

BAYELSA STATE
FISCAL RESPONSIBILITY
LAW, 2009

ARRANGEMENT OF SECTIONS

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A law to provide for prudent management of the state's resources and ensure long term macro economic stability, greater accountability and transparency in fiscal operations within a Medium term fiscal Policy Framework and the establishment of a fiscal responsibility commission aimed at reforming and strengthening the state's fiscal management policies and practices and other matters connected therewith.

NOW THEREFORE BE IT ENACTED by the Bayelsa State House of Assembly as follows:-

PART 1

ESTABLISHMENT, FUNCTIONS AND POWERS OF THE FISCAL RESPONSIBILITY COMMISSION AND THE GOVERNING BOARD.

1. ESTABLISHMENT OF THE FISCAL RESPONSIBILITY COMMISSION

- (1) There is hereby established a body to be known as the Fiscal Responsibility Commission (hereinafter in this Law referred to as "the Commission)
- (2) The Commission shall be a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name.

2. FUNCTIONS OF THE COMMISSION

- (1) The commission shall –
 - (a) monitor and enforce the provisions of this law and by so doing promote the fiscal and economic policies and objective of the state government.
 - (b) disseminate such standard practices including international best practices that will result in greater

efficiency in the allocation and management of public expenditure, revenue collection, debt control and transparency in fiscal matters

- (c) undertake fiscal and financial studies analysis and diagnoses and disseminate the result to the general public.
 - (d) make rules for carrying out its functions under this Law; and
 - (e) perform any other functions consistent with the promotion of the objectives of this law.
- (2) The Commission shall be independent in the performance of its functions.

3. POWERS OF THE COMMISSION

- (1) In the performance of its functions the commission shall have power to –
 - (a) compel any person or government institution or ministry to disclose information relating to public revenues and expenditure;
 - (b) investigate whether any person has violated any of the provisions of the Law;
 - (c) to forward the report of its investigation of violation to the Attorney-General of the state for prosecution
 - (d) compel the observance of this Law; and
 - (e) formulate general policies and guidelines for the internal running of the commission.
- (2) Formulate policies and guidelines for the implementation of this law.

- (3) Supervise the implementation of the policies of the commission.

4. THE GOVERNING BOARD OF THE COMMISSION

- (1) There is hereby established for the Commission a governing board (hereinafter in this law referred to as the Board) which shall have power for the overall supervision of the Commission as specified in this Law.
- (2) The Board shall consist of:-
 - (a) a chairman who shall be a person of proven integrity and must possess a minimum of an honours degree either in economics, accountancy, finance or law or related discipline with not less than ten (10) years cognate post qualification experience.
 - (b) one member representing the organized private sector;
 - (c) one member representing civil societies engaged in causes relating to probity, transparency and good governance;
 - (d) a representative of the State Ministry of Finance and Budget who shall not be below the rank of a director;
 - (e) a representative of the State Planning Commission, who shall not be below the rank of a director;
 - (f) three representatives of the established local government Councils in the state, who shall be nominated by the State Chapter of the Association of Local governments of Nigeria, and who shall be persons that come from all the Senatorial Districts of the State;
 - (g) a representative of the Ministry of Justice not below the rank of a director; and

- (h) a representative of the Nigeria Labour Congress.
- (3) All members of Board shall be persons of proven integrity and must possess a minimum of an honours degree in economics, accountancy, finance or Law or related discipline with not less than 5(five) years cognate post qualification experience.
- (4) All members of the Board other than ex officio members shall be appointed by the Governor.
- (5) The members of the Board other than the chairman shall be part time members.
- (6) All the appointments by the governor to the Board shall be subject to confirmation by the State House of Assembly.

5. DISQUALIFICATION/ REMOVAL OF MEMBERSHIP

Notwithstanding the provisions of Section 4 (3) of this Law, a member of the Board shall cease to hold office if:-

- (a) he becomes bankrupt or makes a compromise with his creditors; or
- (b) he is convicted of a felony or any offence involving dishonesty, corruption or fraud or
- (c) he becomes incapable of carrying out the functions of his office either by reason of an infirmity of mind or body; or
- (d) the Governor is satisfied that it is not in the interest of the commission or the interest of the public that the member should continue in office and the Governor removes him from office, or
- (e) he has been found guilty of violation of the code of conduct or serious misconduct in relation to his duties; or

- (f) he resigns his appointment by notice under his hand addressed to the Governor; and
- (g) in the case of a person who becomes a member by virtue of the office he occupies, he ceases to hold such office for whatever reason.

6. FILLING OF VACANCY

Whereas a vacancy occurs in the membership of the Board, it shall be filled by the appointment of a successor to hold office for the remainder of the term of office of his predecessor so however that the successor shall represent the same interest as his predecessor.

7. TENURE OF MEMBERSHIP

Subject to Provisions of Section 5 (1) (f) and 6 (1) the chairman and members of the Board shall hold office for a single term of four (4) years

8. REMUNERATION OF MEMBERS OF THE BOARD

There shall be paid to the chairman and other members of the Board such salaries, allowances and benefits as the House of Assembly may determine.

