

## **THE INTERGOVERNMENTAL FISCAL RELATIONS BILL, 2011**

### **ARRANGEMENT OF CLAUSES**

Clause

#### **PART I – PRELIMINARY**

- 1 - Short title.
- 2 - Interpretation.
- 3 - Principles and objects.

#### **PART II – ESTABLISHMENT OF THE INTERGOVERNMENTAL BUDGET COUNCIL**

- 4 - Establishment of the Budget Council.
- 5 - Functions of the Budget Council.
- 6 - Vacation of office by a member.
- 7 - Secretary to the Budget Council.
- 8 - Responsibilities of the Secretary.
- 9 - Removal of the Secretary.
- 10 - Staff of the Budget Council.
- 11 - Secondment of Staff.
- 12 - Allowances for members and staff of the Council.
- 13 - Committees.
- 14 - Procedures of the Council.

### **PART III – PROCESS OF REVENUE SHARING**

- 15 - Sharing revenue.
- 16 - Commission's recommendations.
- 17 - Revenue Division and Allocation Bills.
- 18 - Management of process and guidelines.

### **PART IV – THE SENATE REVENUE ALLOCATION AND OVERSIGHT COMMITTEE**

- 19 - Establishment and functions of the Senate.
- 20 - Composition of Committee.

### **PART V – THE INTERGOVERNMENTAL LOANS AND DONOR GRANTS COUNCIL**

- 21 - Establishment of the Loan and Grants Council.
- 22 - Functions of the Loans and Grants Council.
- 23 - Vacation of office.
- 24 - The Secretariat.
- 25 - Responsibilities of the Secretary.
- 26 - Removal of the Secretary.
- 27 - Staff of the secretariat.
- 28 - Secondment of staff.
- 29 - Allowances payable to the Council members.
- 30 - Organization of the Council.
- 31 - Procedures of the Council.

**PART VI – PROCESS OF CO-ORDINATION AND CONTROL OF  
DONOR GRANTS**

- 32 - Process of co-ordination and control of borrowing.
- 33 - Loan guarantee approvals.
- 34 - Grants.
- 35 - Submission of programme.

**PART VII – FINANCIAL PROVISIONS**

- 36 - Funds of the council.
- 37 - Financial year.
- 38 - Annual estimates.
- 39 - Accounts and audit.

**PART VIII – MISCELLANEOUS PROVISIONS**

- 40 - Report of the council.
- 41 - Offences.
- 42 - Regulations.
- 43 - Code of conduct.

**SCHEDULE - MEETINGS OF THE COUNCIL**

**A Bill for**

**An Act of Parliament to provide for co-operation and consultation between the national and county levels of government on fiscal, budgetary and financial matters; to prescribe a process for budgeting and the determination of equitable sharing and allocation of revenue raised nationally; to provide for a process for the determination of the control, coordination and management of borrowing; the granting of loan guarantees; the proper management of public debt by both the national and county levels government; the receipt and use by both the national and county levels of government of donor grants; and to provide for connected purposes.**

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

**PART I – PRELIMINARY**

Short title.                    **1.** This Act may be cited as the Intergovernmental Fiscal Relations Act, 2011.

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

“Budget Council” means the Intergovernmental Budget Council established by section 4;

“County Allocation of Revenue Bill” means the County Allocation of Revenue Bill in Article 218 (1) (b) of the Constitution dividing revenue allocated the county level of government among the counties in accordance with section 17 (2) (b);

“Division of Revenue Bill” means the Division of Revenue Bill in Article 218 (1) (a) of the Constitution dividing the revenue raised nationally between the national and county levels of government in accordance with section 17 (2) (a);

“financial year” means the period of twelve months ending on the thirtieth day of June;

“Loans and Grants Council” means the Intergovernmental

Loans and Grants Council established by section 21;

“revenue sharing” means sharing of revenue between the national and county governments and among the county governments.

Principles and objects.

