

PARLIAMENT OF KENYA**THE SENATE****THE HANSARD****Tuesday, 5th August, 2014**

*The House met at the Senate Chamber,
Parliament Buildings, at 2.30 p.m.*

[The Speaker (Hon. Ethuro) in the Chair]

COMMUNICATION FROM THE CHAIR**FAILURE BY SENATORS TO VOTE ON MATTERS
BEFORE THE HOUSE DESPITE BEING PRESENT**

The Speaker (Hon. Ethuro): Hon. Senators, I have the following communication to make. You may recall that since 1st July, 2014 when we started using the new Senate Chamber, we have been using the multi-media digital congress system. This system allows you to speak, raise a point of order or seek information by use of the card. Likewise, the system allows Members to vote electronically on matters affecting counties as provided for by Standing Order No.74(3). It is now clear that we vote by pressing either the ‘Yes’, ‘No’ or ‘Abstain’ buttons on the delegate unit on your desks.

It has, however, been brought to my attention that some Members have failed to vote on matters before the Senate despite being present in the Chamber and properly logged in to participate in Senate business. I would like to caution that this amounts to disorderly conduct and a breach of Standing Order No.80 on decorum during division, which states and I quote-

“(1) No Senator shall be obliged to vote in a division, but those present and not voting shall either-

- (a) in the case of an electronic vote, press the “abstain” button; or
- (b) in the case of a roll call vote, record their abstention with the Clerk.

(2) It shall be disorderly conduct for a Senator to fail to record his or her abstention in a division.”

I thank you.

MESSAGE FROM THE NATIONAL ASSEMBLY

CONCURRENCE OF THE SENATE ON THE STATUTE LAW
(MISCELLANEOUS AMENDMENTS) (NO. 2) BILL (NATIONAL
ASSEMBLY BILL NO. 33 OF 2013)

The Speaker (Hon. Ethuro): Hon. Senators, I have also a message to communicate from the National Assembly on the Statute Law (Miscellaneous Amendments) (No. 2) Bill (National Assembly Bill No. 33 of 2013).

I wish to bring to the attention of the Senate that, pursuant to Standing Order No. 40(3) and (4), the Clerk has delivered to me a message from the National Assembly regarding the Statute Law (Miscellaneous Amendments) (No. 2) Bill (National Assembly Bill No. 33 of 2013), which was delivered, pursuant to Standing Order No. 40(2), on 1st August, 2014. It states as follow:-

“THAT, the Statute Law (Miscellaneous Amendments) (No. 2) Bill, 2013 (National Assembly Bill No. 33 of 2013), was published in the Kenya Gazette Supplement No.147 of 30th October, 2013 as a Bill originating in the National Assembly and was passed by the National Assembly on 22nd July, 2014 in the form attached hereto;

AND FURTHER THAT, the National Assembly now seeks the concurrence of the Senate to the said Bill as passed by the National Assembly.”

Hon. Senators, Standing Order No.148 requires that a Bill which originates in the National Assembly be proceeded with by the Senate in the same manner as a Bill introduced in the Senate by way of First Reading in accordance with Standing Order No. 129. I now, therefore, direct that the Statute Law (Miscellaneous Amendments) (No. 2) Bill (National Assembly Bill No. 33 of 2013) be listed for First Reading, tomorrow, Wednesday, 6th August, 2014.

Thank you.

(Applause)

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. At this time, it would not be asking for too much if I requested the Chair to allow me to congratulate the Speaker of the National Assembly for the cooperation he has started extending to the mutual relationship in a properly functioning bicameral system.

It is so nice to note that beyond what the Speaker of the National Assembly has done, he has also, as evidenced by reports earlier on in the week, fielded questions with members of the public during the Parliament Week, the open day of Parliament, and in such instance, he confirmed that some of the petty supremacy wars that have been there between the Houses of Parliament are best sorted out by the amendment of the Constitution and, therefore, by extension, he supported the forthcoming referendum. I want to congratulate him.

(Laughter)

The Speaker (Hon. Ethuro): Next Order.

BILLS*First Readings*

THE FOOD SECURITY BILL, (SENATE BILL NO.23 OF 2014)

THE PERSONS WITH DISABILITIES (AMENDMENT) BILL,
(SENATE BILL NO.24 OF 2014)

*(Orders for First Readings read – Read the First Time
and ordered to be referred to the relevant Senate Committees)*

The Speaker (Hon. Ethuro): Next Order.

COMMITTEE OF THE WHOLE

(Order for Committee read)

[The Speaker (Hon. Ethuro) left the Chair]

IN THE COMMITTEE

[The Chairperson (Sen. Kembi-Gitura) took the Chair]

THE COUNTY ALLOCATION OF REVENUE BILL,
(SENATE BILL NO.9 OF 2014)

The Chairperson (Sen. Kembi-Gitura): Hon. Senators, we are now in the Committee of the Whole on the County Allocation of Revenue Bill, (Senate Bill No.9 of 2014).

(Loud consultations)

Order, Members! We are in the Committee and this is still serious business of the House. May I request that we have some order? We will try and go through the Committee as fast as we can if there are not too many controversies.

Let us proceed.

(Sen. (Dr.) Khalwale spoke off record)

The Chairperson (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, if I put the question, we will have to go to division. I propose that we go through as many clauses as possible, do one division and then vote separately. So, I will not put the question now, I will do so later.

Can we proceed?

New Clause 5A

Sen. Billow: Mr. Chairman, Sir, I beg to move:-

THAT, the Bill be amended by inserting the following new clause immediately after Clause 5-

Conditional allocation to
Level 5 hospitals.

5A The conditional allocation to each Level 5 Hospital for the financial year 2014/2015 shall be as set out in Column B of the Third Schedule.

The Chairperson (Sen. Kembi-Gitura): Sen. Billow, are you done with moving the amendment? We are going to debate it because we are in second reading? I need to propose the question since you have finished moving the amendment.

(Question of the New Clause 5A proposed)

(New Clause 5A read the First Time)

*(Question, that the New Clause 5A be read
a Second Time, proposed)*

Sen. Billow: Mr. Chairman, Sir, if Members look at Column B of the Third Schedule, which is on the Order Paper, you will find the conditional grants for each of the Level 5 hospitals. They are 11 of them. The allocation for the Financial Year 2013/2014 is there and the proposed allocation for the Financial Year 2014/2015 is also there.

I want to mention the criteria used for determining that allocation is from the Ministry of Health which looks at a number of resource allocation criteria that has been used for the past 40 to 50 years by the Ministry in allocating money to those general hospitals. It includes poverty, the number of beds utilized, the out-patient cases and the accident prone facilities; some facilities are on highways where there are accidents. It also includes the fuel cost. So there are all these weights for each of those criteria and based on that in Column B, Kshs1.87 billion is provided for. Those are the figures.

Sen. Obure: Mr. Chairman, Sir, thank you for allowing me to make a comment on the allocations for Level Five hospitals. I am very unhappy about the basis for these allocations and I want to put it on record that, in fact, through very inadequate allocations, we are setting up county governments which host Level Five hospitals for failure. In my own county, Kisii Level Five hospital, last year, they received an allocation of Kshs211 million. This year, it is being proposed that they receive only Kshs83 million. This is a hospital with more than 1,000 medical staff and other supporting staff. It is not possible for that hospital to be sustained at this level of funding. I just want to put it on record that I am very unhappy. I am sure counties like Nyeri and others will be much worse off than Kisii. Therefore, I think this is an area which we should be able to examine at some point soon.

Sen. (Dr.) Khalwale: Mr. Chairman, Sir, as I support my Chairman in charge of the Committee on Finance, Commerce and Budget on this amendment, may I express my disappointment on behalf of the medical fraternity of this Republic. When the Constitution gave the President an opportunity to hire professionals to be in charge of

Government departments, our hope as doctors, nurses, paramedics and patients was that the person who would steer this particular department would be somebody with expertise in the medical profession.

That the Government settled on one Cabinet Secretary, a Mr. Macharia, you can see the consequences. Today because Macharia has no idea of the challenge in the former provincial hospitals, he does not know what is going to happen in Nakuru. After Kenyatta National Hospital, if it was a doctor who was in charge, the President would have been told that the biggest provincial hospital is Nakuru followed closely by Kisumu which is currently called Jaramogi Oginga Odinga Teaching and Referral Hospital, followed by Mombasa and then Kakamega. The amount of money put here cannot run those hospitals. There is no way the Governors are going to deliver. I therefore want to urge and I am glad to see that Sen. (Prof.) Kindiki is here today together with Sen. Elachi that they should go back to the President and tell him that the chiefs of equalization called Senators are requesting that in the Supplementary Budget, not less than Kshs9 billion should be included so as to get our hospitals up and running.

Mr. Chairman, Sir, our Governors are so frustrated to the extent that when you tell Governor Oparanya that you are giving him Kshs200 million to run the Kakamega Provincial General Hospital, you are merely telling him to pay salaries for doctors and nurses for six months. Where will the drugs come from? Where will the chemicals in the laboratory come from? Where will the requirements that are needed for emergency and elective surgery in theatres come from? Does this Government want Kenyans to remain alive? They want Kenyans to die!

This is coming at a time when the President has just gone to the United States of America (US) with 40 people accompanying him. A return ticket to the US is about Kshs1 million. The Kshs40 million is being used on travel when we could take it to our hospitals. It is very sad.

I support the Chairman in this amendment and hope that the Supplementary Budget will come.

Sen. Kagwe: Thank you, Mr. Chairman, Sir. In supporting my Chairman, I just wanted to put things in the right perspective and say that if we remember, last year when this Bill was here, the Treasury had actually put aside some Kshs10 billion. Sen. (Dr.) Khalwale is suggesting Kshs9 billion, but if I remember correctly, the Treasury had actually put Kshs10 billion being the amount that was supposed to be for Level Five hospitals. In the wisdom of another House, that Kshs10 billion which was supposed to be for Level Five hospitals was put together with the rest of the money and divided amongst the counties equally. So, the Treasury in the matter of speaking had actually tried to get this done.

However, I just want to say that in supporting the Bill, in actual constitutional and legal terms, Level Five hospitals have not been devolved to county governments. Therefore, the money that is allocated here is only money that can be used perhaps to pump up the hospitals because in accordance with Article 187 (2) of the Constitution, you cannot devolve a function and not devolve the resources to run that function. Saying that a function has been devolved does not in itself devolve the function. Sending the money for the devolved function is what effectively devolves the function. Therefore, even without belabouring the point, I think we are passing this money as bits and pieces that

are going to be used for that purpose, but in actual legal effect, the hospitals are still part of the national Government.

The Chairperson (Sen. Kembi-Gitura): I see a lot of interest in this issue.

The Senate Minority Leader (Sen. Wetangula): Mr. Chairman, Sir, allow me to join Sen. (Dr.) Khalwale and Sen. Kagwe in commenting on this point. We ought to be making progress. The most critical issue for any government is to make sure that its people are secure and healthy. In these Level Five Hospitals, there is no evidence that their services and their cost thereof is going down. What is the rationale of reducing the allocation by almost 50 per cent? Even as we accept this paltry figure, we must make it clearly known that if you take, for example, Kakamega Provincial General Hospital, it is as busy the Moi Teaching and Referral Hospital in Eldoret. It serves the entire five western counties plus eastern Uganda. You are giving it a paltry Kshs200 million down from Kshs311 million that was not even enough. We are now hearing even more dangerous arguments from the “Lower House” that these Level Five hospitals, contrary to the provisions of the Constitution Schedule Four have to be moved to the national Government. There is a matter on the Floor in the “Lower House” and we must resist this as protectors and defenders of counties.

I want to urge my Chairman because I am in the Committee on Finance, Commerce and Budgeting that even as we pass this, please, start immediately with the ferocity that a man from northern Kenya can carry, to agitate for revised estimates to give more money to Level Five hospitals because they are simply going to ground to a halt.

Sen. Wangari: Mr. Chairman, Sir, while supporting the position of the Chairman of the Finance, Commerce and Budget Committee and knowing the hard times he has had to endure for us to get here, I am really disappointed and it is not only a sad day for the medical fraternity of this country, it is a very sad day for the children and women of this country. I even said the same when we were debating the Division of Revenue Bill because the biggest consumers of these services are women and children. When I look at these figures, they are basically halved. If you look at the figure for the coast region, it has actually been cut by 50 per cent and the same thing applies to Nakuru. I really want to register my disappointment that we can point to one personality on this issue knowing the circus we went through when we debated the Division of Revenue Bill. The National Assembly actually refused to approve money to go to the Level Five hospitals. The result we got from the mediated report was a disappointment.

Mr. Chairman, Sir, this figure is an insult, but even as we take it because we need the money, we must not stop at that. As the Senate, we must voice our sentiments because otherwise when we talk of achieving the Millennium Development Goals (MDGs) which are supposed to be evaluated next year, we will be talking of mortality rates that are still going high where mothers and their children are dying while giving birth. We cannot just sit and let this happen. I hope we shall be able to negotiate and push for more money, especially the Kshs10 billion that had been allocated last year as the minimum so that it can be able to serve those hospitals that serve so many counties other than those where they are situated.

I support.

The Chairperson (Sen. Kembi-Gitura): Order, Members! May I suggest that we avoid repetition on this issue because there is a lot of interest and we still have to go to division on it, so that as many people can contribute as possible.

Sen. (Dr.) Machage: Thank you, Mr. Chairman, Sir. It is a sad situation that we have to reduce the budget for running Level 5 hospitals, especially taking cognizance of certain facts. One, prices of all commodities are increasing, including medicine, at an astronomical sort of situation; a total inverse proportion to availability of resources. Two, Kenya has one of the highest maternal mortality rates in the world, at around 480 mothers dying for every 100,000. There is also a very high infant mortality rate. In some places, we have even up to 135 per 1,000. There is also very high neonatal death rate of about 51 per 1,000 in most places in this country, yet we cannot increase the amount required to run Level 5 hospitals, despite advice from the Abuja Declaration, where the total Gross Domestic Product (GDP) of the country should, at least, allocate 15 per cent to medical provision. Really, this is a sad situation, but we will have to pass this budget anyway. Like Sen. Khalwale said earlier, let it be considered that in the Supplementary Estimates, at least, Kshs9 billion should be allocated to Level 5 hospitals in this country.

The Chairperson (Sen. Kembi-Gitura): Hon. Senators, like I said, there is a lot of interest in this matter. But maybe you all need to be cognizant of one fact; that this amount of Kshs1.8 billion came from negotiations of mediation. It was actually not there at all. After we passed the Bill, it went to mediation and then we came back with this figure. Although we are making a very important point, that it has been slashed to almost 50 per cent, that is the amount of money that we have to share for now. So, even as you debate and express your displeasure, I think it is important, in the interest of time, to recognize that this is the money that you passed and we debated all these things during the Division of Revenue Bill. If sufficient displeasure has been expressed, we all do not have to express the same displeasure, so that we can make some progress.

Having said that, of course, there is interest in the issue. Sen. Lesan, before you talk, there are two issues, and I think the Speaker has made a Communication on this. If you want to contribute, press “microphone”. It will indicate that you want to contribute. If you have a point of order, then press “intervention,” so that I can see that you actually have a point of order or an intervention other than the intention to contribute.

Sen. Khaniri, I can see you on “intervention.” I want to believe that it is a point of order or something other than the debate on the Floor.

Sen. Khaniri: Mr. Chairman, Sir, it is not really a point of order, but an intervention. I have heard all my colleagues who have spoken in support of the amendment and have a different proposal that I want to put forward. I am conversant with the two buttons and I pressed both. I want to contribute and make an intervention at the same time.

The Chairperson (Sen. Kembi-Gitura): Do you want to do that other thing now?

Sen. (Prof.) Lesan: Mr. Chairman, Sir, you had already given me the Floor.

The Chairperson (Sen. Kembi-Gitura): Sen. Lesan, there is an intervention, which I think takes precedence over a normal debate, in my understanding of these things.

Sen. Khaniri: Mr. Chairman, Sir, let me, first of all, begin by thanking the Chairman of the Committee for bringing this amendment. I think that he did it in very good spirit, and I am sure that he means very well. I want to plead with my colleagues and refer them to Article 187 (2) (a) and (b) of the Constitution. If we pass this amendment that has been proposed by the Chairman for the Committee on Finance, Commerce and Budget, Sen. Billow Kerrow, we will be setting these hospitals and

counties to fail, for sure. This is because clearly, the monies that we are approving cannot sustain these hospitals at all, yet this provision of the Constitution says that resources, of course, will follow functions. So, my suggestion to the Senators – and maybe we can look at it critically – is that let us not make this provision of Kshs1.8 billion, because anything bellow Kshs10 billion will not be able to run these hospitals and they will fail. So, if we do not vote anything at all based on Article 187 (2), then it means that the function of running these hospitals will be a function of the national Government. So, the onus will be on them to ensure that the hospitals run and not the county governments.

I want to plead that we defeat this particular amendment that was brought by Sen. Billow and his Committee, so that the running of these hospitals remains with the national Government, so that they can be funded adequately.

