

A BILL

FOR

A LAW TO PROVIDE FOR PRUDENT MANAGEMENT OF THE STATE'S RESOURCES, ENSURE LONG-TERM MACROECONOMIC STABILITY OF THE STATE ECONOMY, SECURE GREATER ACCOUNTABILITY AND TRANSPARENCY IN FISCAL OPERATIONS WITHIN A MEDIUM TERM FISCAL POLICY FRAMEWORK, AND THE ESTABLISHMENT OF THE STATE FISCAL RESPONSIBILITY COMMISSION TO ENSURE THE PROMOTION AND ENFORCEMENT OF THE STATE'S ECONOMIC OBJECTIVES AND OTHER MATTERS CONNECTED THEREWITH.

BE IT ENACTED by the Delta State House of Assembly as follows:

1. This Law may be cited as the Fiscal Responsibility Bill and shall come into force, on the 29th day of July, 2008.

Short-title and commencement

2. In this Law:

Interpretation

"*Appropriation Law*" means a Law passed by the House of Assembly or Local Government Councils authorizing spending from the Consolidated Revenue Fund and includes a Supplementary Appropriation Law;

"*Arms of Government*" means the Executive, the Legislature and the Judiciary;

"*Borrowing*" means any financial obligation arising from (i) any loan including principal, interest, fees on 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 leases entered into primarily as a method of raising financial 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:

- (i) requesting the submissions in a prescribed form of the revenue and expenditure estimates of Ministries, Extra-Ministerial Departments, and other executing Agencies of Government for the next financial year; and
- (ii) giving detailed guidelines and instructions on the preparation of the estimates and expenditures in a manner consistent with the medium term developmental priorities set out 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;

“*Concessional terms*” means the terms of the loan which must be at an interest rate not exceeding 3%;

“*Consolidated debt*” means the aggregate of the outstanding financial obligations of Government commission including those of its Parastatals and Agencies/ Commissions at any point in time arising from (i) borrowed money including principal, interest, fees on 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 amount of obligations under leases entered into primarily as a method of raising financial 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/model that compares the cost of undertaking a service, project or programme with the benefits that citizens are likely to derive from it;

"*Fiscal Risk Appendix*" An explanatory attachment that provides a set of indicators that can be used to measure local fiscal risks;

"*Fiscal Risk Target*" provides numerical target for each risk indicator with which a fiscal entity will be considered fiscally healthy.

"*Financial Year*" has the meaning ascribed thereto in the Constitution;

"*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/Commission, or a Company in which Government has controlling interest;

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

"*Commissioner*" means the Commissioner charged with the responsibility for Economic Planning;

"*Net debt*" means the Consolidated Debt less what is owed to Government, its Parastatals and Agencies/Commissions at any point in time;

"*Governor*" means the Governor of Delta State of Nigeria;

"*House*" means the Delta State House of Assembly;

"*Public Debt Securities*" means public debt represented by securities issued by the State Government (including those of the Central Bank of Nigeria) and Local Governments;

"*Public Expenditure*" means outlays other than those resulting into debt reduction;

“Public Revenue” means all moneys received by a Government in the State;

“Quarter” means one quarter of a financial year and quarterly shall be construed accordingly;

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

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

“State Financial Institution” means any financial institution in which one or more state governments have controlling shares;

“Tax Revenue Projections” means the projected collectible tax or revenue within a particular planning period;

“Tax Expenditure Projections” means the projected Expenses or Expenditures within a particular planning period; and

“Tiers of Government” means State and Local Governments.

PART I – ESTABLISHMENT FUNCTIONS AND POWERS OF THE FISCAL RESPONSIBILITY COMMISSION

Establishment of the Fiscal Responsibility Commission.

3. (1) There shall be 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.

Responsibility, powers and functions of the Commission.

4. (1) For the purpose of performing its functions under this Law, the Commission shall have power to-

(a) compel any person or government institution to disclose information relating to public revenues and expenditure; and

- (b) cause an investigation into whether any person has violated any provisions of this Law.