**3.** The principles and objects of this Act are to ensure that—

- (a) the revenue raised nationally is shared equitably between the national and county levels of government and among the county governments;
- (b) there is transparency public participation and accountability in financial matters;
- (c) public expenditure is applied in a manner that enhances equitable development of the nation;
- (d) county governments have adequate support to enable them to perform their functions;
- (e) the structures and processes on fiscal relations between the national and county levels of government and among the county governments are established;
- (f) the infrastructure and other services in marginalised areas are brought to the level generally enjoyed by the rest of the nation;
- (g) the present and future generations equitably share the burdens and benefits of the use of resources, public loans and grants;
- (h) the terms on which national and county governments may borrow or acquire grants are prescribed and co-ordinated; and

- (i) public money is managed and used in a prudent and responsible manner.

## **PART II - ESTABLISHMENT OF THE BUDGET COUNCIL**

Establishment  
of the Budget  
Council.

4. (1) There is established the Intergovernmental Budget Council which shall consist of-

- (a) the Cabinet Secretary responsible for finance who shall be the chairperson of the Council;
- (b) the Cabinet Secretary responsible for devolved government;
- (c) six representatives each nominated by a cluster of counties constituted in accordance with sub-section (2) and who shall be county executive committee members responsible for finance in their respective county;
- (d) the Secretary to the Judicial Service Commission;
- (e) the Secretary to the Parliamentary Service Commission;
- (f) the Principal Secretary responsible for finance;
- (g) the Principal Secretary responsible for devolved government; and
- (h) the chairperson of the Commission on Revenue Allocation.

(2) The Council of County Governors established under the Intergovernmental Relations Act shall, in consultation with the Cabinet Secretary responsible for devolved government determine the

cluster of counties under sub-section (1) (c).

(3) In determining the clusters of counties referred to in subsection 1 (c), the Council of County Governors shall take into account the following criteria-

- (a) the potential for shared services;
- (b) the potential for the benefits of economies of scale;
- (c) the commonality of economic sectors of the counties; and
- (d) the shared natural resources.

(4) The Budget Council may co-opt into its membership any person who, in its opinion, has the knowledge and skill necessary for the functions of the Council.

Functions of  
the Budget  
Council.

**5.** (1) The Budget Council shall provide a forum for cooperation, consultation and negotiation between the national and county governments-

- (a) on matters relating to the-
  - (i) determination of the vertical sharing of revenue to inform the Division of Revenue Bill;
  - (ii) the initiation of proposals for the horizontal sharing of revenue among counties in accordance with article 218(1) (b) of the Constitution, as a basis for the preparation of the County Allocation of Revenue Bill by the Senate;
  - (iii) the determination of the allocation of conditional and unconditional grants to the counties out of the national government share of revenue;
  - (iv) the determination of any conditions to be attached to grants to county governments;
  - (v) the determination of the allocation and appropriation of the equalization fund;

- (vi) the determination of the appropriation and allocation of funds from the national government's share of revenue to the county governments; and
  - (vii) the collection and collation of information provided by both levels of government to form the basis for the development of its analytical data base;
- (b) to liaise with the Auditor-General to ensure that the audits of the national and county levels of government are undertaken on time;
- (c) to consider matters which relate to the division of revenue as may from time to time be referred to the Council by a level of government, a state organ, an organization of citizens or a citizen; and
- (d) to facilitate, in the spirit and tenor of the foregoing functions, the overall machinery of revenue sharing between the national and county levels of government and among the counties.

(2) In performing its functions under sub-section (1), the Budget Council shall take into consideration the recommendations of the Commission on Revenue Allocation.

Vacation of office by a member.

**6.** A member of the Budget Council shall cease to be a member of the Council-

- (a) if he or she ceases to hold the office by virtue of which he or she became a member; or
- (b) in the case of a member nominated under section 4 (1) (c), if the cluster of counties withdraws his or her nomination.

Secretary to the Budget Council.

**7.** (1) There shall be a secretariat of the Budget Council, headed by a secretary, who shall be competitively recruited and appointed by the Council.

(2) A person shall not qualify for appointment as a secretary under sub-section (1) unless the person-

- (a) holds a degree from a university recognised in

Kenya; and

- (b) has at least ten years professional experience in matters relating to economics, finance, business administration or law.

Responsibilities of the Secretary.

