

**THE COMMISSION ON REVENUE ALLOCATION BILL, 2011
ARRANGEMENT OF CLAUSES**

Clause

PART I — PRELIMINARY

- 1 — Short title.
- 2 — Interpretation.

PART II — COMPOSITION AND ADMINISTRATION

- 3 — Powers of the Commission as a body corporate.
- 4 — Headquarters.
- 5 — Appointment of members.
- 6 — Qualification for appointment of chairperson and members.
- 7 — Nomination of members.
- 8 — Procedure for nominations.
- 9 — Oath of office.
- 10 — Vacancy in office of chairperson or member.
- 11 — Filling of vacancy.
- 12 — Recommendations by the Commission.
- 13 — Terms and conditions of service.
- 14 — Committees of the Commission.
- 15 — Assignment of powers and duties.
- 16 — Procedures of the Commission.
- 17 — Appointment of Secretary.
- 18 — Removal of secretary.
- 19 — Secondment of staff.
- 20 — The common seal of the Commission.
- 21 — Protection from personal liability.

PART III - FINANCIAL PROVISIONS

- 22 — Funds of the Commission.
- 23 — Financial year.
- 24 — Annual estimates.

25 — Accounts and Audit.

PART IV- MISCELLANEOUS PROVISIONS

26 — Report of the Commission.

27 — Offence.

28 — Regulations.

29 — Code of conduct.

FIRST SCHEDULE – OATH/AFFIRMATION OF OFFICE
SECOND SCHEDULE – MEETINGS AND PROCEDURE OF THE COMMISSION

A Bill for

AN ACT of Parliament to make further provision as to the functions and powers of the Commission on Revenue Allocation, the procedure for appointments to the Commission and for connected purposes

ENACTED by the Parliament of Kenya, as follows -

PART I— PRELIMINARY

Short title. **1.** This Act may be cited as the Commission on Revenue Allocation Act, 2011.

Interpretation. **2. (1)** In this Act, unless the context otherwise requires —

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to finance;

“chairperson” means the chairperson of the Commission appointed under the Constitution in accordance with the procedure set out in section 7 of this Act;

“Commission” means the Commission on Revenue Allocation established by Article 215 of the Constitution;

“member” means a member of the Commission appointed under the Constitution in accordance with the procedure set out in section 7;

“revenue” includes taxes imposed by the national government under Article 209 of the Constitution and revenue as defined in any other written law;

“secretary” means the secretary to the Commission appointed by the Commission under Article 250 (12) of the Constitution in accordance with the procedure set out in section 17;

“public officer” means a person holding a public office as defined in the Constitution.

(2) Despite subsection (1), until after the first elections under the Constitution, references in this Act to the expression “Cabinet Secretary” shall be construed to mean “Minister”.

PART II — COMPOSITION AND ADMINISTRATION

Powers of the Commission as a body corporate.

3. In addition to the powers of the Commission under Article 253 of the Constitution, the Commission shall have the power to –

- (a) acquire, hold, charge and dispose of movable and immovable property; and
- (b) do or perform all such other things or acts for the proper discharge of its functions under the Constitution and this Act as may lawfully be done or performed by a body corporate.

Headquarters.

4. The headquarters of the Commission shall be in the capital city, but the Commission may establish branches at any place in Kenya.

Appointment of members.

5. (1) The chairperson and members of the Commission shall be appointed in accordance with the provisions of Article 215 of the Constitution and this Act.

(2) At least five Commissioners under sub-section (1) shall serve on a full-time basis.

Qualification for appointment of chairperson and members.

6. (1) A person shall be qualified for appointment as the chairperson if the person—

- (a) holds a degree in finance or economics from a university recognized in Kenya;
- (b) has at least fifteen years professional experience in financial and economic matters;
- (c) has had a distinguished career in their respective fields; and
- (d) meets the requirements of Chapter Six of the Constitution.

(2) A person shall be qualified for appointment as a member if the person—

- (a) holds a degree from a university recognized in Kenya;
- (b) has at least ten years professional experience in financial and economic matters;
- (c) has had a distinguished career in their respective fields; and
- (e) meets the requirements of Chapter Six of the Constitution.

(3) A person shall not be qualified for appointment as the chairperson or member if the person—

- (a) is a member of Parliament or County Assembly;
- (b) is a member of a governing body of a political party;
- (c) has at anytime within the preceding five years, held office or stood for election as a member of Parliament or of a County Assembly;
- (d) is an elected member of a local authority;
- (e) is an undischarged bankrupt; or
- (f) has been removed from office for contravening the provisions of the Constitution or any other law; or
- (g) has not met his or her legal obligations relating to tax and other statutory obligations.

