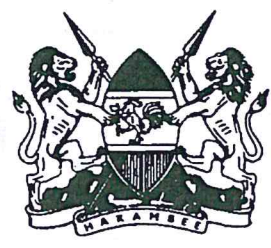


Approved for tabling

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SNA
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REPUBLIC OF KENYA



NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – THIRD SESSION

THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

.....

REPORT ON THE CONSIDERATION OF THE PUBLIC FINANCE MANAGEMENT
(AMENDMENT) BILL, 2017

CLERKS CHAMBERS
DIRECTORATE OF COMMITTEE SERVICES
PARLIAMENT BUILDINGS
NAIROBI

FEBRUARY, 2019

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ABBREVIATIONS

CAF	-	County Assembly Forum
CASA	-	County Assembly Services Act
CBK	-	Central Bank of Kenya
CEC	-	County Executive Committee Member
CFSP	-	County Fiscal Strategy Paper
COG	-	Council of Governors
IBEC	-	Intergovernmental Budget and Economic Councils
ICPAK	-	Institute of Certified Public Accountants of Kenya
MDA	-	Ministries, Departments and Agencies
NT	-	National Treasury
PFMA	-	Public Finance Management Act
SOCAT	-	Society of Clerks at the Table in Kenyan Legislatures
TSA	-	Treasury Single Account

CHAIRPERSON'S FOREWORD

This report contains the Committee's proceedings on the consideration of the Public Finance Management (Amendment) Bill, 2017, which was read a first time on 14th February, 2018 pursuant to Standing Order 127. In processing the Bill, the Committee invited comments from the public by placing advertisements in the Daily Nation and Standard Newspapers on 19th February, 2018 pursuant to Article 118 of the Constitution. A total of six (6) institutions submitted memoranda for consideration by the Committee in a stakeholder's conference held at the Boma Hotel between 15th and 18th March, 2018 and another stakeholders' forum held at Flamingo Beach Resort and Spa between 22nd and 25th March, 2018 in which the Cabinet Secretary for the National Treasury was in attendance to provide his comments on the Bill. The Committee has since adopted the stakeholders' amendments for introduction into the Bill during the Committee Stage of the Bill. In considering the Bill, the Committee noted that the Bill seeks to amend the Public Finance Management Act (No. 18 of 2012) so as to ensure smooth implementation of the Act.

The Committee is grateful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee wishes to thank the National Treasury and the stakeholders for their participation in scrutinizing the Bill.

Finally, I wish to express my appreciation to the Honorable Members of the Committee who made useful contributions towards the preparation and production of this report.

On behalf of the Departmental Committee on Finance and National Planning and pursuant to provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the Public Finance Management (Amendment) Bill, 2017.

THE HON. JOSEPH LIMO, MP

CHAIRPERSON, DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

EXECUTIVE SUMMARY

The Public Finance Management (Amendment) Bill, 2017 was published on 29th December, 2017 and read a first time on 14th February, 2018 and thereafter committed to the Departmental Committee on Finance and National Planning for consideration pursuant to Standing Order 127. The Public Finance Management (Amendment) Bill, 2017 seeks to amend the Public Finance Management Act (No. 18 of 2012) so as to ensure smooth implementation of the Act.

In processing the Bill, the Committee invited comments from the public by placing advertisements in the Daily Nation and Standard newspapers on Monday 19th February, 2018 pursuant to Article 118 of the Constitution. By the time the Committee was conducting a stakeholder's conference at the Boma Hotel between 15th and 18th March 2018 and at the Flamingo Beach Hotel and Spa, Mombasa between 22nd and 25th March, 2018, six (6) organizations had submitted their memoranda for consideration by the Committee. All their proposals were first discussed with the stakeholders and comments made by the Cabinet Secretary for the National Treasury. The following entities appeared during the stakeholders' conference:

1. Institute of Certified Public Accountants of Kenya (ICPAK);
2. Society of Clerks at the Table in Kenyan Legislations (SOCAT);
3. County Assembly Forum;
4. Council of Governors;
5. Institute of Public Finance; and
6. The National Treasury.

1.0 ESTABLISHMENT AND MANDATE OF THE COMMITTEE

The Departmental Committee on Finance & National Planning is one of the fifteen Departmental Committees of the National Assembly established under *Standing Order 216* whose mandates pursuant to the *Standing Order 216 (5)* are as follows:

- a) To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
- b) To study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation;
- c) To study and review all the legislation referred to it;**
- d) To study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
- e) To investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;
- f) To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No.204 (Committee on appointments);
- (fa) To examine treaties, agreements and conventions;
- g) To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
- h) To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
- i) To examine any questions raised by Members on a matter within its mandate.

In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider, Public finance, Monetary policies, Public debt, Financial institutions (excluding those in securities exchange), Investment and divestiture policies, Pricing policies, Banking, Insurance, Population revenue policies including taxation and National planning and development.

In executing its mandate, the Committee oversees the following government Ministries;

- i. The National Treasury
- ii. Ministry of Devolution and Planning
- iii. Office of the Controller of Budget
- iv. Salaries and Remuneration Commission
- v. Commission on Revenue Allocation

1.1 COMMITTEE MEMBERSHIP

The Committee on Finance and National Planning was constituted by the House in December, 2017 and comprises of the following Members:-

1. The Hon. Joseph K. Limo, MP – **Chairperson**
2. The Hon. Isaac W. Ndirangu – **Vice-Chairperson**
3. The Hon. Jimmy O. Angwenyi, MGH, MP
4. The Hon. Christopher Omulele, MP
5. The Hon. Dr. Enoch Kibunguchy, MP
6. The Hon. Shakeel Shabbir Ahmed, CBS, MP
7. The Hon. Abdul Rahim Dawood, MP
8. The Hon. Daniel E. Nanok, MP
9. The Hon. Andrew A. Okuome, MP
10. The Hon. David M. Mboni, MP
11. The Hon. Francis K. Kimani, MP
12. The Hon. Joseph M. Oyula, MP
13. The Hon. Joshua C. Kandie, MP
14. The Hon. Lydia H. Mizighi, MP
15. The Hon. Mohamed A. Mohamed, MP
16. The Hon. Purity W. Ngirici, MP
17. The Hon. Samuel Atandi, MP
18. The Hon. Stanley M. Muthama, MP
19. The Hon. Edith Nyenze, MP

1.3 COMMITTEE SECRETARIAT

1. Ms. Leah W. Mwaura - **First Clerk Assistant/Lead Clerk**
2. Ms. Jennifer Ndeto - **Principal Legal Counsel**
3. Ms. Laureen Wesonga - **Third Clerk Assistant**
4. Mr. Josephat Motonu - **Fiscal Analyst III**
5. Mr. Chelang'a Maiyo - **Research & Policy Analyst III**
6. Mr. John Njoro - **Serjeant-At-Arms**

2.0 CONSIDERATION OF THE BILL

2.1 BACKGROUND INFORMATION

The Public Finance Management (Amendment) Bill, 2017, was published on 29th December, 2017 and read a First Time on 14th February, 2018 and thereafter committed to the Departmental Committee on Finance and National Planning for consideration pursuant to Standing Order 127.

In processing the Bill, the Committee invited comments from the stakeholders pursuant to Article 118 of the Constitution. Six institutions responded by sending their memoranda to the Committee for consideration. The Committee held a stakeholders' Conferences at Boma Hotel between 15th and 18th March, 2018 and at the Flamingo Beach Hotel and Spa, Mombasa between 22nd and 25th March, 2018 to consider stakeholders' memoranda pursuant to Article 118 of the Constitution.

2.2 CLAUSE BY CLAUSE ANALYSIS

Clause 1 - sets out the short title.

Clause 2 - proposes to amend section 2 of the Bill so as to clarify the definitions of "national government entity", "short term borrowing" and "Treasury Single Account".

Clause 3 - proposes to amend the section 5(1) of the Act by including Parliament in the approval process of the declaration of county government entities. Further, the clause also proposes to amend Section 5(4) of the Act by including the County Executive Committee in the approval process where a County Government entity ceases to be a County Government entity in accordance with the Act.

Clause 4 - proposes to amend section 8 of the Act to align the provisions of this section with the role of the Senate as provided for under Article 189 of the Constitution. The Bill further proposes to include the Cabinet Secretary responsible for matters relating to finance in carrying out the functions provided under the section for the purposes of guiding the Senate and other players on the implications and moving of resources from one county to another vis-à-vis the proposals made in the County Allocation Revenue Bill.

Clause 5 - proposes to amend section 10 of the Act to enable the County Assemblies request the Budget Office for capacity building where necessary.

- Clause 6** - proposes to amend section 13 of the Act since the Cabinet Secretary cannot delegate a duty under his or her watch to himself or herself.
- Clause 7** - proposes to amend section 15 of the Act so as to restrict the provisions of this section to the National Government. The section is further amended so as to clarify that it is only external borrowing that is limited to capital projects.
- Clause 8** - proposes to amend section 17(7) to ensure that the provision is in line with the provisions of section 127 of the Act.
- Clause 9** - proposes to amend section 24 of the Act so as to provide for the role of the National Treasury in specifying the accounting procedures and systems and the role of the Auditor-General in auditing the accounts before submission to Parliament.
- Clause 10** - proposes to amend section 35 of the Act so as to mirror what is provided for under section 125(1)(c) of the Act.
- Clause 11** - proposes to amend section 38 of the Act so as to apply the provision of the section to the entire Article 202 of the Constitution.
- Clause 12** - proposes to amend section 39 of the Act so as to mirror the language used in Article 222(1) of the Constitution to avoid any contradiction.
- Clause 13** - proposes to amend section 46 of the Act to ensure that the exchequer issues are reported per programme and project for effective monitoring and evaluation.
- Clause 14** - proposes to amend section 52(2) of the Act to provide for delegation of powers to execute loan documents by the Cabinet Secretary to the accounting officers and other officers.
- Clause 15** - proposes to amend section 66 of the Act so as to include monitoring of non-financial performance.
- Clause 16** of the Bill proposes to amend section 68 of the Act so as to clarify that the Cabinet Secretary for the relevant entity is the one being referred to and not the Cabinet Secretary for finance.
- Clause 17** of the Bill proposes to amend section 77 of the Act so as to align it with the wording of Article 210 of the Constitution.
- Clause 18** of the Bill proposes to amend section 78 of the Act so as to recognize and include other collectors of revenue.
- Clause 19** of the Bill proposes to amend section 82 of the Act so as to restrict the power to grant waivers or variations only to the Cabinet Secretary.