**8.** (1) The Secretary to the Budget Council shall be responsible for-

- (a) facilitating the carrying out of the functions of the Council;
- (b) co-ordinating research and the preparation of position papers on matters relating to the work of the Council;
- (c) ensuring the implementation of the decisions of the Council;
- (d) the day to day administration and management of the affairs of the Council; and
- (e) such other duties as may be assigned by the Council from time to time.

(2) Notwithstanding any other written law, the secretary shall be the accounting officer and shall be responsible for-

- (a) all income and expenditure of the Council;
- (b) all assets and liabilities of the Council; and
- (c) the proper and diligent implementation of this Act.

Removal of Secretary.

**9.** (1) The secretary may be removed from office by the Budget Council, 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) breach of leadership and integrity standards specified in Chapter Six and other provisions of the Constitution; or
- (e) any other ground that would justify removal from office under the terms and conditions of service.

(2) Before removal from office under subsection (1), the secretary shall be informed of the case against him or her and shall be given an opportunity to be heard.

Staff of the  
Budget  
Council.

**10.** (1) The Budget Council may appoint such staff as may be necessary for the proper discharge of its functions under this Act, and upon such terms and conditions of service as the Council may determine.

Secondment of  
staff.

**11.**(1) In addition to the staff appointed by the Budget Council under section 10, the Public Service Commission may, upon request by the Council, second to the Council such number of public officers as may be necessary for the performance of the functions of the Council under this Act.

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

Allowances for  
members and  
staff of the  
Council.

**12.** The members and staff of the Budget Council shall be paid such allowances as shall be determined by the Public Service Commission in consultation with the Salaries and Remuneration Commission.

Committees.

**13.** (1) The Budget Council may, from time to time, establish such committees as it considers necessary for the better carrying out of its functions under this Act.

(2) The Budget Council may co-opt into the membership of a committee established under subsection (1) persons whose knowledge and skills are necessary for the functions of the Council, provided co-opted members do not exceed one third of the total membership.

Procedures of

**14.** (1) The business and affairs of the Budget Council

the Budget Council.

shall be conducted in accordance with the Schedule of this Act.

(2) Except as provided in the Schedule, the Budget Council may regulate its own procedure.

### PART III - PROCESS OF REVENUE SHARING

Sharing revenue.

**15.** (1) The revenue raised nationally which is to be shared both vertically and horizontally shall include all taxes, dividends, sale of shares, proceeds on privatizations, imposts, rates, duties, fines, forfeitures, rents, and dues and all other receipts of the government, from whatever source arising, over which Parliament has power of appropriation.

(2) The process of sharing-

(a) the revenue raised nationally between the national and the county levels of government in terms of Article 218 (1) (a) of the Constitution;

(b) among the counties, the revenue secured for the county level of government in terms of Article 218 (1) (b) of the Constitution;

(c) any allocation of conditional or unconditional grants in terms of Article 202 (2) of the Constitution; and

(d) the equalization fund in terms of Article 204 of the Constitution,

shall be effected in accordance with the provisions of this Act.

Commission's recommendations.

**16.** (1) At least ten months before the commencement of each financial year, the Commission on Revenue Allocation shall submit its recommendations in relation to the financial year to-

(a) Parliament;

(b) the county assemblies;

- (c) the national executive;
- (d) the county executive committees;
- (e) the Budget Council; and
- (f) the Loans and Grants Council.

(2) The Budget Council may, at the request of the Commission on Revenue Allocation extend the period specified under sub-section (1).

(3) The recommendations for the financial year under sub-section (1) shall relate to –

- (a) an equitable division of revenue raised nationally, among the national and county levels of government
- (b) the determination of each county equitable share in the county share of revenue;
- (c) any other allocations to counties from the national government's share of that revenue, and conditions on which those allocations should be made if any; and
- (d) the share of the equalization fund targeting marginalized areas within counties as envisaged in Article 204 of the constitution.

(4) When making its recommendations in terms of subsection (3) the Commission shall take into account the matters listed in Article 203(1) and (2) of the Constitution.

(5) The Cabinet Secretary responsible for matters relating to finance shall cause to be prepared, the Division of Revenue Bill and the County Allocation of Revenue Bill on the basis of the recommendations of the Commission on Revenue Allocation submitted under sub-section (1) and submit the Bills to the Budget Council.

