

**CLAUSE BY CLAUSE ANALYSIS OF ANAMBRA STATE FISCAL
RESPONSIBILITY BILL**

**ANAMBRA STATE OF NIGERIA
A BILL**

FOR

A LAW TO PROVIDE FOR PRUDENT MANAGEMENT OF THE STATE'S RESOURCES, ENSURE LONG-TERM MACROECONOMIC STABILITY OF THE STATE ECONOMY, SECURE GREATER ACCOUNTABILITY AND TRANSPARENCY IN FISCAL OPERATIONS WITHIN A MEDIUM TERM FISCAL POLICY FRAMEWORK AND THE ESTABLISHMENT OF THE STATE FISCAL RESPONSIBILITY COMMISSION TO ENSURE THE PROMOTION AND ENFORCEMENT OF THE STATE'S ECONOMIC OBJECTIVES AND OTHER MATTERS CONNECTED THEREWITH.

Sponsor: By the request of the Executive

BE IT ENACTED by the Anambra State House of Assembly as follows:

1. This Law may be cited as the Fiscal Responsibility Law 2010 and shall come into force on the 1st day of 2010.

2 In this Law;-

"Appropriation Law" means a Law passed by the House of Assembly or a Bye-Law passed by a Local Government authorizing spending from the Consolidated Revenue Fund of the State or Funds of the Local Government and includes a Supplementary Appropriation Law;

"Arms of Government" means the Executive, the Legislature and the Judiciary;

"Borrowing" means any financial obligation arising from

- (i) any loan including principal, interest, fees on such loan,
- (ii) the deferred payment for property, goods or services,
- (iii) bonds, debentures, notes or similar instruments,
- (iv) letters of credit and reimbursement obligations with respect thereto,
- (v) trade or bankers' acceptances,
- (vi) capitalized amounts of obligations under leases entered into primarily as a method of raising financing or of financing the acquisition of the asset leased,
- (vii) agreements providing for swaps, ceiling rates, ceiling and floor rates, contingent participation or other hedging mechanisms with respect to the payment of interest or the convertibility of currency and
- (viii) a conditional sale agreement, capital lease or other title retention agreement.

"Budget Call Circular" means a circular –

- (i) requesting the submission in a prescribed form of the revenue and expenditure estimates of Ministries, Extra-Ministerial Departments and other executing agencies of Government for the next financial year; and
- (ii) giving detailed guidelines and instructions on the preparation of the estimates and expenditure in a manner consistent with the medium term developmental priorities set out in the Medium-Term Expenditure Framework;
- (iii) requesting the organized private sector, organized labour, civil society groups, etc, to make inputs into the budget formulation process in accordance with the Medium Term Expenditure Framework.

"Capital Expenditure" means spending on an asset that lasts for more than one financial year and expenses associated with the acquisition of such assets;

"Commissioner" means the Commissioner charged with the responsibility for Economic Planning;

"Concessional terms" means the terms of the loan which must be at an interest rate not exceeding 3% per annum;

"Consolidated debt" means the aggregate of the outstanding financial obligations of Government including those of its parastatals and agencies at any point in time arising from-

- (i) borrowed money including principal, interest, fees on such borrowed money,
- (ii) the deferred payment for property, goods or services,

- (iii) bonds, debentures, notes or similar instruments,
- (iv) letters of credit and reimbursement obligations with respect thereto,
- (v) guarantees,
- (vi) trade or bankers' acceptances,
- (vii) capitalized amounts of obligations under leases entered into primarily as a method of raising financing or of financing the acquisition of the asset leased,
- (viii) agreements providing for swaps, ceiling rates, ceiling and floor rates, contingent participation or other hedging mechanisms with respect to the payment of interest or the convertibility of currency and
- (ix) a conditional sale agreement, capital lease or other title retention agreement;

"Constitution" means the Constitution of the Federal Republic of Nigeria, 1999;

"Cost-Benefit Analysis" means an analysis/model that compares the cost of undertaking a service, project or programme with the benefits that citizens are likely to derive from it;

"Fiscal Risk Appendix" means an explanatory attachment that provides a set of indicators that can be used to measure local fiscal risks;

"Fiscal Risk Target" means the numerical target for each risk indicator with which a fiscal entity will be considered fiscally healthy;

"Financial Year" has the meaning ascribed to it in the Constitution;

"Fiscal Policy Objectives" means the goals set by Government for attainment of set targets for a given period;

"Government" or "the Government" means the Government of Anambra State of Nigeria.

"Government - Owned Company" means a statutory corporation or commission, Government agency or a company in which Government has controlling interest;

"Governor" means the Governor of Anambra State of Nigeria;

"House" means the Anambra State House of Assembly;

"Medium-Term Expenditure Framework" means the document referred to and the contents of which is prescribed in Part II of this Law;

"Net Debt" means the Consolidated Debt less what is owed to Government, its parastatals and agencies at any point in time;

"Public Debt Securities" means public debt represented by securities issued by Government (including those of the Central Bank of Nigeria) and Local Governments;

"Public Expenditure" means outlays other than those resulting into debt reduction;

"Public Revenue" means all moneys received by Government and by Local Governments in the State;

"Quarter" means one quarter of a financial year and "Quarterly" shall be construed accordingly;

"Recurrent Expenditure" means normal overhead and administrative expenses and personnel cost including salaries, emoluments and other benefits of employees;

"Refinancing of Debt Securities" means issuance of securities to repay the existing debt;

"State" means the Anambra State of Nigeria;

"State Financial Institution" means any financial institution in which Government has controlling shares;

"State Joint Local Government Account" means the special account maintained by the State pursuant to Section 162 (6) of the Constitution;

"Tax Expenditure Projections" means the projected amount expected to be utilized in granting tax relief or tax holiday; and

"Tax Revenue Projections" means the projected collectible tax or revenue within a particular planning period.

