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NATIONAL ASSEMBLY BILLS, 2022

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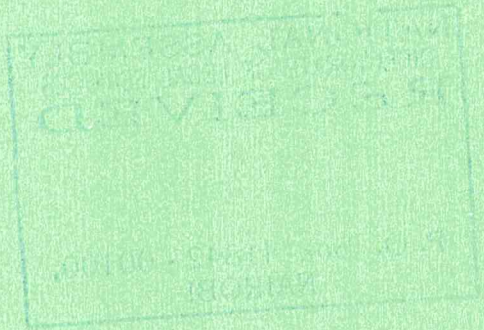


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**THE PUBLIC FINANCE MANAGEMENT
(AMENDMENT) BILL, 2022**

A Bill

for

AN ACT of Parliament to amend the Public Finance Management Act, and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Public Finance Management (Amendment) Act, 2022. Short title.

2. The Public Finance Management Act, 2012 (hereinafter referred to as the “principal Act”) is amended in section 2 by inserting the following new definition in the proper alphabetical sequence—

“Institute” means the Institute of Certified Public Accountants of Kenya established under section 3 of Accountants Act.

3. is amended by deleting section 192 and substituting therefor the following new section— Amendment of
section 192 of No.
18 of 2012.

Establishment of the
Board.

192. (1) There is established a board to be known as the Public Sector Accounting Standards Board.

(2) The Board shall be a body corporate with perpetual succession and a common seal, and shall in its corporate name, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, borrowing, holding, charging or disposing of movable and immovable property; and
- (c) doing or performing all such other things or acts necessary for the proper performance of its functions which may lawfully be done by a body corporate.

(3) The Board shall be a successor of the Accounting Standards Board which

existed immediately before the commencement of this Act.

4. The principal Act is amended in section 193 by deleting subsection (5).

Amendment of section 193 of No. 18 of 2012.

5. Section 194 of the principal Act is amended —

Amendment of section 194 of No. 18 of 2012.

(a) in subsection (1) by inserting the following new paragraph immediately after paragraph (g)—

(h) prescribe a framework for implementation of accrual accounting in Government; and

(i) prescribe a risk management framework.

(b) by inserting the following new subsection immediately after subsection (5)—

(6) Without prejudice to the generality of subsection (1) (h), the framework for implementation of accrual accounting shall provide for a three-year transition period from the date of commencement of this Act.

6. The principal Act is amended by inserting the following new sections immediately after section 195—

Insertion of new section in No. 18 of 2012.

Chief Executive Officer.

195A. (1) The Public Sector Accounting Standards Board shall appoint a chief executive officer through a competitive process and, on such terms and conditions as it may determine.

(2) A person shall be qualified for appointment as a chief executive officer, if the person-

- (a) has a degree in accounting or finance;
- (b) is a certified member in good standing with the Institute;
- (c) has at least five years experience in management; and
- (d) meets the requirements of chapter six of the Constitution.

(3) The chief executive shall hold office for a period of four years but shall be eligible for reappointment for a further term of four years.

(4) The chief executive shall, subject to the general direction and control of the Board, be charged with the direction of the affairs and transactions of the Board, the exercise, discharge and performance of its objectives, functions and duties, and the administration and control of the staff of the Board.

Staff of the Board.

195B. (1) The Public Sector Accounting Standards Board may recruit such number of staff, through a competitive process, as may be necessary for the proper and efficient performance of the functions of the Board.

(2) The Public Service Commission may, on the request of the Board, second to the board such number of public officers as may be necessary for the performance of the functions of the Board.

Common seal.

195C. (1) The common seal of the Board shall be kept in such custody as the Board shall direct and shall not be used except on the order of the Board.

(2) The affixing of the common seal shall be authenticated by the chairperson or any other person authorized in that behalf by a resolution of the Board.

(3) The common seal of the Board when affixed to a document and duly authenticated shall be judicially and officially noticed and unless the contrary is proved, any necessary order or authorization of the Board under this section shall be presumed to have been duly given.

Funds of the Board

195D. The funds of the Board shall consist of—

- (a) such monies as may be appropriated by the National Assembly
- (b) such moneys as may be imposed by the Board in the performance of its functions; or
- (c) such grants, donations or endowment received by the Board.

Financial year.

195 E. The financial year of the Board shall be the period of twelve months ending on the thirtieth of June in each year.

Annual estimates.

195 F. (1) Before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Board for that year.

(2) The annual estimates shall make provision for all the estimated expenditure of the Board for the financial year concerned and, in particular, shall provide for the—

- (a) payment of the salaries, allowances and other charges in respect of the staff of the Board;
- (b) payment of pensions, gratuities and other charges and in respect of benefits which are payable out of the funds of the Board;
- (c) maintenance of the buildings and grounds of the Board;
- (d) creation of such funds to meet future or contingent liabilities in respect of benefits, insurance or replacement of buildings or installations, equipment and in respect of such other matters as the Board may think fit.

(3) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary for tabling in the National Assembly.

(4) No expenditure shall be incurred for the purposes of the Board except in accordance with the annual estimates approved under subsection (3).

Accounts and audits.

195G. (1) The Board shall cause to be kept all proper books and records of accounts of the income, expenditure, assets and liabilities of the Board.