(6) The Budget Council shall, upon receipt of the Bills under sub-section (5) consider and carry out such consultations as it considers necessary and submit a report to the Cabinet Secretary responsible for finance for consideration prior to submission of the Bills to Parliament for introduction under section 17.

(7) The Budget Council shall, in carrying out consultations under sub-section (6), consult with the Senate Revenue Allocation and Oversight Committee established by the Senate under section 19.

Revenue  
Division and  
Allocation  
Bills.

**17.** (1) Two months before the end of the financial year, the Cabinet Secretary responsible for finance shall submit the Division of Revenue Bill and the County Allocation of Revenue Bill in Parliament in accordance with Article 218 of the Constitution.

(2) The Bill on-

(a) Division of Revenue shall detail the proposed equitable division of revenue raised nationally, inclusive of conditional grants with the attendant conditions and unconditional grants, among the national and county levels of government in accordance with the Constitution; and

(b) County Allocation of Revenue shall, detail the proposed equitable division of the revenue allocated to the county level of government, inclusive of funds emanating from the Equalization Fund, conditional grants with the attendant conditions and unconditional grants, among the counties.

(3) The Bills referred to in sub-section (1) shall be considered together by Parliament and all other relevant institutions.

(4) The Cabinet Secretary responsible for finance shall, before submitting the Bills sub-section (1) to Parliament, consult—

(a) the county governments in the Budget Council, and in any other way deemed

appropriate;

(b) the Senate through the Senate Revenue Allocation and Oversight Committee; and

(c) the Commission on Revenue Allocation.

(5) The Commission on Revenue Allocation and the Senate Committee on Revenue Allocation shall be consulted in terms of subsection (4) at least twenty one days before the Division of Revenue Bill and County Allocation of Revenue Bill are submitted to Parliament.

(6) When the Bills referred to in subsection (5) are submitted to Parliament, they shall each be accompanied by a memorandum explaining—

(a) how the Bill takes into account the matters listed in Article 203;

(b) the extent to which the recommendations of the Commission on Revenue Allocation have been taken into account;

(c) the recommendations of the Senate through the Senate Revenue Allocation and Oversight Committee; and

(d) the details of any assumptions and formulae used in arriving at the respective shares mentioned in subsection (2)(a) and (b).

Management process and guidelines.

**18.** (1) Not later than 30<sup>th</sup> July, the Budget Council shall issue a circular setting out guidelines on the process to be followed in revenue sharing.

(2) The guidelines under sub-section (1) shall include matters relating to-

(a) receipt and review of the Commission's recommendations on revenue allocation;

- (b) preparation of the Division of Revenue Bill and the Allocation of Revenue Bill;
- (c) consultation on the Division of Revenue Bill and the Allocation of Revenue Bill with the Senate Revenue Allocation and Oversight Committee;
- (d) the schedule for preparation of the fiscal, budgetary or financial matters indicating key dates by which various exercises are to be completed;
- (e) procedures for the review and projection of revenues and expenditures;
- (f) key policy areas and issues to be taken into consideration when preparing the budget;
- (g) procedures concerning the manner of public participation in the budget process;
- (h) the format of submission of budget information and documents; and
- (i) any other information relevant to the budget process.

#### **PART IV - SENATE REVENUE ALLOCATION AND OVERSIGHT COMMITTEE**

Establishment  
and functions  
of the Senate

**19.** (1) The Senate shall establish the Senate Revenue Allocation and Oversight Committee, whose functions shall be -

- (a) to receive and consider the report of the Commission on Revenue Allocation and advise the Senate;
- (b) to make recommendations to the Senate regarding the proposals of the Commission and advise the Senate;

- (c) to evaluate the recommendations of the Commission in the report on the Division of Revenue Bill and advise Senate;
- (d) to evaluate the recommendations of the Commission in the report on the County Allocation of Revenue Bill and advise Senate;
- (e) to provide a forum through which the Senate participates in the cooperation, consultation and negotiation between the national and county levels of government and among counties on matters relating to revenue sharing;
- (f) to provide a forum through which the Senate is involved in the consideration of the Division of Revenue Bill and the County Allocation of Revenue Bill;
- (g) to consult with the Budget Council and report to the Senate; and
- (h) to provide a forum through which the Cabinet Secretary responsible for finance can consult with the Senate on revenue sharing.

