COAST REGIONAL BUDGET HUB

Submission On the PFM (Amendment) Bill 2024 And PFM(Amendment) (No.2) Bill,2024 Presented Before the National Assembly- Departmental Committee on Finance and National Planning During Stakeholder Engagement Held On 25th September 2024, At Bunge Towers.

1.0. Introduction

The Public Finance Management (Amendment) Bill, 2024 Seeks to amend the PFM Act, No.18 of 2012, by reducing the time for submission of financial statements by public entities from three months to one month after the end of the financial year, to ensure that the office of the auditor General has adequate time to carry out required audits and prepare the necessary reports. On the other hand, the PFM (Amendment) (No.2) Bill, 2024, seeks to amend the Public Finance Management Act, Cap.412 A, to align the timelines for passing and consideration of the Finance Bill by the County Assemblies and National Assembly.

The Coast Regional Budget Hub is a platform for Public Finance Management (PFM) practitioners, that brings together regional voices for collective efforts and synergy to enhance public budgets and services across the Coast Region of Kenya. The Coast Regional Budget Hub operates in the six Coastal counties: Mombasa, Kwale, Kilifi, Lamu, Taita-Taveta, and Tana River Counties. The Hub is Comprised of budget coordinators, facilitators, and champions from various organisations/institutions, informal groups, academia and individuals, drawn from across the Coast. The Coast Regional Hub builds the collective capacity of communities to engage effectively and mobilizes participation in the budget-making processes at the county, regional and national levels.

In response to the National Assembly's invitation for stakeholder engagement, as outlined in the letter dated 17th September 2024, referenced **NA/DDC/F&NP/2024/101**, the CRBH is pleased to submit its observations, concerns, and recommendations regarding the proposed bills. The first section outlines a summary of our key submissions, followed by a detailed analysis of each bill's proposed amendments, associated concerns, and our primary recommendations, concluding with a general overview.

2.0. Key Summary submission

i. The PFM (Amendment) Bill,2024 Seeks to reduce the timeframe of submission of financial statements and reports by public entities from three months to one month and submission of national and county annual financial statements and summaries from four months to two months, as provided in the various sections of the Bill. Whereas this is good for ensuring efficiency and timely reporting, there ought to be consideration in terms of resources to enable various public entities to deliver within the proposed timeframe.

ii. The PFM Amendment Bill, 2024 amends Section 68(2) (k), 4(b) and further proposes adding subsection 4A, which holds accounting officers liable for not implementing the provisions under Section 68(4). The penalties for non-compliance include imprisonment for up to five years, a fine of up to ten million shillings, or both. This is commendable to ensure compliance. However, the timeline is still constraining. While accountability is crucial, consider introducing tiered penalties based on the severity of the offence or providing clearer guidance on compliance expectations to ensure fairness and reduce fear of excessive punishment for minor infractions.

iii. Re-establishment of the board- Re-establishing the Public Sector Accounting Standards Board (PSASB) as a body corporate will grant it legal independence and greater authority to manage its financial and administrative affairs, enabling it to enter contracts, own property, sue or be sued, and pursue initiatives that enhance public sector financial accountability and transparency. However, the National Assembly may want to consider the additional costs that come with the establishment of the entity, which could increase the ballooning wage bill and operational Costs, as the country is implementing the Fiscal consolidation programme.

iv. The PFM (Amendment) bill (No.2), 2024, seeks to amend the submission and consideration and passing of the Finance Bill by county assemblies by the 30th of June, to align it with the national assembly. The alignment of the timelines with the national government processes and elimination of the outdated provisions, will provide timely decision-making, enhance accountability, and foster consistency in financial management practices across all levels of government. However, there is a need to ensure public awareness of the changes should the bill sail through and encourage public participation in the county finance bill.

v. We propose that **Section 131A(4)(g)** be added to the amendments to require openness and accountability, including public participation in revenue matters, in alignment with **Article 201(a)** of the **Constitution of Kenya, 2010**, which mandates that all aspects of public finance adhere to the principles of openness, accountability, and public participation.

3.1: PFM (Amendment) Bill, 2024

3.1.1. Proposed Amendments

1. The PFM (Amendment Bill), 2024, seeks to amend several sections and sub-sections to reduce the time for submissions of financial statements by various public entities, as follows:

   a. Section 2 of the proposed bill seeks to amend, Section 23(1) of the Principal Act (PFM Act, No. 18 of 2012), *regarding the financial statements in respect of contingencies funds* deleting *"three months"* and substituting it with *"one month."*

   b. Section 3 of the proposed Bill seeks to amend the Principal Act (PFM Act, 2012), Section 24(10) (b) reducing the timeline for an administrator of a national public fund to submit financial statements to the Auditor General from three months to one month. [1]

[1] *Refer to Section 3 of the proposed PFM Amendment Bill, 2024*

c. Section 4 of the Bill proposes to amend section 68 of the Principal Act, on the responsibilities of accounting officers for the national government entities, parliament and the judiciary.

