

THE CONTROLLER OF BUDGET BILL, 2011

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A Bill for

AN ACT of Parliament to make further provision as to the functions and powers of the Controller of Budget and for connected purposes

ENACTED by the Parliament of Kenya, as follows -

PART I— PRELIMINARY

Short title. **1.** This Act may be cited as the Controller of Budget Act, 2011.

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

“accounting officer” means a person designated to be an accounting officer within the meaning of the constitution.

“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;

“deputy controller of budget” means the deputy controller of budget appointed by the Controller of Budget under section 9 of this Act;

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

“state department” has the meaning assigned to it in the Constitution;

“public service commission” means the Public Service Commission established under Article 233 of the Constitution;

(2) Despite subsection (1), until after the first elections under the Constitution, references in this Act to the expression “Cabinet Secretary” shall be construed to mean “Minister”, and “state department” shall be construed to mean “Ministry.”

PART II —ADMINISTRATION

Functions of the
Controller of
Budget

3. (1) In performing his or her functions as set out in Article 228 (4)-(6) of the Constitution, the Controller of Budget shall-

- (a) authorize withdrawals from the Equalization Fund, Consolidated Fund and County Revenue Funds;
- (b) compile, prepare and submit to Parliament, quarterly budget implementation reports for the national and county governments;
- (c) make recommendations to the national and county governments, and their entities on measures to improve budget implementation;
- (d) prepare and submit a report to Parliament on funds withheld by the Cabinet Secretary pursuant to Article 225 of the Constitution;

(e) when necessary, compile, prepare and submit to Parliament, the national executive, county assemblies and county executives , any other reports on matters that have come to the attention of the Controller of Budget during the performance of his or her functions; and

(f) any other functions assigned by law.

Reports of the Controller of Budget

4. The Controller of Budget shall submit reports to Parliament in accordance with Article 228 (6) of the Constitution.

Duty of Accounting Officers to provide information to the Controller of Budget

5. For the purpose of enabling the Controller of Budget to prepare reports required under section 4, all accounting officers shall submit information to the Controller of Budget in a format prescribed by the Controller of Budget.

Duty of the Controller to publish and publicize reports

6. The Controller of Budget shall publish and publicize reports under section 3 and 4 of this Act within 14 days after the reports are submitted to the relevant entity.

Terms and conditions of service.

7. The salaries and allowances payable to, and other terms and conditions of service of the Controller of Budget, shall, pending the establishment of the Salaries and Remuneration Commission, be determined by the State Department responsible for public service in consultation with the National Treasury.

Assignment of powers and duties.

8. (1) The Controller of Budget may-

- (a) delegate any of his or her powers to any employee of his or her office; or
- (b) instruct any employee to perform any of the duties of his or her office.

(2) A delegation or instruction under subsection (1)-

- (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.

(3) The Controller of Budget may confirm, vary or revoke any decision taken by an employee in consequence of a delegation or instruction under this section.

Appointment of
the Deputy
Controller of
Budget

9. (1) Pursuant to Article 252 (1)(c) of the Constitution, the Controller of Budget shall appoint a Deputy Controller of Budget through a competitive recruitment process.

(2) A person shall not qualify for appointment under subsection (1) unless such person-

- (a) holds a degree from a university recognized in Kenya;
- (b) has at least ten years professional experience in finance, accounting or economic matters; and
- (c) meets the requirement of chapter six of the Constitution.

(3) A person appointed as Deputy Controller of Budget under this section shall be subject to the provisions of Article 232 of the Constitution.

(4) As the chief executive officer, the Deputy Controller of Budget shall be responsible to the Controller of Budget for-

- (a) facilitating the carrying out of the functions of the Controller of Budget;
- (b) the day to day administration and management of the affairs of the office of the Controller of Budget;
- (c) such other duties as may be assigned by the Controller of Budget from time to time.

Removal of
Deputy
Controller of
Budget

10. (1) The Deputy Controller of Budget may be removed from office by the Controller of Budget in accordance with the terms and conditions of service, for —

- (a) inability to perform the functions of the office arising out of physical or mental incapacity;
- (b) gross misconduct or misbehaviour;
- (c) incompetence or neglect of duty;
- (d) the violation of the Constitution; or
- (e) is an undischarged bankrupt.

(2) Before the Deputy Controller of Budget is removed under subsection (1), he or she shall be informed of the case against him or her and shall be given an opportunity to defend himself or herself against any allegations against him or her.

Oath of office.

11. The Deputy Controller of Budget shall make and subscribe, before the Chief Justice, to the affirmation set out in the First Schedule.

Secondment of
staff.

