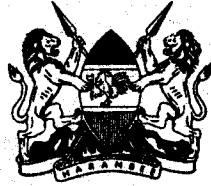


**SPECIAL ISSUE**

*Kenya Gazette Supplement No. 16 (National Assembly Bills No. 2)*



REPUBLIC OF KENYA

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**KENYA GAZETTE SUPPLEMENT**

**NATIONAL ASSEMBLY BILLS, 2020**

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**NAIROBI, 4th March, 2020**

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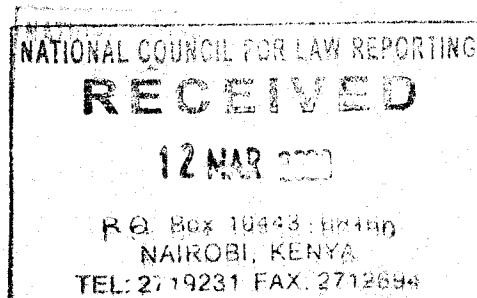
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**THE PUBLIC FINANCE MANAGEMENT  
(AMENDMENT) BILL, 2020**

**A Bill for**

**AN ACT of Parliament to amend the Public Finance  
Management Act, 2012**

**ENACTED** by the Parliament of Kenya, as follows—

1. This Act may be cited as the Public Finance Management (Amendment) Act, 2020. Short title.
  
2. The Public Finance Management Act, 2012 (hereinafter referred to as “the principal Act”) is amended in section 24 by deleting subsection (2A) and substituting therefor the following new subsection—
 

“(2A) Notwithstanding the provisions of subsection (1), the Parliamentary Service Commission may, with the approval of the National Assembly, establish any other Fund for the purpose of Parliament or a House of Parliament.”

Amendment of section 24 of No. 18 of 2012.
  
3. The principal Act is amended in section 50 by deleting the word “Parliament” wherever it appears and substituting therefor the words “National Assembly”. Amendment of section 50 of No. 18 of 2012.

**MEMORANDUM OF OBJECTS AND REASONS**

The principal object of this Bill is to amend the Public Finance Management Act, 2012 to empower the Parliamentary Service Commission to establish a fund for Parliament or a House of Parliament.

The Bill further seeks to amend the Act to require the approval of the National Assembly on borrowing and guaranteeing of loans by the national government. In particular, it seeks to provide that the national government shall only borrow money for the budget approved by the National Assembly, and for allocations of loans approved by the National Assembly.

The enactment of this Bill shall not occasion additional expenditure of public funds.

This Bill does not concern county governments within the meaning of Article 110 of the Constitution.

Dated the 2nd March, 2020.

**ADEN DUALE,**  
*Leader of the Majority Party.*

*Section 24 of No. 18 of 2012 which it is proposed to amend—*

(1) There is established a fund to be known as the Parliamentary Fund.

Establishment of Parliamentary Fund and other national government public funds.

(2) The Secretary to the Parliamentary Service Commission shall, on the directions of the Commission, open and operate such bank accounts as may be necessary for the purposes of the Parliamentary Fund.

(2A) Notwithstanding the provisions of subsection (1), the Parliamentary Service Commission may with the approval of the National Assembly, establish any other fund for the purpose of Parliamentary or a House of Parliament

(3) Notwithstanding any other provisions of this Act, where a Fund is established under this Act or any other law for the purposes of Parliament or a House of Parliament, the Parliamentary Service Commission shall—

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

(4) The Cabinet Secretary may establish a national government public fund with the approval of the National Assembly.

(5) The Cabinet Secretary shall designate a person to administer every national public fund established under subsection (4).

(6) The administrator of a national public fund shall ensure that the earnings of, or accruals to a national public fund are retained in the fund unless the Cabinet Secretary directs otherwise.

(7) The administrator of a national public fund shall ensure that money held in the fund, including any earnings or accruals referred to in subsection (6), is spent only for the purposes for which the fund is established.

(8) The Cabinet Secretary may wind up a national public fund with the approval of the National Assembly.