- *Section 68(2) (k) is amended by reducing the timelines for submission of annual financial statements for the financial year by the accounting officer of national government entities, parliament and judiciary from three months to one.*

- *Further, section 68(4) (b) by adding "Auditor General" immediately after the national treasury, making the Auditor General one of the recipients of the reports prepared by an accounting officer on the actions taken by the entity in the implementation of recommendations made in by the relevant committee of the national assembly, after the adoption of the report, according to section 4 (a).*

- *Introduction of a sub-section, "4A"***,** *which holds accounting officers liable for not implementing the provisions under Section 68(4). The penalties for non-compliance include imprisonment for up to five years, a fine of up to ten million shillings, or both, according to Section 199 of the PFM Act, 2012.*

d. **Section 5** of the proposed bill amends the Principal Act, Section 80(4), by reducing the timeframe for the National Treasury to submit the financial statements and summaries referenced in Section 80(1) to the Auditor General, with copies to the Controller of Budget and the Commission on Revenue Allocation (CRA), from four (4) months to two (2) months.

e. The proposed bill amends the principal Act by reducing the submission periods specified in Section 81(1) (annual reporting), Section 82(3) (submission of accounts by the Receiver of Revenue), Section 82(4) (submission of waivers and variations of taxes granted by the Receiver of Revenue), and Section 84(3) (submission of financial statements by an administrator of a national public fund) from three months to one month, respectively.[2]

f. The Bill proposes to amend Section 115(1) concerning the submission of financial statements for an Emergency Fund by the County Treasury, Section 116(7)(b) regarding the accounts of a county public fund, and Section 149(2)(k) relating to the submission of annual financial statements by the accounting officer to the County Assembly, by reducing the respective timeframes for submission from three (3) months to one (1) month.

g. The Bill proposes to amend Section 163(4), reducing the timeframe for the County Treasury to submit annual financial statements and summaries, as referred to in Section 163(1), from four (4) months to two (2) months after the end of the financial year. Additionally, it amends Section 164(4) regarding annual reporting by accounting officers, Section 165(3) concerning annual reporting by receivers of revenue, and Section 167(3) regarding annual reporting by

[2] *Refer to sections 6 and 7 of the PFM (amendment) Bill, 2024.*

administrators of county public funds, reducing the submission timeframes in each case from three (3) months to one (1) month.

h. **Establishment of PSASB as a body corporate**- Section 16 of the Bill, deletes section 192 of the Principal Act on Establishment of Public Sector Accounting Standards Board and introduces a new section, establishing the board as a body corporate, with perpetual succession and a common seal. As a body corporate, the Board shall be capable of suing and being sued, taking, purchasing or otherwise acquiring and borrowing, holding, charging, or disposing of movable or immovable property. The board shall succeed the existing PSASB.

3.1.2. Issues/ concerns on the proposed amendments.

i. **Time constraints-** The amendment reduces the time available for the National Treasury, county treasury and accounting officers of public entities to prepare and submit financial statements on various public Funds from three months to one month. Further, the deadline for compilating an annual report is reduced from 4 months to two months. This reduction of timeframe potentially creates undue pressure, which could potentially lead to rushed or incomplete financial reporting, particularly if delays occur in the compilation of data.

ii. ***The amendment is good for improving efficiency and transparency by speeding up financial reporting,*** benefiting stakeholders and oversight institutions and the public with quicker access to data. However, it may conflict with bureaucratic operations that may struggle with the rapid turnaround. Further, there is a need to ensure, that there are internal capacities in the national treasury, county treasuries or administrators of public funds to deliver such in the given timelines.

iii. ***Alignment with reporting of other financial statements***- The one-month period must align with other statutory financial reporting deadlines, such as annual reviews, departmental reporting, and year-end reconciliations, to avoid overlap or bottlenecks that could impact the quality and timeliness of all financial reports.

iv. The PFM Amendment Bill, 2024 amends Section 68(2) (k), 4(b) and further proposes adding subsection 4A, which holds accounting officers liable for not implementing the provisions under Section 68(4). The penalties for non-compliance include imprisonment for up to five years, a fine of up to ten million shillings, or both. This is commendable to ensure compliance. However, the timeline is still constraining.

v. **Re-establishment of the board-** Re-establishing the Public Sector Accounting Standards Board (PSASB) as a body corporate will grant it legal independence and greater authority to manage its financial and administrative affairs, enabling it to enter contracts, own property, sue or be sued, and pursue initiatives that enhance public sector financial accountability and transparency.

