BOMET COUNTY ASSEMBLY

THIRD ASSEMBLY: THIRD SESSION

REPORT

OF THE FINANCE AND ECONOMIC PLANNING COMMITTEE ON THE APPROVAL OF THE MODEL INTERGOVERNMENTAL CONDITIONAL ALLOCATIONS TRANSFER AGREEMENT

BOMET COUNTY ASSEMBLY
CLERK
27 FEB 2024
P. O. Box 590-20400 BOMET

FEBRUARY, 2024

Tabled on Tuesday 27/02/2024 at 2:30pm

Hon Speaker
You may approve for tabling
27/2/24

Approved for tabling
27/02/2024.

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Chairman's Foreword

The Model Intergovernmental Conditional Allocations Transfer Agreement provides a framework through which Conditional Allocations shall be transferred to the County governments. The agreement is anchored in Section 191A of the Public Finance Management Act, 2012. The agreement provides among others that the Conditional Allocation shall not be used for any other purpose apart from what is agreed in the Conditional Allocation Framework and that any other expenditure shall be considered ineligible. The agreement further provides that the projects funded and supported by this Conditional Allocation must be executed within the project duration.

Acknowledgement

Mr. Speaker Sir,

I wish to thank the Members of Finance and Economic Planning Committee for their effort in coming up with this report on the approval of the Model Intergovernmental Conditional Allocations Transfer Agreement pursuant to section 191A(3) of the Public Finance Management Act, 2012.

Gratitude is further extended to the honorable members and the technical team who participated in the deliberations and eventual production of this report.

Mandate of the Committee

Mr. Speaker sir,

The Second schedule to the County Assembly Standing Orders establishes the Finance and Economic Planning Committee to deal with all matters relating to the County Treasury, revenue policies, county economic planning and development including statistics.

Furthermore, Standing Order 201(5) states the functions of a Sectoral Committee as follows:

1.(a) Investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned departments;
(b) Study the program and policy objectives of departments and the effectiveness of the implementation;
(c) Study and review all county legislation referred to it;

(d) Study, assess and analyze the relative success of the departments as measured by the results obtained as compared with their stated objectives;

(e) Investigate and inquire into all matters relating to the assigned departments as they may deem necessary, and as may be referred to them by the County Assembly;

(g) Make reports and recommendations to the County Assembly as often as possible, including recommendation of proposed legislation.

(h) Scrutinize the resolutions of the County Assembly (including adopted committee reports), petitions and the undertakings given by the County Executive Committee and examine –

(i) Whether or not such decisions and undertakings have been implemented and where implemented, the extent to which they have been implemented; and whether such implementation has taken place within the minimum time necessary; and

(j)Whether or not legislation passed by the County Assembly has been operationalized and where operationalized, the extent to which such operationalization has taken place within the minimum time necessary.

(k)The Committees may propose to the County Assembly, sanctions against any member of the County Executive Committee who fails to report to the relevant select Committee on implementation status without justifiable reasons.

Membership and Ownership of the Report

We, the Honorable Members of the Finance & Economic Planning Committee, do hereby affix our signatures to this report to affirm our approval, confirm its accuracy, validity and authenticity: -

No.	Name	Position	Signature
1.	Hon. Nathan Kibet	Chairperson	
2.	Hon. Evaline Chelangat	Vice Chair	
3.	Hon. Olivia Koskei	Member	
4.	Hon. Peter Rono	Member	
5.	Hon. Japhet Cheruiyot	Member	
6.	Hon. Joseah Samoei	Member	
7.	Hon. Naomi Chemutai	Member	

Signed------------------------------Date-- 27/02/24 ----------------------------

HON. NATHAN KIBET, MCA

CHAIRPERSON, FINANCE AND ECONOMIC PLANNING COMMITTEE

Introduction

1.1Background information

Mr. Speaker Sir,

The County Assembly received a letter dated 25th January, 2024from the CECM in charge of Finance, ICT and Economic Planning seeking the approval of the County Assembly of the Model Intergovernmental Conditional Allocations Transfer Agreement pursuant to section 191A (3) of the Public Finance Management Act, 2012.The County Assembly under Section 191A (4) of the PFMA has a period of fourteen (14) days to either approve or reject the Agreement. The County assembly was however on recess and the Agreement was therefore tabled on 13th February, 2024 after the resumption of the county assembly to its regular sessions and committed to the Committee on Finance and Economic Planning. The fourteen (14) days was therefore computed from the day the Agreement was tabled.

Mr. Speaker Sir, the said Model Agreement once approved will provide for a framework under which the County Government shall be receiving Conditional Allocations from the National Government. The County Governments Additional Allocations Act, 2022 amended the Public Finance Management Act, 2012 and provided for Intergovernmental Agreements.

1.2The Legal Framework Governing the Intergovernmental Conditional Allocations Transfer Agreement

Mr. Speaker Sir,

Over the last couple of years, the National government has been channeling conditional allocations to Counties to address specific issues including but not limited to matters affecting Health, Education and infrastructure sectors. Likewise, the international development partners have been channeling resources to the National Government and County Governments as grants and or loans to address specific concerns. These transfers were governed by the subsisting provisions of the Public Finance Management Act, 2012. However, The County Governments Additional Allocations Act, 2022 amended the Public Finance Management Act, 2012 and introduced Section 191A -191E. Section 191A requires the National Treasury and the County Governments to enter into Intergovernmental Agreements for the transfer of the Conditional Additional Allocations. This gave birth to the preparation of The Intergovernmental Conditional Allocations Transfer Agreement. The section provides,

"(1) *The National Treasury shall enter into an agreement with the respective county government for the transfer of the respective conditional allocation made to the county government pursuant to this Act.*

(2) An agreement under subsection (1) shall set out any conditions that may be attached to the conditional allocations made under this Act.