Clause 20 of the Bill proposes to amend section 87 of the Act so as to align it with the rest of the provisions making reference to corporations.

Clause 21 of the Bill proposes to amend section 88 of the Act so as to make it consistent with the rest of the section.

Clause 22 of the Bill proposes to amend section 89 of the Act so as to align it with the rest of the provisions of the section.

Clause 23 of the Bill proposes to amend section 91 of the Act to include any form of funding given to government linked corporations as investments.

Clause 24 of the Bill proposes to amend section 93 of the Act to enhance better presentation and understanding of the Act.

Clause 25 of the Bill proposes to amend section 96 of the Act so as to align it with the wording of the marginal note.

Clause 26 of the Bill proposes to amend section 97(4) of the Act so as to clarify the content under the subsection.

Clause 27 of the Bill proposes to amend section 98 of the Act so as to align it with the wording in the Constitution.

Clause 28 of the Bill proposes to amend section 104 of the Act so as to clarify and make it uniform with other sections referring to county public funds.

Clause 29 of the Bill proposes to amend section 105 of the Act so as to cater for public officers and any other persons designated to perform duties or any other responsibilities on behalf of County Treasuries.

Clause 30 of the Bill proposes to amend section 107 of the Act so as to clarify as to which level of government the provision refers to.

Clause 31 of the Bill proposes to amend section 109 of the Act so as to facilitate the easy operationalization of the Treasury Single Account (for both level of government) by having all County Exchequer Accounts in the Central Bank of Kenya.

Clause 32 of the Bill proposes to amend section 112 of the Act so as to reflect what is provided for at national level under section 28(3) and (4).

Clause 33 of the Bill proposes to amend section 116 of the Act so as to provide a distinction between public funds and county public funds. It further proposes to amend the Act so as to provide that statements must be audited before being presented to Parliament.

Clause 34 of the Bill proposes to amend section 117 of the Act to extend the period of consideration of the County Strategy Paper by the county assemblies from fourteen days to thirty days.

Clause 35 of the Bill proposes to amend section 119 of the Act so as to facilitate the easy operationalization of the Treasury Single Account (for both levels of government) by having all County Exchequer Accounts in the Central Bank of Kenya.

Clause 36 of the Bill proposes to introduce a new section 119A to the Act to address the issue of county governments and county entities operating many bank accounts by providing guidelines that a county entity must comply with before opening a bank account.

Clause 37 of the Bill proposes to amend section 125 of the Act so as to remove the planning aspect of the provision.

Clause 38 of the Bill proposes to amend section 126 of the Act so as to provide a linkage between the plan being referred to in section 125(1) and to distinguish it from the annual development plan being referred to in section 126(2), (3) and (4). The amendment further proposes to extend time to allow the County Governments sufficient time to prepare their annual development plans.

Clause 39 of the Bill proposes to amend section 127 of the Act so as to align it with the wording of Article 210 of the Constitution.

Clause 40 of the Bill proposes to amend section 128 of the Act to increase the days that the county executive committee member for finance shall have to issue the circular setting out the guidelines to be followed by all the county government entities in the budget making process.

Clause 41 of the Bill proposes to amend section 129 of the Act to require county assemblies to amend section 129 of the Act to require county assemblies to submit their budget estimates through the County Executive.

Clause 42 of the Bill proposes to amend section 131 of the Act so as to align it with the wording of section 39.

Clause 43 of the Bill proposes to amend section 132 of the Act so as to complete the wording in reference to County Executive Committee Member.

Clause 44 of the Bill proposes to amend section 133 of the Act for proper reference.

Clause 45 of the Bill proposes to amend section 136 of the Act by inserting a new subsection (3) to require county governments to surrender to the county exchequer account any funds withdrawn from the County Revenue Fund but not spent at the end of the financial year within fourteen days upon receipt of the audit report for that financial year.

Clause 46 of the Bill proposes to amend section 137 of the Act so as to complete the wording in reference to County Budget Review Outlook Paper.

Clause 47 of the Bill proposes to amend the heading appearing between sections 137 and 138 to reflect the equivalent heading in provisions relating to the same at the National Government level appearing between sections 45 and 46.

Clause 48 of the Bill proposes to amend section 141 of the Act so as to reflect the correct position.

Clause 49 of the Bill proposes to amend section 143(2) of the Act to provide for delegation of powers to execute loan documents by the County Executive Committee Member to the accounting officers and other officers.

Clause 50 of the Bill proposes to amend section 144 of the Act by deleting the word delegate which is not defined in the Act.

Clause 51 of the Bill proposes to amend section 145 of the Act so as to correspond with the text in the section.

Clause 52 of the Bill proposes to amend section 155 of the Act so as to clarify that the reference is to internal audit and not audits in general.

Clause 53 of the Bill proposes to amend section 159 of the Act so as to align it with the provisions of Article 210 of the Constitution.

Clause 54 of the Bill proposes to amend the heading immediately after section 162 of the Act so as to relate it to the content referring to County Governments and County Government Entities.

Clause 55 of the Bill proposes to amend section 165 of the Act so as to synchronize the reports with the provisions of annual reporting at the national and county government levels. Furthermore, it proposes to amend the section to make it a responsibility of the County Executive Committee Member in granting waivers and not by receivers of revenue.

Clause 56 of the Bill proposes to amend section 171 of the Act so as to delete the reference to Organ of State which is not the correct expression.

Clause 57 of the Bill proposes to amend section 174 of the Act so as to align it with section 172.

Clause 58 of the Bill proposes to amend section 176 of the Act so as to make it necessary for withdrawal of the funds limited to the time when Appropriation Bill is enacted.

Clause 59 of the Bill proposes to amend section 178 of the Act so as to make it consistent with the rest of the references to grants and donations in this section.

Clause 60 of the Bill proposes to amend section 180 of the Act so as to make it clear and consistent with the equivalent provisions in the National and County Governments.

Clause 61 of the Bill proposes to amend section 183 of the Act so as to clarify what was intended in the Act.

Clause 62 of the Bill proposes to amend section 184 of the Act so as to be consistent with the provisions of the section and the Act.

Clause 63 of the Bill proposes to amend section 185 of the Act so as to be consistent with the provisions of the section and the Act. Furthermore, it proposes to amend the section to reflect the provisions of section 89(4) and also to recognize the role of the County Executive Committee Member in overseeing county public finances.

Clause 64 of the Bill proposes to amend section 186 of the Act so as to apply the definitions to section 185 and to ensure that the county corporations or county-linked corporations are referred to together as provided for in other sections of the Act.

Clause 65 of the Bill proposes to amend section 187 by deleting subsection (3) to correct an error.

Clause 66 of the Bill proposes to amend section 193 by inserting new subsections (3), (4) and (5) to require the Public Sector Accounting Standards Board to account and report to the Cabinet Secretary.

Clause 67 of the Bill proposes to amend section 197 of the Act so as to make the provision clear of the intention.

Clause 68 of the Bill proposes to amend the Second Schedule of the Act for avoidance of doubt.

Please delete the repeated words “of the bill”

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not delegate legislative powers to the Cabinet Secretary nor does it limit any fundamental rights and freedoms.

Statement that the Bill concerns county governments

The Bill affects the functions of the county governments as set out in the Fourth Schedule to the Constitution and is therefore a Bill concerning counties for purposes of the Standing Orders.

Statement that the Bill is a money Bill within the meaning of Article 114 of the Constitution

The Bill is a money Bill within the meaning of Article 114 of the Constitution.

3.0 SUBMISSION BY THE STAKE HOLDERS

Following the call for memoranda from the public the Committee received memoranda from six organizations. All their proposals were deliberated on and considered by the Committee. Below are the views of the stakeholders:

3.1 INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF KENYA (ICPAK)

ICPAK made the following submission:-

Clause 3, s.5

Clause 3 (a) should add "and Senate "instead of "and Parliament", reason being that it is the mandate of the Senate to oversee the functions of the County's and not the National Assembly.

Justification

Article 96 of the Constitution grants the Senate mandate to represent the counties, and protect the interests of the counties and their governments.

Committee's position on the proposal: Committee rejected this proposal since both Houses of Parliament should be involved because this may entail transfer of liabilities from one level of government to the other.

Clause 8, s.17

Amend 8(b) to read "by inserting the following new subsection immediately after subsection (7)—"(8) six months prior to a general election, no procurement shall be carried out by the national and county governments, or their respective entities, in respect of their respective development votes unless with the approval of the National Treasury".

Justification

To curb against pilferage of public resources during an election year

Committee's position on the proposal: The proposal was rejected since the proposal would shut down Government operations. Other measures of curbing pilferage should be considered since the stoppage of procurement may not fully cure pilferage.

Clause 9, s.24

Recommend the provision be retained as per the Act as the amendment impacts negatively on the principle of separation of power. This erodes the independence of the Parliamentary Service Commission. The National Treasury shouldn't prescribe standard operating procedures for PSC.

Justification

To uphold the principles of separation of powers for the three arms of Government.

Committee's position on the proposal: The Committee agreed with the proposal to retain the provision as per the Act since the amendment interferes with the independence of Parliamentary Service Commission.

Clause 10, s.35

Retain as per parent Act section 35(1)(j). It is ideal to report quarterly (three months) or consistency and not four as indicated in the amendment

Justification

The current best practices is quarterly reporting (three months)

Committee's position on the proposal: The Committee agreed with the proposal to retain the provision as per the Act as reports should be submitted four times a year and not three times. This is consistent with best practices.