3.1.3. Our Key Asks / Recommendations

i. To enhance operational efficiency and transparency, the National and county Treasuries should invest in automated financial management systems that facilitate real-time data collection, processing, and reporting. This will reduce manual workloads and make it easier to meet tighter deadlines. Additionally, training staff to efficiently use these tools will help ensure that financial statements are accurate, even within a shortened timeframe. However, it should be noted that this is likely to come with additional Costs.
ii. Review and, if necessary, adjust the timelines for other financial reporting requirements, such as annual *reviews and ministries and departmental reporting,* to avoid overlap or bottlenecks. Further, there is a need to establish a *coordinated calendar* for all financial reporting processes to ensure that the one-month deadline aligns smoothly with the other reporting tasks.
iii. While accountability is crucial, consider introducing tiered penalties based on the severity of the offence or providing clearer guidance on compliance expectations to ensure fairness and reduce fear of excessive punishment for minor infractions.
iv. On re-establishment of the PSASB as a body corporate- To mitigate the risks associated with acquiring, holding, or disposing of assets, it is crucial to establish **strong internal governance frameworks** for the Board. This includes implementing internal controls, clear policies on asset management, and strict financial reporting standards.

3.2. PFM (Amendment) Bill, (No.2) of 2024

The bill seeks to amend the Public Finance Management Act, Cap.412 A, to align the timelines for passing and consideration of the Finance Bill by the County Assemblies and National Assembly.

3.2.1. Proposed amendments

i. Section 2 of the PFM (Amendment) (No.2) Bill of 2024 seeks to amend section 129(2)(a) of the PFM Act, Cap 412 A, by deleting the word “Except Finance bill”. By so doing, the CECM finance shall submit to the county assembly the budget estimates, supporting documents and any other bills required to implement the budget.
ii. The Bill introduces a new Section 131A, on the submission, consideration and passing of the Finance Bill. The new Section 131(1) requires CECM finance to submit to the county assembly the Finance Bill, setting out revenue-raising measures for the county government on /before 30th April. Further, section 131A (3), requires the county assembly to pass the Bill on with /without amendments for it to be assented by 30th June each year.
iii. The bill repeals section 133 of the PFM Act, 2012, Cap. 412A to align the practice of the County Assembly in the Consideration of the Finance Bill, with that of the National Assembly.

3.2.2. Comments/ Concerns

i. The new **Section 131A** will align the county timelines with those of the national government, requiring Finance Bills to be submitted by **April 30th** and passed by **June 30th**. This synchronization will help reduce inconsistencies between county and national financial frameworks, ensuring that county governments are better prepared for the start of the fiscal year.
ii. ***Enhanced Accountability and Timeliness-*** By mandating the county assemblies to pass the Finance Bill by June 30th, the amendments promote timely enactment of revenue-raising measures, reducing delays that could affect the implementation of the budget.
iii. The repeal of **Section 133** eliminates outdated provisions, that required the finance Bill to be passed 90 days after the passing of the County Appropriation Act and brings the process for county-level Finance Bill consideration in line with that of the **National Assembly**, fostering consistency in financial management practices across all levels of government.
iv. We proposed that **Section 131A(4)(g)** be added to the amendments to require openness and accountability, including public participation in revenue matters, in alignment with **Article 201(a)** of the **Constitution of Kenya, 2010**, which mandates that all aspects of public finance adhere to the principles of openness, accountability, and public participation.

3.2.3. Recommendations/ Key Asks

i. There is a need to establish a **monitoring framework** to ensure that both county executives and assemblies adhere to the newly established timelines.
ii. To ensure smooth implementation of the revised timelines, **county assemblies** should invest in building their technical and administrative capacities to handle the increased workload during the budget Estimates and Finance Bill review periods.
iii. There is a need to create public awareness of the changes, should the bill sail through and encourage robust **public participation** in the Finance Bill process at the county level to ensure that revenue-raising measures are both transparent and reflective of local needs.

4.0. Conclusion

The **PFM (Amendment) Bill, 2024** introduces significant changes aimed at expediting financial reporting timelines for various public entities and aligning county and national processes. While these amendments will promote greater efficiency and accountability, they also raise concerns about the potential pressure on public entities to meet shorter deadlines, which may compromise the quality of reporting.

The proposed amendments to the **Public Finance Management Act, Cap. 412A** is a positive step towards harmonizing the budgetary processes between the national and county governments, particularly about the submission and consideration of Finance Bills. The alignment of the timelines with the national government processes and elimination of the outdated provisions, will provide timely decision-making, enhance accountability, and foster consistency in financial management practices across all levels of government.

However, successful implementation will require capacity building within county assemblies, robust monitoring frameworks, and increased public awareness to ensure transparency and smooth adherence to the revised timelines. Encouraging public participation will further ensure that revenue-raising measures address the specific needs of local communities while maintaining national standards.

We trust that our inputs will provide valuable insights into the proposed amendments.

Sincerely,

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