(2) If the Commission is satisfied that such a person has committed any punishable offence under this Law and/or violate any provisions of this Law, the Commission shall forward a report of the investigation to the State House of Assembly for onward routing to the Attorney-General of the State for possible prosecution.

5. (1) The Commission shall:

Function of the Commission.

- (a) monitor and enforce the provisions of this Law and by so doing, promote the economic objectives contained in section 16 of the Constitution;
- (b) disseminate such standard practices including international good practice 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 diagnosis and disseminate the result to the general public;
- (d) make rules for carrying out its functions under this Law; and
- (e) perform any other function consistent with the promotion of the objectives of this Law.

(2) The provisions of Public Officers Protection Law shall apply to the members of the Commission in discharge of their functions under this Law.

6. (1) The Commission shall establish and maintain a fund from which shall be defrayed all expenditure incurred by the Commission.

Establishment of a fund for the Commission.

(2) There shall be credited to the Fund established pursuant to subsection (1) of this Section, the budgetary allocation from the State Government

Establishment
and
composition of
the Commission.

7. (1) The Commission shall consist of-

- (a) Chairman, who shall be the Chief Executive and accounting officer of the Commission;
- (b) one member representing the organized private sector;
- (c) one member representing Civil Society engaged in causes relating to probity, transparency and good governance;
- (d) one member representing organized labour;
- (e) a representative of the State Ministry of Economic Planning of a level not below the rank of a Director;
- (f) a representative of the State Ministry of Finance, who must be a seasoned professional accountant with not less than 10 years post qualification experience;
- (g) a representative of Ministry of Justice of a level not below the rank of Assistant Director;
- (h) one member, to represent each of the following three senatorial district of the State, that is: Delta-Central, Delta-North and Delta-South; and
- (i) one member to represent the Association of Local Government Council of Nigeria (ALGON), Delta State chapter.

(2) All members of the Commission shall be persons of proven integrity and must possess appropriate qualifications with not less than 10 years cognate post qualification experience.

(3) The Chairman, Secretary and other Members of the Commission other than ex-officio members shall be appointed by the Governor subject to confirmation by the House of Assembly.

(4) The Chairman, Secretary and other members representing the three senatorial district shall be full time members.

8. The Chairman, Secretary and other members of the Commission shall hold office for a term of 3 years in the first instance, subject to reappointment for another term of 3 years only.

Tenure of Office

9. The Commission shall have power to-

Powers of the Commission.

(a) formulate and provide general policy guidelines for the discharge of the functions of the Commission;

(b) superintend the implementation of the policies of the Commission;

(c) appoint for the Commission, such number of employees as may in opinion of the Commission be expedient and necessary for the proper and efficient performance of the functions of the Commission;

(d) determine the terms and conditions of service in the Commission, including disciplinary measures for the employees of the Commission;

(e) fix the remuneration, allowances and benefits of the employees of the Commission as approved by the Salaries and Wages Commission;

(f) do other things, which in its opinion are necessary to ensure the efficient performance of the functions of the Commission; and

(g) 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 as the Commission may, from time to time, determine.

Cessation of
membership.

10. (1) Notwithstanding the provisions of Section 5(2) of this Law, a member of the Commission 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 State and/or 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 a notice under his hand, addressed to the Governor; or
- (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; and
- (h) upon a resolution of the House of Assembly recommending to the Governor that the Member be removed from office.

(2) Where a vacancy occurs in the membership of the Commission, it shall be filled by appointment of a successor to hold office for the remainder of the term of office of his predecessor, provided that the successor shall represent the same interest as his predecessor.

11. (1) There shall be paid to the Chairman, Secretary and other full time members of the Commission such salaries, allowances and benefits as the Revenue Mobilization Allocation and Fiscal Commission may from time to time approve.

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Commissi
Members.

(2) There shall be paid to other members of the Commission such sitting allowances and benefits as may be determined by the Revenue Mobilization Allocation and Fiscal Commission may from time to time approve.