Composition  
of Committee.

**20.** (1) The Senate on Revenue Allocation and Oversight Committee shall consist of twelve members, with each cluster of counties as determined in terms of section 4 (2) being represented by two members.

(2) In selecting the members of the committee, the Senate shall ensure that members have the requisite skills, knowledge and expertise to perform the functions set out in section 19 of this Act.

## **PART V — THE LOANS AND GRANTS COUNCIL**

Establishment  
of Loan  
Council.

**21.** There is established the Intergovernmental Loans and Grants Council which shall consist of-

- (a) the Cabinet Secretary responsible for finance, who shall be the chairperson;
- (b) the Cabinet Secretary responsible for devolved government;

- (c) the Attorney General; and
- (d) six representatives each nominated by a cluster of counties constituted in accordance with section 4 (2) and who shall be county executive committee members responsible for finance in their respective county.

Functions  
of the  
Loans and  
Grants  
Council

**22.** (1) The Loans and Grants Council shall provide an advisory forum for cooperation, consultation and negotiation between the national and county levels of government on matters relating to the—

- (a) development and review of public debt management policy for national and county governments and other public entities;
- (b) control and co-ordination of borrowing by national and county governments;
- (c) coordination of the borrowing requirements of both the national and county governments in accordance with Articles 211 and 212 of the Constitution and after taking into account estimates of the aggregate demand for capital market funds during the financial year;
- (d) consideration and approval of the aggregate funds to be borrowed by both the national and county governments;
- (e) consideration and determination of the terms and conditions for the funds to be borrowed;
- (f) regulation of internal and external borrowing by national and county governments and other public entities;
- (g) setting of public debt limits applicable to the national government, county governments and other public entities;

- (h) coordination, control and monitoring of inflows and use of grants by the national government, county governments and other public entities;
- (i) establishment and maintenance of data bank for public debt and grants;
- (j) documentation and audit of public debt and grants; and
- (k) development and review of policy on public participation and information sharing on the management of public debt and grants.

(2) The Loans and Grants Council shall exercise the functions in subsection (1) in respect of borrowing by-

- (a) the national government;
- (b) the county governments;
- (c) cities and municipalities established under the Urban Areas and Cities Act;
- (d) the state organs;
- (e) county government public entities; and
- (f) other public entities as may be determined by the Council.

Vacation of office.

**23.** A member of the Loans and Grants Council shall cease to hold office if he or she—

- (a) ceases to hold the office by virtue of which he or she became a member; or
- (b) in the case of a member nominated under section 21 (d), if the cluster of counties withdraws his or her nomination.

The Secretariat.

**24.** (1) There shall be a secretariat of the Loans and Grants Council, headed by a secretary, who shall be competitively appointed by the Loans and Grants Council.

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

- (a) holds a degree from a university recognised in Kenya; and
- (b) has at least ten years professional experience in matters relating to economics, finance, business administration or law.

Responsibilities of the Secretary.

**25.** (1) The secretary to the Loans and Grants Council shall be responsible for--

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

(2) Despite any other written law, the secretary to the Loans and Grants Council shall be the accounting officer and shall be responsible for-

- (a) all income and expenditure of the Council ;
- (b) all assets and liabilities of the Council; and
- (c) proper and diligent implementation of this Act.

Removal of the Secretary.

**26.** (1) The Secretary may be removed from office by the Loans and Grants Council, 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; or

- (d) breach of the leadership and integrity standards specified in chapter six and other provisions of Constitution; or
- (e) any other ground that would justify removal from office under the terms and conditions of service.

(2) Before removal under subsection (1), the Secretary shall be informed of the case against him or her and shall be given an opportunity to be heard.

Staff of the secretariat.

**27.** The Loans and Grants Council may appoint such staff as may be necessary for the proper discharge of its functions under this Act, and upon such terms and conditions of service as the Council may determine.

Secondment of staff.