Nomination of members.

7. Every nominating body under Article 215 (2) (b) and (c) of the Constitution shall nominate its representative to the Commission in a competitive manner in accordance with section 8.

Procedure for nominations.

8. (1) Whenever there is a vacancy in the Commission relating to the members under Article 215(2) (b) and (c) of the Constitution, the relevant nominating body shall, by advertisement in the Gazette and in at least two local daily newspapers of national circulation, invite applications from persons who qualify for nomination as members under the Constitution and this Act for nomination as a member of the Commission.

(2) The relevant nominating body shall consider the applications received under sub-section (1) to determine their compliance with the provisions of the Constitution and this Act interview the applicants and forward the names of two persons

so qualified, who shall be of opposite gender, to the Cabinet Secretary for onward transmission to the President.

(3) Within fourteen days of the occurrence of a vacancy in the office of the chairperson, the President shall convene a selection panel (hereinafter referred to as “the panel”) for the purpose of selecting suitable candidates for appointment as the chairperson.

(4) Until the first general election after the commencement of this Act, the President shall consult with the Prime Minister on the nomination of the selection panel under subsection (3).

(5) The panel shall comprise a chairperson and four other members drawn from the executive and professional organisations.

(6) The panel shall, subject to this section, determine its own procedure and the Ministry responsible for Public Service shall provide it with such facilities and other support as it may require for the discharge of its functions.

(7) The panel shall, within seven days of its convening, invite applications from qualified persons and publish the names and qualifications of all applicants in the Gazette and two daily newspapers of national circulation.

(8) The selection panel shall consider the applications, and shortlist and interview the applicants.

(9) After carrying out the interviews, the panel shall select three persons qualified to be appointed as chairperson of the Commission and forward the names to the President.

(10) Until after the first general election after the commencement of this Act, the President, in consultation with the Prime Minister shall, within seven days of receipt of the names forwarded under subsections (2) and (9), nominate a chairperson and other members of the Commission and forward the names of the nominees to the National Assembly.

(11) The National Assembly shall, within twenty-one days of the day it next sits after receipt of the names of the nominees under subsection (9), consider all nominations and may approve or reject any nomination.

(12) Where the National Assembly approves the nominees, the Speaker shall forward the names of the approved nominees to the President for appointment.

(13) The President shall, within seven days of the receipt of the approved nominees from the National Assembly, by notice in the Gazette, appoint the chairperson and members approved by the National Assembly.

(14) Where the National Assembly rejects any nomination, the Speaker shall communicate the decision to the President to submit fresh nominations.

(15) In appointing members under this section, the President shall observe the principle of gender equity, regional and ethnic balance and equal opportunities for persons with disabilities and shall ensure that at least one-third of the members are of either gender.

Oath of office.

9. The chairperson, the members and the secretary shall each make and subscribe, before the Chief Justice, to the respective oath or affirmation set out in the First Schedule.

Vacancy in office of chairperson or member.

10. (1) The office of the chairperson or a member shall become vacant if the holder—

- (a) dies;
- (b) by a notice in writing addressed to the President resigns from office; or
- (c) is removed from office under any of the circumstances specified in Article 251 and Chapter Six of the Constitution.

(2) The President shall notify every resignation, vacancy or termination in the Gazette within fourteen days.

Filling of
vacancy.

11. (1) Where a vacancy occurs in the membership of the Commission under section 10, the appointment procedure provided for under the Constitution and this Act shall apply.

(2) A member appointed under subsection (1) shall serve for a term of six years but shall not be eligible for reappointment.

Recommendations
by the
Commission.

12. In addition to its principal function under Article 216 (1) of the Constitution, the Commission shall, in accordance with clause (2) of that Article –

- (a) make recommendations for consideration by Parliament prior to any Bill appropriating money out of the Equalization Fund is passed in Parliament;
- (b) upon request from the Senate, make recommendations on the basis for allocating among the counties the share of national revenue that is annually allocated to the county levels of government;
- (c) submit recommendations to the Senate, National Assembly, national executive, County Assembly and county executive on the proposals made for equitable distribution of revenue between the national and county governments and amongst the county governments taking into account the criteria set out in Article 203 of the Constitution;
- (d) make recommendations on all legislation enacted to operationalize the provisions related to devolved government as contained in sections 14, 15 and 16 of the Sixth Schedule to the Constitution; and
- (e) perform such other functions as are provided for

by the Constitution or any other written law.

Terms and conditions of service.

