Bill for Introduction into the National Assembly—

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THE CONTROLLER OF BUDGET BILL, 2015
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THE CONTROLLER OF BUDGET BILL, 2015

A Bill for

AN ACT of Parliament to give effect to the provisions of Articles 225, 228 and 252 of the Constitution regarding the functions of the Office of the Controller of Budget and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I— PRELIMINARY

1. This Act may be cited as the Controller of Budget Act, 2015.

2. (1) In this Act, unless the context otherwise requires—

“accounting officer” means an officer designated as such in accordance with relevant provisions of the Public Finance Management Act or any other Act of Parliament;

“any other public funds” means any public fund other than the Consolidated Fund, County Revenue Funds or Equalization Fund that—

(a) is reasonably excluded from the Consolidated Fund by an Act of Parliament;

(b) is payable to another public fund established for a specific purpose; and

(c) requires the Controller of Budget to approve withdrawals from that public fund as provided by an Act of Parliament;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to finance;

“Controller of Budget” means the Controller of Budget appointed under Article 228 of the Constitution

“public officer” has the meaning assigned to it under Article 260 of the Constitution;

“Public Service Commission” means the Public Service Commission established under Article 233 of the Constitution; and

“State Organ” has the meaning assigned to it in Article 260
of the Constitution.

PART II—ADMINISTRATION

3. The Controller of Budget shall be appointed in accordance with the Constitution and the Independent Offices (Appointment) Act, 2011.

4. (1) In the performance of his or her functions under Articles 228(4) to (6), and 252 of the Constitution, the Controller of Budget shall ensure prudent and efficient use of public funds —

(a) by authorising withdrawals from the Equalization Fund, Consolidated Fund, County Revenue Funds and any other public fund which by an Act of Parliament requires approval of the Controller of Budget for withdrawal from that fund;

(b) by monitoring, evaluating, reporting and making recommendations to the national and county governments on measures to improve budget implementation in accordance with Article 228 of the Constitution;

(c) in consultation with the national and county treasuries and the Public Sector Accounting Standards Board established under section 192 of the Public Finance Management Act, 2012, by reviewing from time to time, the formats of requisitions and approvals of withdrawals of funds in subsection (a); and

(d) in performing any other function that may be assigned to him or her by an Act of Parliament.

5. For the purposes of enabling the Controller of Budget to effectively oversee the implementation of the Budget—

(a) the Cabinet Secretary shall at the time of submitting the budget estimates of the national government to the National Assembly submit a copy of the estimates to the Controller of Budget;

(b) each County Executive member responsible for finance shall at the time of submitting the budget estimates to the County Assembly of the respective county government submit a copy of
the estimates to the Controller of Budget; and

(c) each County Executive member responsible for finance shall at the time of submitting the County Fiscal Strategy paper to the County Assembly of the respective county government submit a copy of the County Fiscal Strategy Paper to the Controller of Budget.

6. (1) The Controller of Budget shall, in accordance with Article 228 (6) of the Constitution, submit to Parliament quarterly budget implementation reports for the national and county governments within thirty days after the end of each quarter.

(2) The reports submitted under sub-section (1) shall comprise of —

(a) a report on approved expenditures, authorised withdrawals, actual releases and actual expenditures;

(b) the comparison between amounts provided for in the County Allocation of Revenue Act for each county in accordance with county government disbursement schedule approved by the Senate with the authorised withdrawals from the Consolidated Fund to county governments; and

(c) a report on the receipts into the Consolidated Fund and the County Revenue Funds.

(4) Despite the first quarterly report of the year submitted under this section, each subsequent report shall contain cumulative amounts from the beginning of that year.

(5) The Controller of Budget shall publish and publicise the reports referred to in this section not later than fourteen days after the reports are submitted to Parliament.

7. The Controller of Budget shall prepare and submit the following special reports as provided for in the Constitution—

(a) in accordance with Article 225(7), a report to Parliament on funds withheld by the Cabinet Secretary giving a detailed account as to why the
withholding should be continued or withdrawn;

(b) pursuant to any investigations conducted under Article 252(1)(a), a report to Parliament, the national executive, county assemblies or county executives, or any other state agency as may be appropriate, on any matters that have come to the attention of the Controller of Budget relating to the performance of his or her functions;

(c) pursuant to Article 254 (2), and upon request by the President, National Assembly or the Senate, a report on a particular issue;

(d) a report on any particular issue as may be requested by a Governor or a county assembly.

8. (1) The Controller of Budget may—

(a) delegate in writing, any of his or her powers to any employee in the Office of the Controller of Budget; or

(b) instruct in writing, any employee in the Office of the Controller of Budget to perform any of the duties of his or her office.

(2) A delegation or instruction under subsection (1) above—

(a) shall be subject to any conditions the Controller of Budget may impose; and

(b) shall not divest the Controller of Budget of the responsibility concerning the exercise of the power or the performance of the duty.

