

KO/PIN/L.2015/027

April 27, 2015

Hon. Benjamin Langat  
The Chairperson  
Parliamentary Committee on Finance, Planning and Trade  
Kenya National Assembly  
Parliament Buildings, Nairobi

**RE: MEMORANDUM TO THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL, 2015**

- I) The Public Finance Management (Amendment) Bill, 2015 seeks to amend the PFM Act (No.18 of 2012) so as to ensure smooth implementation of the Act. The Parliamentary Initiatives Network (PIN) proposes the following amendments to the Bill:

<b>Clause</b>	<b>Amendment</b>	<b>Justification</b>
<b>Clause 3</b>	Proposes to amend section 5(1) of the Act by including Parliament in the approval process of the declaration of County government entities. <ul style="list-style-type: none"><li>• Delete the inclusion of Parliament</li></ul>	The role of Parliament should be limited to a general oversight role of the funding transferred to counties from the National government and not decisions of individual counties

<p><b>Clause 5</b></p>	<p>Proposes to amend section 10 of the Act to enable County Assemblies to request the Budget Office for capacity building</p>	<p>This amendment may overload the responsibilities of the PBO. To undertake the support regularly, the PBO may need to expand its own capacity and budget to be able to accommodate these requests.</p> <p>It is also the case that currently, there are many different bodies offering support to Assemblies in an uncoordinated and possibly ineffective fashion. Adding another body without creating proper structures may not yield much impact. It may be preferable for Assemblies to have to make a formal request explaining the other sources of support they are receiving and why specifically the PBO is being asked to step in.</p>
<p><b>Clause 8</b></p>	<p>Proposes to amend section 17(6) of the Act by substituting the disbursement requirement of monies to counties from quarterly to monthly.</p> <p>Sub-clause (b) substitutes 15<sup>th</sup> May for 15<sup>th</sup> June in Section 17(7) of the Act as the deadline for gazetting the schedule prepared by Treasury to guide the disbursement of monies to counties</p>	<p>The revised PFM Act already incorporated that change</p> <p>The amended Act reads 30<sup>th</sup> May so the amendment should be from 30<sup>th</sup> May to 15<sup>th</sup> June</p>
<p><b>Clause 13</b></p>	<p>It proposes to insert a new section 39 A, which appears to give the National Treasury the ability to withdraw funds from the Consolidated Fund in the absence of an Appropriation or a vote on account as stipulated in Article 222 of the constitution</p> <ul style="list-style-type: none"> <li>• PIN proposes that the entire new clause be</li> </ul>	<p>This proposal contravenes Articles 222 and 223 of the Constitution. If maintained as is, the Act will seemingly be amending the Constitution which in itself makes it unconstitutional. The purpose of the amendment is unclear. It appears to shift power to the executive to be able to spend in the absence of explicit authority from Parliament. It is possible that a Parliament that was refusing to assent to the Appropriations Act on time would also be unwilling to call for a vote on account, which in turn would have the effect of shutting down the government. This clause would seem to eliminate that possibility,</p>

	expunged	<p>which may be appropriate. The clause fails to rectify an ambiguous issue that has arisen before, which is whether the authorization to spend 50% of budget is against the original estimates tabled in Parliament or the revised estimates after Parliament has approved the budget committee report but before the Appropriations Act is tabled. It would appear to be more prudent to base this on the estimates revised by Parliament. In a situation where Parliament decides to cut the budget of a particular vote to 40% of what Treasury has proposed for the year, if the vote is authorized up to 50% of what Treasury had tabled, this would allow expenditure beyond what Parliament had indicated.</p>
<b>Clause 14</b>	<p>Proposes to insert a new section 42A of the ACT to provide for the process of approving expenditure before the County Allocation of Revenue Act is approved.</p>	<p>The amendment appears to respond to the situation that has arisen since 2013 where the Division of Revenue and County Allocation of Revenue Act were not approved before the beginning of the financial year by allowing funds to be released against the draft bills.</p> <p>While this amendment is useful, it does not address the fact that Parliament has failed to adhere to its own deadlines. What might be prudent is to create an additional deadline for Parliament to debate the recommendations from the CRA before the end of January. This would avoid a situation where Parliament is on recess for the entire period during which this debate is supposed to happen (January 1 to February 15), which is one contributing factor to the delays.</p>
<b>Clause 35</b>	<p>Proposes to amend section 116 of the Act 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. It seems to eliminate the requirement for a year-end report on county public funds to be filed in the Assembly, and requires instead that the Assembly receive the audited financial statements.</p> <ul style="list-style-type: none"> <li>• The amendment should be rejected or redrafted to</li> </ul>	<p>While it makes sense for audited statements to be tabled in the Assembly, it is clear that the delays in auditing require that the Assembly exercise its oversight even before audited results are available. The current statute ensures that a final year-end financial statement is tabled with the Assembly for review, which allows oversight to continue while the final audited statements are awaited. The annual COB and QEBR reports prepared for the full budget are unaudited, but provide crucial information on budget execution. The same would be true of these unaudited reports and this requirement should be maintained</p>

