

[1ST DRAFT]

THE INTERGOVERNMENTAL FISCAL RELATIONS BILL, 2011

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SCHEDULE - MEETINGS OF THE COUNCIL

A Bill for

An Act of Parliament to provide for co-operation and consultation between the national and county levels of government on fiscal, budgetary and financial matters; to prescribe a process for budgeting and the determination of equitable sharing and allocation of revenue raised nationally; to provide for a process for the determination of the control, coordination and management of borrowing; the granting of loan guarantees; the receipt and use by both the national and county levels of government of donor grants; the proper management of public debt by both the national and county levels of government; and to provide for connected purposes.

ENACTED by the Parliament of Kenya, as follows--

PART I – PRELIMINARY

Short title. 1. This Act may be cited as the Intergovernmental Fiscal Relations Act, 2011.

Interpretation. 2. In this Act, unless the context otherwise requires --

“the Budget Council” means the Intergovernmental Budget Council established by section 4;

“County Allocation of Revenue Bill” means the Bill dividing among the counties the revenue in accordance with section 22 (2) (b);

“Division of Revenue Bill” means the Bill dividing the revenue raised nationally between the national and county levels of government in accordance with section 22 (2) (a);

“financial year” means the period of twelve months ending on the thirtieth day of June;

“Loans and Grants Council” means the Intergovernmental Loans and Donor Grants Council established by section 24;

“revenue sharing” means sharing of revenue between the national and

county governments and among the county governments.

Principles
and objects.

3. The principles and objects of this Act are that—

- (a) the revenue raised nationally is shared equitably between the national and county governments;
- (b) there is openness, popular participation and accountability in financial matters;
- (c) public expenditure enhances equitable development of the nation;
- (d) county governments have adequate support to enable them to perform their functions;
- (e) the processes and structures of fiscal relations between the two levels of government are established;
- (f) the services in marginalised areas are brought to the level generally enjoyed by the rest of the nation;
- (g) the present and future generations equitably share the burdens and benefits of the use of resources, public loans and grants;
- (h) the terms on which national and county governments may borrow or acquire grants are prescribed and co-ordinated; and
- (i) public money is used and managed in a prudent and responsible manner.

PART II - ESTABLISHMENT OF THE BUDGET COUNCIL

Establishme

4. (1) There is established the Intergovernmental Budget Council

nt of the
Budget
Council.

which shall be a body corporate with perpetual succession and a common seal and shall be capable of--

- (a) suing and being sued;
- (b) acquiring, holding, charging and disposing of movable and immovable property; and
- (c) doing or performing all such other things or acts for the proper discharge of its functions under this Act as may lawfully be done or performed by a body corporate.

Functions of
the Budget
Council.

5. (1) The Budget Council shall provide a forum for cooperation, consultation and negotiation between the national and county governments --

- (a) to determine the vertical sharing of revenue to inform the Division of Revenue Bill;
- (b) to initiate proposals for the horizontal sharing of revenue among counties as a basis for the preparation of the County Allocation of Revenue Bill by the Senate;
- (c) to determine the allocation of conditional and unconditional grants to the counties out of the national government share of revenue;
- (d) to determine any conditions to be attached on grants to county governments;
- (e) to determine the allocation and appropriation of the equalization fund;
- (f) to consult and cooperate on the determination of the appropriation and allocation of funds from the national government's share of revenue to the constitutional commissions and independent offices;
- (g) to collect and collate information provided by both levels of government to form the basis for the development of its analytical data base;

- (h) to co-ordinate with the Auditor-General to ensure that the audits of all levels of government are undertaken on time; and
- (i) to consider other matters which relate to the division of revenue as may from time to time be referred to the council by a level of government, a state organ, an organization of citizens or a citizen.

(2) In performing all the above functions and making decisions, the Budget Council shall take into consideration the recommendations of the Commission on Revenue Allocation

(3) Where the Budget Council makes a decision that deviates from the recommendations of the Commission on Revenue Allocation, the Budget Council shall provide an explanation giving reasons for such deviation

Composition of the Budget Council.

6. (1) The Budget Council shall consist of—

- (a) the Cabinet Secretary responsible for finance who shall be the chairperson of the Council;
- (b) the Cabinet Secretary responsible for devolved government;
- (c) six representatives, each representing a cluster of counties, determined by the Organisation of County Governments who shall be the county executive committee members responsible for finance in their respective counties;
- (d) the Secretary to the Judicial Service Commission;
- (e) the Secretary to the Parliamentary Service Commission;
- (f) the Principal Secretary responsible for finance; and

(g) the Principal Secretary responsible for devolved government.