**28.(1)** In addition to the staff appointed by the Loans and Grants Council under section 27, the Public Service Commission may, upon request by the Council, second to the Council such number of public officers as may be necessary for the performance of the functions of the Council under this Act.

(2) A public officer seconded to the Loans and Grants Council shall, during the period of secondment, be deemed to be an officer of the Council and shall be subject only to the direction and control of the Council.

Allowances payable to council members and staff.

**29.** The members and staff of the Loans and Grants Council shall be paid such allowances as shall be determined by the Public Service Commission in consultation with the Salaries and Remuneration Commission.

Organization of the council.

**30. (1)** The Loans and Grants Council may, from time to time, establish such committees as it considers necessary for the better carrying out of its functions.

(2) The Loans and Grants Council may co-opt into the membership of a committee established under subsection (1) persons whose knowledge and skills are considered necessary for the functions of the Council.

Procedures of the

**31. (1)** The business and affairs of the Loans and Grants Council shall be conducted in accordance with the

Council. Schedule to this Act.

(2) Except as provided in the Schedule, the Budget Council may regulate its own procedure.

## **PART VI - PROCESS OF COORDINATION AND CONTROL OF DONOR GRANTS**

Process of coordination and control of borrowing.

**32.** (1) The national government, each county government and any other relevant entity shall within the time to be determined by the Loans and Grants Council submit to the Council a programme setting forth the amount it desires to raise by loans and grants for each financial year, and indicating –

- (a) the estimated total amount of such loan expenditure for the year;
- (b) the estimated amounts for repayments which will be made available towards meeting that expenditure; and
- (c) any revenue deficit amount to be funded through the loan.

(2) Where the Loans and Grants Council is of the opinion that the total amount of the loan and grant programme for the year cannot be borrowed at reasonable rates and conditions it shall advise on the amount to be borrowed for the year, and may by unanimous decision allocate such amount between the national and county governments and other relevant entities.

(3) The Loans and Grants Council shall consider the loan programmes submitted to it and take into account the total debt of the national government, each county government and the public entities falling under each level of government and their contingent liabilities, risks and ability to service their debt.

(4) The Loans and Grants Council, may by unanimous decision consider and recommend policy on other connected matters.

Loan  
guarantee  
approvals.

**33.** (1) The Loans and Grants Council shall develop a policy for the setting and approving of conditions for borrowing and loan guarantees where required, for the national and county governments.

(2) In considering the terms and conditions for borrowing and loan guarantees, the Loans and Grants Council may consider the following factors-

- (a) written proof that the intended borrowing has been included in the budget proposals of the national government or respective county government;
- (b) proof of public participation in contributing to the budget and loan proposals of the government concerned;
- (c) ability of the subject capital project to generate the necessary cash flows to repay the loan;
- (d) financial management and probity of the government seeking the loan;
- (e) application, management and servicing of previous loans and public debt;
- (f) proportion of the total loan portfolio of the government seeking the loan relative to both its annual budget and gross domestic product;
- (g) level of conditional and unconditional grants by the National Government;
- (h) nature and implementation time frame of the project for which the loan is being sought;
- (i) quantified investment and project potential for wealth, employment and poverty reduction;
- (j) project and investment potential for local, national or regional economic growth and

development;

- (k) credit rating of the government seeking the loan;  
and
- (l) compliance with the requirements for borrowing from the capital markets, as applicable.

(3) Where a level of government is seeking external borrowing from international financial institutions, bilateral, multilateral and other external sources, the Loans and Grants Council may formulate additional policy relating to the-

- (a) role of National Government departments in facilitating county governments;
- (b) conditions for loan effectiveness;
- (c) loan disbursement procedures;
- (d) responsibility for the assumption of interest and foreign exchange risks;
- (e) limitations on the amounts that the national and the county governments can borrow from external sources;
- (f) conditions for national government bailouts to county governments; and
- (g) indemnity to the National government for costs incurred for the takeover and servicing of non-performing loans of defaulting county governments.

(4) The Loans and Grants Council shall ensure that consideration by the national government of loan guarantees sought by the county governments shall be efficient, transparent and accountable.

(5) The Loans and Grants Council shall develop policies and procedures for the consideration and approval of loans including specification of sanctions for unreasonable delay or refusal to grant approvals.