12. The Commission shall prepare and submit to the House of Assembly, not later than 30th June in each financial year, a report of its activities including all cases of contravention investigated during the preceding financial year, and shall include in the report a copy of its audited accounts for the preceding financial year.

Submission
annual repc
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Commission

PART II – THE MEDIUM-TERM EXPENDITURE FRAMEWORK

13. (1) The State Government after consultation shall:

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Expenditur

(a) not later than six months from the commencement of this Law, cause to be prepared and laid before the House of Assembly, for their consideration a Medium-Term Expenditure Framework for the next three financial years; and

(b) thereafter, not later than four months before the commencement of the next financial year, cause to be prepared a Medium-Term Expenditure Framework for the next three financial years.

(2) The Frame-work so laid shall be considered for approval with such modifications if any, as the House of Assembly finds appropriate.

(3) The Medium-Term Expenditure Framework shall contain-

(a) a Macroeconomic Framework setting out the macro-economic projections, for the next three financial years, the

underlying assumptions for those projections 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) expenditure, debt expenditure, capital expenditure, borrowings and other liabilities, lending and investment;
- (iii) the strategic, economic, social and developmental priorities of the State Government for the next three financial years;
- (iv) an explanation of how the financial objectives, strategic, economic, social and developmental priorities and fiscal measure set out pursuant to paragraph (i), (ii) and (iii) of this subsection relate to the Economic Objectives set out in section 16 of the Constitution.

(c) an Expenditure and Revenue Framework setting out;

- (i) estimate of aggregate revenues for the State for each financial year in the next three financial years, based on the predetermined Projected Statutory Allocations and Internal Revenue Projections adopted and tax revenue projections;
- (ii) aggregate expenditure projection for the State for each financial year in the next three financial years;
- (iii) aggregate tax expenditure projection for the State for each financial year in the next three financial years; and
- (iv) minimum capital expenditure for the State for each financial year in the three financial years;

Provided that, the estimates and expenditures provided pursuant to paragraph (d) of this subsection, shall be-

- (i) based on reliable and consistent data certified in accordance with subsection 15 (2) (b) of this Law;
 - (ii) targeted at achieving the macro-economic projections set out in pursuance of paragraph (a) of subsection (3) of this section; and
 - (iii) consistent with and derive from the underlying assumptions contained in the Macroeconomic Framework, the objectives, policies, strategic priorities and explanations in the 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; and
- (e) a statement describing the nature and fiscal significance of contingent liabilities and quasi-fiscal activities and measures to offset the crystallization of such liabilities.

14. (1) The estimates of aggregate expenditure and the aggregate amount appropriated by the House of Assembly for each financial year shall not be more than the estimated aggregate revenue plus a deficit, not exceeding three percent of the Estimated Gross Domestic Product or any sustainable percentage as may be determined by the House of Assembly for each financial year.

Aggregate
Expenditure
Ceiling.

(2) The aggregate expenditure for a financial year may exceed the ceiling imposed by the provisions of subsection (1) of this section, if in the opinion of the Governor there is a clear and present threat to security of the Delta State of Nigeria.

Preparation of
the Medium-
Term
Expenditure
Framework.

15. (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) may hold public consultation, on the Macroeconomic Framework, the Fiscal Strategic, economic, social and developmental priorities of Government, and such other matters as the Commissioner deems necessary.

Provided that, such consultations shall be open to the public, the press and any citizen or authorized representatives of any organization, group of citizens, who may attend and be heard on any subject matter properly in view;

(b) shall seek, inputs from the-

- (i) Board of Internal Revenue
- (ii) House of Assembly;
- (iii) Ministry of Finance;
- (iv) Office of Head of Service;
- (v) any other relevant statutory body as the Governor may determine; and

(c) shall consider and reflect as may be deemed appropriate the input of the bodies and persons referred to in subsection (a) and (b) of this section.

Time limit for
presentation
Of Medium
Term
Expenditure
Framework
to State
Executive
Council.

16. (1) The Governor shall before the end of the second quarter of each financial year, present the Medium-Term Expenditure Framework to the State Executive Council for consideration and endorsement.