9. (1) The Controller of Budget may appoint such staff as may be necessary for the proper discharge of the functions of the Office of the Controller of Budget under this Act, on the basis of such qualifications and on such terms and conditions as the Controller of Budget may, in consultation with the Public Service Commission determine and on such remuneration and benefits as the Salaries and Remuneration Commission, shall advise.

(2) In making appointments in terms of subsection (1), the Controller of Budget shall be guided by Articles 27 and 232 of the Constitution.

(3) For purposes of this Act, a public officer who is
seconded to the Office of the Controller of Budget under this section, shall be deemed to be an employee of the Controller of Budget and shall enjoy the same benefits in the same manner as an employee recruited directly by the Controller of Budget under this Act.

11. (1) The common seal of the Controller of Budget shall be kept in such custody as the Controller of Budget shall direct and shall not be used except on his or her order.

(2) The common seal of the Controller of Budget when affixed to a document shall be \textit{prima facie} evidence of authority unless the contrary is proved.

(3) The fixing of the common seal by the Controller of Budget shall be authenticated by the signature of the Controller of Budget:

Provided that the Controller of Budget shall nominate a member of staff to authenticate in his or her absence.

12. Nothing done by the Controller of Budget or any person working under the instructions of the Controller of Budget shall, if done in good faith for the purposes of executing the powers, functions or duties of the Controller of Budget under the Constitution, Independent Offices (Appointment) Act this Act or any other law, render the Controller of Budget, officer or agent personally liable for any action, claim or demand.

13. (1) A public officer, State Organ or State office shall co-operate with the Controller of Budget to enable the Controller of Budget to carry out his or her functions in accordance with the constitution and any other law and shall in particular—

(a) respond promptly to any inquiry made by the Controller of Budget;

(b) furnish the Controller of Budget with periodic reports as to the status of management of the budget and public funds in respect of the question raised within such period as may be prescribed by the Controller of Budget; and

(c) provide any other information that the Controller of Budget may require in the performance of his or her functions under the Constitution or any
other legislation.

(2) A public officer, who refuses or fails to co-operate with the Controller of Budget as required by this section commits an offence and is liable, on conviction, to a term of imprisonment not exceeding two years or to a fine not exceeding one million shillings, or to both.

PART III — FINANCIAL PROVISIONS

14. The funds of the Controller of Budget shall consist of—

(a) monies appropriated by Parliament for the purposes of his or her office;

(b) such monies or assets as may lawfully accrue to the Controller of Budget in the course of the exercise of his or her powers or in the performance of the functions set out in this Act; and

all monies from any other lawful source provided or donated.

15. The financial year of the Controller of Budget shall be the period of twelve months ending on the thirtieth of June of each year.

16. (1) The Controller of Budget shall cause an annual report to be prepared for each financial year.

(2) The annual report shall contain, in respect of the year to which it relates—

(a) the financial statements of the Controller of Budget;

(b) a description of the activities of the Controller of Budget;

(c) such other statistical information as the Controller of Budget considers appropriate;

(d) any other information relating to his or her functions that the Controller of Budget considers necessary.

(3) The Controller of Budget shall cause the annual report to be published and publicised.

17. (1) The annual estimates of the Controller of
Budget shall be submitted and reported upon in accordance with the relevant provisions of the Constitution and the Public Finance Management Act, 2012.

(2) Without prejudice to the generality of subsection (1)—

(a) before the commencement of each financial year, the Controller of Budget shall cause to be prepared estimates of the revenue and expenditure for that year;

(b) the annual estimates prepared by the Controller of Budget under sub-section (2) shall be forwarded to the Cabinet Secretary.

18. (1) The Controller of Budget shall cause to be kept all proper books and records of accounts for his or her office.

(2) Within a period of three months after the end of each financial year, the Controller of Budget shall submit to the Auditor-General the financial statements of his or her office in respect of that year for audit.

(3) The annual accounts of the Controller of Budget shall be prepared, audited and reported upon in accordance with the provisions of the Constitution, the Public Finance Management Act, 2012, the Public Audit Act and any other relevant legislation.

PART IV — MISCELLANEOUS PROVISIONS

19. A person who—

(a) without justification or lawful excuse, obstructs, hinders, assaults or threatens the Controller of Budget or his or her members of staff acting under this Act;

(b) knowingly submits false or misleading information; or knowingly misrepresents to or misleads the Controller of Budget or a member of his or her staff acting under this Act, commits an offence and is liable, on conviction, to a term of imprisonment not exceeding two years or to fine not exceeding five million shillings or to both.
20. (1) The Controller of Budget may make regulations generally, which shall be laid before Parliament, for better carrying out and giving effect to, any provision of this Act.

21. Within six months of the commencement of this Act, the Controller of Budget shall prepare a code of conduct for members of staff of the Office of the Controller of Budget.