13. (1) The salaries and allowances payable to, and other terms and conditions of service of the chairperson and members shall, pending the establishment of the Salaries and Remuneration Commission, be determined by the Ministry responsible for public service in consultation with the Treasury.

Committees of the Commission.

14. (1) The Commission may, from time to time, establish committees for the better carrying out of its functions.

(2) The Commission may co-opt into the membership of committees established under subsection (1) other persons whose knowledge and skills are found necessary for the functions of the Commission.

Assignment of powers and duties.

15. (1) The Commission may-

- (a) delegate any of its powers to a member, committee or employee of the Commission; or
- (b) instruct any member, committee or employee of the Commission to perform any of the Commission's duties.

(2) A delegation or instruction under subsection (1)-

- (a) shall be subject to any conditions the Commission may impose; and
- (b) shall not divest the Commission of the responsibility concerning the exercise of the power or the performance of the duty.

(3) The Commission may confirm, vary or revoke any decision taken by a member, committee or employee of the Commission in consequence of a delegation or instruction under this section.

Procedures of the

16. (1) The business and affairs of the Commission shall be conducted in accordance with the Second Schedule.

Commission.

(2) Except as provided in the Second Schedule, the Commission may regulate its own procedure.

Appointment of secretary.

17. (1) The appointment of the secretary to the Commission under Article 250 (12) of the Constitution shall be through a competitive recruitment process.

(2) A person shall not qualify for appointment under subsection (1) unless such a person—

- (a) is a Kenyan citizen;
- (b) holds a degree from a university recognized in Kenya;
- (c) has had at least ten years professional experience in economic and financial matters; and
- (d) meets the requirements of Chapter Six of the Constitution.

(3) A person appointed as a secretary under Article 250 (12) of the Constitution shall be a State officer.

(4) As the chief-executive officer, the secretary shall be responsible to the Commission for-

- (a) facilitating the carrying out of the functions of the Commission;
- (b) the day to day administration and management of the affairs of the Commission;
- (c) such other duties as may be assigned by the Commission from time to time.

(5) Notwithstanding the provision of any other

written law, the secretary, as the accounting officer shall be shall be responsible for-

- (a) all income and expenditure of the Commission;
- (b) all assets and the discharge of all liabilities of the Commission; and
- (c) the proper and diligent implementation of Part III of this Act.

Removal of secretary.

18. (1) The secretary may be removed from office by the Commission; in accordance with the terms and conditions of service, for—

- (a) inability to perform the functions of the office arising out of physical or mental incapacity;
- (b) gross misconduct or misbehaviour;
- (c) incompetence or neglect of duty;
- (d) violation of the Constitution; or
- (e) any other ground that would justify removal from office under the terms and conditions of service.

(2) Before the secretary is removed under subsection (1), he or she shall be informed of the case against him or her and shall be given an opportunity to defend himself or herself against any allegations against him or her.

Secondment of staff.

19. (1) In addition to the staff appointed by the Commission under Article 252 (1)(c) of the Constitution, the Government may, upon the request by the Commission, second to the Commission such number of public officers as may be necessary for the purposes of the Commission.

(2) A public officer seconded to the Commission shall, during the period of secondment, be deemed to be an officer of the Commission and shall be subject only to the direction and control of the Commission.

The common seal of the Commission.

20. (1) The Common seal of the Commission shall be kept in such custody as the Commission shall direct and shall not be used except on the order of the Commission.

(2) The common seal of the Commission when affixed to a document and duly authenticated shall be judicially and officially noticed and unless the contrary is proved, any necessary order or authorization of the Commission under this section shall be presumed to have been duly given.

Protection from personal Liability.

21. No matter or thing done by a member of the Commission or any officer, employee or agent of the Commission shall, if the matter or thing is done in good faith for executing the functions, powers or duties of the Commission, render the member, officer, employee or agent personally liable to any action, claim or demand whatsoever.

PART III — FINANCIAL PROVISIONS

Funds of the Commission.

22. (1) The funds of the Commission shall consist of—

- (a) monies allocated by Parliament for the purposes of the Commission;
- (b) such monies or assets as may accrue to the Commission in the course of the exercise of its powers or the performance of its functions under this Act; and
- (c) all monies from any other source provided or donated or lent to the Commission.

Financial year.

23. The financial year of the Commission shall be the period of twelve months ending on the thirtieth of June in each year.

Annual estimates.

24. (1) Before the commencement of each financial year, the Commission shall cause to be prepared estimates of the revenue and expenditure of the Commission for that year.

(2) The annual estimates shall make provision for all the estimated expenditure of the Commission for the financial year concerned.