Clause 12, s.39

Retain 39(1)(j) as per the Act

The issue on "not assented to" of a Bill does not arise. Article 115 (6) of the Constitution provides that in if the President does not assent to a Bill or refer it back within 21 days, the Bill shall be taken to have been assented to on the expiry of that period.

Justification

The issue on “not assented to” of a Bill does not arise. Article 115 (6) of the Constitution provides that in if the President does not assent to a Bill or refer it back within the prescribed period, the Bill shall be taken to have been assented to on the expiry of that period.

Committee’s position on the proposal: The Committee rejected the proposal as the amendment is consistent with the Constitution where the National Assembly may authorize withdrawals of funds. This is in line with Article 222 of the Constitution. The amendment as proposed in the Bill has been lifted from Article 222 of the Constitution.

Clause 14, s.52

Amend section 52 by deleting subsection (2).

1. The PFM Act has mandated the Cabinet Secretary to authorize execution of loan agreements.
2. Any designation should happen within the confines of PFM Act. Therefore, no other legislations (as indicated in this amendment) should authorize execution of this responsibility.

Justification

To be consistent with the letter and spirit of Public Finance management reforms. Execution of loans is the sole prerogative of the Cabinet Secretary.

Committee’s position on the proposal: The Committee rejected the proposal by ICPAK since the amendment is intended to enable the CS to exercise discretion to execute loan documents to other accounting officers.

Clause 17, s. 77

The Institute supports this amendment. However, there’s need for a National Policy/Guidelines on tax waivers and variations. At the moment, this has been left at the discretion of the Cabinet Secretary-National Government, and Governors at the County Level.

Clause 18, s.78

ICPAK proposes that the amendment be deleted so as to have the provision as per the Principal Act. This is because Clause 18 of the Bill proposes to have many other revenue collectors besides KRA. These "others" should be agents of KRA and not the National Government. Having many revenue collectors may not be for the good of the Country's revenue collection. Besides, the proposed

amendment creates a loophole which can be misused to affect revenue collection/generation. Revenue being a sensitive matter.

Committee's position on the proposal:

The Committee rejected the proposal by ICPAK by supporting what is contained in the Bill as it recognizes other collectors e.g KAA, CAK and many others who are agents of KRA. The Committee however proposed amendment to the Clause as contained in the Committee's proposed amendments. The amendment is intended to renumber the Section 78 and also introduce other agents in revenue collection.

Clause 25, s.96

ICPAK proposed amendment to Section 96 so as to mirror provisions of Sec. 95 of the Principal Act.

This notwithstanding, there is need to interrogate the provision to stop disbursement on account of acts of omission and commission to the detriment of service delivery.

The proposed amendment touching on material breach of obligations by county governments is not in tandem with the treatment for similar breaches by national government entities as provided for under Sec. 95 of the principal Act. Sec. 96 of the Principal Act should be amended to align the provisions thereon with those of Sec. 95. The spirit need should cut across the National and County Governments .

Justification

The accounting officers should be personally held liable for the misstatements in accordance with Article 226(5) of the constitution.

Committee's position on the proposal: The Committee rejected the proposal since the provisions of Sections 95 and 96 have fundamentally different objectives.

Clause 27, s.98

ICPAK propose that the provision be retained as per the principal Act as "Material" and "Serious" in accounting terminology are synonymous.

Committee's position on the proposal: The Committee rejected the proposal by ICPAK since the amendment as proposed by the Bill was intended to align Section 98 with the Constitution to ensure consistency.

Clause 29, Section 105 (2)

ICPAK proposed that the amendment as proposed in the Bill be further reviewed as follows:

“Any other officer within the county designated by the County Treasury.”

The amendment empowers the County Treasury to appoint even outsiders to exercise a specified power, on its behalf. The original provision had locked the nomination to officers under county treasury.

Committee’s position on the proposal: The Committee rejected the modification since it was normal practice to designate other public officers to act on behalf for mobilization of funds through borrowing

Clause 32, Section 112

ICPAK was proposing the deletion of the proposed amendment as it amounted to duplication.

Committee’s position on the proposal:

The Committee rejected the proposed deletion by ICPAK since the provision was intended to further clarify the unforeseen circumstances where the Executive Committee Member is allowed to make payment from the Emergency Fund.

Clause 34, s. 117

Retain as in the principal Act.

The constitution established a structure in which policy directions are set at the National Government, BPS being one of the policies. Counties must prepare budget priorities in tandem with the national policy guide. This was made possible by the staggered due dates which allowed counties to align their budget priorities to the national priorities. This amendment takes away the possibility of alignment since it requires the presentation of the documents on the same day.

Committee’s position on the proposal: The Committee rejected the proposal by ICPAK to retain the provision as per the Principal Act. The

Clause 46, Section 137

ICPAK was proposing that the Clause 46 be further amended as follows :-

Section 137(2)(a)

The County Executive Committee Member responsible for matters related to Finance shall be the Chairperson”;

The

1. Add subsection 137(2)(d)

In constituting the Forum, the County Government shall ensure that among the professionals, one is certified members in good standing of a professional body in accounting or finance recognized by law in Kenya

Justification

Some of the County Budget Economic Forums have been non-functional or ineffective due to the fact that they are chaired by Governors who are busy and thus unable to convene meetings. This should be amended to have CBEFs convened by the County Executive Committee Member of Finance. Budgeting requires input by professionals knowledgeable in matters finance and accounting.

Committee’s position on the proposal:

Committee rejected the proposed amendment by ICPAK since the Governor is in a position to delegate to the CEC (F) hence no need for specifying that in the law. A Governor may choose to organize his/ her Government in any manner as long as it increases efficiency.

Clause 49, s.143: Persons who are authorized to execute loan documents at county government level

ICPAK was proposing that Clause 43 be amended by deleting the proposed 143(2) of the Principal Act.

Justification

The PFM Act has mandated the County Executive Committee member for finance to authorize execution of loan agreements at the County level. Any designation should happen within the confines of the PFM Act. Therefore, no other legislations (as indicated in this amendment) should authorize

execution of this responsibility. The amendment is inconsistent with the letter and spirit of Public Finance management reforms.

Committee's position on the proposal:

Committee rejected the proposed amendment by ICPAK because the amendment as per the Bill is meant to allow the authority to execute loan documents. Besides CEC Finance has the overall responsibility. Again, similar situation prevails in the National Government prevails where CS National Treasury has the overall responsibility for any loan to be executed.

Clause 52, s.155

Amend 155(5) by deleting "internal" to read,

"A county government entity shall establish an audit committee whose composition and functions are to be prescribed by the regulations".

Justification

This should be amended to ensure that the audit committee looks at both internal control and external audit. Subsection 5 narrows the mandate of the committee to internal audit issues and therefore these should be amended to ensure that the Committee also looks at both internal and external issues.

Committee's position on the proposal:

The Committee rejected the amendment as proposed by ICPAK since audit is mainly internal and meant to check the internal systems and areas of improvement.

Clause 65, s.187: Establishment of Intergovernmental Budget and Economic Council

ICPAK proposed as follows:-

Amend 187(1) by inserting a new paragraph after (h) "(i) The Institute of Certified Public Accountants of Kenya".

Justification:

They propose an additional amendment to include the Institute as a member of the Intergovernmental Budget and Economic Council. Since the main purpose of the Council is to provide consultation on

matters relating to budgeting, the economy and financial management, it makes sense to incorporate the Institute by virtue of its expertise and mandate on public finance and accountability as stipulated by the Accountants Act 2008. The Institute by virtue of its expertise and mandate on public finance and accountability as stipulated by the Accountants Act 2008 will add value to the Council.

Committee's position on the proposal:

The Committee rejected the proposal ICPAK since IBEC is a forum for national and county governments and not for non-public sector institutions.

3.2 SOCIETY OF CLERKS AT THE TABLE IN KENYAN LEGISLATURES (SOCAT)

SOCATT made their proposals as follows; THAT:-

Clause 3, s.5

Section 5(1) be retained as in the Principal Act

Justification

- i. The process of creation and dissolution of such organs should be fully domiciled within the individual County Governments with no interference from national government actors like Parliament.
- ii. County Government Entities are defined as either department, agency, authority or other body of the County Government.
- iii. These are administrative and functional units that the respective County Governments use to ensure service delivery.

Committee's position on the proposal: Committee rejected this proposal since both Houses of Parliament should be involved because this may entail transfer of liabilities from one level of government to the other.

Further Amendment by SOCATT

The Principal Act is amended by inserting the following new Section immediately after Section 5

5A. (i) Subject to Article 201 of the Constitution and the provisions of this Act, each county assembly shall establish an office responsible for budget, finance and economic analysis.

(ii) The county assembly office created under subsection (i) shall exist as an office in the County Assembly Service and shall consist of persons appointed on merit by virtue of their experience in finance, economics and public policy matters.

(iii) The county assembly budget office created under subsection (i) shall—

- a) provide professional services in respect of budget, finance and economic information to the offices of the County Assembly;
- b) prepare reports on budgetary projections and economic forecasts and make proposals to the committees of the county assembly responsible for budgetary matters;
- c) prepare analyses of specific issues, including financial risks posed by the National and County government policies and activities to guide the county assembly;
- d) consider budget proposals and economic trends and make recommendations to the relevant committee of the county assembly with respect to those proposals and trends;
- e) establish and foster relationships with the National and County Treasury and other national and international organisations, with an interest in budgetary and socio-economic matters as it considers appropriate for the efficient and effective performance of its functions;
- f) subject to Article 35 of the Constitution, ensure that all reports and other documents produced by the assembly office are prepared, published and publicised not later than fourteen days after production; and
- g) report to the relevant committees of the county assembly on any bill that is submitted to the county assembly and has an economic and fiscal impact, making reference to the fiscal responsibility principles and to the fiscal objectives set out in the relevant Budget Policy Statement; and
- h) propose, where necessary, alternative fiscal framework in respect of any financial year.