9. PROCEEDINGS OF THE BOARD

- (1) At any meetings of the Board, the chairman shall preside and in his absence such member as the other members may elect from amongst the members for that purpose shall preside.
- (2) The quorum for meetings of the board shall be five (5) members.

- (3) The Board shall have power to regulate its proceedings and *make standing orders with respect to the holding of its meetings, notices to be given, the keeping of minutes of its proceedings and such other matters of the Board may, from time to time determine*

10. FINANCES OF THE COMMISSION

- (1) The Commission shall establish and maintain a fund from which it shall defray all expenditures incurred by the commission including amounts payable to the members of the Board.
- (2) There shall be credited to the fund established pursuant to subsection (1) of this section, the budgetary allocation from the state government and grants from any other source, provided that it shall be mandatory for the state government to adequately fund the commission.

11. SUBMISSION OF ANNUAL AND FINANCIAL REPORT

The Board shall prepare and submit to the state House of Assembly not later than 30th June in each financial year cases of contravention investigated during the proceeding financial year and shall include in the report a copy of its audited report and accounts for the preceding financial year.

PART II

THE MEDIUM - TERM EXPENDITURE FRAMEWORK

12. THE PREPARATION OF THE MEDIUM TERM EXPENDITURE FRAMEWORK

- (1) The State Government shall:-

- (a) not later than six (6) months from the commencement of this Law cause to be prepared and laid before the State House of Assembly for consideration and approval of Medium term expenditure Framework for the next three (3) financial years; and
 - (b) hereafter not later than four (4) months before the commencement of the next financial year, cause to be prepared Medium Term Expenditure Framework for the next three (3) financial years.
- (2) The Medium term Expenditure Framework shall contain:
- (a) a macroeconomic framework setting out the macroeconomic projections for the next three (3) financial years, the underlying assumption for those projecting and an evaluation and analysis of the macroeconomic projections for the preceding three financial years;
 - (b) a fiscal strategy paper setting out
 - (i) the state government's medium term financial objectives;
 - (ii) the policies of the state government for the Medium term relating to taxation, recurrent (non debt), debt Expenditure, Capital Expenditure, borrowing and other liabilities, lending and investment.
 - (iii) the strategic economic social and developmental priorities of the state government for the next three (3) financial years.
 - (iv) an explanation of how the financial objectives, strategic economic, social and developmental priorities and fiscal measures set out pursuant to paragraphs (i), (ii) and (iii) of this subsection relate to the economic objectives of the state
- (c) an expenditure and revenue framework setting out-

- (i) estimates of aggregate revenues for the state for each financial year in the three financial years based on the predetermined projected statutory allocation and internal revenue projections
- (ii) aggregate expenditure ceiling for the state for each financial year in the next three (3) financial years;
- (iii) aggregate tax expenditure for such financial year in the next three (3) financial years;
- (iv) *minimum capital expenditure floor for each financial year in the next three (3) financial years; provided that the estimates and expenditure provided pursuant to paragraphs i, ii and iii of this subsection shall be*
 - (a) based on reliable and consistent data certified in accordance with section 14 (2) of this Law
 - (b) consistent with and derive from the underlying assumptions contained in the macroeconomic framework, the objectives policies, strategic priorities and explanation in fiscal strategy paper
- (d) a consolidated debt statement setting out and describing the fiscal significance of the debt liability of the state government and measures to reduce any such liability
- (e) a statement describing the nature and fiscal significance of contingent liabilities and quasi-fiscal activities and measures to affect the crystallization of such liabilities.

13. AGGREGATE EXPENDITURE CEILING

- (1) Subject to the provisions of subsection (2) of this section but notwithstanding anything to the contrary contained in any other law, the estimates of aggregate expenditure and the

aggregate amount appropriated by the state House of Assembly for each financial year shall not exceed the moving average of actual accrued revenue in the last three years plus a deficit not exceeding three percent (3%) of the estimated Gross Domestic Product for each financial year.

- (2) The aggregate expenditure for a financial year may exceed the ceiling imposed by the provision of subsection (1) of this section if in the opinion of the governor there is a clear and present threat to state security.
- (3) The Commissioner shall within thirty days of the coming into force of this law set machinery in motion for the calculation of the Gross Domestic Product of the State.

14. PREPARATION OF THE MEDIUM - TERM EXPENDITURE FRAMEWORK

- (1) The commissioner shall be responsible for the preparation of *the Medium Term Expenditure Framework*
- (2) In preparing the draft Medium Term expenditure Framework the commissioner-
 - (a) shall hold public hearings which may be widely publicized on *the Macroeconomic Framework, Fiscal Strategy Paper, the Revenue and Expenditure Framework, the strategic, economic, social and developmental priorities of government and such other matters as the Commissioner may deem necessary provided that such hearing shall be open to the public, the press and any citizen or authorized representative of any organization, group of citizens who*

may attend and be heard on any subject matter properly in view

- (b) shall seek the inputs of the –
 - (i) State Planning Commission;
 - (ii) State Council on Development Planning;
 - (iii) State Economic Team
 - (iv) State House of Assembly
- (c) shall consider and reflect as may be deemed appropriate the inputs of the bodies and persons referred to in subsection (a) and (b) of this section.