(2) In determining the clusters of counties referred to in subsection 1 (c), the organization of the county governments shall take into account of the following factors-

- (a) the potential for shared services;
- (b) the potential for the benefits of economies of scale;
- (c) the commonality of economic sectors of the counties; and
- (d) the shared natural resources.

Vacation of office by a member.

7. A member of the council who shall cease to hold office where he or she is a member of the Council by virtue of—

- (a) section 6 (1) (c), the person-
 - (i) resigns from office in writing to the chairman;
 - (ii) is removed from office by the budget council; or
 - (iii) is removed from office of the nominating organization; and
- (b) section 6 (1) (a), (b), (d), (e), (f) and (g), the person ceases to hold office by virtue of which he or she became a member of the Council.

Removal from office.

8. (1) A member of the Budget Council may be removed from office by the Budget Council for—

- (a) inability to perform the functions of the office arising out of physical or mental incapacity;
- (b) gross misconduct or misbehaviour;
- (c) incompetence or neglect of duty;
- (d) breach of leadership and integrity standards specified in

chapter six and other provisions of the Constitution;

(e) bankruptcy; or

(f) any other ground that would justify removal from office under the terms and conditions of service.

(2) In the case of a member nominated to the Budget Council in terms of section 6 (1) (c), the nominating body may make written representation to the council seeking the commencement of removal proceedings of the member in accordance with this section.

(3) Before removal under subsection (1), the member shall be informed of the case against him or her and shall be given an opportunity to be heard.

Filling of a vacancy.

9. (1) Any vacancy in the Council shall be filled in the same manner as is referred to in section 6.

Secretary to the Budget Council.

10. (1) There shall be a Secretariat of the Budget Council, headed by a Secretary, who shall be competitively appointed by the Budget Council.

(2) A person shall not qualify for appointment under subsection (1) unless the person-

(a) holds a degree from a university recognised in Kenya; and

(b) has at least ten years professional experience in matters relating to economics, finance, business administration or law.

Responsibilities of the Secretary.

11. (1) The Secretary to the Budget Council shall be responsible for-

(a) facilitating the carrying out of the functions of the Council;

(b) the day to day administration and management of the affairs of the Council; and

(c) such other duties as may be assigned by the Council from time to time.

(2) Despite any other written law, the Secretary shall be the accounting officer and shall be responsible for-

(a) all income and expenditure of the Council;

(b) all assets and the discharge of all liabilities of the Council; and

(c) the proper and diligent implementation of this Act.

Removal of Secretary.

12. (1) The Secretary may be removed from office by the Budget Council, in accordance with the terms and conditions of service, for—

(a) inability to perform the functions of the office arising out of physical or mental incapacity;

(b) gross misconduct or misbehaviour;

(c) incompetence or neglect of duty;

(d) breach of leadership and integrity standards specified in Chapter Six and other provisions of the Constitution; or

(e) any other ground that would justify removal from office under the terms and conditions of service.

(2) Before removal under subsection (1), the Secretary shall be informed of the case against him or her and shall be given an opportunity to be heard.

Staff of the Budget Council.

13. (1) The Budget Council may appoint such staff as may be necessary for the proper discharge of its functions under this Act, and upon such terms and conditions of service as the Council may determine.

Secondment of staff.

14.(1) In addition to the staff appointed by the Budget Council under section 13, the Public Service Commission may, upon request by the Council, second to the Council, such number

of public officers as may be necessary for the performance of the functions of the Council under this Act.

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

Allowances payable to the Council members.

15. The members and staff of the Budget Council shall be paid such allowances as shall be determined by the Public Service Commission in consultation with the Salaries and Remuneration Commission.

Committees and sub committees.

16. (1) The Budget Council may, from time to time, establish such committees as it considers necessary for the better carrying out of its functions.

(2) The Budget Council may co-opt into the membership of a committee established under subsection (1) persons whose knowledge and skills are found necessary for the functions of the Council.

Procedures of the Budget Council

17. (1) The business and affairs of the Budget Council shall be conducted in accordance with the Schedule of this Act.