(2) The Medium-Term Expenditure Framework as endorsed by the Executive Council shall take effect upon approval by a resolution of the House of Assembly.

17. The Medium-Term Expenditure Framework as approved by the House of Assembly shall be published in the Gazette.

Publication of Medium-Term Expenditure Framework in the Gazette.

18. (1) Subject to subsection (2) of this section, the Governor may cause adjustments to be made to the Medium-Term Expenditure Framework.

Adjustments to the Medium-Term Expenditure Framework.

(2) Any adjustments to the 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.

19. Local Government Councils which so desire shall be assisted by the State Government to manage their fiscal affairs within the medium-term framework.

Application to Local Government

PART III - THE ANNUAL BUDGET

20. (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 House of Assembly under section 81(1) of the Constitution.

Annual Budget to be derived from Medium-Term Expenditure Framework.

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

21. The estimates of revenue and expenditure, in this Law referred to as the Annual Budget, shall be accompanied by-

Annual Budget to be accompanied by certain documents.

- (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 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 target for that financial year-
 - (i) target inflation rate,
 - (ii) target fiscal account balances,
 - (iii) any other development target deemed appropriate; and
- (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.

Application of
Part III Local
Government
Councils.

22. In preparing their annual budget, Local Government Councils shall adopt the provisions of this part of the Law.

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**PART IV – BUDGETARY PLANNING OF CORPORATIONS
AND OTHER RELATED AGENCIES**

23. (1) The Government corporations/companies, agencies and government owned companies listed in the Schedule to this Law shall not later than six months from the commencement of this Law and for every three financial years thereafter, not later than the end of the second quarter of every year, cause to be prepared and submitted to the Commissioner, their estimates of revenue and expenditure for the next three financial years.

Preparation of estimates of revenue and expenditure by Corporations etc.

(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 part of the draft Appropriation Bill to be submitted to the House of Assembly.

24. (1) Notwithstanding the provision of any written Law governing the Corporation, each Corporation shall establish a General Reserve Fund and shall allocate thereto at the end of each financial year, one-fifth of its operating surplus for the year.

Operating Surplus and general reserve fund

(2) The balance of the operating surplus shall be paid to the Consolidated Revenue Fund of the State Government, not later than one month following the statutory dead line for publishing each corporation's accounts.

25. (1) The corporations/surpluses shall be classified as State Revenue payable into the State Treasury.

Classification of corporation Operating surplus

(2) Where a Corporation's result is a deficit, the deficit shall be classified as the Corporation's loss for the fiscal year.

(3) Each Corporation shall not later than three 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.

Cessation of
Application of
Part IV

26. The provisions of section 23, 24 and 25 shall cease to apply to any of the Corporations from the date of its privatization.

PART V – BUDGETARY EXECUTION AND ACHIEVEMENT OF TARGETS

Annual Cash
plan

27. (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 span from 1st April of the financial year to 31st March of the next financial year.

(3) The annual Cash Plan shall be prepared in advance of the financial year setting out projected monthly cash flows and shall be revised biannually to reflect actual cash flows.

Disbursement
Schedule.

28. The Commissioner of Finance, shall within 30 days of the enactment of the Appropriation Law, prepare and publish a disbursement schedule derived from the Annual Cash Plan for the purposes of implementing the Appropriation Law.

Power of
Commissioner
to approve
virement.

29. (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 the approval of the House of Assembly virement from sub-heads under heads of account, without exceeding the amount appropriated to such head of account.

30. (1) Where by the end of three months after the enactment of the Appropriation Law, the Commissioner of Finance determines that the targeted revenues may be insufficient to fund the heads of expenditure in the Appropriation law, the Commissioner shall within the next 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.

Power to restrict further commitments

(2) Where the targeted revenue are re-established, either in part or in full, the appropriations for which further commitments were restricted shall be restored proportionately.

(3) The provisions of subsection (1) and (2) of this section shall not apply to statutory or constitutional expenditure.