15. TIME LIMIT FOR PRESENTATION OF THE MEDIUM TERM EXPENDITURE FRAMEWORK TO THE STATE EXECUTIVE COUNCIL

1. The Commissioner shall before the end of the month of May of each financial year present the Medium term Expenditure Framework to the State Executive council for consideration and approval.
2. The Medium Term Expenditure Framework as approved by the State Executive Council shall only take effect upon approval by a resolution of the State House of Assembly.

16. PUBLICATION OF THE APPROVED MEDIUM-TERM EXPENDITURE FRAMEWORK

The Commissioner shall cause the Medium Term Expenditure Framework as approved by the State Executive Council to be published in the gazette and website of the Ministry of Finance and Budget; and copies shall be made available to any interested person at the cost of production.

17. ADJUSTMENTS TO THE MEDIUM TERM EXPENDITURE FRAMEWORK

- (1) Subject to subsection (2) of this section the Commissioner of Finance and Budget may cause adjustments to be made to a Medium Term Expenditure Framework
- (2) Any adjustments to a medium term Expenditure Framework shall be limited to:-
 - (a) the correction of manifest error; and
 - (b) changes in the fiscal indicators which in the opinion of the Governor are significant.

18. APPLICATION TO LOCAL GOVERNMENT AREAS

- (1) The local government shall plan the management of their fiscal affairs within the Medium term Expenditure Framework
- (2) In planning their fiscal affairs as prescribed under subsection (1) of this section, local government councils shall be guided by and adopt the provisions of sections 12, 13, 14, 15, 16 and 17 of this Law with such modifications as may be appropriate and necessary.

PART III

THE ANNUAL BUDGET

19. ANNUAL BUDGET TO BE DERIVED FROM MEDIUM TERM EXPENDITURE FRAMEWORK

- (1) Notwithstanding anything to the contrary contained in this Law or any other law the medium term Expenditure Framework shall be the basis for the preparation of the estimates of

revenue and expenditure required to be prepared and laid
before the State House of Assembly

- (2) The sectorial and compositional distribution of the estimates and expenditure referred to in subsection (1) of this section shall be consistent with the medium term developmental priorities set out in the Medium term Expenditure Framework

20. ANNUAL BUDGET TO BE ACCOMPANIED BY CERTAIN DOCUMENTS

- (1) The estimates of revenue and expenditure in this Law referred to as the Annual Budget shall be accompanied by-
- (a) a copy of the underlying revenue and expenditure profile for the next two years;
 - (b) a report setting out actual and budgeted revenue and expenditure and detailed analysis of the performance of the budget for the eighteen (18) months up to June of the preceding financial year;
 - (c) a revenue framework broken down into monthly collection targets prepared on the basis of the predetermined projected statutory allocations and internal revenue projections as contained in medium Term Expenditure Framework;
 - (d) measures on cost, cost control and evaluation of results of programmes financed with budgetary resources;
 - (e) a fiscal target appendix derived from the underlying Medium Term Expenditure Framework setting out the following targets for that financial year:
 - (i) targets for economic growth
 - (ii) target fiscal account balances; and
 - (iii) target employment rate

(iv) targets for the realization of the rights to education, health, adequate housing and to sustainable improvements in the standard of living and the original and

(v) any other development target deemed appropriate.

(f) a fiscal risk appendix evaluating the fiscal and other related risks to the Annual Budget and specifying measures to be taken to offset the occurrence of such risks.

21. CRITERIA FOR ADMISSION OF PROJECTS AND PROGRAMMES INTO THE APPROPRIATION BILL

- (1) Projects and programmes shall only be admitted into an Appropriation Bill if they:
 - (a) are derived from the medium Term Expenditure Framework; and
 - (b) have undergone a cost-benefit analysis
- (2) New projects shall only be admitted into an Appropriation Bill if adequate funding has been provided for on-going projects and for the conservation of existing public assets
- (3) All expenditure involving public securities or contractual debt shall be contained in the Appropriation Bill
- (4) The refinancing of public debt shall be suited separately in the Appropriation bill.
- (5) Liabilities arising by reason of judgment of the courts established under the constitution shall be stated separately in the appropriation Bill
- (6) Provisions for borrowing with imprecise objectives in the Appropriation Bill are prohibited

22. PREPARATION OF THE ANNUAL BUDGET

The preparation of the Annual Budget shall commence not later than 15th July in each financial year by the issuance of the Budget Call Circular in such form as the commissioner may from time to time prescribe to all ministries, departments and agencies of the State Government.