(9) On the winding up of a national public fund—

(a) the administrator of the national public fund shall pay any amount remaining in the fund into the National Exchequer Account for the credit of the national government; or

(b) the Cabinet Secretary shall pay any deficit in the fund from funds of the national government in the National Exchequer Account with the approval of the National Assembly; and

(c) the Cabinet Secretary shall submit a final statement of accounts to Parliament.

(10) The administrator of a national public fund—

(a) shall prepare financial statements for the fund for each financial year in a form specified by the Accounting Standards Board; and

(b) not later than three month after the end of each financial year, submit those statements to the Auditor General and deliver a copy of the statements to the National Treasury, Commission on Revenue Allocation and the Controller of Budget.

(11) The regulations shall provide for the establishment, management, operation or winding-up of national public funds.

(12) This section applies to all other rational public funds including funds earmarked for specific purposes established by an Act of Parliament but does not apply to a public fund established by the Constitution.

(13) In this section—

“administrator”, in relation to a national public fund, means a person designated by the Cabinet Secretary under subsection (5) to administer the fund; and

“national public fund” means a public fund established under subsection (4).

*Section 50 of No. 18 of 2012 which it is proposed to amend—*

**50.** (1) In guaranteeing and borrowing money, the national government shall ensure that its financing needs and payment obligations are met at the lowest possible cost in the market which is consistent with a prudent degree of risk, while ensuring that the overall level of public debt is sustainable.

Obligations and restrictions on national government guaranteeing and borrowing.

(2) The national government may borrow money in accordance with this Act or any other legislation and shall not exceed a limit set by Parliament.

(3) The national government may borrow money only for the budget as approved by Parliament and the allocations for loans approved by Parliament.

(4) The guarantee of debt shall be done in terms of criteria agreed with the Intergovernmental Budget and Economic Council and prescribed in regulations approved by Parliament.

(5) Parliament shall provide for thresholds for the borrowing entitlements of the national government and county governments and their entities.

(6) A public debt incurred by the national government is a charge on the Consolidated Fund, unless the Cabinet Secretary determines, by regulations approved by Parliament, that all or part of the public debt is a charge on another public fund established by the national government or any of its entities.

(7) The Cabinet Secretary shall ensure that the proceeds of any loan raised under this Act are—

- (a) paid into the Consolidated Fund;
- (b) paid into any other public fund established by the national government or any of its entities as the Cabinet Secretary may determine in accordance with regulations approved by Parliament;
- (c) disbursed directly to the suppliers where the loan is a government to government loan and is raised for the purpose of financing goods and services provided by a supplier outside Kenya; or
- (d) in the case of an external loan or external government security, applied, in part, to pay at closing, pre-negotiated expenses associated solely and exhaustively with the borrowing, including but not limited to, the fees, commissions and expenses of lenders, financial arrangers, managers and book runners, fiscal agents, trustees, paying agents, exchange and information agents, syndicate agents, counsel, clearing systems, listing agents, and stock exchanges, rating agencies and other expenses of a similar nature arising from the external loan or external government security.

(8) The Cabinet Secretary may, by regulations approved by Parliament, establish such sinking fund or funds for the redemption of loans raised under this Act by the national government.

(9) The Cabinet Secretary may, subject to Article 227 of the Constitution and in accordance with national legislation on Public Procurement and Asset Disposal—

- (a) appoint advisers, agents and underwriters for the purpose of raising loans and issuing, managing or redeeming national government securities; and
- (b) enter into agreements with the advisers, agents and underwriters appointed under paragraph (a) on the role to be undertaken by them and the remuneration to be paid to them.

(10) Any expenses incurred in connection with borrowing by the national government or the issue of national government securities is a charge—

(a) on the Consolidated Fund; or

(b) on such other public fund established by the national government or any of its entities as the Cabinet Secretary may determine by regulations approved by Parliament.

(11) The costs, interests and principal payments made by the national government concerning loans to each level of government shall be passed on by the national government to the relevant level of government.

(12) A copy of the details of the expenses and costs referred to under subsections (10) and (11) shall be submitted to the Controller of Budget and to Parliament, at the end of each quarter.