Grants.

**34.** (1) The national government and county

governments may solicit and receive grants from-

- (a) foreign governments;
- (b) local authorities;
- (c) international or local foundations;
- (d) non-governmental organizations;
- (e) private companies and corporate institutions;
- (f) philanthropists, charities, relief and humanitarian agencies; and
- (g) individuals,

to support their social and economic development programmes.

Submission  
of  
programme.

**35.** (1) Within two months after the end of each financial year, the national government and county governments shall submit to the Loans and Grants Council details of any programmes, projects and activities that are to be financed by donor grants.

(2) The information referred to in subsection (1) shall indicate-

- (a) the amounts relating to the programmes, projects and activities as well as the sources and terms of the donor grants; and
- (b) evidence of public participation and involvement of the legislative arm of the national and county governments in the consideration of such programmes, projects and activities and how they fit into the development plans of the national and county governments.

(3) The Loans and Grants Council shall consider, and where necessary, make recommendations regarding receipt and use of grants to facilitate-

- (a) documentation and monitoring of external financial in-flows;
- (b) fiscal and macroeconomic stability;
- (c) alignment of the funding to national and county development plans and budgets;
- (d) promotion of balanced and equitable development;
- (e) evaluation and audit of the programmes, projects and activities financed by donor funds;
- (f) evaluation of effectiveness of donor funded programmes; and
- (g) public participation, transparency and accountability in the use of donor grants.

(4) The national government and each county government shall submit a report to the Loans and Grants Council regarding the steps taken to implement the recommendations of the Council, and where no steps are taken, the governments shall submit, together with the report, the reasons for the failing to do so.

## **PART VII — FINANCIAL PROVISIONS**

Funds of  
the Council.

**36.** (1) The funds of the Council (in this Part “Council” refers to both the Budget Council and the Loans and Grants Council) shall consist of—

- (a) monies allocated by Parliament for the purposes of the Council;
- (b) such monies or assets as may accrue to the Council in the course of the exercise of its powers or the performance of its functions under this Act; and
- (c) all monies from any other source provided

or donated or lent to the Council.

Financial  
year.

**37.** The financial year of the Council shall be the period of twelve months ending on the thirtieth of June in each year.

Annual  
estimates.

**38.** (1) Before the commencement of each financial year, the Council shall cause to be prepared estimates of revenue and expenditure of the Council for that year.

(2) The annual estimates shall make provision for all the estimated expenditure of the Council for the financial year concerned.

(3) The annual estimates prepared by the Council under subsection (2) shall be submitted to the Cabinet Secretary responsible for finance for tabling in the National Assembly.

Accounts  
and  
Audit.

**39.** (1) The Council shall cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities of the Council.

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

- (a) a statement of the income and expenditure of the Council during that year; and
- (b) a statement of the assets and liabilities of the Council on the last day of that financial year.

(3) The annual accounts of the Council 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.

No.12 of  
2003.

### **PART VIII — MISCELLANEOUS PROVISIONS**

Report of  
the Council.

**40.** The report of the Council (in this Part “Council” refers to both the Budget Council and the Loans and Grants Council) in respect of the financial year to which it relates, contain —

- (a) the financial statements of the Council;
- (b) a description of the activities of the Council;
- (c) such other statistical information as the Council considers appropriate relating to the Council's functions; and
- (d) any other information relating to its functions that the Council considers necessary.

Offences.

**41.** (1) A person shall not—

- (a) without justification or lawful excuse, obstruct or hinder, or assault or threaten a member or staff of the Council acting under this Act;
- (b) submit false or misleading information; or
- (c) misrepresent to or knowingly mislead a member or staff of the Council 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 five hundred thousand shillings, or to imprisonment for a term not exceeding two years, or to both.

Regulations.

**42.** The Council may make regulations generally for the better carrying into effect of any provisions of this Act.

Code of  
conduct.

**43.** The Council shall develop a code of conduct for its members and staff.

**SCHEDULE**

**( s. 14 and 31)**

**MEETINGS AND PROCEDURE OF THE  
COUNCIL**

Meetings.      1. (1) The Council shall decide when and where it meets and the meetings shall be convened by the chairperson.