	indicate that the audited results are in addition to the annual financial statement.	
<b>Clause 37</b>	<p>Proposes to amend Section 123(3) of the Act so as to remove the requirement to submit the County Government Debt Management Strategy to the Commission on Revenue Allocation (CRA ) and the Intergovernmental Budget and Economic Council (IBEC)</p> <ul style="list-style-type: none"> <li>• The amendment should be withdrawn</li> </ul>	No explanation is provided for this amendment. CRA is given a constitutional role to advise counties on their revenue management and IBEC is required to review conditions for loan guarantees. Both entities have a need to see and review county debt management strategy papers.
<b>Clause 39</b>	Postpones the tabling of the annual development plan, and provides a definitive period for review.	<p>The current law requires tabling by September 1 and gives no timeline for approval. The amendment would postpone tabling until end of September and then approval would be after an additional month. No explanation is provided for the amendment.</p> <p>PIN recommends that the ADP be tabled by 15 September and approved by 30 September, and the CBROP be prepared by 15 October and approved by end of October. This should allow the sector hearings to go forward from late November.</p>
<b>Clause 40</b>	Clause 40 moves up the date for tabling the cash flow projection so that it is tabled with the budget estimates on April 30.	While the amendment is reasonable, we note that Parliament has not resolved the issue of approving its own Division of Revenue Act and County Allocation of Revenue Act on time. It is therefore unlikely that the county will be able to forecast well its major revenue source, the national transfer, by April 30. Parliament should prioritize resolving this underlying issue first, for this amendment to be more meaningful.

In addition to the above amendments, PIN notes that a number of lacunas are still unresolved in the principal Act and makes the following recommendations for additional amendments that should be included in this Bill:

Section	Issue of Concern	Proposal	Justification
<b>Section 53</b>	Equitable sharing of burdens and benefits of public borrowing between the present and future generations as per Article 201(c) of the Constitution not guaranteed.	Section 53 of the principal Act is amended by inserting a new sub section immediately after 17  “18” The Provisions of this section shall abide by article 201(c) of the constitution.	The provision provides for the equitable share of benefits and burdens of the use of resources and public borrowing between the current and future generations.
<b>Section 53A</b>	Wider consultations and due diligence not provided for before issuance of external loans or external government securities by the national treasury.  This if not well managed can worsen our public debt situation	53A of the Bill is amended by adding a new sub-clause immediately after 3  (4) Any external loans or external government securities issued by the Cabinet Secretary shall be done in consultation with the Public Debt Management Office and within the Medium Term Debt Management Strategy	This guarantees sustainable public debt management at all levels of government.
<b>Section 128 (2)</b>	No sufficient time for County Treasuries to internalize national government policies and the macroeconomic environment yet this is an important component of their budgeting	Amend section 128(2) by deleting “Not later than the 30 <sup>th</sup> August in each year” and replace with, “Not later than the 30 <sup>th</sup> September in each year”	County government policy priorities are driven by the national government priorities, part of which is articulated through the budget circulars.  All County planning must be underpinned by the broader national planning framework. Section 36(2) and 128(2)) both provide for 30 <sup>th</sup> August in each year as the date by when budget circulars ought to be issued.

			This however, makes it not possible for the counties to align key policy areas and issues to the national government priorities.
<b>Section 117(1)</b>	Given that the BPS is submitted to National Assembly by 15 <sup>th</sup> of February and the CFSP by 28 <sup>th</sup> February in each year, there is inadequate time for the County Treasuries to align their budget policies to the National budget policies.	Amend section 117(1) by deleting, “the 28 <sup>th</sup> of February in each year” and replace with, “the 15 <sup>th</sup> of March in each year”	This will provide a period of a month for the County Treasuries to interrogate and understand the national policies as contained in the BPS so as to effectively align County policies to national policies in the preparation of the CFSP.
<b>Section 80(2)</b>	Lack of a compressive reporting on financial position of government. This section provides for cash accounting as opposed to the overall objective accrual accounting which presents more comprehensive and complete reporting.  Accrual accounting will present all facets of reporting, of which Assets and other liabilities have been left out by the provision of this section	Add to 81(2d) contingent liabilities arising out of loan guarantees.  Add 81(2g) assets and other liabilities	This will guarantee accrual accounting essential for comprehensive and complete government financial reporting.  The best international practice is accrual accounting.
<b>Section 193(5)</b>	The Principal Act provides that the National Treasury shall provide secretariat services to the Board, yet it is the primary consumer of the standards to be developed by the Board.  This may give rise to actual or perceived conflict of interest.	Delete 193(5) and substitute with 5(a) The Board shall establish an independent Secretariat to effectively perform its functions”  5(b) The budget of the Board shall be a charge on the Consolidated Fund.	This provision is essential in curbing against actual or perceived conflict of interest.
<b>194(2a)</b>	The Principal Act provides that in setting standards, the Board shall take into account best international accounting practices. The best international practice is IPSAS yet not captured.	Amend 194(2a) by adding, “including International Public Sector Accounting Standards(IPSAS)’	The best international practice is IPSAS



In conclusion, PIN notes as follows:

- i) The Amendment Bill is silent on the transparency gaps that still exist in the principal Act. For instance, there is still no timeline by which the budget estimates must be made available to the public upon tabling in Parliament or County Assembly. It has previously been recommended that this should be done within 7 days at most. There has also been a persistent problem of accessing the estimates after they are revised by Parliament, and the final approved estimates have not been made available online or in soft copy, or in excel format, all of which substantially hinder independent analysis and parliamentary oversight.
- ii) The CRA has issued guidelines on the functioning of the County Budget and Economic Forum, and the law in Section 137 could make reference to the existence of guidelines on the same, or note that the CRA and Treasury will draft such guidelines
- iii) The Amendment Bill does not address the contentious issue of whether or not any institution can provide ceilings for county governments for their Assembly or Executive costs. *In the High Court Petition No. 368 of 2014*, The 47 County Assemblies had moved to court seeking to have circulars issued by CRA and the COB setting ceilings for financial allocations to County Assemblies declared unconstitutional. This case failed to resolve this issue, except insofar as it clarified that the Controller of Budget does not have the authority to enforce ceilings from the CRA. But the question of what role Parliament should play was left open. The PFM Act could clarify that ceilings are recommendations to Parliament and to county governments and that they are not binding.

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