

**SPECIAL ISSUE**

*Kenya Gazette Supplement No. 98 (National Assembly Bills No. 48)*



REPUBLIC OF KENYA

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**KENYA GAZETTE SUPPLEMENT**

**NATIONAL ASSEMBLY BILLS, 2019**

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**NAIROBI, 28th June, 2019**

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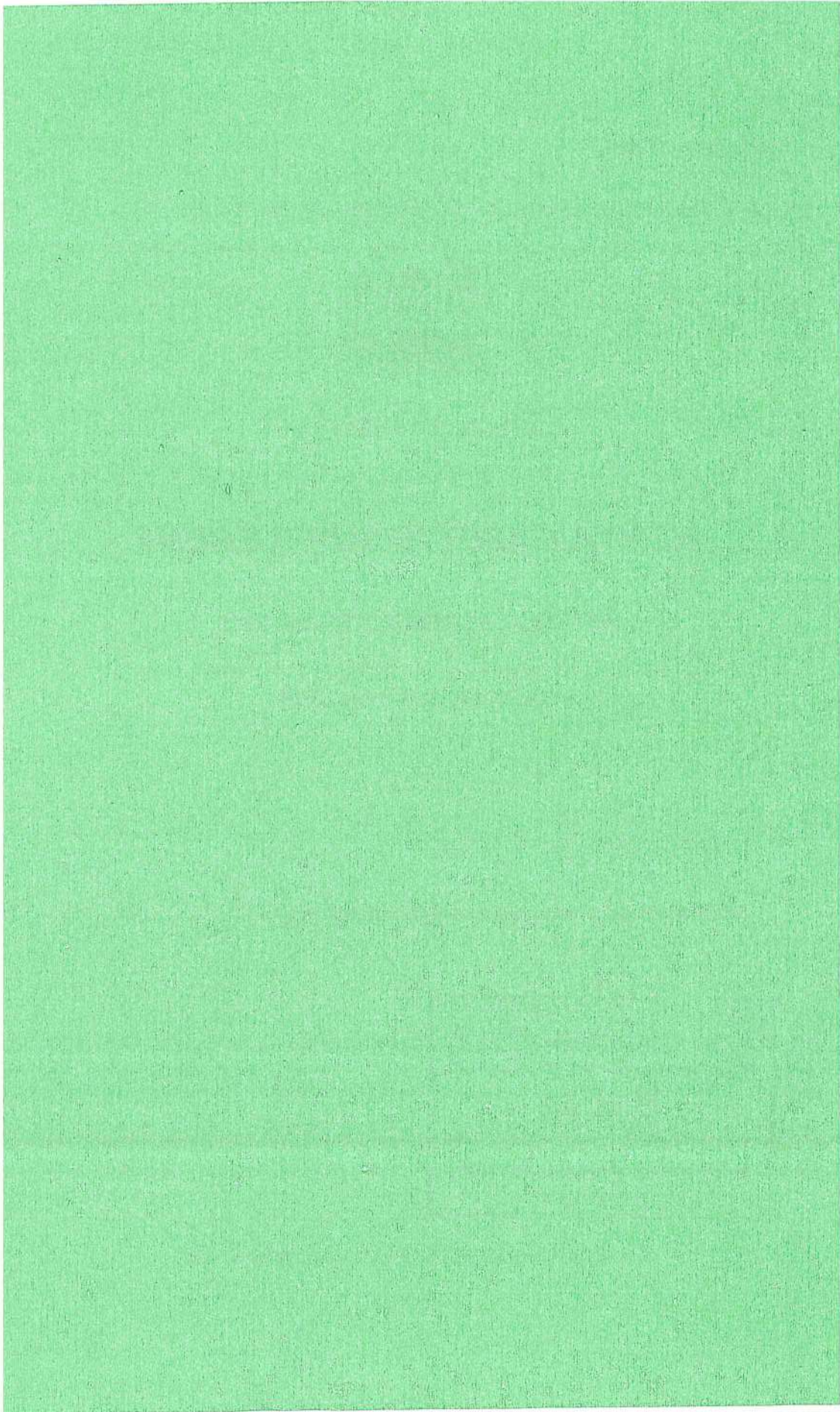
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**THE PUBLIC FINANCE MANAGEMENT  
(AMENDMENT) BILL, 2019**

**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, 2019.

Short title.

**2.** The Public Finance Management Act (hereinafter referred to as the “principal Act” is amended in section 49 (1) by inserting the words “upon the approval of the National Assembly” immediately after the words “the Cabinet Secretary may”.

Amendment of section 49(1) of the Act No. 18 of 2012.

**3.** The principal Act is amended in section 50 by-

Amendment of section 50 of No. 18 of 2012.