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

PART III - SENATE REVENUE ALLOCATION AND OVERSIGHT COMMITTEE

Establishment and functions.

18. There is established a Senate Revenue Allocation and Oversight Committee whose functions shall be—

- (a) to receive and consider the report of the Commission on Revenue Allocation and advise the Senate;
- (b) make recommendations to the Senate regarding the proposals of the Commission and advise the Senate;
- (c) to evaluate the recommendations of the Commission in the report on the Division of Revenue Bill and advise Senate;

- (d) to evaluate the recommendations of the Commission in the report on the County Allocation of Revenue Bill and advise Senate;
- (e) to provide a forum through which the Senate participates in the cooperation, consultation and negotiation between the national and county levels of government and among counties on matters relating to vertical and horizontal sharing of revenue;
- (f) to provide a forum through which the Senate is involved in the consideration of the Division of Revenue Bill and the County Allocation of Revenue Bill; and
- (g) to provide a forum through which the Cabinet Secretary responsible for finance can consult with the Senate on the vertical and horizontal sharing of revenue raised nationally.

19. (1) The Senate Revenue Allocation and Oversight Committee shall consist of twelve members, with each cluster of counties as determined in terms of section 6(2) being represented by two members.

Composition.

(2) In selecting the members of the committee, the Senate shall ensure that members have the requisite training, skills, knowledge and expertise to perform the functions set out in section 18 of this Act and they also meet the leadership and integrity standards set out in Chapter Six of the Constitution.

(3) The quorum of the committee shall be the chairperson or the vice-chairperson and two thirds of the total membership;

(4) The committee will elect a chairperson and vice chairperson during its first meeting.

PART IV - PROCESS OF REVENUE SHARING

Sharing revenue.

20. (1) The revenue raised nationally which is to be shared both vertically and horizontally shall include all tolls, taxes,

dividends, sale of shares, proceeds on privatizations, imposts, rates, duties, fines, forfeitures, rents, and dues and all other receipts of the government, from whatever source arising, over which Parliament has power of appropriation.

- (2) The process of sharing-
 - (a) the revenue raised nationally among the national and the county levels of government in terms of Article 218(1)(a);
 - (b) the allocation of the county share among the counties in terms of Article 218(1)(b);
 - (c) any allocation of conditional and unconditional grants to counties in terms of Article 202(2); and
 - (d) the sharing of the equalization fund in terms of Article 204,

shall be effected in accordance with the provisions of this Act.

Commission
's
recommend
ations.

21. (1)At least ten months before the commencement of each financial year, the Commission on Revenue Allocation shall submit its recommendations in relation to the financial year to--

- (a) the Houses of Parliament;
- (b) the county assemblies;
- (c) the Cabinet Secretary responsible for finance;
- (d) the Cabinet Secretary responsible for devolved government; and
- (e) the Budget Council.

(2)The period specified in subsection (1)—

- (a) may be increased with the concurrence of—
 - (i) the Cabinet Secretary responsible for finance;
 - (ii) the Commission on Revenue Allocation; and

(iii) the Budget Council;

(b) shall not be later than sixty days before the introduction of the annual Division of Revenue Bill and County Allocation of Revenue Bill in Parliament for the relevant financial year.

(3) The recommendations for the financial year shall relate to –

(a) an equitable division of revenue raised nationally, among the national and county levels of government

(b) the determination of each county equitable share in the county share of revenue;

(c) any other allocations to counties from the national government's share of that revenue, and conditions on which those allocations should be made if any;

(d) the share of the equalization fund targeting marginalized areas within counties as envisaged in Article 204 of the constitution.

(4) When making its recommendations in terms of subsection (3) the commission shall take into account the matters listed in Article 203(1) and (2).

22. (1) Each year, the country's Budget shall be introduced by the Cabinet Secretary responsible for finance submitting the Division of Revenue Bill and the County Allocation of Revenue Bill to both Houses of Parliament for the financial year to which the Budget relates.

Revenue
Division and
Allocation
Bills.

(2) The Division of Revenue Bill and the County Allocation of Revenue Bill, for each financial year, shall in the case of –

(a) the Division of Revenue Bill, detail the proposed equitable division of revenue raised nationally, inclusive of conditional and unconditional grants, among the national and county levels of government in accordance with the Constitution;

- (b) the County Allocation of Revenue Bill, detail the proposed equitable division of the revenue allocated to the county level of government, inclusive of conditional and unconditional grants, among the counties.