23. RESPONSIBILITY FOR PREPARATION OF THE ANNUAL BUDGET

- (1) The commissioner shall prepare and present to the state Executive Council not later than the third week of September in each financial year a draft Annual Budget and the Governor shall in turn present the draft budget to the State House of Assembly not later than the second week in October
- (2) The Draft annual budget shall be passed by the State House of Assembly not later than the last week of December.

24. APPLICATION OF PART III TO LOCAL GOVERNMENT COUNCILS AND OTHER EXECUTING BODIES

In preparing their annual budget, local government councils, ministries, extra ministerial office/departments, state executive bodies and other executing agencies of the state government shall be guided by and adopt the provisions of this part with such modification as may be appropriate and necessary

PART IV**BUDGETARY PLANNING OF CORPORATIONS AND OTHER RELATED AGENCIES****25. PREPARATION OF ESTIMATES OF REVENUE AND EXPENDITURE BY CORPORATIONS**

- (1) The state's corporations, agencies as well as government owned companies listed in the schedule to this Law (hereinafter in this Law referred to as the corporations) shall not later than six (6) months from the commencement of this law cause to be prepared and submitted to the commissioner their estimates of revenue and expenditure for the next three financial years.
- (2) Each of the bodies referred to in subsection (1) of this section shall submit to the commissioner not later than the end of August in each financial year;
 - (a) an annual budget derived from the estimates submitted in pursuance of subsection (1) of this section;
 - (b) projected operating surplus which shall be prepared in line with acceptable accounting practices
- (3) the commissioner shall cause the estimates submitted in pursuance of subsection (2) of this section to be attached as an Appendix to the Annual budget.

26. OPERATING SURPLUS AND GENERAL RESERVE FUND

- (1) Notwithstanding the provisions any written law governing the corporation each corporation shall establish a general fund and shall allocate thereto at the end of each financial year one-fifth of its operating surplus for the year.
- (2) The balance of the operating surplus shall be paid to the Consolidated Revenue Fund of the state government not later than one (1) month following the statutory deadline for publishing each corporations account.

27. CLASSIFICATION OF CORPORATION OPERATING SURPLUS

- (1) The corporation's surpluses shall be classified as state treasury revenue
- (2) Where a corporation's result is in deficit, the deficit shall be classified as the corporation's loss for the fiscal year
- (3) Each corporation shall not later than three (3) months after the end of its financial year cause to be prepared and published its audited financial reports in accordance with such rules as may be prescribed from time to time.

28. CESSATION OF APPLICATION OF PART IV

The provisions of this part shall cease to apply to any corporation from the date of its privatization.

PART V**BUDGETARY EXECUTION AND ACHIEVEMENT OF TARGETS****29. ANNUAL CASH PLAN**

- (1) The state government shall cause to be drawn up in each financial year an Annual Cash Plan which shall be prepared by the office of the Accountant-General of the State
- (2) The Annual Cash Plan shall be prepared in advance of the financial year setting out projected monthly cash flows and shall be revised periodically to reflect actual cash flows.

30. DISBURSEMENT SCHEDULE

The Commissioner shall within thirty (30) days of the enactment of the Appropriation law prepare and publish a disbursement schedule derived from the Annual cash Plan for the purpose of implementing the Appropriation law.

31. POWER OF COMMISSIONER TO RECOMMEND FOR VIREMENT

- (1) The sums appropriated for a specific purpose shall be used solely for the purpose specified in the Appropriation law.
- (2) Without prejudice to subsection (1) of this section, the commissioner may in exceptional circumstances and in the overall public interest recommend for approval to the State House of Assembly virements from subheads under heads of account without exceeding the amount appropriated to such head of account.

32. POWER TO RESTRICT FURTHER COMMITMENTS

- (1) Where by the end of three (3) months after the enactment of the Appropriation law, the Commissioner determines that the targeted revenues may be insufficient to fund the heads of expenditure in the appropriation law, the Commissioner shall within the next thirty (30) days of such determination, take appropriate measures to restrict further commitments and financial operations according to the criteria set in the Fiscal Risk Appendix.
- (2) Where the targeted revenues are re-established either in part or in full, the appropriations for which further commitments were restricted shall be restored proportionately.
- (3) Powers of restriction shall not be unduly exercised by the Commissioner and the State House of Assembly shall be notified once the decision to exercise the power to restrict has been taken by the commissioner.
- (4) The provisions of subsections (1) and (2) of this section shall not apply to statutory or constitutional expenditure

33. RESTRICTION ON THE GRANT OF TAX RELIEF

- (1) Any proposed tax expenditure shall be accompanied by a restriction on the grant of evaluation of its budgetary and financial implications in the year it becomes effective and in the three (3) subsequent years, and shall only be approved by the Commissioner if it does not adversely impair the revenue estimates in the Annual Budget or if it is accompanied by countervailing measures during the period mentioned in this subsection through revenue increasing measures such as tax rate raises and expansion of tax base.
- (2) The provisions of this section shall not apply to
 - (a) changes in the rates of the taxes mentioned in the laws of the state; and
 - (b) debt cancellation in an amount lower than the cost of collection

34. RESPONSIBILITY OF THE BUDGET OFFICE TO MONITOR AND REPORT ON BUDGET IMPLEMENTATION

- (1) The Commissioner through the department of Budget and Control in the Ministry of finance and Budget shall monitor and evaluate the implementation of the Annual Budget to assess the attainment of fiscal targets and report thereon on a quarterly basis to the commission and the Finance Committee of the State House of Assembly.
- (2) The Commissioner shall cause the report prepared pursuant to subsection (1) of this section to be published in the mass and electronic media and on the Ministry of finance website not later than a month after the end of each quarter.