(2) The Council shall have at least four meetings in every financial year and not more than four months shall elapse between one meeting and the next meeting.

(3) Unless three quarters of the members otherwise agree, at least seven days' notice in writing of a meeting shall be given to every member.

(4) The chairperson or in his or her absence the vice-chairperson shall preside over any meeting of the council.

(5) The members of a Council shall elect a vice-chairperson from among themselves-

(a) at the first sitting of the Council; and

(b) whenever it is necessary to fill a vacancy in the office of the vice-chairperson.

(6) The Chairperson and Vice-chairperson shall not be of the same gender.

(7) The Council may invite any person to attend any of its meetings and to participate in its deliberations, but the person so invited shall not have a vote in any decision of the Council

Conflict of interest.      2. (1) If any person has a personal or fiduciary interest in any matter before the Council, and is present at a meeting of the Council or any committee at which any matter is the subject of consideration, that person shall as soon as is practicable after the commencement of the meeting, declare the interest and shall not take part in any consideration or discussion of, or vote on any question touching such matter.

(2) A disclosure of interest made under subsection (1)

shall be recorded in the minutes of the meeting at which it is made.

(3) A person who contravenes subsection (1) commits an offence and shall be liable, upon conviction, to a fine not exceeding three million shillings, or to imprisonment for a term not exceeding seven years, or to both such fine and imprisonment.

(4) A member or staff of the Council shall not transact any business or trade with the Council.

Quorum.       **3.** (1) Subject to sub-paragraph (2), the quorum of the meeting shall not be less than half of the appointed members.

(2) Where there is a vacancy in the Council, the quorum of the meeting shall not be less than three appointed members.

Voting.       **4.** A question before the Council is decided with a supporting vote of at least two thirds of the members present.

Rules of Procedure and minutes       **5.** The Council shall-

- (a) determine rules of procedure for the conduct of its business; and
- (b) keep minutes of its proceedings and decisions.

## **MEMORANDUM OF OBJECTS AND REASONS**

The principal object of this Bill is to provide a legislative framework which forms the basis upon which the national and county levels of government co-operate and consult on financial, budgetary and financial matters. The Bill outlines the process of revenue sharing and allocation of resources as well as the management and control of the processes relating to borrowing of funds and use of grants and loans.

**Part I** provides for preliminary matters.

**Part II** provides for the Intergovernmental Budget Council and outlines its composition and functions. Clause 7 provides for the appointment of a Secretary to the Council in accordance with the terms and conditions to be determined by the Council. This part outlines the responsibilities of the Secretary and the circumstances under which he or she may be removed from office. This part also provides for the employment and secondment of staff of the Council and their remuneration.

**Part III** outlines the manner in which revenue is to be shared based on the recommendations of the Commission on Revenue Allocation submitted in accordance with clause 16. This part also outlines the manner in which the Revenue Division and County Allocation Bills should be submitted in Parliament as well as the principles relating to the horizontal and vertical revenue sharing.

**Part IV** provides for the establishment of the Senate Revenue Allocation and Oversight Committee as well as its functions, including making recommendations to and reviewing the recommendations of the Commission on Revenue Allocation regarding the allocation of resources to the counties, and providing a forum for consultation among the governments of both levels.

**Part V** provides for the establishment of the Intergovernmental Loans and Grants Council, its composition, organization, functions and operations.

**Part VI** outlines the bodies and institutions from which the national and county government may receive grants. It also outlines the process relating to the submission of a programme to the Intergovernmental Loans and Grants Council in relation to the activities through which the grants are to be utilized.

**Part VII** contains financial provisions relating to the Budget Council and the Intergovernmental Loans and Grants Council.

**Part VIII** contains miscellaneous provision. Clause 40 provides for the reporting on the activities of the Councils established under the Bill while clause 41 sets out various prohibitions and penalties in the case of breach.

The schedule outlines the manner in which meetings are to be conducted by the Councils established under the Act.

Additional expenditure of public funds will be incurred by reason of the enactment of this Bill.

**Dated the** **2011.**

**Musalia Mudavadi**  
**Deputy Prime Minister and Minister for Local Government**