(3) Due to their close functional relationship, the two Bills shall be submitted, processed and considered together by parliament and all other relevant institutions.

(4) After receiving any recommendations of the Commission on Revenue Allocation in terms of section 21 (1) and (2) but before the annual Division Revenue Bill and the County Allocation of Revenue Bill are submitted to both Houses of Parliament, the Cabinet Secretary responsible for finance shall consult—

- (a) the county governments in the Budget Council, and in any other way deemed appropriate;
- (b) the Senate through the Senate Revenue Allocation and Oversight Committee; and
- (c) the Commission on Revenue Allocation.

(5) The Commission on Revenue Allocation and the Senate Revenue Allocation and Oversight Committee shall be consulted in terms of subsection (3) at least 21 days before the annual Division and Allocation of Revenue Bills are submitted.

(6) When the annual Division of Revenue Bill and the County Allocation of Revenue Bill are submitted, they shall each be accompanied by a memorandum explaining—

- (a) how the Bills take into account each of the matters listed in Article 203(1) and (2);
- (b) the extent to which the recommendations of the Commission on Revenue Allocation have been taken into account;
- (c) the recommendations of the Senate through the Senate Revenue Allocation and Oversight Committee; and

- (d) details of any assumptions and formulae used in arriving at the respective shares mentioned in subsection (2)(a) and (b).

Management process and guidelines.

23. (1) Not later than the 30th July, the Budget Council shall issue a circular setting out guidelines on the process to be followed in the allocation of revenue both vertically (between the national and county government), and horizontally (between the county governments).

(2) The guidelines shall include-

- (a) receipt and review of the Commission's recommendations on revenue allocation;
- (b) preparation of the Division of Revenue Bill and the Allocation of Revenue Bill;
- (c) consultation on the Division of Revenue Bill and the Allocation of Revenue Bill with the Senate committee responsible for revenue allocation.

(3) The Commission on Revenue Allocation shall present a copy of the report referred to in Article 216 (5) to the Budget Council by 31st August in every year.

(4) The circular issued under subsection (2) shall include—

- (a) the schedule for preparation of the fiscal, budgetary or financial matters indicating key dates by which various exercises are to be completed;
- (b) procedures for the review and projection of revenues and expenditures;
- (c) key policy areas and issues to be taken into consideration when preparing the budget;
- (d) procedures concerning the manner of public

participation in the budget process;

(e) the format of submission of budget information and documents; and

(f) any other information relevant to the budget process.

(5) The National and county governments shall comply with the guidelines and the key dates indicated in the Schedule.

PART V — THE INTERGOVERNMENTAL LOANS AND DONOR GRANTS COUNCIL

Establish
ment of
Loan
Council.

24. There is established the Intergovernmental Loans and Donor Grants Council which shall be a body corporate with perpetual succession and a common seal and shall be capable of-

- (a) suing and being sued;
- (b) acquiring, holding, charging and disposing of moveable and immoveable property; and
- (c) doing or performing all such other things or acts for the proper discharge of its functions under this Act as may be lawfully done or performed by a body corporate.

Functions
of the
Loans and
Grants
Council

25. (1) The Loans and Grants Council shall provide a forum for cooperation, consultation and negotiation between the national and the county levels of government on matters relating to the-

- (a) development and review of public debt management policy for national and county governments and other public entities;
- (b) control and co-ordination of borrowing by national and county governments;
- (c) coordination of the borrowing requirements of

both the national and county governments, after taking into account estimates of the aggregate demand for capital market funds during the financial year;

- (d) consideration and approval of the aggregate funds to be borrowed by both the national and county governments;
- (e) consideration and determination of the terms and conditions for the funds to be borrowed;
- (f) regulation of the internal and external borrowing by national and county governments and other public entities;
- (g) setting of public debt limits applicable to the national government, county governments and other public;
- (h) coordination, control and monitoring of inflows and use of donor grants by the national government, county governments and other public entities;
- (i) establishment and maintenance of data bank for public debt and donor grants;
- (j) documentation and audit of public debt and donor grants; and
- (k) development and review of policy on public participation and information sharing on the management of public debt and donor grants.