(2) In carrying out its functions under subsection (i), the county assembly office shall observe the principles of public finance under Article 201 of the Constitution.

(3) The Parliamentary Budget Office shall be required to assist and build the capacity of County Assemblies to analyse any documents under this Act and any Regulations on matters Public Finance.

Justification

The County Fiscal Strategy Papers are documents unique to counties and are part of the retinue of information that exist at the County level. Revenue allocation done by Parliament has very little to do with the CFSPs and therefore the Parliamentary Budget Office would be stretching its mandate if they are allowed to also scrutinise these documents for the County Assemblies. They would be engaging in a work fishing expedition if they started over-interacting with the documents. Instead, this should be done at the various County Assemblies by requiring that County Assemblies establish an office within the County Assembly Service responsible for budget, finance and economic matters.

The National Government and its structures should be concerned with building capacity of County Governments and County Assemblies to perform their functions instead of taking away those functions and performing them. It is noted that the roles and functions of County Assemblies with regard to budget preparation, approval and monitoring mirror those that are undertaken at the National Parliament. To safeguard the work of officers undertaking this onus task at the National Parliament, there is legally established Parliamentary Budget Office with adequate expertise and experience to enable Members make informed decisions.

Committee's position on the proposal:

Committee agreed with the proposal to establish County Budget Offices to ensure that the County Assemblies are well equipped to scrutinize the budget documents and all other matters on micro and macro economic analysis within the county. This is similar to the National Government where there is Parliamentary Budget Office which in this case will be mandated to build capacity to County Assemblies. However, there is need to relook at the functions given to the County Budget Offices and also the nomenclature of the office.

Clause 4, s.8: Responsibilities of the Senate Budget Committee in Public Finance matters.

The provision should be amended to provide that with respect to Counties the approval be given by relevant County Treasuries in line with guidelines developed by the National Treasury.

Justification:

The proposed amendment is a timely reprieve that aims to safeguard public funds from the lingering hands of those who may wish to take advantage of general elections to siphon public money.

However, County Governments are autonomous structures capable of making decisions on when and how to spend money allocated to them. The National Treasury exists to provide guidance and advice on public finance management.

The work of approving development expenditures to be undertaken during that period should be done by County Treasuries.

Committee's position on the proposal:

Proposed amendment dropped since it was unclear.

Clause 31, s.109(4): Establishment of a County Revenue Fund for each county government

Clause 31 be amended to insert Clause 31A that will be read:-

The Principal Act is amended by inserting the following new section immediately after **Section 109 (6)**–

109 7A. (a) The County Treasury shall submit all requisitions to the controller of Budget as soon as is practically possible, but not later than forty-eight hours upon receiving the request from respective entities.

(b) The accounting officer when requisitioning for exchequer releases for the county assembly shall submit a copy of the requisition to the controller of budget and the controller of budget shall only release the funds upon satisfying themselves that the requisition submitted by the County treasury and that by the County Assembly are in conformity.

(c) The County Executive Committee (CEC) Member for finance shall not withhold or refuse to submit requisition for a County Assembly to the Controller of budget on behalf of the County Assembly

(d) The CEC commits an offence under the Act for withholding or refusing to submit requisition on behalf of the County Assembly to the Controller of Budget.

Justification

This amendment will ensure that once funds are requisitioned by the County Assembly through the county treasury, there are no delays in forwarding the requisition to the COB as has been the Case.

Committee's position on the proposal

The Committee rejected the proposed amendment since cash release is subject to availability and other factors such as other urgent demands and hence matter of releases cannot be addressed as suggested by SOCAT.

Clause 33, s.116

Clause 33 be amended by inserting 33A

(i) to provide for the establishment of the County Assembly Fund.

(ii) provide that section 34 of the County Assembly Services Act is deleted

Committee's position on the proposal:

There is a fund already established under the County Assembly Service Act hence the proposed amendment is not necessary.

The Principal Act is amended by inserting the following new clause immediately after section 116–

116A. (i) Pursuant to Section 34 of the County Assembly Services Act, there is established a fund to be known as the County Assembly Fund.

(ii) The Secretary to the County Assembly Service Board shall, on the directions of the Board, open and operate such bank accounts as may be necessary for the purposes of the County Assembly Fund.

(iii) Notwithstanding any other provisions of this Act, where a fund is established under any other law for the purpose of a county assembly, the County Assembly Service Board shall–

- a) establish procedures and systems for proper and effective management of the monies and property of the Fund;
- b) establish accounting procedures and systems for the Board to properly account for the monies and property;
- c) superintend the expenditure of the monies of the Fund to ensure that the monies are properly accounted for;
- d) prepare and submit accounts for each financial year in accordance with the written law relating to audit for audit by the Auditor-General; and
- e) ensure that the accounts prepared under paragraph (d) comply with the provisions of this Act.

Justification

The PFMA is superior to CASA and this amendment avoids duplication.

Committee's position on the proposal:

There is a fund already established under the County Assembly Service Act hence the proposed amendment is not necessary.

Clause 35, s.119: Banking arrangements for county government and its entities

Introduce a subsection that provides that the Treasury Single Accounts shall not apply to the County Assemblies

Committee's position on the proposal:

The proposed amendment by SOCAT was rejected since the Treasury Single Account will not affect in any way the operations of the county assemblies. Furthermore, this similar situation prevails with the national government entities where all departments, agencies including Parliament operate a single treasury account established at the Central Bank.

(c) By inserting the following new subsection immediately after subsection 119 (6) –

(7) The provisions of the Treasury Single Account under this Section shall not apply to a county assembly.

Justification

The County Assembly receives funds under the County Allocation of Revenue Act, therefore the funds allocated to County Assemblies need not go through the same executive account to avoid mix ups and unintended mismanagement of funds.

Committee's position on the proposal:

The proposed amendment by SOCAT was rejected since the Treasury Single Account will not affect in any way the operations of the county assemblies. Furthermore, this similar situation prevails with the national government entities where all departments, agencies including Parliament operate a single treasury account established at the Central Bank.

Clause 39, s.127: County government to prepare cash flow projections

The Clause 39 be amended to insert a new clause (39B) 2A by inserting the following new subsection immediately after subsection **127 (1)** –

(2) (a) The Controller of Budget shall only release funds to a County Assembly based on the projections in subsection (ii) and the funds allocated under the County Allocation of Revenue Act.

Justification

This will ensure that County Assembly releases are not subject to other conditions introduced by COB other than the cash flow projections and allocation based on the County Allocation of Revenue Act. Recently the Controller of Budget has introduced extraneous requirements including the Voucher, imprest warrant, bank vouchers for exchequer releases.

Committee's position on the proposal:

The Committee rejected the proposal by SOCAT due to the fact that the Controller of Budget is exercising her mandate as per the constitution in terms of controlling and ensuring all conditions have been met as per the budget approved. She is also allowed to also place other conditions as long as they are meant to streamline expenditure control and avoid pilferage.

Clause 40, s.128a County Executive Committee Member for Finance to manage budget process at county government level.

The provisions should be maintained as in the Principal Act.

Justification

The amendment will limit the timelines available for Sectors to finalize their issues and include the same in the annual development plan which the law requires to be submitted by 30th September.

Committee's position on the proposal:

The Committee rejected the proposal by SOCAT due to the fact that the proposed amendment is meant to provide sufficient time to incorporate any measures contained in the Budget Circular issued by the National Treasury. Hence the need to increase the timelines from 15th August to 30th September.

Clause 41, s.129: County Executive Committee Member to submit budget estimates and other documents to County Executive Committee for approval.

The provision be retained as in the Principal Act

The County budget making process is robust with the formulation of the County Fiscal Strategy Papers (CFSPs) being an exhaustive and all-inclusive end of product of County planning. The CFSP provides the overall resource envelope projections and Sector expenditure ceilings for the next financial year. Sectors including the County Assembly must live within the ceilings proposed by the County Executive Committee and approved by the County Assembly in the CFSP.

It is noteworthy that the provisions of Article 176 of the Constitution of Kenya provides that the County Government consists of the County Executive and the County Assembly. These two are separate arms of the County Government. To safeguard the principle of separation of powers and financial autonomy of County Assemblies, the provision that budget estimates of the County Assemblies be approved by the County Executive should be shelved.

The proposed amendment also contradicts the provisions of **Section 129** (3) and (4) which explicitly provides that the Clerk to the County Assembly shall prepare estimates and table the same in the County Assembly without any reference to the County Executive save for requirement to submit to the County Executive Committee Member for Finance for his comments.

Justification

Retention of the provision in the Act will allow for the independence of the Assemblies by allowing the County Assembly Service Boards to be the final body/authority regarding the County Assembly budget. This amendment will expose the county assembly to another level of control by the Executive yet the Assemblies already have ceilings

Committee's position on the proposal

Committee accepted the proposal from SOCAT since it will protect the independence of the assemblies.

Clause 45, s.136: Appropriation of money for county government purpose to lapse if unspent

Insert 136A (a) any money unspent can be re-budgeted without affecting the ceiling for both assembly and executive. To clear pending bills without affecting the current budget

d) By inserting the following new subsection immediately after subsection (3) –

(4) An appropriation that has not been spent at the end of the financial year for the year which it was appropriated can be budgeted in the next financial year and such sum shall not affect the ceilings issued in respect to that financial year.

Justification

It will allow assemblies to use the funds unspent at the end of any Financial Year as a balance carried forward since the said balances were part of the ceilings and pending bills hence avoiding the use of current financial year ceilings to offset previously accrued bills.

Committee's position on the proposal

The Committee rejected the proposal by SOCAT since it goes against principles of public finances where any money that has been unspent by the end of the financial year is expected to be repaid to the county exchequer account and a refund statement prepared for submission to the Controller of Budget. It is noteworthy that the Bill proposes to introduce timelines within which the balances declared shall be surrendered.