35. APPLICATION OF PART V TO LOCAL GOVERNMENT COUNCIL

In implementing their annual budget local government councils, shall be guided by and adopt the provisions of this part with such modifications as may be appropriate and necessary.

PART VI

PUBLIC REVENUES

36. FORECAST AND COLLECTION OF PUBLIC REVENUES

Prompt remittance of all revenue collected by each tier of government into the appropriate pool account, shall be a condition precedent to any transfer of share of revenue of the respective tier of government.

37. EXECUTIVE TO BREAKDOWN ESTIMATED REVENUE

Estimated revenue shall be broken down by the executive arm of government into monthly collection targets, including where applicable, a separate description to measures to combat tax fraud and evasion

PART VII

SAVINGS AND ASSET MANAGEMENT

38. SAVING OF EXCESS REVENUES

- (1) The state shall maintain a Fund to be called: The State Reserve Fund (hereafter referred to as the Fund)
- (2) The Fund shall form part of the consolidated Revenue fund of the State.
- (3) Monies payable into the fund shall include:
 - a. five percent of all statutory allocations of the state and local governments from the Federal Account;

- b. thirty percent of all additional revenue accruing to the state and local governments from the Federal Account due to rise in commodity prices above reference price;
 - c. other revenues accruing to the state in excess of the Aggregate Expenditure Limit in a year;
 - d. such additional sums as may be approved in the annual appropriation by the Stat House of Assembly on the proposal of the Governor.
4. The fund shall be maintained at a commercial bank approved by the commission.
5. A part of the Fund may be invested in securities, bonds, investments, etc in accordance with approved guidelines developed by the commission.
6. No withdrawals shall be made from the fund within ten years of the coming into force of this law except when the governor acts on an address supported by two thirds majority of the State House of Assembly praying that the money be so withdrawn to forestall a clear and present threat to the security and livelihood of residents of the state.
7. Withdrawals from the Fund after the first ten years shall only be made for the purpose of funding.
 - a. economically viable infrastructure projects in accordance with the Appropriation law;
 - b. to augment a persistent shortfall in budgeted revenues for the implementation of the capital estimates of an Appropriation law.
8. The shares of the State government and the local governments and income due from them shall be clearly identified in the Fund: Provided however that investment by the fund shall be undertaken in a consolidated manner.

PART VIII
PUBLIC EXPENDITURE

39. CONDITIONS FOR INCREASING GOVERNMENT EXPENDITURE

- (1) The creation, expansion or improvement in government action which result in an expenditure increase shall be accompanied by –
- (a) an estimate of the budgetary or financial impact in the year it becomes effective and in the two subsequent years;
 - (b) a statement by the person requesting for the expenditure, stating that the increase is consistent with the Appropriation law and the Medium Term Expenditure Framework of the state.
- (2) The provisions of this section shall not apply to expenditures below thresholds to be set by the commission.

40. CONDITIONS FOR INCREASING PERSONNEL EXPENDITURE

1. The granting of any advantage or increase of remuneration, the creation of posts or alternation of career structures and admission of personnel on any account by bodies and entities including foundations established and maintained by each tier of government shall only be effected if there is a prior budgetary allocation sufficient to cover the estimated expenditure in the financial year.
2. No across the Board Personnel Expenditure increase shall be made within 180 days to the end of the term of office of any administration.

41. ALL CONTRACTS TO COMPLY WITH RULES AND GUIDELINES

1. All contracts with regards to the execution of Annual Budget shall comply with the state's rules and guidelines
 - (a) procurement and award of contracts; and
 - (b) due process and certification of contract.
2. Violations of the Public Procurement Law shall attract penalties as stipulated in the law

42. APPLICATION OF PART VIII

In incurring public expenditure local government Councils shall be guided by and adopt provisions of this Part with such modification as may be appropriate and necessary.

PART IX**DEBT AND INDEBTEDNESS****43. FRAMEWORK FOR DEBT MANAGEMENT**

The Framework for debt management during the financial year shall be based on the following rules-

- (a) Government shall only borrow for capital expenditure and human development, provided that, such borrowing shall be on concessional terms with low interest loans and with a reasonable long amortization period subject to the approval of the State House of Assembly; and
- (b) Government shall ensure that the level as prescribed by the State House of Assembly from time to time on the advice of the commissioner provided however that the prescription by the State House of Assembly shall not exceed the levels set by the National Assembly under section 41(1) (b) of the fiscal Responsibility Act, 2007.