Sen. Billow: Mr. Chairman, Sir, in the Mediation Committee, we discussed that matter. Article 187 refers to a situation where under the Intergovernmental Relations Act, one level of government can transfer a function to be carried out by another level of government. It does not refer to a situation where, under the Fourth Schedule, a function has actually been devolved to a particular Government. This case of Level 5 hospitals is under the Fourth Schedule. Except the national referral hospitals, all the other hospitals were transferred by the Transition Authority (TA) to the county governments. For example, if Kakamega County desires that they transfer their particular hospital back to the county government, that is where now Article 187 Constitution applies. If there is a particular function that the national Government wants to transfer, outside the Fourth Schedule, that is where you use Article 187. The situation that we have here is different. Here, we have a situation where the functions have actually been devolved to those hospitals. They were devolved last year and money was allocated by this same House.

Mr. Chairman, Sir, what I need to again point out to the hon. Senator is that in addition to the Kshs1.87 billion that is being allocated to these hospitals, what we have discussed – and this is known to the Council of Governors---

(Sen. Khaniri crossed the Floor)

Mr. Chairman, Sir, if the hon. Senator can pay attention. He seems to be running around.

The Chairperson (Sen. Kembi-Gitura): I cannot force anybody to pay attention. I think he is coming to talk to you.

Sen. Billow: Mr. Chairman, Sir, he is not coming to me. He seems to be consulting his lawyer in the middle of the debate.

(Laughter)

Mr. Chairman, Sir, the second point that I want to raise is that in addition to the Kshs1.87 billion, we advised the Council of Governors that out of their Kshs226 billion--

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The Chairperson (Sen. Kembi-Gitura): Sen. Billow Kerrow, I gave you a chance to make an intervention and not debate.

Sen. Billow: Mr. Chairman, Sir, I just wanted to inform the hon. Senator that out of the Kshs226 billion that we have given, we have agreed with the Governors with Level

5 hospitals that they will allocate additional money from their resources. So, it is not as if this Kshs1.8 billion is the only money. Unless the transfer of functions is going to be redone again by this House, it is unlikely that the national Government will fund it. That is the reality. So, I do not think that, that point of order is valid.

Sen. (Prof.) Lesan: Mr. Chairman, Sir, whereas I support the amendment which has been sought, I think that we want to consider the seriousness of the underfunding of our institutions, especially the hospitals as they are.

I just want to give a scenario that I experienced this morning when I went to see a hospital executive and asked if they could intervene to have a patient treated with squamous cell carcinoma. For those who know, this is a very aggressive condition. The patient was diagnosed with squamous cell carcinoma and given an appointment in June, 2015. I think that this is a big joke. We are simply sending people to their graves for lack of consideration of what is required to be done. If we give a budget like we have done, I think that we need to consider this very seriously. Even though we are asking the Governors to use some of the money for hospitals, I think it is very important that we seriously consider the health of the citizens of this country, through the resources that we allocate to them. The Kshs1.8 billion plus the money that we are going to ask the Governors to put in cannot set up radiotherapy centres, which we expect to be set in these hospitals within a very short period of time, in order to treat the very many cases of cancer that are ruminating in the country.

Thank you, Mr. Chairman, Sir.

The Chairperson (Sen. Kembi-Gitura): Do you want to continue with this debate or you want us to put the question?

Hon. Senators: Continue with the debate!

The Chairperson (Sen. Kembi-Gitura): Okay.

Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: Mr. Chairman, Sir, I want to support, but plead with the Senators not to fall into a trap where there exists a report at the National Assembly that this function should be taken up by the national Government. We will be doing the counties a big disavour if we reject the schedule as mediated, because we all know that this was a mediated position. In fact, we were being requested, as the Senate, to reduce the sharable revenue by Kshs1.87 billion. So, Members must support the fact that we agreed to a sharable revenue of Kshs226 billion and rejected the idea of having a sharable revenue of Kshs224 billion, so that we could fund Level 5 hospitals. We are of the position, as the Mediation Committee of the Senate, that if the national Government insists that this function has to be devolved, it must be devolved together with funds.

Mr. Chairman, Sir, as we debate this issue, Sen. Wetangula has already mentioned that there is a report being debated in the National Assembly, where this function will actually be taken over by the national Government. The Senate Committee on Health should, therefore, look at the report that has been produced by National Assembly Committee on Health. Therefore, although there appears to be a shortfall here, we agreed to this position, as the Senate, because we did not want to reduce the sharable revenue.

Secondly, we have also recommended that out of the 11 hospitals and counties, once this goes through, they should also go, negotiate and say that this function has not been devolved under Article 187 (2) and, therefore, there are no funds. But in addition, we must also present a report, through the Committee on Health, to confirm, in fact, that

other than Kshs1.87 billion, we should be able to stand here and say how much money is required to run these hospitals. This is because even now we are groping in the dark.

Mr. Chairman, Sir, I support the amendment to that extent. In fact, we have information from the Controller of Budget that most of the counties affected here have already put some of this amount in their budgets. Some of these hospitals are already running well and buying equipment. Let us not deny our people good health service, because the national Government had failed to run these hospitals. Even if they now buy one X-ray machine, it is better than not having an X-ray machine at all.

Thank you, Mr. Chairman, Sir.

The Chairperson (Sen. Kembi-Gitura): Sen. Wako, do you have a point of order? If not, then can you, please, remove your name from the interventions?

Sen. Mshenga, do you have a point of order? If not, then also do the right thing.

Sen. Murungi: Mr. Chairman, Sir, I would like to thank the Chairman of this Committee and the Mediation Committee which discussed and reached a compromise regarding the funding of Level 5 hospitals. As Senators, we have to say that despite those negotiations, we are not satisfied because there is gross under-funding of Level 5 hospitals across the country. The Kshs1.8 billion provided will not help the situation. The other day, I said that the kind of money you have given us in Meru County, which is one of largest counties in this country, that is, Kshs64 million, unless you want us to buy ambulances for ferrying our patients to Kenyatta National Hospital, this is not going to help us. The amount we require at the very minimum at the Meru Level 5 hospital is at least Kshs400 million but we have been given only Kshs64 million.

Even just looking at what has been given to other hospitals, I would like the Chairman to explain to us what criteria he used to make a decision that Meru General Hospital gets Kshs64 million while the other hospitals got Kshs85 million, Kshs200 million, 317 million and so on. The Meru General Hospital caters for a very large area including Meru County, Isiolo County and other counties around us. So, we are not satisfied with the justice of the distribution of Kshs1.8 billion that was negotiated.

Mr. Chairman, Sir, we are really resisting the temptation to support the National Assembly to get Level 5 hospitals back to the national Government if it is not possible to fund them under the county governments so that we can put the responsibility back to where it was before. Those hospitals were running and now that we are devolved---

(Microphone went off)

The Chairperson (Sen. Kembi-Gitura): Have you finished, Sen. Murungi. Come to the Dispatch Box if you had not finished.

Sen. Murungi: Mr. Chairman, Sir, I just wanted to protest in the strongest terms possible, the gross underfunding of our Level 5 hospitals, especially the gross and terrible under-funding of the Meru Level 5 hospital.

Sen. Muthama: Mr. Chairman, Sir, there is a saying which states that if a child cries for a knife, you just pick a stick, sharpen it and give it to the child to keep quiet. Looking at this allocation, it makes no difference with what that saying states. We are not just raising issues because we want to but the money allocated to Machakos County, for example, is to cater for over four million people because Kitui and Makueni people seek treatment from Machakos. Therefore, this allocation is not going to do anything. We are

just being told not to talk or ask questions because there is an allocation but it is not taking us anywhere. I wish to state that it is the right of Kenyans to get what they deserve and there should be enough allocation to the counties. If it is not there, there is no need to give what is not going to do anything. Therefore, we need to reconsider this matter.

We have talked here about these issues and the previous parliaments talked about it but we seem to be Members who just come here to talk, talk and talk go home and after that, there is nothing. We are fed up.

Sen. Wamatangi: Mr. Chairman, Sir, I want to express my dismay at the allocations which have been made to Level 5 hospitals. I want to echo my serious concerns at the allocations which have been given to Level 5 hospital in Kiambu, that is, Thika Level 5 Hospital. The budget of Thika Level 5 Hospital is Kshs500 million. Last year, we received Kshs367 million almost Kshs150 million short but to my dismay and to the dismay of the people of Kiambu, Machakos and Murang'a Counties, who come to seek treatment in Thika, we have been allocated a paltry Kshs87 million which is a reduction of over Kshs300 million. I want to declare with any iota of doubt that there is going to be a major crisis. We must deal with this matter not only expeditiously but with finality and offer a way forward. I want to propose that the Chairperson and the Committee of Finance, Commerce and Budget undertakes immediate steps to ensure that they initiate a process that will ensure that the balances required are included in the Supplementary Budget.

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Chairman, Sir. Do you notice that the Chairman of the Committee who is the respondent in this Bill is hardly listening to any contributions? How is he even going to respond to what Members are saying which are very serious interventions?

The Chairperson (Sen. Kembi-Gitura): Chairman, are you listening?

Sen. Wamatangi: Mr. Chairman, Sir, I truly also echo the concerns of Sen. Wetangula. The Chairperson of this Committee needs to listen to the expressions and lamentations of Members of this House. I was expressing a serious issue and I wish to propose like my colleagues that this Committee ensures---

Sen. Kagwe: On a point of order, Mr. Chairman, Sir. Would I be in order to propose that having seen my Chairman at work, he is both able to walk and chew gum at the same time?

The Chairperson (Sen. Kembi-Gitura): Sen. (Eng.) Muriuki, do you have a point of order?

Sen. (Eng.) Muriuki: Yes. My point of order is; this issue has been ventilated on enough. The point is that this House agreed to the position which was mediated by the Committee on our behalf. The money available for dividing among Level 5 hospitals is Kshs1.87 billion. Unless we are questioning the criteria of how Kakamega ended up with Kshs200 million, for example, there is no other money available. Therefore, I would propose that we pass it as it, pass the amendment and then move as per the suggestion that we now look forward to an intervention in the Supplementary Budget.

The Chairperson (Sen. Kembi-Gitura): Hon. Senators, I would go with what Sen. (Eng.) Muriuki has said. In fact, I had said that before. All of you remember that this Kshs1.8 billion was not there. Sen. Mutula Kilonzo Jnr. said that they mediated and got the money not out of the shareable amount but as an extra amount for Level 5 hospitals. If you ask me as the Chairman of this Committee of the Whole, you have expressed

sufficient displeasure at either the formula used to sharing that Kshs1.8 billion or on the reduction of the amount of money going to Level 5 hospitals.

So, you could spend the whole day here and apart from expressing displeasure, I do not see whether we shall add or increase the money because we cannot do so at this point in time. As I said, it is very difficult for me to stop debate and I would like to bring this debate to an end now on this specific amendment so that after Sen. Wamatangi finishes, I would allow only one other Senator to speak before we put the question. That would be agreeable because if we go on like this, we will not finish even by tomorrow.

Sen. Obure: On a point of order, Mr. Chairman, Sir. I agree with you except that I would have requested the Chairman to explain the formula for distributing the Kshs1.8 billion among the 11 Level 5 hospitals.

The Chairperson (Sen. Kembi-Gitura): The Chairman of the Committee on Finance, Commerce and Budget or the Chairman of Committee of the Whole?

Sen. Obure: The Chairman of the Committee on Finance, Commerce and Budget.

The Chairperson (Sen. Kembi-Gitura): Sen. Wamatangi, could you please finish.

Sen. Wamatangi: Mr. Chairman, Sir, I was just concluding my contribution. I was proposing as a House, we strongly propose to this Committee to ensure that they initiate the process urgently to make sure that the balance due to these Level 5 hospitals is included. The other issue is that it is also important to send a strong message to the county governments such that even within the allocations they have received, we have seen them diverting other funds to buying houses and expensive vehicles. Could they also contribute to this emergency? This will ensure that no lives are lost, no medicine is missing and no money is diverted to other uses other than ensuring that medication and health services are available in Level 5 hospitals.

Sen. (Prof.) Anyang'-Nyong'o: Mr. Chairman, Sir, I just want to say one thing as a former Medical Services Minister. I think the problem is much bigger than we are putting it. Even if you put money in the Supplementary Budget, you will not deal with the issue. What we need is for this House and the National Assembly to have a joint approach to health financing in general. Before I left the Ministry, I had proposed and the Cabinet had passed my Cabinet Memo that we turn the 22 heavy volume hospitals into referral facilities and have a corporation that will bring in funds specifically to run the 22 referral facilities. That thing was shot down by the Committee for the Implementation of the Constitution but it is not late. If we come up with a proposal to look at health financing in general because health is now a county affair, we have tremendous information and ideas on how this can be done. This will only be part of the solution and not the whole solution.

The Chairperson (Sen. Kembi-Gitura): That brings us to the end of that one. I will not put the question. I will go to New Clause 11. Where is Sen. Elachi? There was a loose sheet of paper that was circulated and notice was given.

Sen. Billow: Mr. Chairman, Sir, we had an agreement that the amendment that was to be moved by Sen. Elachi be withdrawn and an alternative, which was approved by the Speaker, be moved by Sen. Mutula Kilonzo Jnr..

The Chairperson (Sen. Kembi-Gitura): Are you saying that Sen. Elachi's proposed amendment is withdrawn in totality?

Sen. Billow: Yes, Mr. Chairman, Sir.

(Proposed amendment by Sen. Elachi dropped)

New Clause 11

Sen. Mutula Kilonzo Jnr.: Mr. Chairman, Sir, pursuant to Standing Order No.138, I propose to move an amendment to add a new Clause 11 as per the sheet that has been circulated.

Mr. Chairman, I beg to move:

THAT, the Bill be amended by inserting the following new clause immediately after Clause 10-

Amendment of section

107 of No.18 of 2012

11. Section 107 of the Public Finance Management Act is amended by inserting the following new subsection immediately after subsection (2)-

(2A) Pursuant to Articles 201 and 216 of the Constitution and notwithstanding subsection (2), the Commission on Revenue Allocation shall set the budgetary ceilings on the recurrent expenditures of each county government.

The Chairperson (Sen. Kembi-Gitura): Basically, you are amending Sen. Elachi's amendment or are you bringing something new?

Sen. Mutula Kilonzo Jnr.: In our discussions at the Committee level, we removed part of the references to the Cabinet Secretary because it was unnecessary to do so.

The Chairperson (Sen. Kembi-Gitura): What is the purport of your amendment?

Sen. Mutula Kilonzo Jnr.: Mr. Chairman, Sir, the purport of the amendment is that the CRA has already set budget ceilings on recurrent expenditure on the budgets of each county government. Those schedules have already been provided to the county assemblies and the county governments. These are on recurrent expenditure. The purpose of inserting this is to ensure that by the time we pass the County Revenue Allocation Bill to each county, the budgets of the county governments and county assemblies will comply on the recurrent expense with the recommendations made by the CRA.

The CRA has calculated the emoluments, allowances and salaries of both the executives and the county assemblies. They have given a figure which is a recommendation. However, the county assemblies and the county executives have entered into a dispute and have not agreed on those ceilings. However, the CRA has assured that the ceilings will ensure that the percentages between the recurrent expenditure and the development expenditure do not eat into one another.

There are reports before this Senate which suggest that the recurrent expense of county executives and county assemblies exceed the 30 per cent we have set as a minimum ceiling for development in any county. So, this is an avenue that will ensure that recurrent expense by the executive and the county assemblies will not eat into the development expenditure.

You noticed last week that, for instance, the Machakos County Assembly spent almost Kshs1.8 million advertising on a charge sheet against the Deputy Speaker. This is what we are avoiding. That sort of money should not have been available to the Machakos County Assembly and should not have been spent on advertisement as opposed to development. That is the reason we are proposing this amendment. It is with the intention of protecting counties and ensuring that there is prudence under Article 207 so that the county executives and the county assemblies adhere to these ceilings.

By the time we sit as the Chairpersons of the County Boards under the new law, we will ensure that these ceilings are adhered to.

(Question of the New Clause 11 proposed)

(New Clause 11 read the First Time)

*(Question, that the New Clause 11 be read a
Second Time proposed)*

Sen. (Eng.) Muriuki: On a point of order, Mr. Chairman, Sir. Could the Mover of that amendment explain why we should “set” rather than “recommend?” The mandate of the CRA is to recommend rather than to set. The ultimate authority of those ceilings is the Senate.

The Chairperson (Sen. Kembi-Gitura): Sen. Mutula Kilonzo Jnr., did you follow what Sen. (Eng.) Karue wants? You need to react to that.

Sen. Mutula Kilonzo Jnr.: Under Article 216, Sen. Karue is right. Majority of Senators have proposed that instead we have “recommended ceilings.” This amounts to the same thing. They will recommend and that will come here. They can put a ceiling but this still remains a recommendation which is subject to approval.

Mr. Chairman, we can say; “with the approval of the Senate.” However, both ways, it amounts to the same thing.

The Chairperson (Sen. Kembi-Gitura): You are not moving another amendment. Are you?

Sen. Mutula Kilonzo Jnr.: The sole intention is that once the Bill comes here, the County Allocation of Revenue Bill will come with another schedule which will include the percentages and ceilings as proposed and recommended by the CRA.