Clause 65, s.187: Establishment of IBEC

The provisions of Section 187 (d) of the Principal Act be amended by inserting the following new paragraphs in subsection (i) immediately after paragraph (h) –

- (i) a representative of a body acting on behalf of County Assemblies appointed by the body.
- (ii) a representative of Clerks of County Assembly nominated by Clerks of County Assemblies.

Justification

The Council does not contain any representation from the County Assemblies making it too slip sided on the County Executive.

Committee's position on the proposal

The Committee rejected the proposal by SOCAT since IBEC is comprised of the executive arm of both levels of government and hence introduction of the county assembly representatives undermines the principal of separation of power as the assemblies are expected to oversight the activities of the

executive. Parliament is also not represented in IBEC hence improper to include county assembly representatives.

3.3 COUNTY ASSEMBLIES FORUM (CAF)

County Assemblies proposed the following amendments:-

Clause 3, s.5: Declaration of entities as county government entities

Retain section 5(1) as per the act

Justification

Proposal to add “Parliament” as one of the bodies to approve formation of county corporations will be unconstitutional as this clearly falls within the purview of county governments hence approval by the county assembly is enough.

The Constitution provides circumstances Parliament and in particular Senate can be involved in county affairs.

Committee’s position on the proposal: Committee rejected this proposal since both Houses of Parliament should be involved because this may entail transfer of liabilities from one level of government to the other.

Clause 41, s.129: County Executive Committee member to submit budget estimates and other documents to county executive committee for approval

Retain provision as per the Act.

Justification

- i. The County Executive and County assemblies are separate entities; hence separation of powers will be eroded with the proposal. As it will expose the county assembly to the control of the county executive.
- ii. It is the duty of the Clerk of the County assembly to prepare estimates of the assembly to be approved by the county assembly service board and submit the same to the county assembly as is in section 129(3) and (4) of the Act.
- iii. The County assembly budget must be within the ceilings proposed by the county executive as provided by CFSP.

Committee's position on the proposal:

The proposal by the CAF is contradictory. The intention of the proposed amendment in the Bill is to provide that independence to the county assemblies.

Clause 42, s.131: County assemblies to consider budgets

CAF stated that the said provision and the amendment should be deleted to allow county assemblies discharge their constitutional mandate of approving the budget without limitations. Article 185 of the Constitution mandates the assembly to approve county budgets.

The problems experienced by county governments departments during the exchequer releases has neither been addressed by the section or regulations

The County Executive has been holding the county assembly at hostage by denying allocations from the county treasury.

The section should be amended to provide that or alternatively regulations made to provide for -

- (i) County budget must be implemented as approved in the relevant appropriation act
- (ii) Requirement for the county executive member in charge of the County treasury to table a schedule providing for monthly exchequer issues to the various organs of the county government which shall be the basis for release of funds.
- (iii) The schedule to be submitted to the assembly for approval within 14 days of enactment of the Appropriation Act.
- (iv) A copy of the schedule to be submitted to the Controller of budget and the National Treasury within 14 days of approval.

Committee's position on the proposal:

The proposed amendment does not in any way interfere with the role of the county assemblies. In addition the issue of exchequer release does not fall within this section hence their proposal is misplaced. The section deals with the approval of county budget estimates which is the sole mandate of the county assemblies.

Clause 45, s.136: Appropriation of money for county government purpose to lapse if unspent

CAF proposed that the section should be amended further to provide that “provided any money unspent can be re-budgeted without affecting the ceiling of a particular organ of the county government to clear pending bills without affecting current budgets”.

Justification

- i. The amendment affects functions and operations of counties as most of the times funds are released late into the financial year making it impossible for an entity to spend that amount.
- ii. Returning the funds without a provision for re-budgeting of the same will affect the operations of the county organs as they may not be able to clear pending bills.
- iii. County government organs should be allowed to use the funds unspent at the end of the financial year as balance carried forward since the said balances were part of the ceilings and have been appropriated to pending bills.

Committee’s position on the proposal

The Committee rejected the proposal by CAF since it goes against principles of public finances where any money that has been unspent by the end of the financial year is expected to be repaid to the county exchequer account and a refund statement prepared for submission to the Controller of Budget. It is noteworthy that the Bill proposes to introduce timelines within which the balances declared shall be surrendered.

3.4 COUNCIL OF GOVERNORS (COG)

The Council of Governors submitted the following amendments:-

Clause 3, Section 5: Declaration of entities as county government entities

COG objected to amendment to section 5(1) and wanted the provision to be maintained as per the Act.

Justification

1. The role of Parliament in the process must be explicitly provided for
2. County corporations are county government’s functions and once the approval has been done by the assembly there is no need for parliament’s approval.

Committee’s position on the proposal: Committee rejected this proposal since both Houses of Parliament should be involved because this may entail transfer of liabilities from one level of government to the other.

Clause 4, Section 8: Responsibilities of the Senate Budget Committee in Public Finance matters.

Objected to amendment to section 8(1) and want the provision to be maintained as per the Act.

Justification

It is not a constitutional mandate of a Senate Committee to monitor adherence of the Public Finance principles by the Counties. Article 96 of the Constitution is very clear on the role of Senate as a whole.

With regards to County finances, the county assemblies are constitutionally provided with the mandate to provide oversight to Counties. The extent of the Senates oversight role should be re-examined.

Committee's position on the proposal:

The proposal by COG seems to misunderstand the role of the Senate in over sighting the county governments as provided by the Constitution and espoused further by the ruling of High Court in where the Court ruled that the Senate can summon Governors over the use of public resources for their respective counties.

Further amendment

Clause 5, Section 10: Responsibilities of the Parliamentary Budget Office

They proposed a deletion and substitution of the proposed new paragraph (i) in Clause 5(a)(ii) as follows-

(i)review monitoring and evaluation reports of government programmes and projects with a view to inform the legislative budget and economic analysis.

Justification

The PBO has no capacity to undertake monitoring and evaluation. As such, it should be limited to reviewing monitoring and evaluation reports.

They object to the proposed paragraph (k)

Justification

The proposal in its entirety will infringe on county operations. The Council envisages a situation where the office will be demanding these documents are not needed for the division of revenue between the two levels of government. The division of revenue is already guided by Article 203 of the Constitution and not through the Fiscal Strategy papers.

Committee’s position on the proposal:

The proposal by COG was rejected since the role of PBO has been mandated to review the budget documents to be able to offer capacity to county assemblies.

Clause 12, Section 39: National Assembly to consider budget estimates

COG proposed that the provision on section 39(7) to be maintained as is in the parent act.

Justification

It is important that the Appropriation Act is assented to before the national assembly authorizes any withdrawals so as to ensure transparency and integrity of the process.

Committee’s position on the proposal:

The proposed amendment is per what is in the Constitution and hence the amendment as contained in the Bill is merely conforming to the requirements of Article 222.

Clause 19, Section 82(4): Annual reporting by receivers of revenue

COG proposes that section 82(4) be maintained as per the parent Act.

Justification

When the words “ by the receiver or collector are deleted in the section the provision loses its meaning.

Clause 30, Section 107(2)

They accepted the proposed amendment to section 107(2)

Clause 31, s.109(4)

They accepted the proposed amendment to section 109(4) on the basis that currently all 47 County Revenue Fund accounts are opened at the Central Bank. This is to allow for efficient management of the County resources.

Clause 32, s.112

They accepted the proposed amendment to section 112(3)

Justification

The proposal is meant to promote pay out of the emergency fund to enable the affected persons to return to their original status.

Clause 33, s.116

They accepted the proposed amendment to section 116(1) as this is to emphasize that these are county funds.

They rejected the amendment to section 116(7) and want the provision to be maintained as it is in the parent Act.

Justification

Submission of audited financial statements to the Auditor General three months after the end of the financial year might not be feasible from the experience. The Council proposes for the retention of the current provision.

Committee's position on the proposal:

The Committee rejected this proposal since the requirement for submission of audited financial statement is a standard requirement hence any administrator of public funds must be in a position to present the same to the county assemblies. The CEC Finance must ensure that this is done in good time before submission to the county assemblies.

Clause 34, s.117

They propose that the provisions of section 117(1) and (6) to be maintained as per the parent Act.

Justification

Any amendment to one budgetary calendar date affects the entire budgeting process. Furthermore, the fiscal strategy paper is meant to be aligned to the Budget Policy Statement submitted to Parliament by the National Treasury on 15th February every year. This will therefore create conflict between the two documents.

The budgeting calendar for County governments should be reviewed wholesomely because it mirrors the budgeting calendar for the MDAs. 30 days is a lot of time for approval of the document by the

assemblies. The County assemblies have adequate staff that enables them fast-track the documents in good time.

Clause 35, s.119 Banking arrangements for county government entities

They propose that the provisions of section 119(4) to be maintained as per the parent Act.

Justification

1. Currently there are no guidelines with regards to accessibility of overdrafts but even if they were there, the overdrafts are accessed through the Central Bank and there is no role of the National Treasury in this process.
2. The National Treasury should be publicizing reports of the national MDAs and not Counties with regards to this process.

Committee position on the proposal:

The amendment was rejected since the National Treasury has the overall responsibility in matters finance

Clause 36

The insertion of the new section is agreed to with amendments to read as follows:

119A(1) the following shall be considered by the County Treasury in granting approval to a county government entity to open and operate a county government bank account.

(b) for avoidance of doubt, all county government bank accounts shall be opened at the Central Bank of Kenya except for imprest bank accounts for petty cash which shall be opened at a bank designated by the County Treasury

Justification

The proposal to have a government controlled bank as the bank that counties should deposit imprest, one wonders which government is being referred to in this context. The national government does not provide for such a directive to the MDAs. This is like a directive to the Counties.

Committee's position on the proposal:

The COG seems to have misunderstood the proposed amendment as just like all national government entities, county governments will be required to operate an exchequer account with national treasury except for imprest bank accounts for petty cash which shall be opened at a government controlled or a cooperative owned bank designated by the county treasury. The purpose of these is to avoid opening bank accounts in banks with the danger of collapsing. A good example being Chase and Imperial Banks.