31. (1) Any proposed Tax Expenditure shall be accompanied by an evaluation of its budgetary and financial implications in the Year it becomes effective and in the three subsequent years, and shall only be approved by the Commissioner of Finance 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 the tax base.

Restriction on the grant of relief.

(2) The provisions of this section shall not apply to-

- (a) changes in the rates of the taxes mentioned in Section 163 of the Constitution; and
- (b) debt cancellation in an amount lower than the cost of collection.

32. (1) The Commissioner, through the Budget Office of the State shall monitor and evaluate the implementation of the Annual Budget, assess the attainment of fiscal targets and reports thereon on a quarterly basis to the Fiscal Responsibility Commission and the Finance and Appropriations Committee of the House of Assembly

Responsibility of the Budget Office to monitor and report on implementation.

(2) The Commissioner shall, cause the report prepared Pursuant to subsection (i) of this section to be published in the mass and electronic media and on the Ministry of Finance website, not later than 30 days after the end of each quarter.

Application of Part V to State and Local Governments

33. In implementing their annual budgets, the State and Local Governments shall adopt the provisions of this part of the Law.

PART VI - PUBLIC REVENUES

Forecast and collection of public revenues

34. Any fund due to the State from any of Local Government Council may be set off by the State in or towards payment or remittance of any sum due to that Local Government from the State.

Revenue forecast.

35. The Executive arm of the State Government shall at least 30 days before the deadline for the submission of its budget proposals, place at the disposal of the House of Assembly, the revenue estimates for the following year, including the next current revenue and the respective memorandum items.

Executive to Breakdown estimated revenue

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

PART VII - SAVINGS AND ASSET MANAGEMENT

Penalty for Non-compliance with Part VI

37. (1) Where the Projected Statutory Allocations and Internal Revenue Projections rises above the predetermined level, the resulting excess proceeds shall be saved in accordance with the provisions of subsection (2) of this section.

(2) The savings of each Local Government Council in the State in pursuance of subsection (1) of this section shall be deposited in a separate account, which shall form part of the State Governments Fund to be maintained at the Central Bank of Nigeria by the State Government.

(3) The Ministry of Finance in consultation with the Governor and Local Government Chairmen initiate investment decisions on behalf of the State and Local Governments, and such investment can be undertaken in a consolidated manner, provided that the shares of the State and that of each Local Government and income due them from the investment are clearly identified.

(4) The Ministry of Finance in the discharge of its obligation under subsection (3) of this section shall, observe the limits and conditions imposed by safety and prudential considerations and the need to maintain macroeconomic stability and such safety and prudential conditions are to be agreed upon with the State Governor and Local Government Chairmen.

(5) No Local Government Council in the State shall have access to the savings made in pursuance of subsection (2) of this section, unless, the Projected Statutory Allocations and Internal Revenue Projections falls below the predetermined level for a period of three consecutive months.

(6) The augmentation referred to in subsection (5) of this section shall be limited to such sums that will bring the revenue of Local Government to the level contained in its budget estimates.

(7) Notwithstanding the provisions of subsection (5) and (6) of this section and subject to agreement by State Government and Local Government Councils in the State, a proportion of the savings may be appropriated in the following year for the capital projects and programmes.

PART VIII – PUBLIC EXPENDITURES

38. (1) The creation, expansion or improvement in government action which result in an expenditure increase shall be accompanied by-

Conditions for increasing government expenditure.

- (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.

(2) The provisions of this section shall not apply to expenditures deemed inconsequential and shall apply to the State and Local Government only to the extent to which they have adopted these provisions.

Conditions for increasing personnel expenditure

39. The granting of any advantage or increase of remuneration, the creation of posts or alteration of career structures and admission of personnel on any account by bodies and entities including foundations established and maintained by the State Government, shall only be effected if, there is a prior budgetary allocation sufficient to cover the estimated expenditure.

All connects to comply with rules and guideline.

40. All contracts with regards to the execution of annual budget, shall comply with the rules and guidelines on-

- (a) procurement and award of contracts; and
- (b) due process and certification of contract.