The Senate Minority Leader (Sen. Wetangula): Mr. Chairman, Sir, as a matter of procedure, Sen. Mutula Kilonzo Jnr., having moved the amendment and proposed the amendment, there is no provision for him to come and clarify anything. The only process we can allow is that; either, Eng. Muriuki Karue can move an amendment on the amendment which we can support. Sen. Khalwale is trying to come up with one. Sen. Mositet is also trying to come up with one and Sen. Sang is also trying to come up with one. You can give any of them an opportunity to move, then we amend the amendment instead of asking the Mover to clarify. There is nothing for him to clarify.

The Chairperson (Sen. Kembi-Gitura): I had proposed a question to the amendment moved by Sen. Mutula Kilonzo Jnr. We are now at the debate stage. I have not seen anyone proposing an amendment so far.

Sen. Billow: Mr. Chairman, Sir, I want to support the amendment. I want Senators to appreciate what we are trying to do. There have been concerns and all Senators are aware that county assemblies have been spending huge amounts of money on very unnecessary expenditure like travel and allowances. They have really been living large. This matter has been raised in the quarterly report by the Controller of Budget. We have seen this in the reports by the Controller and Auditor-General. We have also seen extensive reports in the media and complaints by everyone that these guys are spending a lot of money. Therefore, the CRA, the Controller of Budget and other institutions, a few weeks ago, sought to come up with some ceiling which says that out of the money; the Kshs226 billion that will go to the county governments, in the workings, the cost of administration came to Kshs30 billion. This is for payroll, allowances and other O&M. The question was; how are the county assemblies and the county executives supposed to share the money?

County assemblies had come to a point where they were demanding from the county executive a certain amount. Some were asking for Kshs1 billion and ultimately, that is the money that is being misused in the county assemblies. So, the CRA and other institutions have sought out to find a basis for allocating money to the county assemblies for their recurrent expenditure but not development. The development expenditure is separate. So, when the ceilings were set and the county governments were advised, some county assemblies complied. However, some did not. Some have, in fact, gone to court. We had this discussion in our Committee of Finance, Commerce and Budget and thought the idea was very important. We plan to bring an amendment to the PFM Act.

I think this amendment is in order. Within the Kshs30 billion which is available for recurrent expenditure relating to salaries and so forth, the amount that will go to the assemblies and what will go to the executive will be determined based on the cost of running an assembly and the cost of allowances including travel. They have also looked at other O&M expenses and the performance for the last one year. The Auditor-General has the performance for the past one year. So, they went into a detailed costing of how much it would cost county assemblies to run their operations. This is the ceiling that was set. This is money that will be more than adequate for them to carry out their operations. I fully support this.

This will give the ceiling that has been recommended by the CRA some weight in law so that all counties can comply. However, as we speak, many county assemblies have refused to approve their budgets because of the simple reason that they want to be given the money that they proposed. They are saying that if they do not get it, then they will not approve the budgets. Some of them have demanded that they re-write the budgets.

This House has a mandate to determine how resources will be spent in the counties. This is one of the fundamental roles that we have. I want to implore all of us here to adopt this. Without the ceiling, we will be lamenting like everyone else in the streets tomorrow saying that these people are just spending money. A few minutes ago, we were discussing about the hospitals and the challenges we are having concerning money. This is the same money that the county governments have been given. We want to limit the wastage and inefficiencies.

I fully support and encourage the others to support.

Sen. Hargura: Thank you, Mr. Chairman, Sir. I support the amendment. I think we have had an experience in the last one year in the way the county governments and the assemblies have been spending money. Their expenditure has not been prudent because they have not been concentrating on developments. Most of these counties do not have proper county assemblies. They do not have the infrastructure and intend to go for easy money. That is why we are complaining about the trips that they have made. One year down the line, they may not be having their infrastructure in place. I support the control of the amount to be spent on recurrent expenditure.

Sen. Murkomen: Thank you, Mr. Chairman, Sir. Having listened to the amendment by Sen. Mutula Kilonzo Jnr. and having interacted with the Chairman of the CRA in Mombasa last weekend, I have a problem supporting this amendment. My problem is constitutional. The responsibility of the county assembly is basically to ensure that they can run the budgeting process of the county. That budgetary process is guided, if you read the Public Finance Management Act, by the County Fiscal Strategy Plan. That is like the overall or the global picture that counties must have when they are preparing matters of the budget for the county both at the executive level and also at the legislative level.

Mr. Chairman, Sir, the budget process, both at the national and at the county levels, is a negotiated process; it is about the various parties in that county – like the Executive and the Legislature – sitting down and agreeing on the bigger development plan for the county.

Mr. Chairman, Sir, it also became very apparent in Mombasa that the ceilings that are being set are done in a meeting that involves only the executive – what is called AIPEC – which means the executive of the counties were represented in that meeting while the legislature is not represented. I find it very difficult to agree to an amendment that converts a constitutional function of Commission for Revenue Allocation (CRA) under Article 216, which is to amend a constitutional provision from “recommend” to “set.” Whereas a lot has been publicized about the imprudence of financial management and use by county assemblies, the same is also being done by the county executive. We cannot victimize one arm of the county government *vis-à-vis* another arm of the county government. If we want the CRA to be setting these processes so that the county assemblies become functional officials so that their work is just to rubber stamp, there is nothing we are going to do.

Mr. Chairman, Sir, it is my proposal that this amendment – even if it is passed by a majority of this House – is unconstitutional. It goes against Article 216 of the Constitution and it goes against the spirit of the functioning of a county legislature. We may have a problem with the county assemblies at the moment; maybe we have a problem with the capacity of county assemblies, going by the kind of people who are being elected. If we are forcing county assemblies to accept their set standards, then let us force this Parliament, which is the National Assembly that has the national budget, to force this House to accept a ceiling that has already been set by the Executive at the national level. We have been rational as a House and I am saying this on behalf of the National Assembly to even reduce the budget of Parliament because we have a picture of the nation. The county assemblies, who have a picture of their counties, should also be rational and deny themselves unnecessary expenditures.

So, Mr. Chairman, Sir, I am sorry; this amendment looks populist, but I think it is unconstitutional and I beg to oppose.

(Applause)

The Chairperson (Sen. Kembi-Gitura): Thank you very much.

Now, do I see Sen. Sang wanting to make a point of order?

Sen. Sang: Yes, Mr. Chairman, Sir. While I appreciate the comments being made by Sen. Kipchumba Murkomen, is he in order to make such kind of comments knowing that he is already a sponsor of a Bill in this House that tries to set the limits or the percentages between development and recurrent expenditures? If we are prepared to walk in that line of sharing or apportioning the percentages on recurrent and development expenditures, it means again that we can still apportion ceilings on the basis of recurrent expenditure. So, it is doublespeak for the Senator to talk of the fact that we are curtailing the---

An hon. Senator: Correct!

(Applause)

The Chairperson (Sen. Kembi-Gitura): Well, Sen. Sang---

(Several Senators stood up in their places)

Order! Order! Sen. Sang, the point you are making is also important because it is common knowledge that Sen. Murkomen, and I think some other Senators have sponsored a Bill whose effect is going to be essentially more or less what is being sought to be done here. I want to assume that if what we are doing passes now, it will render that Bill---

Sen. Murkomen: No! No! On a point of order, Mr. Chairman, Sir.

The Chairperson (Sen. Kembi-Gitura): No; Order! Order! I have not finished. I am saying that as far as I can see myself from where I am sitting, the effect of this amendment will almost be the same as the Bill that Sen. Murkomen has sponsored. So---

(Several Senators stood up in their places)

Order! I am talking now. I am the Chairperson and that is a position you must appreciate. I am the Chairperson of this Committee of the Whole.

Sen. Murkomen has expressed his opinion about the current Motion before us and he has his vote; remember that. So, regardless of how many points of orders you put across, if they are to counter what Sen. Murkomen has said, you cannot undo what he has said; and he has said that he opposes. So, if you want to debate the issue, you debate it and convince the membership here that what Sen. Murkomen has said has no merit. But do not bring it by way of a point of order because that is just going to eat into our time. I will request that you debate the matter. But I do not think it is right to enter into an argument with Sen. Murkomen because of what he thinks about this amendment. But you are very right to debate and give your own contributions.

(Several Senators stood up in their places)

Sen. Billow, Sen. Murkomen and Sen. Njoroge Ben, is it on the same point? Because if you are going to take issue with what Sen. Murkomen has said, I am not going to allow it.

(Several Senators stood up in their places)

I am not going to allow it because you are just going to eat into our debating time.

What is it, Sen. Billow?

Sen. Billow: Mr. Chairman, Sir, a point of order can always be sought under the Standing Orders because we have to also be very careful that even in giving our views and opinions on a particular Motion, we do not mislead.

Mr. Chairman, Sir, in this House, just a couple of weeks ago, we passed the Division of Revenue Bill. That Bill, in essence, was sharing out money between two levels of Government. What we are setting out to do in this Motion is doing the same thing; setting out money between two levels of one government. So, there is nothing unconstitutional because this is a House that has the mandate to determine this issue. Even in national Government, there are sector ceilings which are normally set. The ceiling for recurrent expenditure in the county governments is Kshs30.2 billion and it is known.

The Chairperson (Sen. Kembi-Gitura): Sen. Billow, if you want to debate that issue, debate it. But do not bring it by way of a point of order because it cannot be a point of order. It cannot be a point of order because Sen. Murkomen has said what he has said.

(Several Senators stood up in their places)

I am not going to allow any more points of order on this issue.

What is it, Sen. Khaniri?

Sen. Khaniri: Mr. Chairman, Sir, Standing Order No.88(1) has been breached by none other than the Senator for Nandi. This is the Standing Order that talks about anticipating debate. It is very clear that Standing Order No.88(1) says that:-

“It shall be out of order to anticipate the debate of a Bill which has been published as such in the Gazette by discussion upon a substantive Motion or an amendment or by raising the subject matter of the Bill upon a Motion for the Adjournment of the Senate.”

Mr. Chairman, Sir, Sen. Sang, in opposing what had been said by Sen. Murkomen, referred to a Bill that has been published already and the subject matter of the Bill. I think that is out of order and he has to withdraw that.

(Several Senators stood up in their places)

The Chairperson (Sen. Kembi-Gitura): Order, Senators! We are going to spend a lot of time here and unless you are asking me to reverse my ruling on this issue--- I have made my ruling and I have said that Sen. Murkomen has a right to oppose this

amendment for whatever reasons. It is up to you to convince him or otherwise to believe differently. But we cannot keep on talking about this issue or raising points of orders on an issue that you cannot control. How are you going to stop Sen. Murkomen from voting no, yes or abstaining, if that is what he wishes to do?

(Several Senators stood up in their places)

On Sen. Khaniri's point of order under Standing Order No.88(1), it is true and he is right because we have not even finished debate on the other Bill that has been brought by Sen. Murkomen. So, I think we are just anticipating debate on it and I would like us to now proceed to the substantive arguments on this matter.

(Several Senators stood up in their places)

What is your point of order, Sen. Njoroge Ben?

Sen. Njoroge: Mr. Chairman, Sir, would I be in order to remind the Senators in this House who are also the Chairpersons of the County Development Boards (CDBs) that they should remember that in one month's time, they will also be in the county working on moving those boards and also working on the monies which are entitled to counties?

Thank you, Mr. Chairman, Sir.

The Chairperson (Sen. Kembi-Gitura): So, what was the point of order?

(Laughter)

Sen. Njoroge: Mr. Chairman, Sir, I just asked whether I will be in order to inform them and also remind them that they are also Chairpersons in the CDBs. I was also congratulating them for being the Chairpersons of the boards.

(Laughter)

The Chairperson (Sen. Kembi-Gitura): You are in order.

Order, Sen. Wetangula! What is your point of order, Sen. Murkomen? Let us get this out quickly.

Sen. Murkomen: Mr. Chairman, Sir, I totally appreciate your ruling on Sen. Sang's point of order. But until it is withdrawn, it is totally misleading because he needs to withdraw what he has referred to and apologize. Otherwise, I will be---

The Chairperson (Sen. Kembi-Gitura): I do not see anything to withdraw and apologize because nobody asked you to declare your personal interest in this matter. Just like you are giving your opinion---

(Loud consultations)

Order, Senators! Just like you were giving your opinion, which I said must be respected, Sen. Sang, rightly or wrongly, was giving his opinion and I have ruled him out of order.

Sen. Murkomen: Thank you.

The Chairperson (Sen. Kembi-Gitura): I think that should be sufficient.

Sen. Murkomen: But he should withdraw because he is trying to---

The Chairperson (Sen. Kembi-Gitura): Order, Sen. Murkomen! Let us not pursue this issue.

Sen. Murkomen: Let me just conclude something, Mr. Chairman, Sir. The impression he is creating out there is that, first of all, this Bill will solve the issues we are raising. One, this Bill is effective only for one year; two, the Bill we tabled about 40 per cent is actually an amendment of a ceiling that has already been set for development versus recurrent for the counties. What I am opposed to here is converting the CRA into a county assembly or the CRA performing a legislative function so that the legislature at the county level becomes a rubberstamp. That is my opposition!

(Loud consultations)

The Chairperson (Sen. Kembi-Gitura): Well, I have heard you. I am not going to allow this to be a match between Sen. Murkomen and Sen. Sang. I think I have concluded that issue.

Do you have a point of order, Sen. Murungi?

Sen. Murungi: Thank you, Mr. Chairman, Sir. I think we should put this matter to rest this way. If you read Standing Order No.88(1), it says:-

“It shall be out of order to anticipate the debate of a Bill which has been published as such in the Gazette by discussion upon a substantive Motion or an amendment or by raising the subject matter of the Bill upon a Motion for the Adjournment of the Senate.”

Mr. Chairman, Sir, Sen. Sang did not discuss by way of a substantive Motion, neither by way of amendment nor by raising the subject matter of a Bill upon a Motion of Adjournment. He merely mentioned; so, he was not out of order and we need a proper reading of Standing Order No.88(1).

The Chairperson (Sen. Kembi-Gitura): I have made a ruling already!

Sen. Murungi: Mr. Chairman, Sir, I know you made a ruling, but it is good for the House to---

The Chairperson (Sen. Kembi-Gitura): Sitting where I am, I have already made a ruling on that issue.

Sen. Murungi: Mr. Chairman, Sir, I do not want to disagree with you---

The Chairperson (Sen. Kembi-Gitura): You have every right to disagree with me. So, now, we are going to the substantive debate on that proposed amendment that was moved by Sen. Mutula Kilonzo Jnr.

Proceed, Sen. G.G. Kariuki.

Sen. G.G. Kariuki: Mr. Chairman, Sir, I think the amendment here is quite appropriate, but as Sen. Murkomen has just said, I think we have gone through a big problem since the formation of county governments. What we are trying to do today is what we ought to have done a year ago because we have been complaining that county governments are misusing money; spending money without any control. If this amendment are going to bring some control, it is quite appropriate that we pass it bearing in mind that if we were to perform miracles in order for the Members of the County

Assemblies to be a little bit more advanced than what they are presently, we will not be in a problem to fit this ceiling, but just because of the way things are today, this Senate still has the power to amend this Act. Unless we give the county assemblies a grace period of five years so that they understand what kind of business they are supposed to execute, I think we shall not have done justice.

It is very difficult for anybody to come and tell the county governments not to exceed certain ceilings. This is quite in order, but because the way the county assemblies have behaved for the whole of last year and part of this year, I think there is need to have this kind of amendment.

I beg to support.

Sen. Okong'o: Mr. Chairman, Sir, I stand to oppose this amendment by my good friend, Sen. Mutula Kilonzo Jnr. If we are only talking about issues of the Commission on Revenue Allocation (CRA) giving recommendations and yet we cannot give them more powers, then we are usurping our own powers. We are stifling the county assemblies and the county executive. Unless there is a further amendment on this, I strongly oppose the amendment.

The Chairperson (Sen. Kembi-Gitura): For the sake of good order, as we debate this issue, we are in Committee and so I think there is more laxity in looking at these issues. It is okay to say that you oppose it as it is now, but I think it is also important to let you know that this is the Second Reading. So, if you are opposing it because of the amendment you are talking about, when I put the question and you vote on this amendment, I do not want you to vote against it under the wrong impression that that is the way it is going to be because you have a right to bring an amendment during the Committee Stage. So, you may make a mistake of voting against it or kill it now, whereas you cannot amend it at this point in any event because we are at the Second Reading and you have a right to propose an amendment when we go to the Committee Stage. I thought it was important to let Members know that because you might vote on an uninformed reason.

Sen. Elachi: Thank you, Mr. Chairman, Sir. I also rise to support. I know that with the challenges we are facing in our country, Kenyans are now looking upon us to bring sanity within the county assemblies and also for the county assemblies to understand that as much as we consider recurrent expenditure, we will ensure that development also goes to the wards.

Sen. Chelule: Mr. Chairman, Sir, I also stand to support this amendment. I am doing this because each and every time we have always agitated for more funds to be allocated to the counties for the purpose of development. There must be a format of how to utilize these funds at the county level. Kenyans are watching and most of them are in need of the basic needs; water, roads and health centres. This cannot happen if most of the money is spent by the executive or the county assemblies. I want to propose that half of this money should be spent on Development Expenditure and not Recurrent Expenditure.

I support.

The Chairperson (Sen. Kembi-Gitura): I was trying to cut this debate because like I have said, we are still going to the Committee Stage on it. That is why I was trying to curtail the debate so that we can finish.

