out provisions affecting the transfers made in error or fraudulently.

Clause 8 of the Bill provides for the publishing of quarterly reports on actual transfers of all allocations to county governments by the national government.

Clause 9 of the Bill requires the county treasury to reflect the total allocations from the national government separately in the county governments Finance Bill and provide all transfers in its books of accounts.

Clause 10 of the Bill provides for the mechanism for resolution of disputes arising from the provision of this Act or any issue on division or allocation of revenue to county governments.

Clause 11 of the Bill provides for what constitutes financial misconduct.

The enactment of this Bill shall occasion additional expenditure of public funds to be provided for in the annual estimates.

Dated the 31st December, 2012.

ROBINSON NJERU GITHAE,
Minister for Finance.