2. Notwithstanding the provisions of subsection (1) of this section and subject to the approval of the State House of Assembly, the State government may borrow from the capital market.

44. LIMITS ON CONSOLIDATED DEBT OF STATE AND LOCAL GOVERNMENT COUNCILS

- (1) Outstanding judgment debts not paid shall be considered part of the consolidated debt for the purpose of application of the respective limits set out in pursuance of this section.
- (2) For the purpose of verifying compliance with the limits specified pursuant to this section, the commission shall in consultation with the Debt Management Office and the Federal Fiscal Responsibility Commission, at the end of each quarter determine the amount of the consolidated debt of the state government and the local governments.
- (3) The Commission shall publish on a quarterly basis a list of the local government councils in the State that have exceeded the limits of consolidated debt indicating the amount by which the limit was exceeded.
- (4) Where at the end of any quarter the consolidated debt of the state or its local government Council exceed respective limits it shall be brought within the limit not later than the end of the three(3) subsequent quarters with a minimum of twenty-five percent (25%) reduction in the first quarter.
- (5) Violators of the limits specified pursuant to this section shall –
 - (a) be prohibited from borrowing from internal and external sources except or the refinancing of existing debts

- (b) bring the debt within the established limit by inter alia restricting, restoring commitments accordingly.
- (6) Where non-compliance with the limit specified pursuant to this section persists after the time limited by subsection (5) of this section the affected tier of government shall also be prohibited from receiving grants from any government in the Federal Republic of Nigeria.
- (7) The Commission shall publish information on a quarterly basis on whether the state has exceeded the limits of consolidated debt, indicating the amount by which the limit was exceeded.

45. SERVICING OF EXTERNAL DEBTS

- (1) Servicing of external debts shall be the direct responsibility of the tier of government that incurred the debt
- (2) The cost of servicing State Government guaranteed loans shall be deducted at source from the share of the debt Local Government from the Consolidated Revenue Fund.

PART X

BORROWING

46. CONDITIONS OF BORROWING AND VERIFICATION OF COMPLIANCE WITH LIMITS

- (1) The State Government, its agencies, corporations and Local Government Councils in the State desirous of borrowing shall specify the purpose for which the borrowing is intended and present a cost-benefit analysis, detailing the economic and social benefits of the purpose to which the intended borrowing is to be applied to the Debt management Office.

- (2) Without prejudice to subsection (1) of this section each borrowing shall comply with the following condition-
 - (a) the existence of prior authorization in the Appropriation or other law for the purpose for which the borrowing is to be utilized; and
 - (b) the proceeds of such borrowing shall solely be applied towards long-time capital expenditures.
- (3) No borrowing shall be incurred by any administration within 180 days to the end of the tenure of that administration.
- (4) Nothing in this section shall be construed to authorize borrowing in excess of the limits set-pursuant to section 40, 41 and 42 of this Law.
- (5) The Commission shall verify on a quarterly basis compliance with the limits and conditions for borrowing by each of the state's ministries, extra ministerial offices/departments, agencies and its local government councils
- (6) Without prejudice to the specific responsibility of the State House of Assembly, the Debt Management Office shall maintain comprehensive, reliable and current electronic database of internal and external debts, guaranteeing public access to the information.
- (7) Notwithstanding the provisions of this law or any other law, the Bayelsa State House of Assembly may give approval to the State Government, its agencies, corporations and Local Governments to borrow.

47. LENDING BY FINANCIAL INSTITUTIONS

1. All banks and financial institutions shall request and obtain proof of compliance with the provisions of this Part before lending to the State Government and any of its agencies or

corporations or to any Local Government Council in the state.

2. Lending by financial institutions in contravention of this section shall be unlawful.

48. POWER OF COMMISSIONER TO GRANT GUARANTEES

- (1) Subject to the provisions of this part the Commissioner may with the approval of the State Executive council grant guarantee on behalf of any Local Government Council or Government Agencies in the state.
- (2) Any guarantee granted by the Commissioner shall be conditional upon the provision of a counter-guarantee in an amount equal to or higher than the guarantee obligation, provided that, there are no overdue obligations from the requesting Local Government Council or Government agencies to the guarantor and its controlled corporation and such guarantee shall also be in compliance with the following-
 - (a) counter-guarantee shall only be accepted from Local Government Council.
 - (b) the counter guarantee required by the State Government from the Local Government Council may consist in the appropriation of tax revenue directly collected and resulting from statutory transfers and the guarantor shall be authorized to retain such revenue and use the respective amount to repay overdue debts
- (3). There shall be no foreign currency borrowing.