Sen. Hassan: Mr. Chairman, Sir, I think that as much as Kenyans are quite irked by the kind of spending at the county level, we must rationalize this gag on account of what the counties are allocated. I have made this pertinent point every time we discuss revenue and that is why for the first time and future times, I will register a no vote. As you are discussing about capping revenues, the Mombasa County still gets much less allocation than its wage bill. We have a wage bill of Kshs4.7 billion and we Kshs4.5 billion based on the CRA formula. Then this whole debate is a futility. How do you gag what does not even meet the threshold to even pay salaries? When you are doing this, you should not react to your counties where, for example, you have Kshs4 billion to Kshs5 billion after you have removed a wage bill of Kshs6 billion.

There are those counties that have a deficit even going into the wage bill itself based on the kind of personnel we have received from the county governments or from the national governments. Therefore, we have only one avenue; either we rationalize the staff or we sack everybody, but do not micromanage the county assemblies just because it has the quality of people that you do not like or appreciate, and therefore, we get this populist kind of view.

You need to rationalize this from county to county. I am here to say that this is not the kind of way we want to move forward. We should ensure that as we go into devolution, there is good order. First and foremost, if you want to give a ceiling, make sure that Mombasa County can at least pay its wage bill of Kshs4.7 billion rather than allocating it Kshs4.5 billion and then going ahead to put a cap. This is an exercise in futility with respect to other counties. What are you capping when you cannot even meet the obligation towards your salary?

Sen. (Eng.) Muriuki: On a point of order, Mr. Chairman, Sir. I am rising on a point of order, not on what he is saying.

The Chairperson (Sen. Kembi-Gitura): Then let him finish.

Sen. Hassan: Mr. Chairman, Sir, Sen. (Eng.) Muriuki has intimidated me. On account of that, I have been registering a “no” vote. Last week, that “no” vote was my vote. In any other subsequent amendments and discussions, I will vote “no” until Mombasa County can, first and foremost, pay its wage bill before we discuss any other thing.

Thank you.

Sen. (Eng.) Muriuki: On a point of order, Mr. Chairman, Sir. I wish to seek direction from the Chairman. I would like to move an amendment to that amendment and I am doing it for the second time because we are at the Committee Stage.

The Chairperson (Sen. Kembi-Gitura): We are in Committee Stage generally, but you will note that these are new clauses. These are amendments to proposed inclusion of new clauses and so they have to be read a Second Time. Right now, we are in the Second Reading and not at the Committee Stage for that clause. If the amendment is read a Second Time, it will then go to the Committee Stage and then you can bring the amendment.

Sen. Ndiema: Mr. Chairman, Sir, I really do agree on basically the issue of trying to control the management of finances in the counties but I have a problem because even at the national level, the setting of ceilings has never been a legal affair; it is something that is discussed as a matter of policy and agreed upon. In this case, I do not know whether the CRA or even us as the Committee on Finance, Commerce and Budget have

met the county assemblies, discussed with them and agreed broadly on how we can move forward. According to Article 224 of the Constitution, once we have allocated funds to the counties, it is their business to determine how to spend it.

Sen. (Dr.) Machage: On a point of order, Mr. Deputy Speaker, Sir. I need guidance from the Chair with regard to us discussing an issue that is supposed to be on the Second Reading in the Committee of the Whole. How will the voting on this item be put?

The Chairperson (Sen. Kembi-Gitura): I have already given guidance. At the risk of repeating myself, when we have put the question on what we are doing now, I shall be putting the question that the New Clause 11 be now read a Second Time. If it is agreed to, it will then move to the Committee Stage. It is at that point that we shall vote on it to be part of the Bill. Before we do that, you will now be able to bring amendments.

Sen. (Dr.) Machage: Mr. Deputy Speaker, Sir, in my own thinking I thought that that should be done when you are on the Speaker's Chair and not at the Chairman's Chair.

The Chairperson (Sen. Kembi-Gitura): What Standing Order are you relying on?

Sen. (Dr.) Machage: It is my opinion.

The Chairperson (Sen. Kembi-Gitura): Then it will be very difficult for me because I am confident. As you can see, I am seating between the Clerk to the Senate and another senior clerk and that is why I feel so confident that what I am saying is right. I know that I am right on that issue, Sen. (Dr.) Machage.

Sen. (Dr.) Khalwale: On a point of order, Mr. Chairman, Sir. Since this is a House of record, it would be wrong to allow the contribution by the Senator for Trans Nzoia that it is unconstitutional for us to imagine that we can recommend to the county assemblies about ceilings. He is reading that from Article 224, but he should read it together with Article 216 (2) which clearly says---

The Chairperson (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, why do you not let him finish his argument because he had not actually gone that far, he was still setting up his argument if I got him right?

Sen. (Dr.) Khalwale: He had finished, Mr. Chairman, Sir. That is how I heard him.

The Chairperson (Sen. Kembi-Gitura): Let him move it a notch higher and then we see.

Sen. Ndiema: Thank you Mr. Chairman, Sir. I had actually not finished. Sen. (Dr.) Khalwale has actually indicated the section that deals with the recommendation by the CRA. I believe that a recommendation from that Commission goes to the county governments when it relates to county allocations. We are here to find the best way to do it. I am not sure whether any recommendation should be coming to the Senate or whether the Senate should empower the CRA to set ceilings and make it compulsory.

The Chairperson (Sen. Kembi-Gitura): Do you want us to still continue? Sen. (Prof.) Lesan, why are you standing?

(Sen. (Prof.) Lesan stood up in his place)

The Chairperson (Sen. Kembi-Gitura): Do you still want us to continue? Sen. Lesan, why are you standing?

Sen. (Prof.) Lesan: Mr. Chairman, Sir, I thought that by standing, you would see me. I am generally a short fellow.

The Chairperson (Sen. Kembi-Gitura): I can see all of you here.

Sen. Mositet: Mr. Chairman, Sir, I stand to support the amendment, even though some Members have indicated that they intend to bring more amendments to the same amendment.

Mr. Chairman, Sir, let us support this amendment because the whole nation is looking upon us to set standards and make sure that the county governments are accountable. As it is well known to the public, we are sitting here so that, at least, money can go to the counties. They are worried that with the same allocation, again, they will see Members of the County Assemblies (MCAs) travelling all over the world and the Governors spending it the way they want. Through this amendment, we are just trying to empower the Commission on Revenue Allocation (CRA), as we think about coming up with a Bill to control expenditure in the counties, so that the funds are not misused this year. I believe that all of us would like to see that money being used for development and to provide services to the people.

Mr. Chairman, Sir, I support the amendment.

The Chairperson (Sen. Kembi-Gitura): Thank you, hon. Senators. That brings us to the end of that matter, subject to putting the question.

(Loud consultations)

Do you still want to contribute on this? Okay. I will give a chance to just two Senators. That will be Sen. Anyang'-Nyong'o and Sen. Lesan in that order. Two minutes each.

Sen. (Prof.) Anyang'-Nyong'o: Mr. Chairman, Sir, my point is very simple, but I think very important.

Mr. Chairman, Sir, first, I am frightened by what Sen. Omar is saying. He seems to be holding the view that so long as Mombasa County has a very large recurrent expenditure, there should be no ceiling whatsoever on what that county should spend on Recurrent Expenditure. The very reason why there should be a ceiling is to help Mombasa County to bring down its recurrent expenditure.

Mr. Chairman, Sir, secondly, let me just share an experience with the Senate. In the year 2003, the national budget of the Republic of Kenya was Kshs580 billion. We began wondering in the Treasury and Ministry of Planning and National Development how we could increase the budget of the Republic of Kenya. We decided to do that by stimulating expenditure by the Government. If you stimulate expenditure by the Government, then you compel it to look for revenue to finance that expenditure. Indeed, the Government came up with a very ambitious infrastructure project which compelled it to look for revenue to finance that infrastructure. Today, the Kenyan annual budget has gone up to over Kshs1 trillion whereas for many years it had stayed below Kshs500 billion per annum. Therefore, if we put a ceiling on recurrent expenditure, it would compel us and the counties to look for money for development expenditure. As development expenditure goes up, the percentage for recurrent expenditure will, in fact, go down.

Mr. Chairman, Sir, what we are doing in this amendment is extremely important for stimulating development in the counties by putting a ceiling on recurrent expenditure. What we need to do, and I think Sen. Mutula Kilonzo Jnr. had agreed, is to just change the word from “set” to “recommend.” This Senate will find ways and means of trying to increase development expenditure in the counties, so that progressively the percentage spent in recurrent expenditure will become lower and lower. We are doing a very important thing.

Sen. (Prof.) Lesan: Mr. Chairman, Sir, mine is a small point drawn from the experience that I have had in the last two or three weeks in Bomet County.

Mr. Chairman, Sir, there has been an attempt by the Controller of Budget to resolve the dispute that exists in Bomet County, in order to pacify the county assembly and the executive. I want to suggest an amendment in the next stage of this process where it is the Controller of Budget who should be empowered to participate in the setting of the ceilings rather than the Commission on Revenue Allocation (CRA).

Thank you, Mr. Chairman, Sir.

The Chairperson (Sen. Kembi-Gitura): Thank you, Sen. Lesan.

We will move on now to the next amendment. If you look at your Order Paper, there is a New Clause 11 proposed by the Committee.

Sen. Billow Kerrow.

New Clause 11A

Sen. Billow: Mr. Chairman, Sir, I beg to move:-

THAT the Bill be amended by inserting the following new clause immediately after clause 10—

Amendment of paragraph 12 of the Second Schedule to the Public Finance Management Act
 11A. Paragraph 12 of the Second Schedule to the Public Finance Management Act is amended by deleting the expression “2014/15” appearing after the words “and in the” and substituting therefor the expression “2015/16”.

Mr. Chairman, Sir, what the Public Finance Management Act now requires is programme-based budgeting, effective from 2014/2015. What we are requesting is that, that effective date for programme-based budgeting be pushed to 2015/2016. It is going to be difficult for the county governments because of the delay in the approval of the Division of Revenue Bill and County Allocation of Revenue Bill. We have discussed with the Treasury and they also find it okay. So, the only thing that we are doing is pushing it to the next financial year. That is the amendment that is being proposed here.

(Question of the New Clause 11A proposed)

(New Clause 11A read the First Time)

*(Question, that the New Clause 11A
 be read a Second Time proposed)*

The Chairperson (Sen. Kembi-Gitura): Sen. Murungi, do you want to contribute?

For the sake of good order, if you have no interest in this specific clause, can you, please, withdraw your request? We have so many requests, some of which I believe were for the last one.

Sen. Murungi: Mr. Chairman, Sir, just a small clarification. Our understanding is that the current budget, both at the county level and national level, is a programme-based budget. When we asked the Finance, Commerce and Budget Committee of the Senate to appear before us, as the Committee on Agriculture, Livestock and Fisheries they told us that the budget for the Ministry of Agriculture is a programme-based budget. Now, the Chairman is proposing that the programme-based budgets should come into place in the next financial year and not this financial year. But our understanding is that they are already in place.

An hon. Senator: For counties!

Sen. Murungi: He is explaining that it is for counties, but even at the county level, I found them struggling to make a programme-based budget. So, are we satisfied that we are not going to create more confusion in the budgeting process through this amendment?

The Chairperson (Sen. Kembi-Gitura): Do you want a clarification from the Chairman? Chairman, maybe you can make a clarification.

Sen. Billow: Mr. Chairman, Sir, the individual counties, as you all know, prepare their own budgets, from which they prepare their own appropriation bills and so forth. The county governments are fairly independent in the way they prepare their budgets. But because of the need to ensure that the budgets done at the county governments and national Government use the same system, for the same reasons that we use the Integrated Financial Management Information System (IFMIS) also in the counties, it is important that the county governments also use programme-based budgeting. However, because of the delay, it would be difficult to get the counties to comply at this late time, for the simple reason that counties are trying to do the budgets now because the County Allocation of Revenue Bill is being considered now. So, it will be a bit late. We have asked that the period for the county governments be pushed to next year. We have discussed it with the Treasury and they do not seem to have a problem with that. Otherwise, it would be difficult to really get the county governments to comply with that provision if we leave it the way it is.

The Chairperson (Sen. Kembi-Gitura): Sen. Kiraitu Murungi, I trust that you are satisfied.

(Sen. Murungi nodded)

Since there is no other interest shown on this specific one, let me give direction. I am going to put four specific questions and then the Division Bell shall be rung. The first question that I am putting is:-

THAT, Clauses 3, 4, 5, 6, 7, 8, 9 and 10 be part of the Bill.

The next Question that I am putting is:-

THAT, the New Clause 5A be read a Second Time.

The next one is:-

THAT, the New Clause 11 by Sen. Mutula Kilonzo, the one that substituted Sen. Elachi's proposal, be read a Second Time.

I will also be putting the Question:-

THAT, the New Clause 11A, for purposes of clarity, brought by the Committee be read a Second Time.

We are going to ring the Division Bell once, but when we come back, we shall take specific votes on each of those questions that I have put. Is that clear? Since it is electronic voting, I am sure that it will not take too long.

The Division Bell may now be rung for five minutes.

(The Division Bell was rung)

The Chairperson (Sen. Kembi-Gitura): Order, Senators! Can you, please, resume your seats? Let us have some order. We are now going to do the roll call. We are going to vote so I ask that the bars be drawn. We are going to do the voting electronically and I am going to put the question again. For each of the four questions, we shall vote on each of them. We are not going to have one general vote because this is not like we used to do in the roll call. So, on the first Question vote YES, NO or ABSTAIN. I wish to remind you of the Communication from the Chair this afternoon that it would be misconduct under the Standing Orders not to vote in any of the three ways. We shall now vote. You have one minute to vote. You may now vote.

DIVISION

ELECTRONIC VOTING

(Question, that Clauses 3, 4, 6, 7, 8, 9 and 10 be part of the Bill put and the Senate proceeded to vote by County Delegations)

AYES: Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Boy Juma Boy, Kwale County; Sen. Chelule, Nakuru County; Sen. Chiaba, Lamu County; Sen. Elachi, Nairobi County; Sen. Hargura, Marsabit County; Sen. G.G. Kariuki, Laikipia County; Sen. Kagwe, Nyeri County; Sen. Kembi-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. (Prof.) Lesan, Bomet County; Sen. (Dr.) Mchache, Migori County; Sen. Madzayo, Kilifi County; Sen. Mositet, Kajiado County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo Marakwet County; Sen. Murungi, Meru County; Sen. Muthama, Machakos County, Sen. Mutula Kilonzo Jr., Makueni County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Sang, Nandi County; Sen. Sijeny, Nairobi County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County and Sen. Wetangula, Bungoma County.

The Chairperson (Sen. Kembi-Gitura): Order, Senators! The results of the Division are as follows:-

The "Ayes" who voted electronically are 28, plus the three who voted manually. So, the total for the "Ayes" is 31.

NOES: Nil

ABSENTIONS: Nil.

The “Ayes” have it.

(Question carried by 31 votes to nil)

(Clauses 3, 4, 6, 7, 8, 9 and 10 agreed to)

I am certain that everybody knows the rules now. Are there Senators who wish to be assisted to vote?

Sen. Sijeny, you have not voted. Do you have authority to vote?

Sen. Sijeny: Yes, but I have not voted.

The Chairperson (Sen. Kembi-Gitura): Then you should be assisted to do so.

New Clause 5A

The Chairperson (Sen. Kembi-Gitura): We are now voting for new Clause 5A. I have already put a question that the new Clause 5A be read a second time. Please, prepare to vote.

DIVISION

ELECTRONIC VOTING

(Question, that the New Clause 5A be read a Second Time put and the Senate proceeded to vote by County Delegations)

AYES: Sen. (Prof.) Anyang’-Nyong’o, Kisumu County; Sen. Billow, Mandera County; Sen. Boy Juma Boy, Kwale County; Sen. Chelule, Nakuru County; Sen. Chiaba, Lamu County; Sen. Elachi, Nairobi County; Sen. Hargura, Marsabit County; Sen. G.G. Kariuki, Laikipia County; Sen. Kagwe, Nyeri County; Sen. Kembi-Gitura, Murang’a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. (Prof.) Lesan, Bomet County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Mositet, Kajiado County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo Marakwet County; Sen. Murungi, Meru County; Sen. Muthama, Machakos County, Sen. Mutula Kilonzo Jr., Makueni County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Okong’o, Nyamira County; Sen. Sang, Nandi County; Sen. Sijeny, Nairobi County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County and Sen. Wetangula, Bungoma County.

The Chairperson (Sen. Kembi-Gitura): Order, Senators! The results of the Division are as follows:-

The “Ayes” who voted electronically are 28, plus the three who voted manually. So, the total for the “Ayes” is 31.

NOES: Nil

ABSENTIONS: Nil.

The “Ayes” have it.

(Question carried by 31 votes to nil)

(New Clause 5A was read a Second Time)

New Clause 11

The Chairperson (Sen. Kembi-Gitura): That is done. We will now move to the third question which is that the New Clause 11 by Sen. Mutula Kilonzo Jnr. be read a second time.