Clause 38, Section 126: County government to prepare development plan

COG accepted the amendment.

Justification

It is important to provide timelines for the County Assemblies to deliberate on the County annual development plans. The Act as it is currently does not provide for this.

Clause 39, Section 127: County government to prepare cash flow projections

COG propose to maintain the provisions of section 127(1) as per the parent Act.

Justification

The budgeting framework should only be reviewed to cater for transition period.

Committee's position on the proposal:

The Committee rejected this proposal as the alteration of timelines allows for sufficient time to prepare the county estimates.

Clause 40, Section 128: County executive Committee Member for Finance to manage budget process at county government level

They propose to maintain the provision of section 128(2) as per the parent Act.

Justification

Budgeting should only be amended to incorporate the transition phase after every general election. As it is, the budgeting calendar mirrors the National government budgeting process in the review of the counties' budgeting calendar.

Committee’s position on the proposal:

The Committee rejected the proposal by COG due to the fact that the proposed amendment is meant to provide sufficient time to incorporate any measures contained in the Budget Circular issued by the National Treasury. Hence the need to increase the timelines from 15th August to 30th September.

Clause 42, s.131

They accepted the proposed insertion of a new subsection (5). On the basis that here must be a ceiling as how much the County Assembly can adjust the budget estimates of the County. Without a ceiling, we may find that no county budget will ever be approved in time and in the right manner.

They object to the insertion of the new subsection (7). The **COG** questioned why the National Treasury requires an amendment to the Act to demand County Budgets. The National Treasury is not responsible for the implementation of County Budgets and has no role in the implementation of County Budgets. County Governments are already required to publish and publicize their budgets, the National Treasury should be able to access those budgets in the publicized forums rather than to make it mandatory through a legislation.

Committee position on the proposal:

The proposal by COG was rejected since the National Treasury has the overall responsibility in matters finance hence no harm in legislating on the requirement for CEC Finance to submit a copy of the budget estimates to the National Treasury.

Clause 45, s.136

COG accepted the amendment as it ensures that the refund process is fast tracked.

Clause 53, s.159

COG accepted the amendment as it seeks to include the variation component.

Clause 55, s.165

COG accepted the amendment to section 165(4) the three months is to coincide with the submission of the statements to the other oversight institutions.

Clause 58, s.176

COG accepted the amendment to section 176(2). The proposal is to protect the financing of urban areas.

Clause 59, s.178: Conditions in which urban areas or cities may receive grants

They propose that the provision in section 178(7) be maintained as it is in the parent Act.

Justification

The grant or donation is directly being implemented by the Counties on the counties functions. There is or reason as to why the National Treasury should authorize Counties to allow a donor to audit such donations and grants. This authority should come from the Counties themselves.

Committee position on the proposal:

The Committee rejected the proposal by the COG since in as much as counties are independent, the national government retains the overall responsibility on grants and as such it is necessary for his authority to be sought to allow a donor of a grant to audit such funds on the basis of its own financial procedures. The amendment ass proposed in the Bill is proper.

3.5 THE NATIONAL TREASURY

The National Treasury proposed the following amendments:

Clause 2

Section 2 of the principal Act is amended by inserting the following new paragraph:

The "Consolidated Fund" shall mean all money raised or received by or on behalf of the national government in accordance with Article 206(1) of the Constitution.

Justification

The Consolidated Fund is not defined. There is need to define the Consolidated Fund and the scope therefore.

Section 2 of the Principal Act is amended by inserting the following new paragraph:

The "County Revenue Fund" shall mean all money raised or received by or on behalf of the County Government in accordance with Article 207(1) of the Constitution.

Justification

The County Revenue Fund is not defined. There is need to define the County Revenue Fund and the scope therefore.

Section 2 of the Principal Act is amended by deleting the definition of “public money” and replacing therefor with the following:

“Public money means:

- a) All money that comes into possession of, or is distributed by a national or county government entity and money raised by a private body where it is doing so under statutory authority; and*
- b) Money held by national or county government entities in trust for third parties and any money that can generate liability for the government.”*

Justification

The amendment is intended to include public money held by county government entities in the definition of public money. This was inadvertently omitted in the published PFMA.

Section 2 of the Principal Act is amended by deleting definition for National Exchequer Account and replacing therefor with the following:

“National Exchequer Account or Accounts” means the National Exchequer Account or Accounts referred to in section 17

Justification

The definition needs to be aligned with the proposed amendments in Section 17(2).

Clause 8

The National Treasury does not support this amendment because it is intended to restrict procurement relating to development votes three months prior to an election. It is not a good practice to curtail procurement since this would have a negative impact on economic development. Since there are control institution mechanisms established in law to check abuse of office, there is no need of freezing employment due to an impending election.

Clause 11

The Ministry did not support this amendment because the section applies to paragraph (2) of Article 202 of the Constitution and not paragraph (1) of Article 202 of the Constitution. They therefore recommend

that the amendment be dropped since national government budget estimates do not include the equitable share.

Clause 13

The National Treasury did not support it because exchequer issues are usually not by programmes and projects but by Votes (Recurrent and Development) as appropriated by Parliament or by County Governments as per CARA. What Parliament should require the CS/NT to provide is a breakdown of expenditures by programmes and projects and not exchequer releases.

Section 17(2)

That Section 17 be amended in subsection (2) by deleting it and replacing therefor with the following paragraph:

“(2) The National Treasury shall maintain the Consolidated Fund in Kenya shilling or foreign denominated currencies accounts to be known as the Consolidated Fund Accounts, kept at the Central Bank of Kenya and shall, subject to Article 206(1) of the Constitution-

- a) include the National Exchequer Accounts, Revenue Collection Accounts, Receipts into Domestic Debt Accounts, Overdraft Account, Special Project Deposit Accounts and any other accounts designated by the Cabinet Secretary.*
- b) Facilitate payment into that account or accounts all money raised or received by or on behalf of the national government and*
- c) pay from that National Exchequer Account or National Exchequer Accounts without undue delay all amounts that are payable for public services.”*

Justification

1. It is necessary to expand the accounts of the Consolidated Fund to provide for Kenya shillings or foreign denominated currency. The account or accounts should be kept at the Central Bank of Kenya.
2. The foreign currency Exchequer accounts shall hold funds received by the National Treasury in foreign currencies hence reduce exchange losses.
3. All the National Exchequer Accounts shall be subject to CoB’s approval in accordance with Article 206(1) of the Constitution and Clause 17(4) of the PFM Act.

That Section 17 be amended in subsection (3) by deleting it and replacing therefor with the following new paragraph:

“(3) The National Treasury shall ensure that no National Exchequer Account is overdrawn at any time.”

Justification

To require that no National Exchequer Account shall be overdrawn at any time, whether Kenya Shillings account or foreign denominated account.

That Section 17 be amended in subsection (4) by deleting it and replacing therefor with the following paragraph:

“(4) Where a withdrawal from the Consolidated Fund is authorized under the Constitution or an Act of Parliament for the appropriation of money, the National Treasury shall make requisition for the withdrawal and submit it to the Controller of Budget for approval, which request shall be made manually or electronically through a designated form prescribed by the Cabinet Secretary, provided that inter-account transfers within the Consolidated Fund Accounts shall not require Controller of Budget’s approval.”

Justification

1. This amendment is made to facilitate progressive automation of the requests made of authority from the Controller of Budget on the withdrawals from the National Exchequer Account to be automated and embrace use of technology in our Public Finance management transactions.
2. The amendment provides flexibility for the National Treasury to make inter-account transfers especially funding the National Exchequer Account from other Consolidated Fund accounts.

That Section 17 be amended in subsection (5) by deleting it and replacing therefor the following new paragraph:

“(5) The approval of a withdrawal from the Consolidated Fund by the Controller of Budget, together with written instructions from the National Treasury requesting for the withdrawal, shall be sufficient authority for the Central Bank of Kenya to pay amounts from a National Exchequer Account in accordance with the approval and instructions provided, which approval or written instructions may be manual or electronic in a form prescribed by the Cabinet Secretary.”

Justification

To provide for more than one bank account and require CBK to release funds based on approval from the Controller of Budget and the National Treasury instructions. In addition, this is also to clarify that the approval or written instructions may be manual or electronic to allow progressive use of technology.

Section 28

Section 28 of the Principal Act is amended by inserting the following new subsections immediately after subsection (1):

“(1A) Any bank account opened under subsection (1), for the primary purpose of collecting money raised or received by or on behalf of the national government shall be designated as a Revenue Collection Account and shall be used only for purposes of collecting money raised or received by or on behalf of that national government.

(1B) Money paid into a bank account designated as Revenue Collection Account shall be promptly credited into a National Exchequer Account and shall be withdrawn in accordance with Article 206 of the Constitution and Section 17 of the Act.

(1C) For the avoidance of doubt, no expenditure shall be paid out of a bank account designated as a Revenue Collection Account except as otherwise authorized by law except as otherwise authorized by the Cabinet Secretary in concurrence with the Controller of Budget.

(1D) Each financial year, an Accounting Officer of a national government entity shall prepare and submit to the National Treasury a record of all bank accounts operated by that entity during the year, with a copy to the Controller of Budget and the Auditor General.”

Justification

Section 28 of the PFMA should be amended to mirror the amended Section 119 of the PFMA. The Cabinet Secretary should be allowed to authorize payments from Revenue Collection accounts in cases where receipts are made in error or belong to third parties or relate to Treasury Bills.

Section 28 of the Principal act is amended in subsection (2) and (3) by inserting the word “system” immediately after the words “Treasury Single Account” so as to read as follows:

“(2) The National Treasury shall establish a Treasury Single Account system into which all revenues received by national government entities shall be deposited and from which all payments of money to or on behalf of national government entities shall be made.

(3) The Treasury Single Account system shall not be operated in any manner that prejudices any entity to which funds have been disbursed.”

Justification

This amendment harmonizes the Section with the definition of the TSA in the Preliminary section and clarifies that the TSA is a system of accounts and not ONE Account.