22. The Public Audit Act, 2003 is amended by deleting the words “Controller and Auditor-General” wherever they appear and substituting therefor the words “Auditor-General”.

Regulations

Code of conduct.

Amendment.
No. 3 of 2003.
MEMORANDUM OF OBJECTS AND REASONS

The principal object of the Bill is to give effect to the provisions of Articles 228 and 252(1)(d) of the Constitution of Kenya regarding the functions of the Office of the Controller of Budget.

Clause 1 provides for the short title to the Bill.

Clause 2 of the Bill provides for the interpretation.

Clause 3 of the Bill deals with the appointment of the Controller of Budget which shall be in accordance with the Constitution and the provisions of the Independent Offices (Appointment) Act, 2011.

Clause 4 of the Bill provides for the functions of the Controller of Budget which, amongst others, shall be—

(a) to authorise withdrawals from the Equalization Fund, Consolidated Fund, County Revenue Funds and any other public fund which by an Act of Parliament requires approval of the Controller of Budget for withdrawal from that fund;

(b) to monitor, evaluate, report and make recommendations to the national and county governments on measures to improve budget implementation in accordance with Article 228 of the Constitution; and

(c) in consultation with the national and county treasuries and the Public Sector Accounting Standards Board, to review from time to time, the formats of requisitions and approvals of withdrawals of funds.

Clause 5 of the Bill contains provisions on submission of copies of estimates and County Fiscal Strategy Paper to Controller of Budget by the Cabinet Secretary and each county executive member responsible for finance. This is to ensure that the Controller of Budget effectively monitors the implementation of the Budget estimates.

Clause 6 of the Bill deals with submission of quarterly budget implementation reports of the national and county governments by the Controller of Budget to Parliament which shall comprise of—

(a) a report on approved expenditures, authorised withdrawals, actual releases and actual expenditures;

(b) the County Allocation of Revenue Act with the authorised withdrawals from the Consolidated Fund to county governments; and

(c) a report on the receipts into the Consolidated Fund and the County Revenue Funds.
Clause 7 of the Bill further requires the Controller of Budget to prepare and submit special reports as provided for under Articles 225(7), 252(1)(a) and 254(2) of the Constitution.

Clause 8 of the Bill empowers the Controller of Budget to delegate his or her powers and duties, in writing, to any of employee in the Office of the Controller of Budget.

Clause 9 of the Bill enables the Controller of Budget to appoint such staff as may be necessary for the proper discharge of the functions of the Office of the Controller of Budget under the Act, and on such terms and conditions as the Controller of Budget may, in consultation with the Public Service Commission and on advice of the Salaries and Remuneration Commission, determine.

Clause 10 of the Bill further provides for the secondment of staff, on request by the Controller of Budget, by any entity to the Office of the Controller of Budget as it may be necessary.

Clause 13 of the Bill imposes a duty on public officers, State Organs and state officers to co-operate with the Controller of Budget in carrying out his or her functions under the Constitution, this Act or any other written law, and in particular—

(a) respond to any inquiry made by the Controller of Budget;

(b) furnish the Controller of Budget with periodic reports as to the status of management of the budget and public funds in respect of the question raised; and

(c) provide any other information that the Controller of Budget may require in the performance of his or her functions under the Constitution or any other legislation.

Clauses 14, 15, 16 and 17 of the Bill deals with financial provisions. Clause 14 specifies the composition of the funds of the Controller of Budget which shall consist of—

(a) monies appropriated by Parliament for the purposes of his or her office;

(b) such monies or assets as may lawfully accrue to the Controller of Budget in the course of the exercise of his or her powers or in the performance of the functions set out in this Act; and

(c) all monies from any other lawful source provided or donated.

Clause 19 of the Bill provides for the offences under the Act.

It stipulates that a person who—
(a) without justification or lawful excuse, obstructs, hinders, assaults or threatens the Controller of Budget or his or her members of staff acting under this Act;

(b) knowingly submits false or misleading information; or

(c) knowingly misrepresents to or misleads the Controller of Budget or a member of his or her staff acting under this Act,

commits an offence and is liable, on conviction, to a term of imprisonment not exceeding two years or to fine not exceeding five million shillings or to both.

Clause 20 of the Bill empowers the Controller of Budget to make regulations generally, which shall be laid before Parliament, for better carrying out and giving effect to, any provision of the Act.

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

The Bill does not limit fundamental rights and freedoms.

Statement that the Bill concerns county governments

The Bill may concern County Governments in terms of Article 110 (1) (a) of the Constitution as it affects the functions and powers of County Government set out in the Fourth Schedule.

Statement that the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of the Bill shall occasion additional expenditure of public funds.

Dated the 21st April, 2015.

ADEN DUALE,
Leader of the Majority Party, National Assembly.