DIVISION

ELECTRONIC VOTING

(Question, that the New Clause 11 be read Second Time, put and the Senate proceeded to vote by County Delegations)

AYES: Sen. (Prof.) Anyang’-Nyong’o, Kisumu County; Sen. Billow, Mandera County; Sen. Boy Juma Boy, Kwale County; Sen. Bule, Tana River County; Sen. Chelule, Nakuru County; Sen. Chiaba, Lamu County; Sen. Hargura, Marsabit County; Sen. G.G. Kariuki, Laikipia County; Sen. Kagwe, Nyeri County; Sen. Kembi-Gitura, Murang’a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. (Prof.) Lesan, Bomet County; Sen. (Dr.) Machege, Migori County; Sen. Madzayo, Kilifi County; Sen. Mositet, Kajiado County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo Marakwet County; Sen. Murungi, Meru County; Sen. Muthama, Machakos County, Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Okong’o, Nyamira County; Sen. Sang, Nandi County; Sen. Sijeny, Nairobi County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County and Sen. Wetangula, Bungoma County.

The Chairperson (Sen. Kembi-Gitura): Order, Senators! The results of the Division as follows:-

The “Ayes” who voted electronically are 28, plus the three who voted manually. So, the total for the “Ayes” is 31.

NOES: Nil

ABSENTIONS: Nil.

The “Ayes” have it.

(Question carried by 31 votes to nil)

(New Clause 11 was read a Second Time)

New Clause 11A

The Chairperson (Sen. Kembi-Gitura): The last one is from the Chairman of the Standing Committee. This is New Clause 11A.

DIVISION

ELECTRONIC VOTING

(Question, that the New Clause 11A be read a Second Time, put and the Senate proceeded to vote by County Delegations)

AYES: Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Boy Juma Boy, Kwale County; Sen. Bule, Tana River County; Sen. Chelule, Nakuru County; Sen. Chiaba, Lamu County; Sen. Hargura, Marsabit County; Sen. G.G. Kariuki, Laikipia County; Sen. Kagwe, Nyeri County; Sen. Kembi-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. (Prof.) Lesan, Bomet County; Sen. (Dr.) Machege, Migori County; Sen. Madzayo, Kilifi County; Sen. Mositet, Kajiado County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo Marakwet County; Sen. Murungi, Meru County; Sen. Muthama, Machakos County, Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Sang, Nandi County; Sen. Sijeny, Nairobi County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County and Sen. Wetangula, Bungoma County.

The Chairperson (Sen. Kembi-Gitura): Order, Senators! The results of the Division are as follows:-

The "Ayes" who voted electronically are 28, plus the three who voted manually. So, the total for the "Ayes" is 31.

NOES: Nil

ABSENTIONS: Nil.

The "Ayes" have it.

(Question carried by 31 votes to nil)

(New Clause 11A was read a Second Time)

New Clause 5A

The Chairperson (Sen. Kembi-Gitura): I propose that the New Clause 5A be part of the Bill. I will put the question later.

(Question that the New Clause 5A be part of the Bill, proposed)

New Clause 11

(Question, that New Clause 11 be part of the Bill proposed)

The Chairperson (Sen. Kembi-Gitura): That is Sen. Mutula Kilonzo Jnr.'s amendment. I propose that the New Clause 11 by Sen. Mutula Kilonzo Jnr. be part of the Bill. This is now where anybody who wanted to bring an amendment to that one can bring it.

Sen. (Eng.) Muriuki, you had indicated that you had an amendment to this one. Is it here?

Sen. (Eng.) Muriuki: Yes.

The Chairperson (Sen. Kembi-Gitura): Let me look at it.

Yes, Sen. Billow?

(Sen. Billow spoke off record)

Sen. Billow: Mr. Chairperson, Sir, you have referred to the New Clause 11; but there are two New Clause 11 because the amendments submitted---

The Chairperson (Sen. Kembi-Gitura): But you see, I have clarified. If you check the board when we are voting, for the sake of clarity because of what was appearing on the Order Paper, it was written in brackets "Mutula Kilonzo Jnr." Yours is written "Chairperson of the Committee;" but of course, all those are Clause 11.

So, now, Sen. Wangari, do you have a point of order?

Sen. Wangari: Thank you, Mr. Chairperson, Sir. My point of order is actually on the vote and considering how digital this House has become over the last few months, I am wondering why the vote cannot be displayed in the three columns of the no's, yes and the abstentions on the screen?

The Chairperson (Sen. Kembi-Gitura): Instead of what?

Sen. Wangari: Instead of reading them from the sheet of paper that you are reading from.

The Chairperson (Sen. Kembi-Gitura): They are all there, but you see the HANSARD---

Sen. Wangari: The tally---

The Chairperson (Sen. Kembi-Gitura): But the HANSARD cannot see there.

Sen. Wangari: Okay.

The Chairperson (Sen. Kembi-Gitura): Sen. Wangari, let me understand; what do you want to be done?

Sen. Wangari: Mr. Chairperson, Sir, I do not know why everyone is answering. I was asking for your guidance on the final tally; whether, instead of you reading, as you are reading, can it also be displayed from that system?

The Chairperson (Sen. Kembi-Gitura): It can be done and it is there; but there are the assisted voters also who have to come on record and do it physically. There is also a printout which you can inspect which shows exactly how every Senator has voted. That is how we were able to know that some Senators do not vote; that is why the Speaker made the statement he did.

Okay, now, I propose the question that Clause 11 by Sen. Mutula Kilonzo Jnr. be part of the Bill.

Yes, Sen. (Eng.) Muriuki?

Before Sen. (Eng.) Muriuki speaks, I have received a signed proposal for amendment from Sen. (Dr.) Khalwale and it says:-

“THAT, the New Clause 11 be amended by deleting the word “set” appearing on the third line of the new paragraph 2a and substituting therefor the words “recommend to the Senate.”

So, if you want to put the same amendment---

Is it the same one?

Sen. Billow: It is the same one.

The Chairperson (Sen. Kembi-Gitura): Okay. So, Sen. (Dr.) Khalwale has it here.

(The Chairperson consulted the Clerk-at-the Table)

Sen. (Dr.) Khalwale: Thank you, Mr. Chairperson, Sir. I rise to move the following amendment.

THAT, the new Clause 11 be amended by deleting the word “set” appearing on the third line of the new paragraph 29(A) and substituting therefor the words “recommend to the Senate.”

Mr. Chairperson, Sir, the import of this particular amendment are only two things; the first one is that we give recognition to the role of the Senate; that the real final decision on such crucial matter should seek concurrence of this Senate. The second aspect is that we do not want at any time to allow the Commission of Revenue Allocation (CRA), which has no law making role under the Constitution to be seen to be setting this particular function, which would be in direct disagreement with the provision of Article 216 in the Constitution, which provides that:-

“The Commission shall also make recommendations on other matters concerning the financing of and the financial management by county governments as required by this Constitution and national legislation.”

It does not say the Commission “shall set.”

Mr. Chairperson. Sir, I beg to move.

(Question of the amendment to New Clause 5A proposed)

The Chairperson (Sen. Kembi-Gitura): Thank you very much. Do the Senators who I see on the board want to contribute to that amendment? If you have no interest in that amendment, please, withdraw the intervention.

Yes, Sen. (Eng.) Muriuki; are you seeking the Floor?

Sen. (Eng.) Muriuki: Mr. Chairperson, Sir, I stand to support the amendment. I have three things to say; one, of course, I support. Secondly, is to rest the doubt which some of our colleagues had on the intentions of this amendment, because even the little divergent opinion there was really was only that we were like giving the CRA the authority to make a law.

But, Mr. Chairperson, Sir, I would also like to take this opportunity to let the hon. Senators, like the Senator for Mombasa, to know that this is the correct opportunity when this comes, because these figures will be brought to the Senate. So, that is the time now when they can look at their particular counties and see whether the ceilings which

are being put for various votes in their particular counties, there is something wrong or divergent from what the CRA has done, it will be a better opportunity to do that because he has now to convince the House, on behalf of all Kenyans.

So, Mr. Chairperson, Sir, with those few words, I strongly beg to support.

The Chairperson (Sen. Kembi-Gitura): Sen. Kagwe, did you want to say something?

Sen. Kagwe: Mr. Chairman, Sir, I just make a brief comment. I wish to tell my colleagues that even as we try to hurry this through, it is very important for us to realise the implication of this matter and what we must do as a House thereof. What will happen is that the Commission of Revenue Allocation (CRA) will bring recommendations here which we have already discussed in the Committee on Finance, Commerce and Budget. However, it is good to realise that we have to engage the county assemblies as well because the County Assembly Service Boards (CASBs) are the equivalent of our Parliamentary Service Commission (PSC) and they have got their own views about how they ought to be handling those issues.

Secondly, we have seen expenditure that we need to discuss, not just for the county assemblies and governments, but also for the entire government as a whole. For instance, there is the issue of funeral announcements. When you look at the newspapers, you will see funeral announcements of employees of county assemblies from all over the country. The question that arises even in Government Ministries is: who will we allow a funeral announcement to be made in respect of the ranking of the county assembly employees and where do you stop? It is county expenditure and they have got a full page, for example, advertisement for a funeral announcement. That costs about Kshs500,000. These are very fundamental and serious issues that we need to engage in even as we pass this amendment.

The Chairperson (Sen. Kembi-Gitura): Sen. Khaniri, do you want to contribute?

Sen. Khaniri: Mr. Chairman, Sir, I stand to support the amendment on the amendment that was moved by Sen. (Dr.) Khalwale. I think he cited Article 216 of the Constitution. Indeed, the amendment brought by Sen. Mutula Kilonzo Jnr., as it was, contravened the provisions of Article 216. I just want to bring it to the attention of Members who may not know, that even if we went ahead and passed that particular amendment as it was brought, somebody could have challenged this. This is under Article 2(4), the supremacy of this Constitution which states:-

“Any law, including customary law, that is inconsistent with this Constitution is void to the extent of the inconsistency, and any act or omission in contravention of this Constitution is invalid.”

So, indeed, that amendment would have been invalid even if we passed it the way it was. So, I want to thank Sen. (Dr.) Khalwale for that amendment.

The Chairperson (Sen. Kembi-Gitura): Finally, Sen. Sang. You have one minute.

Sen. Sang: Mr. Chairman, Sir, I rise to support the further amendment to the amendment brought by Sen. Mutula Kilonzo Jnr. In supporting this amendment, it is important to raise the fact that we met with the CRA in our retreat in Mombasa and they brought up this issue of requesting us to give them the powers to set the ceilings. A number of us had issues with the request by the CRA. If you look at the purported ceilings that were given by the CRA this year, only four county assemblies were able to

meet them. When we asked them whether they issued ceilings to the county executives, they said that all the county executives in their counties met the budget ceilings. That raises an issue that, how is it possible that only four out of the 47 county assemblies were able to meet the ceilings yet all the 47 county executives were able to meet them? When we asked them how they are arrived at some of these ceilings, they said these were as a result of negotiations. We realized that the county assemblies were not part and parcel of the discussions and negotiations. Giving them the opportunity to recommend ceilings then gives us the opportunity as the Senate to interrogate whether the county assemblies were given a hearing, and whether there were consultations in terms of setting these ceilings.

I, therefore, support the further amendment.

The Chairperson (Sen. Kembi-Gitura): Thank you very much. That ends that debate. I will put the question when we have dealt with the last one.

Let us move on and I want to propose that the New Clause 11 A by the Committee be part of the Bill. Seeing that there is no interest on that clause, the Division Bell will be rung for another five minutes---

Sen. Billow: On a point of order, Mr. Chairman, Sir. In view of the fact that quite a number of Members are leaving and getting quorum will be a challenge, can we also do the schedules so that we vote for all them at the same time? We have three schedules that are still pending.

The Chairperson (Sen. Kembi-Gitura): I am advised and I have no reason to disbelieve the advice from the clerks that it cannot be done.

Sen. Billow: But if it is putting the question and we are voting for three clauses separately, what is wrong with voting for the schedules also in the same way?

The Chairperson (Sen. Kembi-Gitura): Sen. Wetangula.

The Senate Minority Leader (Sen. Wetangula): Mr. Chairman, Sir, mine is beyond what Sen. Billow is saying. I want to beg Senators present that we stay until we finish the voting because we have a habit of simply finishing what we are interested in and walking away. We have this Bill to finish, then we have the next Bill to finish, then we have the Machakos issue again which will require a delegation vote. If we do not have enough delegations to vote, even that will come a cropper. So I beg Senators, please, do not leave until we finish the business of the day.

The Chairperson (Sen. Kembi-Gitura): Thank you, Sen. Wetangula. Sen. Billow, I hear you and maybe there is nothing procedural that cannot be done, but you see, for instance, there is a new Third Schedule that has to go for the Second Reading. Maybe what you should have done, you should have done it for the Second Reading when we were doing the other clauses for the Second Reading, but now it is not possible to do it.

I am happy the Sen. Wetangula has whipped Members on behalf of the Whips. Actually, it is in our interest that we pass this Bill tonight, however long it takes and you know that if the threshold is below 24 delegations we cannot even proceed because it will be an act in futility. I want to reiterate Sen. Wetangula's request that please, let us finish what we are here to do and that is the voting.

The Division Bell will be rung for five minutes and then you will come to vote for those three clauses.

New Clause 5A

(The Division Bell was rung)

The Chairperson (Sen. Kembi-Gitura): What Sen. Khalwale amended is on HANSARD. It was an amendment by Sen. Mutula Kilonzo Jnr. which has been amended further by Sen. Khalwale.

You can vote now for one minute.

*(The Senators proceeded to vote by
County delegations)*

Sen. Murkomen: On a point of order, Mr. Chairman, Sir. Did you notice that in the previous vote 27 Senators voted and in this other vote it is 29 Senators?

The Chairperson (Sen. Kembi-Gitura): What is your point of order?

Sen. Murkomen: Mr. Chairman, Sir, in the absence of a proper explanation, the Standing Order and particularly, the Communication that came from the Chair today will have been breached.

The Chairperson (Sen. Kembi-Gitura): Sen. Murkomen, you could be right or wrong, because some Senators walked out. If you are talking about this specific division, it will be administrative. We shall check the record. If somebody has voted twice at one point, it is misconduct. Likewise if somebody did not vote in the second vote, it is misconduct. That will be administrative but it does not affect the results.

The Senate Minority Leader (Sen. Wetangula): On point of order, Mr. Chairman, Sir. My point of order relates to the Nairobi delegation. When we voted earlier Sen. Judith Sijeny was voting for Nairobi from here and then she walked out but Nairobi continued voting. We do not know if the Chair has been notified on the change of proxy.

The Chairperson (Sen. Kembi-Gitura): The instructions from Nairobi are cascaded downwards. If the Senator for Nairobi is not in, he has given instructions that so-and-so votes and if the other one is not in, so-and-so votes and so forth, *ad infinitum*.

The Senate Minority Leader (Sen. Wetangula): Mr. Chairman, Sir, is that the way of creating proxies?

The Chairperson (Sen. Kembi-Gitura): These are not proxies but designated voters. If the Senator has written it, and I understand from the Clerks that, that is what he has said, then I cannot question it.

We have finished voting on that one. I wish to put the last question; that the New Clause 11 by the Chairman of the Committee be part of the Bill.

You can now vote.

(The Senators proceeded to vote by County delegations)

Hon. Senators, we need to do this for the sake of good order because I do not want anybody to be in trouble with the Speaker. Sen. Chelule and Sen. (Prof.) Lesan did not vote for the last Question. So, Sen. Chelule, you have to make a choice whether you want to be assisted or you want to show that you did not vote. The record shows that you did not vote.

Sen. Mushenga, did you attempt to vote on this one?

Sen. Kisasa: No, Mr. Chairperson, Sir.

The Chairperson (Sen. Kembi-Gitura): Could you help them to vote so that we can finish.

(Sen. (Prof.) Lesan, Sen. Sang and Sen. Chelule were assisted to vote)

New Clause 5A

DIVISION

ELECTRONIC VOTING

(Question, that the New Clause 5A be part of the Bill, put and the Senate proceeded to vote by County Delegations)

AYES: Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Boy Juma Boy, Kwale County; Sen. Chelule, Nakuru County; Sen. Chiaba, Lamu County; Sen. Hargura, Marsabit County; Sen. Kagwe, Nyeri County; Sen. G.G. Kariuki, Laikipia County; Sen. Kembi-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. (Prof.) Lesan, Bomet County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Mositet, Kajiado County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County, Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Muthama, Machakos County; Sen. Murungi, Meru County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Sang, Nandi County; Sen. Wako, Busia County; Sen. Wetangula, Bungoma County and Sen. Wamatangi, Kiambu County.

The Chairperson (Sen. Kembi-Gitura): Order, Senators! The results of the Division are as follows:-

The "Ayes" who voted electronically are 28, plus the three who voted manually. So, the total for the "Ayes" is 31.

AYES: 31

NOES: Nil

ABSTENTIONS: Nil

The "Ayes" have it.

(Question carried by 31 votes to 0)

(New Clause 5A as amended, agreed to)

New Clause 11

DIVISION

ELECTRONIC VOTING

(Question, that the New Clause 11 be further amended as proposed by Sen. (Dr.) Khalwale put and the Senate proceeded to vote by County Delegations)

AYES: Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Boy Juma Boy, Kwale County; Sen. Chelule, Nakuru County; Sen. Chiaba, Lamu County; Sen. Elachi, Nairobi County; Sen. Hargura, Marsabit County; Sen. Kagwe, Nyeri County; Sen. G.G. Kariuki, Laikipia County; Sen. Kembi-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. (Prof.) Lesan, Bomet County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Mositet, Kajiado County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County, Sen. Mutula Kilonzo Jnr., Makeni County; Sen. Muthama, Machakos County; Sen. Murungi, Meru County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Sang, Nandi County; Sen. Wako, Busia County; Sen. Wetangula, Bungoma County and Sen. Wamatangi, Kiambu County.