Effect of violation of Public Expenditure Rules.

41. Any violation of the requirements in sections 38, 39, and 40 shall be unlawful.

Application of Part VII to State and Local Government.

42. In incurring public expenditures, the Local Governments shall adopt the provisions of this part of the Law.

PART IX – DEBT AND INDEBTEDNESS

Framework for debt management.

43. (1) The framework for debt management during the financial year shall be based on the following rules-

(a) the State Government and each Local Government Council shall only borrow for capital expenditure and human development, provided that, such borrowing shall be on concessional terms with low interest rate for external debt, and the prevailing CBN rate for internal debt and with a reasonably long amortization period subject to the approval of the State House of Assembly;

(b) Government shall ensure that the level of public debt as a proportion of State income is held at a sustainable level as prescribed by the House of Assembly from time to time on the advice of the Commissioner of Finance,

(c) notwithstanding the provisions of subsection 1(a) of this section and subject to the approval of the House of Assembly, the State Government may borrow from the Capital market.

(2) Non-compliance with the provisions of this section shall make the action taken unlawful.

44. (1) The Governor shall, within 90 days from the commencement of this law, and with advice from the Commissioner of Finance, subject to approval of House of Assembly, set overall limits for the amounts of consolidated debt of the State and Local Governments pursuant to the provisions of items 7 and 50 of Part I of the Second Schedule to the Constitution and the limits and conditions approved by the House of Assembly, shall be consistent with the rules set in this Law and with the fiscal policy objectives in the Medium Term-Fiscal Framework.

(2) Outstanding judgement debts not paid shall be considered part of the consolidated debts for the purpose of application of the respective limits set in pursuance of this section.

Limits on
onsolidated
debt of
Federal and
State and
Local
Governments

(3) For the purpose of verifying compliance with the limits specified pursuant to this section, the Fiscal Responsibility Commission shall at the end of each quarter, determine the amount of the consolidated debt of State Government and each Local Government.

(4) The Fiscal Responsibility Commission shall publish, on a quarterly basis, a list of the Local Government in the State that have exceeded the limits of consolidated debt, indicating the amount by which the limit was exceeded.

(5) Where at the end of any quarter, the consolidated debt of the State or Local Governments exceeds the respective limits; it shall be brought within the limit, not later than the end of the three subsequent quarters with a minimum of 25 percent reduction in the First quarter.

(6) Violators of the limits specified pursuant to this section shall-

(a) be prohibited from borrowing from internal or external sources, except for the refinancing of existing debts; and

(b) bring the debt within the established limit by inter alia, restricting funding commitments accordingly.

(7) Where non-compliance with the limit specified pursuant to this section persists after the time limited by subsection (5) of this section, the Government shall be prohibited from receiving grants from any source.

(8) Whenever the fundamentals of the proposals referred to in this section are changed due to economic instability or changes in monetary or exchange policies, the Governor shall submit to the House of Assembly a request for a review of the current limits.

45. (1) Servicing of external debts shall be the direct responsibility of the Government that incurred the debt.

(2) The cost of servicing State Government guaranteed loans shall be deducted at source from the share of the debtor Local Government from the State Account.

Servicing of
External
debt.

PART X – BORROWING

46. (1) The State Government or its agencies/commissions and 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.

Conditions of borrowing and verification of compliance with limits.

(2) Without prejudice to subsection 1 of this section, each borrowing shall comply with the following conditions-

- (a) the existence of prior authorization in the Appropriation 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-term capital expenditure.

(3) Nothing in this section shall be construed to authorize borrowing in excess of the limits set pursuant to section 44 of this Law.

(4) The Fiscal Responsibility Commission shall verify on a quarterly basis compliance with the limits and conditions for borrowing by the State and each Local Government in the State.

(5) Without prejudice to the specific responsibilities of the House of Assembly, the Ministry of Finance shall maintain comprehensive, reliable and current electronic database of internal and external public debts, guaranteeing public access to the information.