(a) deleting the word “Parliament” wherever it appears and substituting therefor the words “National Assembly”;

(b) deleting the expression “a limit set by Parliament” appearing at the end of subsection (2) and substituting therefor the expression “six trillion shillings”; and

(c) inserting the following new subsection immediately after subsection (3)-

(3A) In seeking approval to borrow under subsection (3), the Cabinet Secretary shall submit to the National Assembly the intended purpose for borrowing and the envisaged repayment plan.

## **MEMORANDUM OF OBJECTS AND REASONS**

### **Statement of Objects and Reasons**

The purpose of the Bill is to amend the Public Finance Management Act in order to provide for a specific limit of the amount that the Government may borrow in order to reduce the country's external and internal debt.

Clause 2 of the Bill seeks to entrench the oversight role of Parliament in law by ensuring that the National Assembly pays attention to the revenue side of the budget and not just on the expenditure part. This clause therefore mandates the Cabinet Secretary in charge of the National Treasury to seek the approval of Parliament before effecting any borrowing of funds.

Clause 3 of the Bill seeks to specify the exact limit of funds that can be borrowed to six trillion shillings and providing for the need to ensure that the Cabinet Secretary submits the intended purpose for borrowing and the envisaged repayment to the National Assembly.

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

The Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms.

### **Statement of how the Bill concerns County Governments**

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

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

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

Dated the 27th June, 2019.

ALEXENDER KOSGEY,  
*Member of Parliament.*

*Section 49 of No.18 of 2012 which it is proposed to amend-*

**49. Authority for borrowing by the national government**

(1) Subject to provisions of this act, the Cabinet Secretary may, on behalf of the national government, raise a loan only if the loan and the terms and conditions for the loan are set out in writing and in accordance with-

- (a) the fiscal responsibility principles and the financial objectives set out in the most recent Budget Policy Statement and;
- (b) the debt management strategy of the national government over the medium term.

(2) A loan may be raised either within Kenya or from outside Kenya.

*Section 50 of No.18 of 2012 which it is proposed to amend-*

**50. Obligations and restrictions on national government guaranteeing and borrowing**

(1) In guaranteeing and borrowing money, the national government shall ensure that its financing needs and payment obligations are met at the lowest possible cost in the market which is consistent with a prudent degree of risk, while ensuring that the overall level of public debt is sustainable.

(2) The national government may borrow money in accordance with this Act or any other legislation and shall not exceed a limit set by Parliament.

(3) The national government may borrow money only for the budget as approved by Parliament and the allocations for loans approved by Parliament.

(4) The guarantee of debt shall be done in terms of criteria agreed with the Intergovernmental Budget and Economic Council and prescribed in regulations approved by Parliament.

(5) Parliament shall provide for thresholds for the borrowing entitlements of the national government and county governments and their entities.

(6) A public debt incurred by the national government is a charge on the Consolidated Fund, unless the Cabinet Secretary determines, by regulations approved by Parliament, that all or part of the public debt is a charge on another public fund established by the national government or any of its entities.

(7) The Cabinet Secretary shall ensure that the proceeds of any loan raised under this Act are—

- (a) paid into the Consolidated Fund;
- (b) paid into any other public fund established by the national government or any of its entities as the Cabinet Secretary may determine in accordance with regulations approved by Parliament;
- (c) disbursed directly to the suppliers where the loan is a government to government loan and is raised for the purpose of financing goods and services provided by a supplier outside Kenya; or
- (d) in the case of an external loan or external government security, applied, in part, to pay at closing, pre-negotiated expenses associated solely and exhaustively with the borrowing, including but not limited to, the fees, commissions and expenses of lenders, financial arrangers, managers and book runners, fiscal agents, trustees, paying agents, exchange and information agents, syndicate agents, counsel, clearing systems, listing agents, and stock exchanges, rating agencies and other expenses of a similar nature arising from the external loan or external government security.

(8) The Cabinet Secretary may, by regulations approved by Parliament, establish such sinking fund or funds for the redemption of loans raised under this Act by the national government.

(9) The Cabinet Secretary may, subject to Article 227 of the Constitution and in accordance with national legislation on Public Procurement and Asset Disposal—

- (a) appoint advisers, agents and underwriters for the purpose of raising loans and issuing, managing or redeeming national government securities; and
- (b) enter into agreements with the advisers, agents and underwriters appointed under paragraph (a) on the role to be undertaken by them and the remuneration to be paid to them.

(10) Any expenses incurred in connection with borrowing by the national government or the issue of national government securities is a charge—

- (a) on the Consolidated Fund; or
- (b) on such other public fund established by the national government or any of its entities as the Cabinet Secretary may determine by regulations approved by Parliament.

(11) The costs, interests and principal payments made by the national government concerning loans to each level of government shall be passed on by the national government to the relevant level of government.

(12) A copy of the details of the expenses and costs referred to under subsections (10) and (11) shall be submitted to the Controller of Budget and to Parliament, at the end of each quarter.