The Chairperson (Sen. Kembi-Gitura): Hon. Senators, the results of the further amendment to the New Clause 11A as proposed by Sen. (Dr.) Khalwale are as follows:-

AYES: 29

NOES: Nil

ABSTENTIONS: Nil

The "Ayes" have it.

(Question carried by 29 votes to 0)

(Question, that the words to be left out be left out, put and agreed to)

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

DIVISION

ELECTRONIC VOTING

(Question, that the New Clause 11 as proposed by Sen. Billow be part of the Bill put and the Senate proceeded to vote by County Delegations)

AYES: Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Boy Juma Boy, Kwale County; Sen. Chelule, Nakuru County; Sen. Chiaba, Lamu County; Sen. Elachi, Nairobi County; Sen. Hargura, Marsabit County; Sen. Kagwe, Nyeri County; Sen. Kembi-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. (Prof.) Lesan, Bomet County; Sen. (Dr.) Machage, Migori County; Sen. Mositet, Kajiado County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Muthama, Machakos County; Sen. Murungi, Meru County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Sang, Nandi County; Sen. Wako, Busia County; Sen. Wetangula, Bungoma County and Sen. Wamatangi, Kiambu County.

The Chairperson (Sen. Kembi-Gitura): The "Ayes" who voted electronically are 27, plus the two who were assisted to vote manually.

AYES: 29

NOES: Nil

ABSTENSIONS: Nil

(Question carried by 29 votes to 0)

(Question, that the New Clause 11 be part of the Bill, put and agreed to)

(New Clause 11 agreed to)

(Sen. Wetangula spoke off-record)

The Chairperson (Mr. Kembi-Gitura): Are you suggesting that the Chair did not vote? There is a printout. It will show who voted and who did not.

Can the bars be withdrawn?

Hon. Senators, if you look at the Order Paper, you will see we still have business to do. We have to finish this one and then Order No.11, because that Order has timelines. I am invoking Standing Order No.30(2) and extending the time until we finish Standing Order No.10(1). We defer Order No.10(2) and proceed to do Order No.11. Therefore, we are extending time until we finish what we are doing now and Order No.11.

First Schedule

Sen. Billow: Mr. Chairman, Sir, I beg to move:-

THAT, the Bill be amended by deleting the First Schedule and substituting therefor the following new Schedule—

Allocation of Each County Governments' Equitable Share of Revenue Raised by the National Government

No	COUNTY	<u>2014/15 % OF TOTAL</u>	Equitable Share	
			<u>FY 2013/14</u>	<u>FY 2014/15</u>
		COLUMN A	COLUMN B	COLUMN C
1	MOMBASA	2.00%	3,801,647,114	4,535,164,921
2	KWALE	1.97%	3,749,154,804	4,472,544,358
3	KILIFI	2.86%	5,442,221,798	6,492,284,172
4	TANA-RIVER	1.53%	2,913,902,830	3,476,132,713
5	LAMU	0.79%	1,500,421,229	1,789,923,557
6	TAITA-TAVETA	1.27%	2,420,438,656	2,887,455,925
7	GARISSA	2.22%	4,221,750,134	5,036,325,712
8	WAJIR	2.78%	5,290,049,176	6,310,750,244
9	MANDERA	3.45%	6,550,014,150	7,813,822,143
9	MARSABIT	2.00%	3,795,466,857	4,527,792,199
11	ISIOLO	1.18%	2,236,022,302	2,667,456,921
12	MERU	2.50%	4,749,467,903	5,665,865,236
13	THARAKA-NITHI	1.21%	2,294,621,517	2,737,362,700
14	EMBU	1.48%	2,807,496,921	3,349,196,063
15	KITUI	2.80%	5,314,985,989	6,340,498,549
16	MACHAKOS	2.61%	4,950,597,088	5,905,801,768
17	MAKUENI	2.30%	4,366,389,448	5,208,872,802
18	NYANDARUA	1.66%	3,150,429,446	3,758,296,517
19	NYERI	1.71%	3,254,501,880	3,882,449,453
20	KIRINYAGA	1.36%	2,587,580,950	3,086,847,885
21	MURANG'A	2.06%	3,917,321,109	4,673,157,909

22	KIAMBU	2.87%	5,458,389,251	6,511,571,093
23	TURKANA	4.03%	7,664,490,865	9,143,334,208
24	WEST POKOT	1.66%	3,154,744,440	3,763,444,078
25	SAMBURU	1.37%	2,597,647,318	3,098,856,532
26	TRANS-NZOIA	1.96%	3,730,157,371	4,449,881,419
27	UASIN-GISHU	2.00%	3,797,034,982	4,529,662,890
28	ELGEYO-MARAKWET	1.26%	2,391,996,457	2,853,525,879
29	NANDI	1.83%	3,477,772,873	4,148,799,997
30	BARINGO	1.71%	3,248,183,382	3,874,911,817
31	LAIKIPIA	1.33%	2,522,908,908	3,009,697,543
32	NAKURU	3.12%	5,936,685,179	7,082,152,961
33	NAROK	2.04%	3,867,513,493	4,613,740,044
34	KAJIADO	1.70%	3,227,011,241	3,849,654,568
35	KERICHO	1.73%	3,295,007,890	3,915,071,260
36	BOMET	1.82%	3,443,055,947	4,123,084,263
37	KAKAMEGA	3.43%	6,515,403,893	7,772,533,929
38	VIHIGA	1.49%	2,831,720,873	3,378,093,964
39	BUNGOMA	2.95%	5,614,383,661	6,697,664,213
40	BUSIA	2.09%	3,979,092,309	4,746,847,698
41	SIAYA	1.92%	3,653,147,928	4,358,013,207
42	KISUMU	2.19%	4,155,314,216	4,957,071,160
43	HOMA-BAY	2.17%	4,121,525,927	4,916,763,509
44	MIGORI	2.25%	4,269,098,472	5,092,809,787
45	KISII	2.73%	5,188,431,205	6,189,525,352
46	NYAMIRA	1.60%	3,038,772,370	3,625,095,502
47	NAIROBI CITY	5.00%	9,506,028,247	11,340,191,382
			190,000,000,000	226,660,000,000

Mr. Chairperson, that is the Schedule on the Order Paper. The difference between the one in the Bill and this one which is on the Order Paper is the small difference of Kshs660 million. There is a flat figure of Kshs226 billion on the Bill. This one is Kshs226.66 billion. So, that addition sum has been adjusted for all the counties. That is the only reason we are making substitution of the two schedules. So, I urge Senators to approve.

The Chairperson (Sen. Kembi-Gitura): Sen. Karaba, are you seeking the Floor?

Sen. Karaba: No, Mr. Chairman, Sir.

(Question of the amendment proposed)

(New Schedule read the First Time)

DIVISION

ELECTRONIC VOTING

(Question, that the First Schedule be amended as proposed by Sen. Billow put and the Senate proceeded to vote by County Delegations)

AYES: Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Boy Juma Boy, Kwale County; Sen. Chelule, Nakuru County; Sen. Chiaba, Lamu County; Sen. Elachi, Nairobi County; Sen. Hargura, Marsabit County; Sen. Kagwe, Nyeri County; Sen. Karaba, Kirinyaga County; Sen. G.G. Kariuki, Laikipia County; Sen. Kembi-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. (Prof.) Lesan, Bomet County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Mositet, Kajiado County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Muthama, Machakos County; Sen. Murungi, Meru County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Sang, Nandi County; Sen. Wako, Busia County; Sen. Wetangula, Bungoma County and Sen. Wamatangi, Kiambu County.

AYES: 31

NOES: Nil

ABSTENTIONS: Nil

The "Ayes" have it.

(Question carried by 31 votes to 0)

(The First Schedule agreed to as amended)

New Third Schedule

Sen. Billow: Mr. Chairman Sir, I beg to move that the Bill be amended by inserting the following new Schedule immediately after the Second Schedule-

THIRD SCHEDULE

Conditional Grants for Level 5 Hospitals				
	Hospital	County	2013/14 Allocation	2014/15 Allocation*
			Column A	Column B
1	Coast Province General Hospital	Mombasa	414,381,658	209,605,198.18
2	Garissa Provincial General Hospital	Garissa	184,227,575	111,928,914.32
3	Embu Provincial General Hospital	Embu	259,887,438	185,774,538.57
4	Machakos Level 5 Hospital	Machakos	108,529,284	156,909,692.96
5	Nyeri Provincial General Hospital	Nyeri	382,128,747	197,575,455.06
6	Thika Level 5 Hospital	Kiambu	367,887,752	87,853,083.30
7	Nakuru Provincial General Hospital	Nakuru	600,436,911	317,840,196.81
8	Kakamega Provincial General Hospital	Kakamega	311,303,177	206,336,246.25
9	New Nyanza Provincial General Hospital	Kisumu	395,636,481	248,505,726.23
10	Kisii Level 5 Hospital	Kisii	211,155,681	83,358,274.39
11	Meru Level 5 Hospital	Meru	183,151,299	64,312,673.93
	Total		3,418,726,003	1,870,000,000

(Question of the New Third Schedule proposed)

(New Third Schedule read the First Time)

(Question, that the New Third Schedule be read a Second Time proposed)

The Chairperson (Sen. Kembi-Gitura): You must appreciate that for the New Third Schedule we are in the Second Reading.

Sen. Billow: Mr. Chairperson, Sir, when we were discussing the amendment on New Clause 5A, we discussed this schedule which basically allocated the conditional

grants for Level 5 hospitals among the 11 hospitals. When I was moving that amendment earlier, you will find that the basis that has been used by the Ministry of Health in allocating this money between the hospitals is a criteria that they have used in the past. For example, it looks at the number of beds in a hospital that are utilized. It also looks at the out-patient cases, accident prone areas like Nakuru, poverty and so on. For example, 40 per cent of the weight is given to bed utilization, 20 per cent of the weight on out-patient cases and so on. That is the basis on which this allocation was done.

The Chairperson (Sen. Kembi-Gitura): We are now going to go to Division. I am putting the Questions now.

(The Division Bell was rung)

The bars may be drawn now. Let us now vote.

Sen. (Eng.) Muriuki Karue.

Sen. (Eng.) Muriuki: On a point of order, Mr. Chairperson. I would like to make a suggestion if you allow me. The last time that we voted, we had 45 Members present according to the screen. The votes were 24. There was no negative or absentia vote. That means that 21 Members were in the House, but they did not vote at all. The number seemed dubiously large. I am suggesting that we make a quick vote to see who is present and what delegations are present.

Sen. Muthama: Mr. Chairperson, this only takes three votes; either yes, no or abstention. If somebody is holding their card, but is not using it to vote, what business do they have with it? We have the numbers and we have voted. After the counting, there was no objection. Let us not get into people's pockets. If one decides to keep quiet, let them keep quiet and we will continue.

The Chairperson (Sen. Kembi-Gitura): What Sen. Muriuki Karue is asking is important. Remember I had made a ruling on it. The Speaker had also made a communication. As I am seated here, I can see that there are many Senators who are here, but they did not vote. Since you can inspect the documents, there is always a printout to show who voted and who did not. Note that not voting is misconduct. We are putting the question that the First Schedule as amended be part of the Bill. Are we ready to vote?

Hon. Senators, I am proposing that the next vote that I am going to put, if you have the Order Paper, shall be on the Second Schedule, Clause 2, Title and Clause 1 or those which have not been amended. Are we together?

Hon. Senators: Yes.

The Chairperson (Sen. Kembi-Gitura): We shall vote on those which have not been amended and then we shall go back to the New Third Schedule. So, I am putting the question, which is that the Second Schedule, Clause 2, Title and Clause 1 be part of the Bill. Are we together?

Hon. Senators: Yes.

(The Chairperson consulted the Clerk-at-the-Table)

The Chairperson (Sen. Kembi-Gitura): That is the question that I have put. You should now prepare to vote. You have one minute to vote.

DIVISION

ELECTRONIC VOTING

(Question, that the Second Schedule, Clause 2, Title and Clause 1 be part of the Bill, put and the Senate proceeded to vote by County Delegations)

AYES: Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Boy Juma Boy, Kwale County; Sen. Chelule, Nakuru County; Sen. Chiaba, Lamu County; Sen. Elachi, Nairobi County; Sen. Hargura, Marsabit County; Sen. Kagwe, Nyeri County; Sen. Karaba, Kirinyaga County; Sen. G.G. Kariuki, Laikipia County; Sen. Kembi-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. (Prof.) Lesan, Bomet County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Mositet, Kajiado County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Muthama, Machakos County; Sen. Murungi, Meru County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Sang, Nandi County; Sen. Wako, Busia County; Sen. Wetangula, Bungoma County and Sen. Wamatangi, Kiambu County.

The Chairperson (Sen. Kembi-Gitura): On the second question, that the Second Schedule, Clause 2, Clause and the Title be part of the Bill, the results are as follows.

AYES: 31

NOES: Nil

ABSTENTIONS: Nil

The "Ayes" have it.

(Question carried by 31 votes to 0)

(Schedule 2 agreed to)

(Title agreed to)

(Clause 1 agreed to)

First Schedule

Now, the votes are in on the question that the First Schedule, as amended, be part of the Bill, the results are as follows.

DIVISION

ELECTRONIC VOTING

(Question, that the First Schedule as amended be part of the Bill, put and the Senate proceeded to vote by County Delegations)

AYES: Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Boy Juma Boy, Kwale County; Sen. Chelule, Nakuru County; Sen. Chiaba, Lamu County; Sen. Elachi, Nairobi County; Sen. Hargura, Marsabit County; Sen. Kagwe, Nyeri County; Sen. Karaba, Kirinyaga County; Sen. G.G. Kariuki, Laikipia County; Sen. Kembi-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. (Prof.) Lesan, Bomet County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Mositet, Kajiado County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County, Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Muthama, Machakos County; Sen. Murungi, Meru County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Sang, Nandi County; Sen. Wako, Busia County; Sen. Wetangula, Bungoma County and Sen. Wamatangi, Kiambu County.

The Chairperson (Sen. Kembi-Gitura): Hon. Senators, the results of the Division are as follows:

AYES: 31

NOES: Nil

ABSTENTIONS: Nil

The "Ayes" have it.

(Question carried by 31 votes to 0)

(First Schedule as amended agreed to)

New Third Schedule

The Chairperson (Sen. Kembi-Gitura): On the third question, that the Third Schedule be read a Second Time, that is what we are now going to vote on. Now, here we will have two votes on the same divisions. We will vote that it be read a Second Time and then after we get that vote, because we have to get it first, if it is "Aye" that wins, then we will vote again that it now forms part of the Bill. Is that right?

(The Chairperson consulted the Clerk-at-the-Table)

So, now, we are voting on the Bill on the board that the new Third Schedule be now read a Second Time. Vote now.

DIVISION

ELECTRONIC VOTING

(Question, that the New Third Schedule be read a Second Time put and the Senate proceeded to vote by County Delegations)

AYES: Sen. (Prof.) Anyang’Nyong’o, Kisumu County; Sen. Chelule, Nakuru County; Sen. Chiaba, Lamu County, Sen. Elachi, Nairobi County; Sen. Hargura, Marsabit County; Sen. Karaba, Kirinyaga County; Sen. Kagwe, Nyeri County; Sen. G.G. Kariuki, Laikipia County, Sen. Kembi-Gitura, Murang’a County; Sen. Karaba, Kirinyaga County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County, Sen. (Prof.) Lesan, Bomet County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Mositet, Kajiado County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Muthama, Machakos County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Okong’o, Nyamira County; Sen. Sang, Nandi County; Sen. Wamatangi, Kiambu County; and, Sen. Wetangula, Bungoma County.

The Chairperson (Sen. Kembi-Gitura): Order, Senators! The results are as follows:-

AYES: 31

NOES: 0

ABSTENTIONS: Nil

(Question carried by 31 votes to 0)

(Question, that the New Third Schedule be read a Second Time, put and agreed to)

(The New Third Schedule was read a Second Time)

New Third Schedule

DIVISION

ELECTRONIC VOTING

(Question, that the New Third Schedule be part of the Bill put and the Senate proceeded to vote by County Delegations)

The Chairperson (Sen. Kembi-Gitura): Both Sen. Elachi and Sen. Sijeny have voted. It is your duty to sit and to confer. So, I am striking out both votes of Sen. Elachi and Sen. Sijeny. Actually this is a very serious issue because we keep saying the same thing all the time. When you see that you are two members of the delegation here, you need to consult and know who is voting because this is inconveniencing everybody. For the record, I am striking out the vote of Sen. Sijeny and Sen. Elachi.