Section 28 of the principal Act is amended by inserting the following new subsection (2A) immediately after subsection (2):

“(2A) The Treasury Single Account system shall include the Consolidated Funds Accounts as referred to in Section 17(2), State Departments, Commissions and Independent Offices Accounts and any other Account designated by the Cabinet Secretary.”

Justification

The amendment clarifies the scope of the TSA; it includes both inflow (Consolidated Fund Accounts) and outflow accounts (MDAs account). The scope can progressively be increased to include SAGAs and other government entities.

Section 34

The National Treasury did not support this amendment because County Governments are supposed to align their CFSPs with the national plans/policies which are expounded in the BPS. If the CFSPs are to be submitted by 15th February then there will be no time allowed for such alignment to take place.

Section 35

The National Treasury did not support this amendment because the Cabinet Secretary is required to submit to Parliament every four months a report on all loans made to the national government, national government entities and county governments. Besides, it has been agreed following inter-governmental

consultations that county governments will not go directly to the CBK for overdraft, instead the National Treasury shall fast track disbursements for county governments that have urgent financing needs.

Section 119

Section 119 of the PFMA is amended:

(a) by inserting the following new subsections immediately after subsection (1):

(1A) A County Treasury may authorize a county government entity, including a county assembly to open and operate bank accounts only at the CBK except:

- a. an imprest bank account which may be opened in a commercial bank account to facilitate the day to day operation of offices, provided the float for the account shall not exceed a limit set by the Cabinet Secretary;*
- b. a revenue collection account to facilitate receipt and transfer of revenue to the relevant County Revenue Fund;*
- c. a bank account relating to a county public fund established pursuant to Section 116 of the Act to facilitate administration of the fund; or*
- d. any other bank account authorized by the Cabinet Secretary to be opened in a commercial bank.*

(1B) Any bank account opened under subsection (1A), for the primary purpose of collecting money raised or received by or on behalf of the county government shall be designated as a County Revenue Collection Account and shall be used only for the purposes of collecting money raised or received by or on behalf of that county government.

(1C) Money paid into a bank account designated as County Revenue Collection Account shall be promptly credited into the County Exchequer Account and shall be used and accounted for in accordance with Article 2017 of the Constitution and Section 109 of the Act.

(1D) For the avoidance of doubt, no expenditure shall be paid out of a bank account designated as County Revenue Collection Account except as otherwise authorized by law.

(1E) Each financial year, an Accounting Officer of a county government entity shall prepare and submit to the County Treasury a record of all bank accounts operated by the entity during the year, with a copy to the Controller of Budget, the Auditor General and the National Treasury.

Justification

County governments have established revenue collection bank accounts in some commercial banks into which local revenue is paid. Reports however, indicate that county governments are utilizing the revenue collected to make payments before sweeping the funds into the County Revenue Fund. By doing so the county governments are bypassing the office of the Controller of Budget. This goes against the intention of Article 207 of the Constitution, Section 109 of the PFMA and National Treasury Circular No. 14 of 9th September, 2015.

They therefore propose further amendments to Section 119 of the PFMA to require County Governments to designate bank accounts opened for collecting money raised or received by or on behalf of the county government as County Receipts Accounts and to bar charging of any expenses to such accounts, except bank account operational expenses and expenses relating to mobilization of a loan.

In addition, they also noted that county governments are opening bank accounts in commercial banks for purposes of holding deposits (usually transferred from the County Revenue Fund) contrary to the intention of the law. To put a stop to this we have proposed to amend the PFMA to restrict the opening of bank accounts for three purposes: (i) for purposes of an imprest; (ii) for purposes of revenue collection; and (iii) to operationalize a county public fund established under Section 116 of the PFMA.

Section 119 of the principal Act is amended in subsection (2) and (3) inserting the word “system” immediately after the words “Treasury Single Account” so as to read as follows:

(2) Each County Treasury shall establish a Treasury Single Account system at the Central Bank of Kenya through which payments of money to and by the various county government entities are to be made.

(3) The Treasury Single Account System shall not be operated in any manner that prejudices any entity to which funds have been disbursed.

Justification

This amendment harmonizes the Section with the definition of the TSA in the preliminary section and clarifies that the TSA is a system of accounts and not ONE Account.

Section 164 (4)

Section 164 of the principal Act is amended in paragraph (b) of subsection (4) by inserting the words “the National Treasury” immediately after the words “County Treasury” so as to read as follows:

(4) Within three months after the end of each financial year, the accounting officer for an entity shall-

(b) deliver a copy of the statements to the relevant County Treasury, the National Treasury, the Controller of Budget and the Commission on Relevant Allocation.

Justification

The inclusion of National Treasury as a recipient of a copy of financial statements is to facilitate the National Treasury to provide technical support to county government entities in terms of review and feedback of the financial statements in time for the preparation of county treasury financial statements.

The current situation is that the National Treasury does not get copy of the county government entities financial statements. This was an oversight at the preparation of the PFM Act 2012.

Section 187(1)

Section 187 of the principal Act is amended in subsection (1) by inserting the following new paragraph (i) after paragraph (h):

“(i) chairmen of the Committees of the Council of Governors.”

Justification

To include the chairmen of the Council of Governors committees as substantive members of IBEC (as per the resolution of IBEC meeting of 11th August 2015).

4.0 PROPOSED COMMITTEE AMENDMENTS

CLAUSE 2

THAT, clause 2 of the Bill be amended by—

(a) inserting the following new paragraphs immediately after paragraph (a)—

(aa) deleting the definition of “National Exchequer Account” and substituting therefor the following new definition—

“National Exchequer Account” means the National Exchequer Account or Accounts referred to in section 17;

JUSTIFICATION

This is to align the definition with the proposed amendments in Section 17(2) of the Act.

(ab) deleting the definition of “public money” and substituting therefor the following new definition—

“public money” includes—

(a) all money that comes into possession of, or is distributed by, a national or county government entity and money raised by a private body where it is doing so under statutory authority; and

(b) money held by national or county government entities in trust for third parties and any money that can generate liability for the Government;

(b) inserting the following new paragraph immediately after paragraph (c)—

(d) by inserting the following new definitions in their proper alphabetical sequence—

“Consolidated Fund” means the fund established under Article 206(1) of the Constitution; and

“County Revenue Fund” means the fund established under Article 207(1) of the Constitution.

JUSTIFICATION

There is need to define the Consolidated Fund and County Revenue Fund and the scope therefore.

NEW CLAUSE 5A

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

5A. The principal Act is amended by inserting the following new section immediately after section 10—

10A. (1) Subject to Article 201 of the Constitution and the provisions of this Act, each county assembly shall establish a county assembly budget office responsible for budget, finance and economic analysis.

(2) A county assembly budget office shall exist as an office in the County Assembly Service and shall consist of persons appointed on merit by virtue of their experience in finance, economics and public policy matters.

(3) A county assembly budget office created under subsection (1) shall—

- (a) provide professional services in respect of budget, finance and economic information to the offices of the County Assembly;
- (b) prepare reports on county budgetary projections and make proposals to the committees of the county assembly responsible for budgetary matters;
- (c) prepare analyses of specific issues, including financial risks posed by the National and County Government policies and activities to guide the county assembly;
- (d) consider county budget proposals and economic trends and make recommendations to the relevant committee of the County Assembly with respect to those proposals and trends;
- (e) establish and foster relationships with the National and County Treasury and other county treasuries, with an interest in budgetary and socio-economic matters as it considers appropriate for the efficient and effective performance of its functions;
- (f) subject to Article 35 of the Constitution, ensure that all reports and other documents produced by the assembly office are prepared, published and publicised not later than fourteen days after production;
- (g) report to the relevant committees of the county assembly on any Bill that is

submitted to the county assembly and has an economic and fiscal impact, making reference to the fiscal responsibility principles and to the fiscal objectives set out in the relevant County Budget Policy Statement; and

- (h) propose, where necessary, alternative fiscal framework in respect of any financial year.

(4) In carrying out its functions under subsection (3), the county assembly office shall observe the principles of public finance under Article 201 of the Constitution.

(5) The Parliamentary Budget Office shall be required to assist and build the capacity of County Assemblies to analyse any documents under this Act and any Regulations on matters Public Finance.

JUSTIFICATION

The amendment seeks to introduce a county budget office.

CLAUSE 8

THAT, clause 8 of the Bill be amended by—

- (a) deleting paragraph (b) and substituting therefor the following new paragraph—
- (b) by deleting subsection (2) and substituting therefor the following new subsection—

(2) The National Treasury shall maintain the Consolidated Fund in Kenya Shilling or foreign denominated currency accounts to be known as the Consolidated Fund Accounts, kept at the Central Bank of Kenya and shall, subject to Article 206(1) of the Constitution—

- (a) include the National Exchequer Accounts, Revenue Collection Accounts, Receipts into Domestic Debt Accounts, Overdraft Account, Special Project Deposit Accounts and any other accounts designated by the Cabinet Secretary;
- (b) facilitate payment into that account or accounts all money raised or received by or on behalf of the national government; and
- (c) pay from that National Exchequer Account or National Exchequer Accounts without undue delay all amounts that are payable for public services.

JUSTIFICATION

The amendment seeks to encompass all types of accounts being referred to.

(b) inserting the following new paragraphs immediately after paragraph (b)—

(c) by deleting subsection (3) and substituting therefor the following new subsection—

(3) The National Treasury shall ensure that no National Exchequer Account is overdrawn at any time;

(d) by deleting subsection (4) and substituting therefor the following new subsection—

(4) Where a withdrawal from the Consolidated Fund is authorised under the Constitution or an Act of Parliament for the appropriation of money, the National Treasury shall make a requisition for the withdrawal and submit it to the Controller of Budget for approval, which request shall be made manually or electronically through a designated form prescribed by the Cabinet Secretary, provided that inter-account transfers within the Consolidated Fund Accounts shall require the Controller of Budget's approval.