PART XI

TRANSPARENCY AND ACCOUNTABILITY

49. FISCAL ACCOUNTABILITY

- (1) The State as well as its Local Government Councils shall ensure that its fiscal and financial affairs are conducted in a transparent manner and accordingly shall ensure full and timely disclosure and wide publication of all transactions and decisions involving public revenues and expenditures and their application for its finances.
- (2) The legislative arm of each tier of Government shall ensure transparency by way of public hearings during the preparation and discussion of the Medium term expenditure framework, Annual Budget and the Appropriation Bill.

50. PUBLICATION OF AUDITED ACCOUNTS BY THE STATE AND ITS LOCAL GOVERNMENT COUNCILS

- (1) The State Government as well as Local Government Councils shall publish their audited accounts not later than six (6) months following the end of the financial year.
- (2) The publication of general standards for the consolidation of public accounts shall be the responsibility of the office of the Accountant-General of the state.
- (3) The Accountant-General of the state shall not later than nine (9) months following the end of the financial year cause to be consolidated and published in the mass media the accounts of all Local Government Councils in the state.

51. PUBLICATION OF A SUMMARIZED REPORT ON BUDGET EXECUTION

The State Government through its Budget and Control Department of the Ministry of Finance and Budget shall within a

month after the end of each quarter, publish a summarized report on budget execution and not later than six (6) months after the end of the financial year, a consolidated budget execution report showing implementation against physical and financial performance targets shall be published by the commissioner for submission to the State House of Assembly.

PART XII

OFFENCES AND PENALTIES

52. UNLAWFUL ACTS

- (1) Any violation of the requirement of Part VII as Part VIII of this Law shall be considered unlawful.
- (2) Lending by banks and financial institutions in contravention of Part XI of this law shall be considered unlawful.
- (3) A guarantee provided in excess of debt limits shall be considered unlawful.

53. OFFENCES

- (1) Non compliance with any of the provisions of Part II, III, VII and IX of this law shall constitute an offence punishable under this Law.
- (2) Where the non-compliance is by an agency or institution, the head of such organization shall be guilty of an offence punishable under this Law.
- (3) For the purpose of sub-section (2) above the Commissioner, Clerk of the State House of Assembly, Chief Registrar, Commissioners of the various Ministries, Chairmen of the Local Government Councils and the Accountant-General where applicable shall be liable for the contravention.

54. PENALTIES

- (1) Any person who willfully or negligently fails to perform his obligation under this law or who knowingly or recklessly makes a false statement in the discharge of his obligation under this law commits an offence and is liable on conviction to one year imprisonment or a fine of N1 million.
- (2) Any person who willfully or negligently acts in contravention of the provisions of this Law commits an offence and is liable on conviction to a term of imprisonment not less than three years.

PART XIII**MISCELLANEOUS PROVISIONS****55. GOVERNMENT SECURITIES AS COLLATERAL TO GUARANTEE LOANS**

Government Securities, provided that, they are duly listed on the Stock Exchange, may be offered as collateral to guarantee loans or other financial transactions under the law for their economic value as defined by the Ministry of Finance and Budget.

56. RESTRICTION ON UTILIZATION OF PROCEEDS OF SALE OF PUBLIC ASSETS ETC.

The proceeds derived from the sale or transfer of public properties and rights over public assets shall not be used to finance recurrent and debt expenditure, provided that, such proceeds may be used to liquidate ensuing liabilities directly charged against such properties or assets.

57. CONDITIONS FOR LOCAL GOVERNMENT CONTRIBUTION

A Local Government shall only contribute to cover cost of expenditure incurred by the other tiers of Government, if authorized in a covenant, agreement, accord or any similar arrangement.

58. TECHNICAL AND FINANCIAL ASSISTANCE TO LOCAL GOVERNMENT

The State Government may provide technical and financial assistance to Local Governments for the modernization of their respective tax, financial and asset administration, for the purpose of complying with the provisions of this Law.

59. STAFF OF THE COMMISSION

The Commission shall:

- a. appoint such number of employees as may be expedient and necessary for the proper and efficient performance of its functions;
- b. within six months of the inauguration, determine through regulations the terms and conditions of service including disciplinary measures for its employees.

Provided however that until such regulations are made any instrument relating to the conditions of service of the state shall be applicable;

- c. fix the remuneration, allowances and benefits of employees as approved in the scheme of service by the National Council on Establishment.

60. PENSIONS

Notwithstanding the provisions of the Pensions Law it is hereby declared that service in the Commission shall be public service for the purposes of that Law and accordingly officers and other staff of the Commission shall in respect of their services in the Commission be entitled to such pensions, gratuities and other retirement benefits as are prescribed by the Pensions Law.

61. INTERPRETATION OF OTHER LAWS

In the event of any inconsistency between the provisions of the law and the provisions of any other legislation, the provisions of this Law shall prevail and the provisions of that other legislation shall, to the extent of the inconsistency, be void.

62. IMMUNITY AGAINST STAFF AND MEMBERS

No suit shall lie against any member of the Commission in his personal capacity for any act done in pursuance of the functions of the commission under this law.

63. MODE OF COMMENCEMENT OF ACTION FOR ENFORCEMENT

A person shall have the legal capacity to enforce the provisions of this law by obtaining prerogative orders or other remedies at the State High Court without having to show any special or particular interest.