AYES: Sen. (Prof.) Anyang’-Nyong’o, Kisumu County; Sen. Billow, Mandera County; Sen. Boy Juma Boy, Kwale County; Sen. Chelule, Nakuru County; Sen. Chiaba, Lamu County; Sen. Hargura, Marsabit County; Sen. Kagwe, Nyeri County; Sen. Karaba, Kirinyaga County; Sen. G.G. Kariuki, Laikipia County; Sen. Kembi-Gitura, Murang’a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. (Prof.) Lesan, Bomet County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Mositet, Kajiado County;

Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo Marakwet County; Sen. Murungi, Meru County; Sen. Muthama, Machakos County, Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Sang, Nandi County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County and Sen. Wetangula, Bungoma County.

The Chairperson (Sen. Kembi-Gitura): On the vote that the New Third Schedule be part of the Bill, we have nullified the two votes of Nairobi. Therefore, the results are as follows:-

AYES: 30

NOES: Nil

ABSTENTIONS: Nil

The "Ayes" have it.

(Question carried by 30 votes to nil)

(Question, that the New Third Schedule be part of the Bill, put and agreed to)

(New Third Schedule agreed to)

Sen. Billow: Mr. Chairperson, Sir, I beg to move that the Committee doth report to the House its consideration of The County Allocation of Revenue Bill (Senate Bill No.9 of 2014)---

Sen. Khaniri: On a point of order, Mr. Chairperson, Sir. The Bar is still drawn.

The Chairperson (Sen. Kembi-Gitura): Can you unlock the Bar and open the doors? Thank you very much, Sen. Khaniri.

(The Bar was unlocked and doors were opened)

Sen. Billow: Mr. Chairperson, Sir, I beg to move that the Committee doth report to the House its consideration of The County Allocation of Revenue Bill (Senate Bill No.9 of 2014) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

[The Deputy Speaker (Sen. Kembi-Gitura) in the Chair]

REPORT, CONSIDERATION OF REPORT AND THIRD READING

THE COUNTY ALLOCATION OF REVENUE BILL,

SENATE BILL NO.9 OF 2014

Sen. Murkomen: Mr. Deputy Speaker, Sir, I beg to report that the Committee of the Whole has considered the County Allocation of Revenue Bill, Senate Bill No.9 of 2014 and approved the same with amendments.

Sen. Billow: Mr. Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

The Senate Minority Leader (Sen. Wetangula) seconded.

(Question proposed)

(Question put and agreed to)

Sen. Billow: Mr. Deputy Speaker, Sir, I beg to move that the County Allocation of Revenue Bill, (Senate Bill No.9 of 2014) be now read a Third Time.

The Deputy Speaker (Sen. Kembi-Gitura): Who is seconding?

Sen. Billow: Hon. Sen. Wetangula.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I beg to second and make two comments. First, you can see that the amount of money we are sending to the counties, in a national budget of Kshs1.8 trillion is not commensurate with the devolved functions we have given the counties. This is the more reason why we should find ways and means of sending more money to the counties. Secondly, this money is going to the counties. Of late, we have seen and heard serious cases of mismanagement of funds. We want to urge the Committee of Sen. (Dr.) Khalwale and the entire team not to fall into the old trap of carrying out postmortems after money has been misused. They should be seized of the matter and make relevant interventions. This also includes the Committee on Finance, Commerce and Budget. When you see some smoke from anywhere, it is absolutely necessary that we arrest any misuse of funds other than going to the old habits of auditing accounts two or three years later and crying wolf all the time when money has been misused.

(Question proposed)

The Deputy Speaker (Sen. Kembi-Gitura): Are there any people who are willing to contribute? I have five Senators who are willing to contribute. We still have other business of the House. We have discussed the issue this afternoon. Unless you have something very new that you want to say in a minute, I find it difficult to prolong this debate. Having said that, do the Senators still want to contribute?

Hon. Senators: No.

The Deputy Speaker (Sen. Kembi-Gitura): Can they then withdraw the requests? I am not curtailing debate. It is not in my place to curtail debate. However, you know that we are going for another division.

Sen. Wako: Mr. Deputy Speaker, Sir, I will take half a minute. My half a minute is to thank the Senate for having done justice to the people of Busia County by increasing the amount in the Bill by Kshs4,746,847,698. I thank you. That is all.

Sen. Murungi: Thank you, Mr. Deputy Speaker, Sir. Mine is to thank the Senate for finally following the processes of transferring to the counties Kshs228 billion. I would also like to appeal to our colleagues, who are now Chairpersons of the County Development Boards, to follow up this money and not to make postmortem oversight. We should do a premortem oversight of the money. So, be involved from conceptualization and planning until the final execution of various projects in your counties.

Sen. Khaniri: Thank you, Mr. Deputy Speaker, Sir. Let me join my colleagues in thanking and congratulating the Senate for passing this Bill. I have two comments to make. One is to the Governor. We are sending you this money because we want to see the people who elected us benefitting from it.

Secondly, we have heard of cases where money is returned to the Treasury. Initially, before I sat in the Khalwale's County Public Accounts and Investment Committee, I thought that it was purely the governors to blame. However, we came to learn that some counties receive their monies on 28th June when accounts are supposed to be closed on 30th June. Therefore, we are telling the Treasury that this is a very small percentage of the budget. The Treasury should give counties priority. The counties should get their monies well in advance, so that they start spending it.

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, first and foremost, I want to thank the Finance, Commerce and Budget Committee for the good work it has done. I want to prevail on my fellow Senators. If you want to know how much money is being spent in your county, please, make time to visit the Finance, Commerce and Budget Committee. That is how you will know how your money is being spent. I am advising my twin brother, Sen. Hassan, that I do not think it was fair for him to complain in the manner that he did. This is a process which takes place in the Finance, Commerce and Budget Committee of the Senate.

Mr. Deputy Speaker, Sir, last but not least, from tomorrow onwards, we must find a method of how we can get the audited accounts to be up to date, so that we do not start complaining and becoming Jonny come late Senators.

Sen. Karaba: Mr. Deputy Speaker, Sir, I also join other Senators in congratulating the Finance, Commerce and Budget Committee for doing well and for allowing us to be the Chairpersons of these boards. I would like to echo the spirit that has been displayed by other Senators which is good. I hope all will be well as we sit in those boards. The governors should not think that we will boss over them. It is important that we have a good reconciliatory way of carrying out things.

Sen. Murkomen: Mr. Deputy Speaker, Sir, I want to commend the Chairperson of the Committee on Finance, Commerce and Budget, and the whole team for a good job. Looking at this Bill holistically, one of the most contentious issue, which is also still in debate in the National Assembly, is the question of financing Level 5 Hospitals. It is important to remind the counties and the National Assembly that, first of all, there is no legal instrument on their own for reversing a function that has been devolved. It is nowhere. It is not in the Constitution. It is not in the transition to County Government Act. Lastly, it is not in the Inter Governmental Relations Act.

Mr. Deputy Speaker, Sir, reversing a function that has gone to any county is a decision of the county in consultation with the national Government. If they want to let go, they must sign and even agree the period with which that institution is being run.

Article 187 of the Constitution confirms this position. It says the constitutional powers over that residual function still stand with the entities that have been given that function.

Mr. Deputy Speaker, Sir, if the counties feel that the Kshs1.875 billion that is shared among the county governments is too little, they can innovatively sign a two-year agreement with the national Government and agree that they will do this and the national Government can do that in those hospitals. They can continue benefitting from the resources. In any case, the use of grants to support devolved entities all over the world is a continuous process. It could be with us for many years because, usually, it is also one of the ways of promoting the policy of the Government of the day in the national level. So, they can always agree and maybe, they will secure even more resources. There is no reason the national Government should not give more money over and above what has already been given to Kisii County. I have just seen the figures of Kisii, Kakamega and other places, for example, the reduction is drastic. If you also look at the allocation given to them in the equitable allocation, it may not be enough for them to finance such a huge hospital that serves people from Kehancha, Kisumu, Bomet and other places near the country. People who live in Bomet County also go to Kisii to get services in that general hospital.

Mr. Deputy Speaker, Sir, I support this Bill and I think that innovatively, going forward we, as a House, can always have greater gains. The use of grants to support counties should not be limited only to Level 5 Hospitals. Going forward, we should also innovatively use other entities that we think can spur development and investments in the country.

Sen. Chelule: Thank you, Mr. Deputy Speaker, Sir. I also want to thank the Committee on Finance, Commerce and Budget for the wonderful work they did. I want to request the governors that as much as they are also calling for more funds from the national Government, they should also be very transparent in undertaking activities on the ground. They need to really encourage the participation of Kenyans at the grassroots level on issues of projects.

Thank you, Mr. Deputy Speaker, Sir.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, I hope that since we have unanimously supported this Bill, that the same Senators will also go out to the public and debunk the lie by certain senior officials in this country that what we have passed today constitutes 43 per cent. It is not 43 per cent. We should be specific that it is 22.9 per cent.

An hon. Senator: Of what?

The Deputy Speaker (Sen. Kembi-Gitura): It is 22 per cent of what, Sen. (Dr.) Khalwale?

Sen. (Dr.) Khalwale: Of the national budget.

Mr. Deputy Speaker, Sir, may I specify that the so-called 43 per cent is calculated on Kshs552 billion that was realized---

(Loud consultations)

Mr. Deputy Speaker, Sir, could you, please, protect me?

The Deputy Speaker (Sen. Kembi-Gitura): Order! Sen. (Dr.) Khalwale will be heard.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, I need protection from the Chair.

The Deputy Speaker (Sen. Kembi-Gitura): I have given you protection.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, the respect I give some of my colleagues when they are contributing is tremendous. There is no law under the Constitution or in our Standing Orders, that says when a Senator is contributing, he must please a colleague. The only thing that is demanded is the factuality of what one is saying. If you want to know where there 43 per cent and the 22.9 per cent comes from, do your homework.

(Applause)

Mr. Deputy Speaker, Sir, the second point I would like to make is that governors be warned that---

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, I raised an issue with you---

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, the second point I would like to make is that governors be warned that---

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. (Dr.) Khalwale! I raised an issue with you when you said that it is not 43 per cent, but 22 per cent. Since the nation is listening to you, I want you to tell us it is 22 per cent of what or 43 per cent of what.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, assuming that you know, only that you want me to pass it over to the public.

The Deputy Speaker (Sen. Kembi-Gitura): No! No! I am not demanding respect from you. I have raised a question with you and you either say whether you want to answer it or not. Please, give me an answer because I do not know.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, if you want it in good faith, I will give you. The revenue that we should be talking about is Kshs1.026 trillion. However, today we are referring to Kshs552 billion of the 2009/2010 Financial Year. The second point is the issue of the governors in general—

The Senate Majority Leader (Sen. (Prof.) Kindiki): On a point of order, Mr. Deputy Speaker, Sir. I have a lot of respect for the hon. Senator. However, is he in order to mislead the people of Kenya on a very straight forward issue namely, that the law as provided for in the Constitution says that the percentage that is required is at least 15 per cent. Secondly, that 15 per cent must be the 15 per cent of the last audited accounts approved by Parliament. That is Article 233. He is one of the people who passed this law. It is not even me. Other than that very clear provision that I have cited, even if, and the desire is that in future---

The Deputy Speaker (Sen. Kembi-Gitura): What is your point of order, Sen. (Prof.) Kindiki?

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, I am just belabouring the point that Sen. (Dr.) Khalwale is completely out of order for two reasons. First, for misleading Kenyans that the 15 per cent that is required is 15 per cent of Kshs1.026 trillion. It is the 15 per cent of the last audited accounts approved by Parliament. Secondly, in any case, even assuming that the law has been amended, which has not happened, and it is 15 per cent of any figure, even 22 per cent is way above the 15

per cent. So, I do not know why there is a big fuss about the amount that we have allocated to the counties.

Sen. Billow: On a point of order, Mr. Deputy Speaker, Sir. Is the Senator for Kakamega in order to mislead Kenyans, when, in fact, as a Member of the Committee on Finance, Commerce and Budget and as a Member of this House, he approved the Division of Revenue Bill which became an Act that clearly states that Kshs226 billion is 43 per cent of the most recent audited accounts approved. That is the law that we passed in this House. Is he fair to completely mislead the country every time when he knows that that law was passed by this House two weeks ago?

(Sen. Wako stood up in his place)

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Wako, why are you standing up? Please, sit down.

(Sen. Wako resumed his seat)

Sen. Muthama: On a point of order, Mr. Deputy Speaker, Sir. I do not think that the Senate Majority Leader is in order to mislead the House. The sharing that was done was not about the funds that were allocated in 2013/2014 Financial Year. What we shared was for the accounts of three years ago.

The Deputy Speaker (Sen. Kembi-Gitura): What is your point of order, Sen. Muthama?

Sen. Muthama: Mr. Deputy Speaker, Sir, frankly speaking what we are getting now is based on the audited accounts of three years back and not the Kshs1.8 trillion, Kshs1.6 trillion or Kshs1.2 trillion.

The Deputy Speaker (Sen. Kembi-Gitura): You have made your point.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I do not understand what we are fussing about. The Chairperson of my Committee knows that even in the Committee we noted that while the audited accounts being used as a benchmark were for 2009/2010 accounts. We are fully conscious that the revenues being shared are in relation to the Budget of this year. Even in the Committee we did agree that we have---

Sen. Murungi: On a point of order, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): He is on a point of order. Let him finish.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, even in the Committee we did agree that we have a footnote to say that while constitutionally we are using the 2009/2010 accounts. We are fully conscious of the fact that the sharable revenues now relate to the Budget of this year. Constitutionally, it is right, but misleading because we are not sharing from the 2009/2010 accounts. So, I do not even understand what we are fussing about and when people stand and defend the indefensible. Even your Jubilee Governors are out there, shouting that the Government is misleading Kenyans.

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, I have about eight requests for points of order. But let me say this for the record, because---

The Senate Minority Leader (Sen. Wetangula): We should not even be debating it.

The Deputy Speaker (Sen. Kembi-Gitura): Exactly. Thank you, Sen. Wetangula. That is the point. When we were discussing the Division of Revenue Bill, if you remember, this matter came up. I was Chairing at that time and recall that Sen. Muthama did raise the issue about the Kshs226 billion. I remember clearly, and the HANSARD will bear me out, that I pointed out Article 203(3) of the Constitution. All of us are Senators and we represent counties. We would like the counties to have the largest amount of money possible. The Constitution talks about the most recent audited accounts of revenue received as approved by the National Assembly. So, what we are saying is in our wish, but the fact of the matter is that Kshs226.6 billion is based on five years back, which is what Article 203(3) of the Constitution says. What we, as Senators, should be fighting for is to have the National Assembly approve accounts as quickly as possible. So, we can belabour this point as much as we want, but the law is very clear. However, it is important for the nation to know your position.

Can we proceed? Sen. Murungi, are you on a point of order?

Sen. Murungi: On a point of order, Mr. Deputy Speaker, Sir. It is unfortunate that I could not rise on a point of order when the Senate Minority Leader was on his feet. However, Standing Order No.87(1) on points of order says:-

“Any Senator may raise a point of order at any time during the speech of another Senator stating that the Senator raises a point of order and that Senator shall be required to indicate the Standing Order upon which the point of order is based.”

Mr. Deputy Speaker, Sir, we have been abusing procedure through points of order by engaging in this very important debate. I believe various speakers should have pointed out which point of order they are raising. Is it in order for the Senate Majority Leader to continue grumbling when he is sitting down? Therefore, I am calling the attention of the House that for us to make progress, let us strictly follow the Standing Orders of this House and not to engage in backdoor debates.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you, Sen. Murungi. It is important that when you raise a point of order, it must be a point of order and it must be based on something. I do not entertain point of orders which transform into debate.

Sen. (Dr.) Khalwale, you have not finished?

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, the second small point I was trying to make was that for purposes of general information to all the 47 governors of the country, the Public Accounts and Investment Committee of this Senate is taking whistle-blowers reports very seriously. In fact, already the County Government of Trans Nzoia has attracted whistle-blowers who have made extensive submissions to the Speaker who has marked the same to our Committee. We have already requested for a special audit. This shows that we are not going to lie on roulettes, but make sure that we are proactive.

Finally, Mr. Deputy Speaker, Sir, when you look at the conditional allocations, it includes over Kshs700 billion from the donor community. I am not convinced that the way the Government is releasing this money is right. The Government is releasing donor funds every month. Our understanding is that donor funds are brought in the country and should be given to the county governments as a lumpsum. This only serves to delay further development in the countries. For purposes of general information, I was the

Chairman of Public Accounts Committee in the last Parliament. We audited and completed accounts up to 2010 and 2011. Therefore, I want to remind the country that the Speaker of the National Assembly is deliberately refusing to table for approval the last audited accounts which is 2010/2011 that I presided over.

Sen. Hargura: Mr. Deputy Speaker, Sir, the issue of Level 5 hospitals, from the list we have in Schedule 3, more than 30 counties are not benefitting. That means that the facilities below Level 5 so as to make sure that we all benefit, it is better to improve the county hospitals. The issue of additional funding from last year, I can see in my county, we got Kshs3.8 billion and now it is Kshs4.5 billion. We expect the additional funding to go to development. From the way they had carried out their activities, governors must have establish what is recurrent. Therefore, any additional funding is expected to be reflected in development.

Lastly, Mr. Deputy Speaker, Sir, I would like to tell the governors that they are not the only elected leaders in the county to have vision for the county. We have county representatives, Senators, Women Representatives and the National Assembly Members. Therefore, they should involve all the elected and even members of the public in planning so that it can be reflected in the Budget unlike what they are doing now. We have heard cases of where Senators cannot even access the printed estimates after the budget has been passed.