(3) The annual estimates prepared by the Commission under sub-section (2) shall be submitted to the Cabinet Secretary for tabling in the National Assembly.

Accounts and Audit.

25. (1) The Commission shall cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities of the Commission.

(2) Within a period of three months after the end of each financial year, the Commission shall submit to the Auditor-General the accounts of the Commission in respect of that year together with a -

(a) statement of the income and expenditure of the Commission during that year; and

(b) statement of the assets and liabilities of the Commission on the last day of that financial year.

No.12 of 2003.

(3) The annual accounts of the Commission shall be prepared, audited and reported upon in accordance with the provisions of Articles 226 and 229 of the Constitution and the Public Audit Act, 2003.

PART IV — MISCELLANEOUS PROVISIONS

Report of the Commission.

26. The report of the Commission under Article 254 of the Commission shall, in respect of the financial year to which it relates, contain —

(a) the financial statements of the Commission;

- (b) a description of the activities of the Commission;
- (c) such other statistical information as the Commission considers appropriate relating to the Commission's functions; and
- (d) any other information relating to its functions that the Commission considers necessary.

Offence.

27. (1) A person shall not—

- (a) without justification or lawful excuse, obstruct or hinder, or assault or threaten a member or staff of the Commission acting under this Act;
- (b) submit false or misleading information; or
- (c) misrepresent to or knowingly mislead the member or a member of staff of the Commission acting under this Act.

(2) A person who contravenes subsection (1) commits an offence and shall be liable, on conviction, to a fine not exceeding three million shillings, or to imprisonment for a term not exceeding five years, or to both.

Regulations.

28. The Commission may make regulations generally for the better carrying into effect of any provisions of this Act.

Code of conduct.

29. The Commission shall develop a code of conduct for its members and staff.

FIRST SCHEDULE

(s. 9)

**OATH/AFFIRMATION OF THE OFFICE OF CHAIRPERSON/A
MEMBER/SECRETARY**

I having been appointed (the chairperson/member of /Secretary to) the Commission on Revenue Allocation under the Commission on Revenue Allocation Act, 2011, do swear/ solemnly affirms that I will at all times obey, respect and uphold the Constitution of Kenya and all other laws of the Republic; that I will faithfully and fully, impartially and to the best of my knowledge and ability, discharge trust, perform the functions and exercise the powers devolving upon me by virtue of this appointment without fear, favour, bias, affection, ill-will or prejudice. (SO HELP ME GOD).

Sworn/Declared by the said

Before me this Day of

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Chief Justice.

SECOND SCHEDULE

(s.16)

MEETINGS AND PROCEDURE OF THE COMMISSION

Meetings.

1. (1) The Commission will decide when and where it meets and the meetings shall be convened by the chairperson.

(2) The Commission shall have at least four meetings in every financial year and not more than four months shall elapse between one meeting and the next meeting.

(3) Unless three quarters of the members otherwise agree, at least seven days' notice in writing of a meeting shall be given to every member.

(4) A meeting shall be presided over by the chairperson or in his or her absence by the vice-chairperson.

(5) The members of a Commission shall elect a vice-

chairperson from among themselves-

(a) at the first sitting of the commission; and

(b) whenever it is necessary to fill the vacancy in the office of the vice-chairperson.

(6) The Chairperson and Vice-chairperson shall not be of the same gender.

(7) The Commission may invite any person to attend any of its meetings and to participate in its deliberations, but such person shall not have a vote in any decision of the Commission

Conflict of interest.

2. (1) If any person has a personal or fiduciary interest in any matter before the Commission, and is present at a meeting of the Commission or any committee at which any matter is the subject of consideration, that person shall as soon as is practicable after the commencement of the meeting, declare such interest and shall not take part in any consideration or discussion of, or vote on any question touching such matter.

(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.

(3) A person who contravenes subsection (1) commits an offence and shall be liable, upon conviction, to a fine not exceeding three million shillings, or to imprisonment for a term not exceeding seven years, or to both such fine and imprisonment.

(4) No member or staff of the Commission shall transact any business or trade with the Commission.

Quorum.

3. (1) Subject to sub-paragraph (2), the quorum of the meeting shall not be less than half of the appointed members.

(2) Where there is a vacancy in the Commission, the quorum of the meeting shall not be less than three appointed members.

Voting.

4. A question before the Commission is decided with a supporting vote of at least two thirds of the members present.

Rules of
Procedure
and minutes

5. The Commission shall-

- (a) determine rules of procedure for the conduct of its business; and
- (b) keep minutes of its proceedings and decisions.