PART XIV

INTERPRETATION AND SHORT TITLE

64. INTERPRETATION

In this Law except the context otherwise requires "**Appropriation Law**" means a law passed by the State House of Assembly authorizing spending from the consolidated Revenue fund and includes a supplementary Appropriation Law "**Appropriation bill**" means the bill referred to in section 121 of the Constitution.

"**Arms of Government**" means the Executive, Legislative and Judiciary.

"**Borrowing**" means any financial obligation arising from –

- (i) any loan including principal, interest, fees of such loan;

- (ii) the deferred payment for property, goods or services,
- (iii) bonds, debentures, notes or similar instruments;
- (iv) letters of credit and reimbursement obligations with respect thereto;
- (v) trade or bankers' acceptances;
- (vi) capitalized amounts of obligations under lease entered into primarily as a method of raising finance or of financing the acquisition of the asset leased;
- (vii) agreements providing for swaps, ceiling rates, ceiling and floor rates, contingent participation or other hedging mechanisms with respect to the payment of interest or the convertibility of currency and;
- (viii) a conditional sale agreement, capital lease or other title retention agreement;

“Budget call circular” means a circular –

- (1) requesting the submission, in a prescribed form of the revenue and expenditure estimate of ministries, extra-ministerial departments, and other executing agencies of Government for the next financial year; and
- (2) giving detailed guidelines and instructions on the preparation of the estimates and expenditure in a manner consistent with the medium term developmental priorities set and in the medium term expenditure framework;

“Capital expenditure” means spending on an asset that lasts for more than one financial year and expenses associated with the acquisition of such assets.

“Commissioner” means the Commissioner charged with the responsibility for Finance and Budget.

“Consolidated debt” means the aggregate of the outstanding financial obligations of Government including those of its Parastatals and agencies at any point in time arising from (i) borrowed money including principal, interest, fees of such borrowed money (ii) the deferred payment for property, goods or services. (iii) bonds, debentures, notes or similar instruments, (iv) letters of credit and reimbursement obligations with respect thereto, (v) Guarantees (vi) trade or bankers’ acceptances, (vii) capitalized amounts of obligations under leases entered into primarily as a method of raising financing or of financing the acquisition of the asset leased, (viii) agreements providing for swaps, ceiling rates, ceiling and floor rates, contingent participation or other hedging mechanisms with respect to the payment of interest or the convertibility of currency and (ix) a conditional sale agreement, capital lease or other title retention agreement;

“Cost-benefit –analysis” means an analysis that compares the cost of undertaking a service project or programme with the benefits that citizens are likely to derive from it;

“Established Local Government” means the eight (8) local government areas in the constitution i.e Brass, Ekeremor, Kolokuma/Opokuma, Nembe, Ogbia, Sagbama, Southern Ijaw and Yenagoa.

“Financial year” has the meaning ascribed thereto in the Laws of Bayelsa State.

“Fiscal policy objectives” means the goals set by Government for attainment of set targets for a given period.

“Government-owned Company” means a statutory corporation, Government agency and a company in which Government has controlling interest;

“Governor” means the Governor of the Bayelsa State government of Nigeria;

Medium-Term Expenditure Framework” means the document referred to and the contents of which is prescribed in Section 1 of this Law:

“Net debt” means the consolidated Debt less what is owned to Government, its parastatals and agencies at any point in time;

“Public debt securities” means public debt represented by securities issued by the Federal Government (including those of the Central bank of Nigeria), the State and Local government.

“Public expenditure” means outlays other than those resulting into debt reduction;

“Public revenue” refers to all moneys received by a Government in the state.

“Quarter” means one quarter of a financial year (a 3-month period);

“Recurrent Expenditure” means normal overhead and administrative expenses and personnel cost including salaries, emoluments and other benefits of employees;

“Reference Commodity Price” means the moving average for the last preceding 5 years plus a spread no; exceeding 5 dollars as determined by the Commissioner. However, given the recent unexpectedly high oil prices, a 10 years moving average will be used initially until such a time

as it is determined that prices have stabilized at the long-run average, consistent with market and structural conditions:

“Refinancing of debt securities” means issuance of securities to repay existing debts;

“State financial institution” means any financial institution in which the State Government has controlling shares;

“State” shall be construed to include the entire Bayelsa State Territory; and

“Tiers of Government” means the State and Local Government;

SHORT TITLE

69. This Law may be cited as the Bayelsa State Fiscal Responsibility Law 2009.

This printed impression has been carefully compared by me with the Bill which has passed the Bayelsa State House of Assembly and found by me to be a true and correctly printed copy of the said Law.



PETER KORU GEORGE
Clerk of the House

Assented the.....*18th*..... day of.....*September*....., 2009



CHIEF TIMIPRE SYLVA
Governor of Bayelsa State

BAYELSA STATE
FISCAL RESPONSIBILITY
LAW, 2009