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

(a) statement of the income and expenditure of the Board during that year; and

(b) statement of the assets and liabilities of the Board on the last day of that financial year.

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

7. The Second Schedule to the principal Act is amended by inserting the following paragraphs immediately after paragraph 12—

Amendment of the
Second Schedule
to No. 18 of
2012.

13. All the rights, duties, obligations, assets and liabilities of the Public Sector Accounting Standards Board existing at the commencement of this Act shall be automatically and fully transferred to the Board.

14. The administrative directions made by the former Public Sector Accounting Standards Board or by the

Cabinet Secretary which were in force immediately before the commencement of this Act shall, have force as if they were directions made by the Board or the Cabinet Secretary under this Act.

MEMORANDUM OF OBJECTS AND REASONS

The object of this Bill is to provide for establishment of the Public Sector Accounting Board as a body corporate. The Public Sector Accounting Standards Board was previously established as an agency with the National Treasury under section 192 of the Public Finance Management Act, 2012. The establishment of the Public Sector Accounting Standards Board as a body corporate will give the Board independence and will allow for employment of staff of the Board.

Further, the Bill provides for establishment and implementation of a framework for accrual accounting in Government. East African countries such as Rwanda and Tanzania have already implemented accrual accounting.

Clause 1 of the Bill provides the short title to the Bill.

Clause 2 of the Bill amends section 192 to establish the Public Sector Accounting Standards Board as a public body corporate.

Clause 3 of the Bill amends section 193 to provide that the members of the Board shall be full time members. Further, it deletes the provision that the secretariat of the Board shall be provided by the National Treasury.

Clause 4 of the Bill amends section 194 of the Act to provide additional functions of the Board, that is; to prescribe a framework for implementation of accrual accounting and a risk management framework.

Clause 5 of the Bill inserts provisions for appointment of the chief executive officer and staff, funds of the Board, financial year and annual estimates.

Clause 6 of the Bill makes savings provisions.

Statement on delegation of legislative powers and limitation of fundamental rights and freedoms.

The Bill does not delegate legislative powers to the Cabinet Secretary. It does not limit fundamental rights and freedoms.

Statement that the Bill does not concern county governments.

The Bill does not affect the functions of the county governments and is therefore not a Bill concerning counties for the purposes of the Constitution.

Statement that the Bill is not a money Bill within the meaning of Article 114 of the Constitution.

The enactment of this Bill may occasion additional expenditure of public funds.

Dated the 30th March, 2022.

JOSEPH OYULA,
Member of Parliament.

Section 192 it is proposes to amend—

192. Establishment of the Board.

There is established a Public Sector Accounting Standards Board which shall perform the functions set out in this Part.

Section 193 it is proposed to amend—

193. (1) The Accounting Standards Board shall consist of a representative of each of the following bodies who shall serve on a part-time basis—

- (a) the National Treasury;
- (b) the Controller of Budget;
- (c) the Intergovernmental Budget and Economic Council;
- (d) the Auditor-General;
- (e) the Institute of Certified Public Accountants of Kenya;
- (f) the Association of Professional Societies of East Africa;
- (g) the Capital Markets Authority;
- (h) the Institute of Internal Auditors; and
- (i) the Institute of Certified Public Secretaries of Kenya.

(2) The Cabinet Secretary shall appoint a chairperson of the Board from members nominated under subsection (1).

(3) In making nominations to the Board, the respective organisations shall ensure that their nominees are certified members in good standing of a professional body in accounting or finance recognised by law in Kenya.

(4) Members of the Board except ex-officio members shall be appointed by the Cabinet Secretary and serve for a term of not more than three years.

(5) The National Treasury shall provide secretariat services to the Board and assign or appoint such support staff as may be necessary for the Board to effectively perform its functions.

(6) The Board may establish and regulate its own operating procedures.

Section 193 of the Bill it is proposed to amend—

194. Functions of the Board

(1) The Accounting Standards Board shall provide frameworks and set generally accepted standards for the development and management of accounting and financial systems by all State organs and public entities, and shall in particular perform the following functions—

- (a) financial standards;
- (b) prescribe the minimum standards of maintenance of proper books of account for all levels of Government;
- (c) prescribe internal audit procedures which comply with this Act;
- (d) prescribe formats for financial statements and reporting by all state organs and public entities;
- (e) publish and publicise the accounting and financial standards and any directives and guidelines prescribed by the Board;
- (f) in consultation with the Cabinet Secretary on the effective dates of implementation of these standards, Gazette the dates for application of the standards and guidelines; and
- (g) perform any other functions related to advancing financial and accounting systems management and reporting in the public sector.

(2) In setting the standards under subsection (1), the Board shall take into account any relevant factors including—

- (a) best international accounting practices; and
- (b) the capacity of the relevant entity to comply with the standards.

(3) The Board may set different standards for different categories of entities to which these standards apply including to develop content, structure and format of county frameworks and accounting and financial guidelines which are in line with the setting of county standards.

(4) The Board shall monitor the adherence to the standards by all State organs and public entities.

(5) The standards set by the Board shall promote transparency and other Constitutional values and principles in effective, prudence and efficient management of revenue, expenditure, assets and liabilities of the institutions to which are in line with the setting of county standards set generally accepted accounting and these standards apply

Second schedule it is proposed to amend—

SAVINGS AND TRANSITIONAL PROVISIONS.