(d) by deleting subsection (5) and substituting therefor the following new subsection—

(5) The approval of a withdrawal from the Consolidated Fund by the Controller of Budget, together with written instructions from the National Treasury requesting for the withdrawal, shall be sufficient authority for the Central Bank of Kenya to pay amounts from a National Exchequer Account in accordance with the approval and instructions provided, which approval or written instructions may be manual or electronic in a form prescribed by the Cabinet Secretary.

JUSTIFICATION

The amendment seeks to introduce electronic requisition of withdrawal of funds.

CLAUSE 9

THAT, clause 9 of the Bill be amended by deleting paragraph (a).

JUSTIFICATION

The Parliamentary Service Commission is an independent commission.

NEW CLAUSE 9A

THAT, the Bill be amended by inserting the following new clause immediately after clause 9—

9A. Section 25 of the principal Act be amended—

(a) in subsection (2) by deleting the expression "15th" and substituting therefor the expression "1st";
and

(b) in subsection (7) by deleting the words “fourteen days” and substituting therefor the words “thirty days”.

JUSTIFICATION

To give Parliament sufficient time to consider the Budget Policy Statement.

9B. Section 28 of the principal Act be amended by inserting—

(a) the following new subsections immediately after subsection (1)—

(1A) Any bank account opened under subsection (1), for the primary purpose of collecting money raised or received by or on behalf of the national government shall be designated as a Revenue Collection Account and shall be used only for purposes of collecting money raised or received by or on behalf of the national government.

(1B) Money paid into a bank account designated as Revenue Collection Account shall be promptly credited into a National Exchequer Account and shall be withdrawn in accordance with Article 206 of the Constitution and Section 17 of the Act.

(1C) For avoidance of doubt, no expenditure shall be paid out of a bank account designated as a Revenue Collection Account except as otherwise authorized by law.

(1D) Each financial year, an Accounting Officer of a national government entity shall prepare and submit to the National Treasury a record of all bank accounts operated by that entity during the year, with a copy to the Controller of Budget and the Auditor General.

JUSTIFICATION

To ensure accountability.

(b) the word “system” immediately after the words “Treasury Single Account” appearing in subsection (2);

(c) the word “system” immediately after the words “Treasury Single Account” appearing in subsection (2); and

JUSTIFICATION

This is to clarify that the Treasury Single Account is a system of accounts and not a single account.

CLAUSE 10

THAT, the Bill be amended by deleting clause 10.

JUSTIFICATION

The National Treasury should be providing quarterly reports as has been the practice.

CLAUSE 13

THAT, the Bill be amended by deleting clause 13.

JUSTIFICATION

The National Treasury should take responsibility because they fund the projects.

CLAUSE 18

THAT, Section 78 of the principal Act is amended by—

(a) renumbering section 78 as 78(1);

(b) inserting the following new subsection immediately after subsection (1)—

(2) Notwithstanding subsection (1), the Kenya Revenue Authority may delegate its revenue collection responsibility to other agents.

JUSTIFICATION

To increase efficiency in revenue collection.

CLAUSE 35

THAT, clause 35 of the Bill be amended—

(a) by deleting paragraph (a) and substituting therefor the following new paragraph—

(a) by deleting subsection (2) and substituting therefor the following subsection—

(2) Each County Treasury shall establish a Treasury Single Account system at the Central Bank of Kenya through which payments of money to and by the various county government entities are to be made.

(b) inserting the following new paragraphs immediately after paragraph (a) —

(aa) by inserting the following new subsection immediately after subsection (2)—

(2A) The County Treasury Single Account system shall include the County Revenue Fund accounts referred to in section 109(2), county department accounts and any other account designated by the County Treasury.

(ab) by deleting subsection (3) and substituting therefor the following subsection—

(3) The Treasury Single Account system shall not be operated in any manner that prejudices any entity to which funds have been disbursed.

CLAUSE 36

THAT, the Bill be amended by deleting clause 36 and substituting therefor the following new clause—

36. The principal Act is amended by inserting the following new clause immediately after section 119—

119A(1) Subject to the provisions of section 119, a County Treasury may authorize a county government entity, including a county assembly to open and operate bank accounts only at the Central Bank of Kenya except—

- (a) an imprest bank account which may be opened in a commercial bank account to facilitate the day to day operation of offices, provided the balance for the account shall not exceed a limit set by the Cabinet Secretary;
- (b) a revenue collection account to facilitate receipt and transfer of revenue to the relevant County Revenue Fund;
- (c) a bank account relating to a county public fund established pursuant to section 116 to facilitate administration of the fund; and
- (d) any other bank account authorized by the Cabinet Secretary to be opened in a commercial bank.

(2) Any bank account opened under subsection (1), for the primary purpose of collecting money raised or received by or on behalf of the county government shall be designated as a County Revenue Collection Account and shall be used only for the purposes of collecting money raised or received by or on behalf of the county government.

(3) Money paid into a bank account designated as a County Revenue Collection Account shall be promptly credited into the County Exchequer Account and shall be used and accounted for in accordance with Article 207 of the Constitution and section 109.

(4) No expenditure shall be paid out of a bank account designated as County Revenue Collection Account except as otherwise authorized by law.

(5) The County Treasury may prescribe the banking rules and the maximum balance which may be held in any official County Treasury Single Account sub-account or other bank accounts, and if at any time this balance seems likely to be exceeded, the officer operating the accounts shall consult the County Treasury on the action to be taken.

(6) No official county government bank account shall be overdrawn, nor shall any advance or loan be obtained from a bank account for official purposes beyond the limit authorized by the County Treasury in line with section 119(4) and the authority shall be conveyed in writing.

(7) An accounting officer of a county shall, for each quarter of a financial year, prepare and submit to the County Treasury a record of all bank accounts operated by the entity during the year, with a copy to the Controller of Budget, the Auditor General, and the National Treasury.

CLAUSE 41

THAT, the Bill be amended by deleting clause 41 and substituting therefor the following new clause—

41. Section 129 of the principal act is amended—

- (a) deleting subsection (1)

JUSTIFICATION

The amendment will expose the County Assembly to another level of control by the executive yet the assemblies already have ceilings.

(b) in subsection (3) by inserting the words “by 30th March each year” immediately after the words “member for finance.”

JUSTIFICATION

Introduction of timelines for the submission of budget estimates to the Assembly.

CLAUSE 42

THAT, clause 42(c) of the Bill be amended in the proposed new subsection (7) by inserting the words “Controller of Budget and the Senate” immediately after the words “National Treasury.”

JUSTIFICATION

This is to inform the Controller of Budget and the Senate about the budget estimates approved by each County Assembly.

NEW CLAUSE 12

THAT the Bill be amended by inserting the following new clauses immediately after clause 12-

12A. Section 39 of the Principal Act is amended by deleting the words “except the Finance Bill” appearing immediately after the words “relevant Bills”.

12B. The principal Act is amended by inserting the following new section immediately after section 39-

39A. (1) Not later than seven days after the estimates of revenue and expenditure are submitted to the National Assembly, the Cabinet Secretary shall submit to National Assembly the Finance Bill, setting out the revenue raising measures for the National Government.

(2) Following submission of the Finance Bill by the Cabinet Secretary, the relevant committee of the National Assembly shall introduce the Bill in the National Assembly, together with the report of the Committee on the Bill.

(3) The National Assembly shall consider and pass the Finance Bill, with or without amendments, in time for it to be assented to by 30th June each year.

(4) Any recommendations made by the relevant committee of the National Assembly or adopted by the National Assembly on revenue matters shall-

- (a) ensure that the total amount of revenue raised is consistent with the approved fiscal framework and the Division of Revenue Act;
- (b) take into account the principles of equity, certainty and ease of collection;
- (c) consider the impact of the proposed changes on the composition of the tax revenue with reference to direct and indirect taxes;

(d) consider domestic, regional and international tax trends;

(e) consider the impact on development, investment, employment and economic growth;

(f) take into account the recommendations of the Cabinet Secretary as provided under Article 114 of the Constitution; and

(g) take into account the taxation and other tariff arrangements and obligations that Kenya has ratified, including taxation and tariff arrangements under the East African Community Treaty.

(5) The recommendation of the Cabinet Secretary in subsection (4) (f) shall be included in the report and tabled in the National Assembly.

JUSTIFICATION

1. ~~This is to ensure that the Budget is prepared in accordance with the available resources.~~
2. ~~To ensure that the government collects revenue at the beginning of the Financial Year since the Appropriations Bill will be signed together with the Finance Bill.~~

NEW CLAUSE 42A

THAT, the Bill be amended by inserting the following new clause immediately after clause 42—

42A. The principal Act is amended by inserting the following new section immediately after section 131—

131A. The Committee of a County Assembly established to deal with county budgetary matters has responsibility for the following matters, in addition to the functions set out in the respective County's Standing Orders—

- (a) discuss and review the County Budget Policy Statement and county budget estimates and make recommendations to the county assembly;
- (b) provide general direction on county budgetary matters;
- (c) monitor all county budgetary matters falling within the competence of the County assembly under this Act and report on those matters to the County assembly; and
- (d) review and scrutiny of relevant planning and budget documents before the county Assemblies.

NEW CLAUSE 54

THAT, the Bill be amended by inserting the following new clause immediately after clause 54—

54A. Section 164(4) of the principal Act is amended by inserting the words “the National Treasury” immediately after the words “County Treasury” appearing in paragraph (b).

JUSTIFICATION

To inform the National Treasury.

CLAUSE 65

THAT, the Bill be amended by deleting clause 65 and substituting therefor the following new clause—

65. Section 187 of the principal Act is amended—

(a) in subsection (1) by inserting the following new paragraph immediately after paragraph (h)—

(i) chairpersons of the Committees of the Council of Governors; and

(b) by deleting subsection (3).

JUSTIFICATION

This is to include chairpersons of the Council of Governors Committees as substantive members of IBEC (as per the resolution of IBEC meeting of 11th August, 2015).

SIGNED.......... DATE..........

THE HON. JOSEPH LIMO, MP

CHAIRPERSON

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