(2) The functions in subsection (1) shall be exercised in respect of borrowing by-

- (a) the national government;
- (b) the county governments;
- (c) cities and municipalities established under the Urban Areas and Cities Act;

- (d) the state organs;
- (e) county government public entities; and
- (f) any other public entities as may be determined by the Loans and Grants Council.

Composition of the Loans and Grants Council

26. The Loans and Grants Council shall consist of-

- (a) the Cabinet Secretary responsible for finance, who shall be the chairperson;
- (b) the Cabinet Secretary responsible for devolved government;
- (c) the Attorney General;
- (e) six representatives, who shall be executive committee members responsible for finance in the respective counties, each representing a cluster of counties, determined by the organisation of county governments in accordance with section 6 (2) of this Act;
- (f) the executive committee member responsible for finance in the Capital City;
- (g) a representative of the institute of certified accountants Kenya; and
- (h) one person representing the Urban Areas and Cities Advisory Board.

Term of office.

27. The term of office of the members of the Loans and Grants Council appointed under section 26 (g) and (h) shall be five years to run concurrent to the electoral calendar of the country.

Vacation of office by a member.

28. A member of the Loans and Grants Council shall cease to hold office if he or she—

- (a) resigns from office in writing to the chairman;

Removal
from
office

- (b) ceases to hold an office by virtue of which he or she became a member of the council;
- (c) is removed from office by the budget council; or
- (d) is removed from office of the nominating organization.

29. (1) A member of the Loans and Grants Council may be removed from office by the Council, for—

- (a) inability to perform the functions of the office arising out of physical or mental incapacity;
- (b) gross misconduct or misbehaviour;
- (c) incompetence or neglect of duty;
- (d) breach of the leadership and integrity standards specified in chapter six and other provisions of Constitution;
- (e) bankruptcy; or
- (f) any other ground that would justify removal from office under the terms and conditions of service.

(2) In the case of a member nominated to the Loans and Grants Council in terms of section 26 (e), (g) and (h), the nominating body may make written representation to the Council seeking the commencement of removal proceedings of the member in accordance with this section.

(3) Before removal under subsection (1), the member shall be informed of the case against him or her and shall be given an opportunity to be heard.

Filling of
a vacancy.

30. Any vacancy in the Loans and Grants Council shall be filled in the same manner referred to in section 26.

The
Secretariat.

31. (1) There shall be a Secretariat of the Loans and Grants Council, headed by a Secretary, who shall be competitively appointed by the Loans and Grants Council.

(2) A person shall not qualify for appointment under subsection (1) unless the person-

- (a) holds a degree from a university recognised in Kenya; and
- (b) has at least ten years professional experience in matters relating to economics, finance, business administration or law.

Responsibilities of the Secretary.

32. (1) The secretary to the Loans and Grants Council shall be responsible for-

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

(2) Despite any other written law, the secretary shall be the accounting officer and shall be responsible for-

- (a) all income and expenditure of the Loans and Grants Council ;
- (b) all assets and the discharge of all liabilities of the Loans and Grants Council; and
- (c) the proper and diligent implementation of this Act.

Removal of the Secretary.

33. (1)The Secretary may be removed from office by the Loans and Grants Council, in accordance with the terms and conditions of service, for—

- (a) inability to perform the functions of the office arising out of physical or mental incapacity;
- (b) gross misconduct or misbehaviour;
- (c) incompetence or neglect of duty; or

- (d) breach of the leadership and integrity standards specified in chapter six and other provisions of Constitution; or
- (e) any other ground that would justify removal from office under the terms and conditions of service.

(2) Before removal under subsection (1), the Secretary shall be informed of the case against him or her and shall be given an opportunity to be heard.

Staff of
the
secretariat

34. The Loans and Grants Council may appoint such staff as may be necessary for the proper discharge of its functions under this Act, and upon such terms and conditions of service as the Council may determine.

Secondm
ent of
staff.

35.(1) In addition to the staff appointed by the Loans and Grants Council under section 38, the Public Service Commission may, upon request by the Council, second to the Council, such number of public officers as may be necessary for the performance of the functions of the Council under this Act.

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

Allowanc
es payable
to the
council
members.

36. The members and staff of the Loans and Grants Council shall be paid such allowances as shall be determined by the Public Service Commission in consultation with the Salaries and Remuneration Commission.

Organizat
ion of the
council

37. (1) The Loans and Grants Council may, from time to time, establish such committees as it considers necessary for the better carrying out of its functions.