The Deputy Speaker (Sen. Kembi-Gitura): Finally, Sen. Ndiema you have two minutes.

Sen. Ndiema: Thank you, Mr. Deputy Speaker. I will be brief. First of all, I would like to thank the Committee. All of us know that we did not get adequate funds to service the functions of counties. I believe that we agreed on that.

Secondly, I want to send a message that these are public funds. They are taxpayers funds and do not belong to the Senators, Governors or to Members of the County Assemblies (MCAs).

It is, therefore, appropriate that the funds are utilized according to the law. Nobody should personalize the funds in any way. Team work is essential and all the players are important. We should have teamwork between all public servants, the legislators and the members of the public. As far as auditing is concerned, we should have performance auditing other than have auditing at the end of one year or several years.

I support

(The Division Bell was rung)

The Deputy Speaker (Sen. Kembi-Gitura): Order, Senators! Take your seats; Sen. (Dr.) Kuti. I am putting the question, which is that the County Allocation of Revenue Bill (Senate Bill No.9 of 2014) be now read a Third Time. You have one minute to vote.

DIVISION

ELECTRONIC VOTING

(Question, that the County Allocation of Revenue Bill be now read a Third Time, put and the Senate proceeded to vote by County Delegations)

AYES: Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Boy Juma Boy, Kwale County; Sen. Chelule, Nakuru County; Sen. Chiaba, Lamu County; Sen. Elachi, Nairobi County; Sen. Hargura, Marsabit County; Sen. Kagwe, Nyeri County; Sen. Karaba, Kirinyaga County; Sen. G.G. Kariuki, Laikipia County; Sen. Kembi-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. (Dr.) Kuti, Isiolo County; Sen. (Prof.) Lesan, Bomet County; Sen. (Dr.) Machage, Migori County; Sen. Mositet, Kajiado County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Muthama, Machakos County; Sen. Murungi, Meru County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Sang, Nandi County; Sen. Wako, Busia County; Sen. Wetangula, Bungoma County and Sen. Wamatangi, Kiambu County.

The Deputy Speaker (Sen. Kembi-Gitura): Order, Senators! The results are as follows.

AYES: 30

NOES: Nil

ABSTENTIONS: Nil

The "Ayes" have it.

(Question carried by 30 votes to nil)

(Question put and agreed to)

(The Bill was accordingly read the Third Time and passed)

(Applause)

The Deputy Speaker (Sen. Kembi-Gitura): Now, that is over now. I had indicated that we were not going to deal with Order No.10(2). It will be dealt with when prioritized by the Rules and Business Committee (RBC). So, we will not deal with it now. So, we are proceeding to the next Order, which is Order No.11.

Proceed, Senate Majority Leader.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, to the best of my recollection, I had moved this Motion and I had requested Sen. Wetangula to second.

Sen. (Dr.) Khalwale: On a point of order, Mr. Deputy Speaker, Sir. I appreciate that there is need for us to quickly constitute this Committee, but I want to remind you

that for my Bill to find itself on the Order Paper today, the Speaker sought my concurrence for it to be moved to today. So, the least I would have expected out of courtesy is that you consult with me and we agree before you make that variance. I would like this to be on record because this is the way we do business.

The Deputy Speaker (Sen. Kembi-Gitura): It will be on record.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I beg to second the Motion on Order No.11. In doing so, we are forming a Committee which has strict timelines to work and I do believe that the men and women Senators who have been selected in that Committee---

The Deputy Speaker (Sen. Kembi-Gitura): Just one minute, Sen. Wetangula. For procedural purposes let us do it correctly.

MOTION

ESTABLISHMENT OF SPECIAL COMMITTEE TO INVESTIGATE
THE PROPOSED REMOVAL FROM OFFICE BY IMPEACHMENT OF
THE DEPUTY GOVERNOR OF MACHAKOS

THAT, WHEREAS, pursuant to Article 181 of the Constitution and section 33 of the County Governments Act, 2012, on 23rd July, 2014 the County Assembly of Machakos approved a Motion “to remove from office, by impeachment,” the Deputy Governor of Machakos County;

AND FURTHER, WHEREAS by letter dated 24th July 2014 (*Ref:MKSCA/ADM/IMPDG/Vol 1/6* and received in the Office of the Speaker of the Senate on 25th July, 2014, the Speaker of the County Assembly of Machakos informed the Speaker of the Senate of the approval of the Motion by the County Assembly and further forwarded to the Speaker of the Senate documents in evidence of the proceedings of the Assembly;

AND WHEREAS, pursuant to section 33(3)(b) of the County Governments Act, 2012 and standing order 68(1)(b) of the Senate, by resolution, may appoint a special committee comprising eleven of its Members to investigate the matter;

NOW THEREFORE, pursuant to section 33(3)(b) of the County Governments Act, 2012 and standing order 68(1)(b), the Senate resolves to establish a Special Committee comprising the following Senators -

1. Sen. Lenny Kivuti;
2. Sen. Mutahi Kagwe;
3. Sen. Sammy Leshore;
4. Sen. Abu Chiaba;
5. Sen. Martha Wangari;
6. Sen. Njoroge Ben;
7. Sen. (Prof.) Peter Anyang' Nyong'o;
8. Sen. Kennedy Mong'are Okong'o;
9. Sen. (Dr.) Agnes Zani;
10. Sen. Daisy Kanainza; and
11. Sen. Hassan Omar Hassan

to investigate the proposed removal from office of the Deputy Governor of Machakos County and to report to the Senate within ten (10) days of its appointment on whether it finds the particulars of the allegations to have been substantiated.

The Senate Majority Leader (Sen. (Prof.) Kindiki: Mr. Deputy Speaker, Sir, I beg to move and request the Senate Minority Leader to second.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I second and support the formation of the Committee although there were mixed opinions that we, probably, should have dealt with this matter in open plenary. But having agreed that we form a committee, I have no doubt that the consensual list that we have placed before the House are men and women Senators of impeccable character and conduct who will be able to approach this matter with an open mind, to receive the facts as they are, evaluate them as they are and bring back to the House a verdict that is reasonable, sensible and reflects the dignity of this House.

I want to urge the distinguished Senators; they are truly distinguished, because when you look at the list, you cannot slight the distinguished Senator tycoon from Nyeri, you cannot slight Sen. (Prof.) Anyang'-Nyong'o and all the rest who we have consulted and have agreed to serve in the Committee. We urge them to act expeditiously and bring the report to the House.

Mr. Deputy Speaker, Sir, finally, I want to urge that since we shall have an opportunity, if at all the matter comes to the House for debate, we shall be able to debate it fully. For now, because of time pressure and constraint, we allow the House to vote so that the Committee can be constituted in the precedent set when we rise or remain behind to constitute themselves, to elect their Chairperson and Vice Chairperson and set their work programme to start the work immediately. Fairness must not only be seen to be done, but must be seen to be done, and the Committee must live to foot that bill.

Mr. Deputy Speaker, Sir, I beg to second.

(Question proposed)

Sen. Murungi: Mr. Deputy Speaker, Sir, I rise to support this Motion. Every time we are impeaching a governor or deputy governor, it is the Senate itself which is on trial. We must not only do justice, but also be seen to have done justice.

Mr. Deputy Speaker, Sir, there is need for this Senate to be consistent. In the case of Hon. Wambora, we appointed a Special Committee, although we could have done it in plenary. In the case of the Governor of Kericho, we appointed a Special Committee. I think that those Committees that we appointed did an excellent job on behalf of this Senate. Out there, the Senate is now being very much praised and congratulated for being the sober House.

Mr. Deputy Speaker, Sir, looking at the Senators that are proposed to be in this Committee, we have no reason at all to doubt that they are going to be very fair and impartial in listening to evidence.

We are not saying that this Committee will make a decision on behalf of the House. The decision to impeach or not to, is a personal decision for every Senator. What the Committee does is to organize information and present it before this House. It is for us, as Senators, to decide whether to follow the recommendations of the Committee or not because we too have a duty and the opportunity to study the same documents before the

Committee. We shall also study the report of the Committee and disagree or disagree with them in the final decision. I think we should support this Committee, give it a chance and then do our own bit.

As the Committee reports to the House, we shall decide whether the deputy governor has committed gross violation of the Constitution, gross violation of the law or abuse of office. If the particulars are proved then the deputy governor has to go. But if they are not proved, then he stays. We should go strictly by the evidence and facts brought before us.

With those few remarks, I beg to support.

[The Deputy Speaker (Sen. Kembi-Gitura) left the Chair]

[The Speaker (Hon. Ethuro) took the Chair]

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, I just want to say that the County of Machakos is waiting anxiously for this Committee's results. It is only fair that we move consistently with what we have done before. We have already precedence on what we should do. I also want to say that this is not a team of CORD and Jubilee, but one team on behalf of the Senate. Therefore, they must deliver on behalf of the Senate. Therefore, nobody can take a political position on a matter like this. The country is watching to see what we shall do. As the Senator for Vihiga has said, it is possible that even recommendations on amendments on how we should this in future, should also be proposed if it comes to the attention of Members.

Sen. (Prof.) Lesan: Mr. Speaker, Sir, I wish to support the formation of this Special Committee. We have not before dealt with the issue of a deputy governor. I think that precedence will be set by this situation. I have no doubt in mind that we have put together colleagues who do not belong to either side of the House and we believe that they will look at the various reasons brought up and interrogate them extensively. The consequences of impeachment are very serious and, therefore, we should base our decisions on well researched and well discussed points of view brought before us.

Mr. Speaker, Sir, I want to support the formation of this Committee to look at this matter so that the House can make a judgement that will enhance the reputation of this House.

Sen. Murkomen: Mr. Speaker, Sir, I would like to say that this is the second deputy governor the Senate is considering for impeachment. The first one was from Embu County. We have a unique opportunity because the Embu situation created precedence where the court in Kerugoya later said that this House had the power to use Section 33 of the County Governments Act to use the same procedure for removal of a governor to remove a deputy governor. The other thing to note is that this will be the fourth county official to be brought before this House. From the Wambora situation, the Deputy Governor of Embu and the Governor of Kericho, this House has learnt a lot about scrutinizing the conduct and behaviour of persons serving in the counties.

The uniqueness of this situation is that we are considering an impeachment of a deputy governor when the governor is in office. We are also considering the impeachment of a deputy governor in a situation where there is a Bill which is yet to come to this House, which I sponsored. It shows that most deputy governors across the

country have no specific described responsibilities. So, it will be up to this House to see whether in the case of Machakos County, there was a specific one or not.

The key issue to point out here is to say that Senate, as it were, in the last situation the country---

The Senate Majority Leader (Sen. (Prof.) Murkomen): On a point of order, Mr. Speaker, Sir. Is Sen. Kipchumba Murkomen in order to anticipate debate? To the best of my knowledge, this debate is on whether or not we should have a Committee or not.

Sen. Murkomen: Mr. Speaker, Sir, I have not anticipated any debate. I was almost closing and the Senator has disoriented my flow of thoughts. So, have to look for some balance.

The Speaker (Sen. Ethuro): Sen. Murkomen, I am afraid that the Senate Majority Leader is right.

(Applause)

Sen. Murkomen: Mr. Speaker, Sir, I will take a different tangent. I am one of the people who were opposed to the formation of a Committee. Part of the reason I initially thought that we should not form a Committee is because it was my feeling that most deputy governors have no proper defined functions. Since governors have begged us in the past and said that impeachment should be the last procedure for the removal of a public officer, I was hesitant to face a situation where a public officer in the county should be hurriedly taken from the position of a mistake straight to impeachment in a case where a governor should have looked for the Committee of Devolved Government, mediation and arbitration to solve the issue.

Mr. Speaker, Sir, it is important for this House to encourage other methods of dealing with disputes in counties rather than impeachment so that we, as a country, grow together. However, I was convinced by the Senate Majority Leader and the Senate Minority Leader and other Members after consulting that, perhaps, we should keep the tradition of forming a Committee for the purpose of exhausting the issues that have been raised.

Going forward, the tradition should be kept because it looks good. It must go on record that the deputy governors of this country are at pains. They have no space to serve because they have not been given that opportunity. Most of them are reading newspapers in their offices.

The Speaker (Hon. Ethuro): Order, Sen. Murkomen. I am afraid I will cut you off. It is one thing to be reminded and another to persistently continue in the same breath that you have been persuaded against.

Sen. Murkomen: Mr. Speaker, Sir, these people have no one to speak for them. In this situation, we must speak to defend officers of the county government.

I support.

The Speaker (Hon. Ethuro): Sen. Murkomen, in fact, now you are treading on very dangerous grounds. Those people you are talking about have people to speak for them and are known as Senators as per Article 96(1).

Sen. G.G. Kariuki: Thank you, Mr. Speaker, Sir, for giving me this opportunity to say something on this matter. One, this is going to be the third or fourth---

The Speaker (Hon. Ethuro): What is it, Sen. (Prof.) Anyang'-Nyong'o? Are you on a point of order?

Sen. (Prof.) Anyang'-Nyong'o: Yes, Mr. Speaker, Sir, I am on a point of order. Would it be in order for me to call upon the Mover to reply since most of the contributions are just procedural and appreciation?

(Applause)

I will take it that it is the collective view of this House that we appreciate what has been done. Therefore, we should just move ahead and allow the Senate to discuss other issues.

(Applause)

The Speaker (Hon. Ethuro): Order, Senators! I wish to concur, but I will not put the question because initially, there were three requests. Since Sen. (Prof.) Anyang'-Nyong'o has spoken, all of them have disappeared. So, I will allow Sen. G.G. Kariuki to proceed and just urge him to use a very few minutes so that we can put the question.

Sen. G.G. Kariuki: Mr. Speaker, Sir, we have been here for a long time; everybody is a bit tired and they would want to go. Therefore, I am not going to keep them for long by making a speech.

Mr. Speaker, Sir, this would be the third impeachment debate in this House. It can be treated as the fourth because of the Deputy Governor of Embu. Now, I think that other than investigating what the deputy governor has done and also what we have done before, I think the most important thing is that this is a political House. Therefore, we are all politicians and we want to make a name to the public that we are genuine, fair and a people who understand what we want to do. Now that we have almost acquired that respect, my advice to the Committee which will investigate this matter is that they need to know that they will be out there on behalf of the Senate to do nothing, but to investigate the truth and whether all the allegations can be substantiated. Because we all know that there is a war between the Members of County Assemblies (MCAs) and the governors; there is also a war between governors and their deputies; all these things are going to end here.

Mr. Speaker, Sir, we have to be prepared, therefore, to deal with the matters very seriously and that we must prove to the public that we are fair, as we have already done. Let us not do haphazard investigations because our people today are more intelligent than they used to be before because of the many other facilities which enable them to understand what is happening in the world.

Mr. Speaker, Sir, as I promised, I thank you very much and I beg to support.

The Speaker (Hon. Ethuro): Order, Senators! Having satisfied myself that there are no further requests, I, therefore, wish to call upon the Mover to reply.

(Laughter)

The Senate Majority Leader (Sen. (Prof.) Kindiki: Mr. Speaker, Sir, I beg to move.

The Speaker (Hon. Ethuro): Hon. Senators, I, therefore, wish to put the question. As per tradition, we have established that this is a matter affecting counties and so we will vote per delegation and it will be electronic voting. So, the Division Bell will be rung for one minute.

(The Division Bell was rung)

DIVISION

ELECTRONIC VOTING

(Question put and the Senate proceeded to vote by County Delegations)

AYES: Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Boy Juma Boy, Kwale County; Sen. Chelule, Nakuru County; Sen. Chiaba, Lamu County; Sen. Elachi, Nairobi County; Sen. Hargura, Marsabit County; Sen. Kagwe, Nyeri County; Sen. Karaba, Kirinyaga County; Sen. G.G. Kariuki, Laikipia County; Sen. Kembu-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. (Dr.) Kuti, Isiolo County; Sen. (Prof.) Lesan, Bomet County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Mositet, Kajiado County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo Marakwet County; Sen. Murungi, Meru County; Sen. Muthama, Machakos County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Sang, Nandi County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County and Sen. Wetangula, Bungoma County.

The Speaker (Hon. Ethuro): Order, Senators! The results of the Division as follows:-

The "Ayes" who voted electronically are 28, plus the three who voted manually. So, the total for the "Ayes" is 31.

Noes: Nil

Abstentions: Nil.

The "Ayes" have it.

(Question carried by 31 votes to nil)

You may now open the door.

(The door was opened)

COMMUNICATION FROM THE CHAIR

DATE AND VENUE OF THE FIRST MEETING
OF THE SPECIAL COMMITTEE

The Speaker (Hon. Ethuro): Hon. Senators, pursuant to provisions of Standing Order No.183, I have directed the Clerk of the Senate to appoint tomorrow, Wednesday 6th August, 2014, as the date of the first meeting of the Committee. The venue will be the Boardroom in County Hall, Ground Floor, at 9.00 a.m.

ADJOURNMENT

The Speaker (Hon. Ethuro): Hon. Senators, we have come to the end of today's sitting. Therefore, the House stands adjourned until tomorrow, Wednesday, 6th August, 2014 at 2.30 p.m.

The Senate rose at 7.33 p.m.