47. (1) All banks and financial institutions shall request and obtain proof of compliance with the provisions of this Part before lending to the State.

Lending by financial institutions.

(2) Lending by banks and financial institutions in contravention of this Part shall be unlawful, and void.

48. (1) Subject to the provisions of this Part, the Governor may with the approval of the State Executive Council, grant guarantees on behalf of the State, to Local Governments in the State.

Power of the Governor to grant guarantees.

(2) Any guarantee granted by the Governor 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 in the State to the guarantor and its controlled corporations and such guarantee shall also be in compliance with the following-

- (a) counter-guarantee shall also be accepted from Local Government; and
- (b) the counter-guarantee required by the State Government from Local Government, 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) In the case of foreign currency borrowing, State Government guarantee shall be a requirement and no Local Government or State Agency/Commission shall, on its own borrow externally.

(4) Any guarantee provided in excess of the debts limits set pursuant to subsection 2(a) of section 46 of this Law; shall be unlawful and void.

PART XI – TRANSPARENCY AND ACCOUNTABILITY

Fiscal
transparency.

49. (1) The State Government 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 revenue and expenditures and their implications for its finances.

(2) The House of Assembly shall ensure transparency during the preparation and discussion of the Medium-Term Expenditure Framework, Annual Budget and the Appropriation Bill.

50. (1) The State Government through the office of the Accountant-General in conjunction with the office of the Auditor-General (State) shall publish its audited accounts not later than six months following the end of the financial year.

Publication of Audited Account by- all Arms of Government

(2) State Government shall, not later than two years following the commencement of this Law and thereafter, not later than 12 months following the end of each financial year, consolidate and publish in the mass media, its audited accounts for the previous year.

(3) 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.

51. The State Government through its budget office in the Ministry of Economic Planning shall within 30 days after the end of each quarter, publish a summarized report on budget execution in such form as may be prescribed by the Fiscal Responsibility Commission and not later than 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 of Finance for submission to the House of Assembly and dissemination to the public.

Publication of a summarized report on budget execution.

52. For accountability and transparency, Local Government Councils shall adopt the provisions of this part of the Law.

Application of Part XI Local Government Council

PART XII – ENFORCEMENT

53. (1) Any person shall have 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:

Enforcement

(2) Notwithstanding the provisions of Subsection (1) of this section, No suit shall be commenced against the Chairman or a member of the Board or any other officer or employee of the Commission before the expiration of the period of one month after written notice of the intention to sue shall have been served on the Commissions by the intending plaintiff or his agent.

(3) The notice referred to in subsection 2 of this section shall clearly and explicitly state:

- (a) the cause of action;
- (b) the particulars of the claim;
- (c) the name and place of abode of the intending plaintiff;
- (d) the relief which he claims.

PART XIII – MISCELLANEOUS PROVISIONS

Government securities as collateral to guarantee loans.

54. 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.

Restriction on utilization of proceeds of sale of public assets, etc.

55. 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 existing liabilities directly charged against such properties or assets.

Technical and financial assistance to State and Local Governments.

56. The State Government may provide technical and financial assistance to Local Government Councils that adopt similar Fiscal Responsibility Commission legislation along the same lines as this Law for the modernization of their respective tax, financial and asset administration.

57. The Governor shall in addition to any other powers conferred on him under this Law make regulations generally for the purposes of carrying into effect the provisions of this Law.

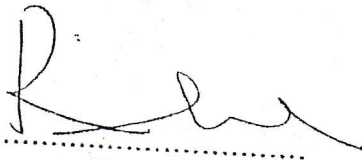
Power of the Governor to make Regulations

SCHEDULE

Section 25

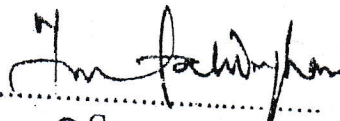
All State Government Board, Agency/Commission or Government owned Company.

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



Clerk,
Delta State House of Assembly.

ASSENTED to/Not assented to this 27th day of August 20 08



Governor,
Delta State of Nigeria.