(2) The Loans and Grants Council may co-opt into the membership of a committee established under subsection (1) persons whose knowledge and skills are deemed necessary for the functions of the Council.

Procedures of the Council.

38.(1) The business and affairs of the Loans and Grants Council shall be conducted in accordance with the Schedule of this Act.

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

PART VI - PROCESS OF COORDINATION AND CONTROL OF DONOR GRANTS

Process of coordination and control of borrowing.

39. (1) The national government and each county government shall within the time to be determined by the Loans and Grants Council submit to the Intergovernmental Loans and Grants Council a programme setting forth the amount it desires to raise by loans and grants for each financial year, and indicating –

- (a) the estimated total amount of such loan expenditure for the year;
- (b) the estimated amounts for repayments which will be made available towards meeting that expenditure; and
- (c) any revenue deficit amount to be funded through the loan.

(2) If the Intergovernmental Loans and Grants Council decides that the total amount of the loan and grant programme for the year cannot be borrowed at reasonable rates and conditions it shall decide the amount to be borrowed for the year, and may by unanimous decision allocate such amount between the national and county governments.

(3) The Loans and Grants Council shall consider the loan programmes submitted to it and take into account the total debt of the national government, each county government and the public entities falling under each level of government and their contingent liabilities, risks and ability to

service their debt.

(4) The Loans and Grants Council, may by unanimous decision consider and make policy on other connected matters.

Loan
Guarante
e
approvals.

40. (1) The Loans and Grants Council shall develop a policy for the setting and approving of conditions for borrowing and loan guarantees where required, for the national and county governments.

(2) In considering the terms and conditions for borrowing and loan guarantees, the Loans and Grants Council may consider the following factors-

- (a) written proof that the intended borrowing has been included in the budget proposals of the national government or respective county government;
- (b) proof of public participation in contributing to the budget and loan proposals of the government concerned;
- (c) ability of the subject capital project to generate the necessary cash flows to repay the loan;
- (d) financial management and probity of the government seeking the loan;
- (e) application, management and servicing of previous loans and public debt;
- (f) proportion of the total loan portfolio of the government seeking the loan relative to both its annual budget and gross domestic product;
- (g) level of conditional and unconditional grants by the National Government;
- (h) nature and implementation time frame of the project for which the loan is being sought;
- (i) quantified investment and project potential for wealth, employment and poverty reduction;
- (j) project and investment potential for local,

national or regional economic growth and development;

- (k) credit rating of the government seeking the loan; and
- (l) compliance with the requirements for borrowing from the capital markets, as applicable.

(3) Where a level of government is seeking external borrowing from international financial institutions, bilateral, multilateral and other external sources, the Loans and Grants Council may formulate additional policy relating to the-

- (a) role of National Government departments in facilitating county governments;
- (b) conditions for loan effectiveness;
- (c) loan disbursement procedures;
- (d) responsibility for the assumption of interest and foreign exchange risks;
- (e) limitations on the amounts that the national and the county governments can borrow from external sources;
- (f) conditions for national government bailouts to county governments; and
- (g) indemnity to the National government for costs incurred for the takeover and servicing of non-performing loans of defaulting county governments.

(4) The Loans and Grants Council shall ensure that consideration by the national government of loan guarantees sought by the county governments shall be efficient, transparent and accountable.

(5) The Loans and Grants Council shall develop policies and procedures for the consideration and approval of loans including specification of sanctions for unreasonable delay or refusal to grant approvals.

Donor grants.

41. (1) The national government and county governments may solicit and receive donor grants from-

- (a) foreign governments;
- (b) local authorities;
- (c) international or local foundations;
- (d) non-governmental organizations;
- (e) private companies and corporate institutions;
- (f) philanthropists, charities, relief and humanitarian agencies; and
- (g) individuals,

Submission of programme. to support their social and economic development programmes.

Submission of programme.

42. (1) Ten months before the end of each financial year, the national government and county governments shall submit to the Loans and Grants Council details of any programmes, projects and activities that are to be financed by donor grants.

(2) The information referred to in subsection (1) shall indicate-

- (a) the amounts relating to the programmes, projects and activities as well as the sources and terms of the donor grants; and
- (b) evidence of public participation and involvement of the legislative arm of the national and county governments in the consideration of such programmes, projects and activities and how they fit into the development plans of the national and county governments.