12. (1) In addition to the staff appointed by the Controller of Budget under Article 252 (1)(c) of the Constitution, the Government may, upon the request by the Controller of Budget, second to his or her office such number of public officers as may be necessary for the purposes of carrying out the functions of this office.

(2) A public officer seconded under subsection (1) shall, during the period of secondment, be deemed to be an officer of the Controller of Budget and shall be subject only to the direction and control of the Controller of Budget.

The common
seal

13. (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 the order of the Controller of Budget.

(2) The Common seal of the Controller of Budget 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 Controller of Budget under this section shall be presumed to have been duly given.

Protection from personal Liability.

14. No matter or thing done by the Controller of Budget or any of his or her officers, employees or agents shall, if the matter or thing is done in good faith for executing the functions, powers or duties of the Controller of Budget, render the Controller of Budget, his or her officers, employees or agents personally liable to any action, claim or demand whatsoever.

PART III — FINANCIAL PROVISIONS

Funds of the Controller of Budget

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

- (a) monies allocated by Parliament for the purposes of his or her office;
- (b) such monies or assets as may 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 source provided or donated or lent to the Controller of Budget.

Financial year.

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

Annual estimates.

17. (1) The annual estimates of the Controller of Budget shall be prepared, submitted and reported upon in accordance with the provisions of the Constitution.

(2) Without prejudice to the generality in 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 for submission to the National Assembly.

Accounts and
Audit.

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 accounting officer in the office of the Controller of Budget shall submit to the Auditor-General the accounts of his or her office in respect of that year for audit together with a -

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

(b) statement of the assets and liabilities as at the last day of that financial year;

(c) cash flow statement; and

(d) any other financial statement as prescribed by the National Treasury.

(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 Audit Act and other written law.

PART IV — MISCELLANEOUS PROVISIONS

- Offence. **19.** (1) A person shall not—
- (a) without justification or lawful excuse, obstruct or hinder, or assault or threaten the Controller of Budget or his or her members of staff acting under this Act;
 - (b) submit false or misleading information; or
 - (c) misrepresent to or knowingly mislead the Controller of Budget or a member of his or her staff acting under this Act.
- (2) A person who contravenes subsection (1) commits an offence and shall be liable, on conviction, to a fine not exceeding three million shillings, or to imprisonment for a term not exceeding five years, or to both.

Regulations. **20.** The Controller of Budget may make regulations generally for the better carrying into effect of any provisions of this Act.

Code of conduct. **21.** The Controller of Budget shall develop a code of conduct for his or her staff.

PART VI-TRANSITION AND AMENDMENTS

Transitional Provisions **22.** The provisions of the Second Schedule shall apply.

Government Financial Management Act amendments **23.** The Government Financial Management Act 2004 is amended in the Third Schedule.

Public Audit Act amendments **24.** The Public Audit Act is amended in the manner set out the Fourth Schedule.

FIRST SCHEDULE

(s. 11)

**OATH/AFFIRMATION OF THE OFFICE OF DEPUTY CONTROLLER
OF BUDGET**

I having been appointed the Deputy Controller of Budget under the Controller of Budget Act, 2011, do swear/solemnly affirm that I will at all times obey, respect and uphold the Constitution of Kenya and all other laws of the Republic; that I will faithfully and fully, impartially and to the best of my knowledge and ability, discharge trust, perform the functions and exercise the powers devolving upon me by virtue of this appointment without fear, favour, bias, affection, ill-will or prejudice. (SO HELP ME GOD).

Sworn/Declared by the said

Before me this Day of

.....
Chief Justice.

SECOND SCHEDULE

(s.22)

TRANSITIONAL PROVISIONS

Inconsistencies with existing laws

1. If this Act is inconsistent with a provision of a written law in existence when this Act comes into operation, this Act shall prevail to the extent of the inconsistency with another written law if the other written law provides for a person other than the Controller of Budget to perform the functions specified in this Act.

2. Upon the effective date of this Act, The Controller of Budget appointed under Article 228 of the

Constitution shall perform the functions under this Act.

THIRD SCHEDULE GOVERNMENT FINANCIAL MANAGEMENT ACT AMMENDMENTS (S.23)

1. Section 15(1) and 16(1) of the Act is amended by striking out of the words “Controller and Auditor-General” and substituting it with the words “Controller of Budget”

2. Section 18(2)(d) of the Act is amended by striking out of the words “Controller” from the words “Controller and Auditor-General”.

3. Section 22(2) of the Act is amended by striking out of the words “Controller” from the words “Controller and Auditor-General”.

FOURTH SCHEDULE

THE PUBLIC AUDIT ACT (s.24)

The Public Audit Act 2003

1. The Public Audit Act is amended by deleting the word “Controller” from the words “Controller and Auditor General” wherever these words appears in the Act.