(3) Where a county government intends to enter into an agreement under subsection (1), the county executive committee member shall submit the agreement to the respective County Assembly for approval.

(4) The County Assembly shall, within fourteen days of submission of an agreement under subsection (3), approve or reject the agreement.

(5) Where a County Assembly fails to consider an agreement under subsection (3) within fourteen days, the agreement shall be deemed to be approved.

(6) An agreement under subsection (1) shall set out all conditions attached to an allocation made under this Act.

(7) The respective county government shall forward the agreement approved under this section to the Controller of Budget within seven days of approval"

Section 191E provides that the requisition of funds from the County Revenue Fund for purposes of a conditional grant shall be supported by the intergovernmental agreement approved under Section 191A. In line with this development, and in order to ensure a consultative approach in developing the intergovernmental agreements, the National Treasury constituted an Inter-Agency Taskforce comprising of members from the National Treasury, Controller of Budget (COB), Council of Governors (CoG), Commission on Revenue Allocation (CRA), Intergovernmental Budget and Economic Council (IBEC), State Department for Devolution, the Judiciary, Parliamentary Budget Office (PBO) and three representatives of the County Executive Committee Members responsible for finance to prepare the Draft Intergovernmental Conditional Allocations Transfer Agreement in line with the requirements of the law. The draft agreement needs to be approved and signed to unlock additional resources to county governments.

The other Key constitutional provisions necessitating the agreement includes:

(1) Article 6 of the Constitution which provides that the governments at the national and county levels are distinct and inter-dependent and shall conduct their mutual relations on the basis of consultation and cooperation.

(2) Article 187 of the Constitution which provides that the National and County Governments may cooperate in the performance of functions and exercise of powers;

(3) Article 190 of the Constitution which provides that Parliament shall by legislation ensure that county governments have adequate support to enable them to perform their functions:

(4) Article 202 of the Constitution which provides that County Governments may be given additional allocations from the National Government's Share of revenue either conditionally or unconditionally;

(5) Article 228 of the Constitution which provides that the Controller of Budget shall not approve any withdrawal from a public fund unless satisfied the withdrawal is authorized by law;

(6) Section 191A to E of the Public Finance Management Act, 2012 which requires that the National Treasury and County Governments shall enter into intergovernmental agreements for purposes of the additional allocations; and;

(7) Article 201 of the Constitution which provides for the Principles of Public Finance which include among others that there shall be openness and accountability, including public participation in financial matters.

The role of The County Assembly in this arrangement is the approval of the Agreement so as to allow the County Executive to access Conditional Allocations. Each of the participating Counties, technically the 47 Counties, has to therefore approve and sign the agreement to allow them to access the conditional allocations.

1.3 Salient features of the Model Intergovernmental Conditional Allocations Transfer Agreement

The following are some of the salient features of the Agreement:

(1) That the Conditional Allocation shall not be used for any other purpose apart from what is agreed in the Conditional Allocations Framework and any other expenditure shall be considered ineligible.

(2) That the projects funded and supported by the Conditional Allocation must be executed within the project duration.

(3) That the county government shall provide regular quarterly and annual reports to the respective Ministries, Departments and Agencies and the respective county assembly regarding progress on implementation of the project as set out in the Conditional Additional Allocations Framework and as set out in section 163 of the PFMA on reporting.

(4) That if the County government is experiencing any financial or administrative difficulties that may hinder or prevent the completion of the project within a set period, the county government shall inform the responsible Ministries, Departments and Agencies and the National Treasury not later than seven (7) days.

(5) That if the County government fails to comply with any of the Terms and conditions of Additional Allocations Framework, the National Treasury with written instructions from the relevant Ministries, Departments and Agencies may reduce, suspend or stop transfer of conditional Additional Allocation or require any part or all of the Conditional Additional allocation to be repaid by the county government upon verification.

(6) That the Ministries, Departments and Agencies responsible for the functions being financed through the additional allocations shall include in its budget estimates a transfer to the county government.

(7) That the county government shall in its annual budget estimates provides for the programs to be financed by this additional allocation.

(8) The County Executive Committee Member for the time being responsible for Finance shall requisition for the additional allocations from the County Revenue Fund through the Controller of Budget.

(9) All disputes and complaints that may arise out of the implementation and interpretation of this agreement will be settled through mutual consultations between the parties.

2.0 Committee Observations

The committee having perused through the Model Intergovernmental Conditional Allocations Transfer Agreement made the following observations:

(1) That the Agreement is a model agreement that will form a framework through which conditional allocations shall henceforth be released to the counties.

(2) That the agreement if approved shall be signed by the County Government of Bomet and the National Treasury as parties to the agreement.

(3) That the Agreement if approved will enable the county government to access conditional allocations from the national government.

(4) That the Agreement provides a watertight platform through which the funds shall be released because it will ensure that the funds are used for specific projects or programs which they are meant for.

3.0 Committee's Recommendation

Mr. Speaker Sir, having examined the Model Intergovernmental Conditional Allocations Transfer Agreement, the Committee makes the following recommendation:

That the County Assembly **approves**the Model Intergovernmental Conditional Allocations Transfer Agreement pursuant to section 191A (3) of the Public Finance Management Act, 2012 so as to pave way for the transfer of conditional allocation funds to the County Government of Bomet.