(3) The Loans and Grants Council shall consider, and where necessary, make recommendations regarding receipt and use of donor grants to facilitate-

- (a) documentation and monitoring of external financial in-flows;
- (b) fiscal and macroeconomic stability;
- (c) alignment of the funding to national and county development plans and budgets;
- (d) promotion of balanced and equitable development;
- (e) evaluation and audit of the programmes, projects and activities financed by donor funds;
- (f) evaluation of effectiveness of donor funded programmes; and
- (g) public participation, transparency and accountability in the use of donor grants.

(4) The national government and each county government shall submit a report to the Loans and Grants Council regarding the steps taken to implement the recommendations of the Council, and where no steps are taken, the governments shall submit, together with the report, the reasons for the failing to do so.

PART VII — FINANCIAL PROVISIONS

Funds of the Council. **43.** (1) The funds of the Council (in this Part "Council" refers to both the Budget Council and the Loans and Grants Council) shall consist of—

- (a) monies allocated by Parliament for the purposes of the Council;
- (b) such monies or assets as may accrue to the Council in the course of the exercise of its powers or the performance of its functions under this Act; and

- (c) all monies from any other source provided or donated or lent to the Council.

Financial year. **44.** The financial year of the Council shall be the period of twelve months ending on the thirtieth of June in each year.

Annual estimates. **45.** (1) Before the commencement of each financial year, the Council shall cause to be prepared estimates of revenue and expenditure of the Council for that year.

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

(3) The annual estimates prepared by the Council under subsection (2) shall be submitted to the Cabinet Secretary responsible for finance for tabling in the National Assembly.

Accounts and Audit. **46.** (1) The Council shall cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities of the Council.

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

- (a) a statement of the income and expenditure of the Council during that year; and
- (b) a statement of the assets and liabilities of the Council on the last day of that financial year.

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

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PART VIII — MISCELLANEOUS PROVISIONS

Report of the Council. **47.** The report of the Council (in this Part "Council" refers to both the Budget Council and the Loans and Grants Council) in respect of the financial year to which it relates,

contain —

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

Offences.

48. (1) A person shall not—

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

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

Regulations.

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

Code of conduct.

50. The Council shall develop a code of conduct for its members and staff.

SCHEDULE

(s. 17 and 38)

MEETINGS AND PROCEDURE OF THE COUNCIL

Meetings. **1.** (1) The Council shall decide when and where it meets and the meetings shall be convened by the chairperson.

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

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

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

(5) The members of a Council shall elect a vice-chairperson from among themselves-

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

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

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

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

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

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

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

(4) A member or staff of the Council shall not transact any business or trade with the Council.

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

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

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

Rules of Procedure and minutes **5.** The Council shall-

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

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to provide a legislative framework which forms the basis upon which national and county levels of government co-operate and consult on financial, budgetary and financial matters. The Bill outlines the process of revenue sharing and allocation of resources as well as the management and control of the processes relating to borrowing of funds and use of grants and loans.

Part I provides for preliminary matters.

Part II provides for the establishment of the Intergovernmental Budget Council and outlines its functions. It also provides for the composition of the Council and outlines the circumstances under which a member may be removed from office. Clause 11 provides for the appointment of a Secretary to the Council in accordance with the terms and conditions to be determined by the Council. This part outlines the responsibilities of the Secretary and the circumstances under which he or she may be removed from office. This part also provides for the employment and secondment of staff of the Council and their remuneration.

Part III provides for the establishment of the Senate Revenue Allocation and Oversight Committee as well as its functions including making recommendations to and reviewing the recommendations of the Commission on Revenue Allocation regarding the allocation of resources to the County and providing a forum for consultation amongst the various levels of government.

Part IV outlines the manner in which revenue is to be shared based on the recommendations of the Commission on Revenue Allocation submitted in accordance with clause 22. This part also outlines the manner in which the Revenue Division and Allocation Bills should be submitted in Parliament as well as the principles relating to the horizontal and vertical revenue sharing.

Part V provides for the establishment of the Intergovernmental Loans and Donor Grants Council, its composition, organization and operations as well as its functions.

Part VI outlines the bodies and institutions from which the national and county government may receive grants from. It also outlines the process relating to the submission of a programme to the Intergovernmental Loans and Donor Grants Council in relation to the activities through which the grants are to be utilized.