Recommendation: The Citation and Interpretation in sections 1 and 2 should be moved to the end of the Law so that the Law starts with the operational section 1 on the establishment and functions of the Fiscal Responsibility Commission.

SECTION	ANAMBRA BILL	RECOMMENDATION	JUSTIFICATION
<p>PART I - ESTABLISHMENT, FUNCTIONS AND POWERS OF THE FISCAL RESPONSIBILITY COMMISSION</p> <p>S.3: Establishment of the Fiscal Responsibility Commission</p>	<p>3. (1). There shall be established for the State a body to be known as the Fiscal Responsibility Commission (hereinafter in this Law referred to as "the Commission").</p> <p>(2) The Commission shall be a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name.</p>	<p>Retain</p>	<p>This provision is in accordance with the Fiscal Responsibility Act (hereafter called "FRA") and the State Level Fiscal Responsibility Template. The Commission addresses the mischief in the existing law by creating an autonomous specialized and competent body thereby improving the prospects of implementation of the Fiscal Responsibility Law (hereafter called "FRL"). The Commission helps avoid potential conflict of interest dilemma that would have arisen if existing institutions were to do the job. It would also help the legislature in holding the executive to account over the management of public resources.</p> <p>Creating the Commission as a body corporate with perpetual succession and a common seal clothes it with the requisite powers and authority needed to embark on its functions. Subsection (2) has provided for <i>"the continuous existence which enables a corporation to manage its affairs and hold property without the necessity of perpetual conveyances for the purpose of transmitting it. By</i></p>

			<i>reason of this quality, this ideal and artificial person remains in its legal entity and personality, the same, though frequent changes may be made of its members”¹.</i>
Powers of the Commission	<p>4. (1) For the purpose of performing its functions under this Law, the Commission shall have power to-</p> <p>(a) compel any person or government institution to disclose information relating to public revenues and expenditures; and</p> <p>(b) cause an investigation into whether any person has violated any provisions of this Law.</p> <p>(2) If the Commission is satisfied that such a person has committed any punishable offence under this Law or violated any provisions of this Law, the Commission shall forward a report of the investigation to the Attorney-General of the State for possible prosecution.</p>	<p>Retain section 4 (1). Redraft section 4 (2) to give the Commission the option of exercising prosecutorial powers or to forward the matter to the Attorney General. The new draft should read</p> <p>(2) If the Commission is satisfied that any person has committed any offence punishable under this Law or violated any provisions of this Law, the Commission shall either prosecute the suspect or forward a report of the investigation to the Attorney-General of the State for possible prosecution.</p>	<p>The Commission should have prosecutorial powers such as the powers of the Economic and Financial Crimes Commission. This is because most of the persons who may run foul of the law will be high ranking officers of state who may be commissioners, etc and the Attorney General may not muster the political will to prosecute them. This power is necessary considering section 5 (2) which states that “the Commission shall be independent in the performance of its functions”. If the Commission cannot prosecute offenders and the Attorney General refuses to prosecute them, then the Commission’s effectiveness would have been impaired. However, the snag is that there are no offences created by this Law.</p>

¹ Blacks Law Dictionary, Centennial Edition at page 1141.

<p>Functions of the Commission</p>	<p>5. (1) The Commission shall:</p> <p>(a) monitor and enforce the provisions of this Law and by so doing, promote the economic objectives contained in section 16 of the Constitution;</p> <p>(b) disseminate such standard practices including international good practices that will result in greater efficiency in the allocation and management of public expenditure, revenue collection, debt control and transparency in fiscal matters;</p> <p>(c) undertake fiscal and financial studies, analysis and diagnosis and disseminate the result to the general public;</p> <p>(d) make rules for carrying out its functions under this Law; and</p> <p>(e) perform any other function consistent with the promotion of the objectives of this Law.</p>	<p>Retain</p> <p>redraft subsection (d) to read:</p> <p>(d) formulate policies and guidelines for the implementation of the Law and make rules for carrying out its functions under this Law; and</p>	<p>In line with best practices - see the FRA and State Level Fiscal Responsibility Template.</p>
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	<p>(2) The Commission shall be independent in the performance of its functions.</p> <p>(3) The Public Officers Protection Law shall apply to the members of the Commission in the discharge of their functions under this Law.</p> <p>(4) No suit shall be commenced against the Chairman or a member of the Commission or any officer or employee of the Commission before the expiration of a period of one month after written notice of intention to sue shall have been served through the State High Court on the Commission by the intending Plaintiff or his agent.</p> <p>(5) The notice referred to in subsection (4) of this Section shall clearly state -</p>	<p>The Commission's independence would be strengthened through the appointment and removal procedures for members, funding, reporting lines and staffing processes, etc.</p> <p>The Public Officers Protection Act² is made as a law to provide for protection against action of persons acting in the execution of public duties. However, the protection of the law does not extend to manifestly unlawful actions, abuse of office, acting <i>malafide</i> and outside the scope of duty³.</p> <p>The essence of pre-action notice is to enable the Commission to decide what to do in the circumstances, to negotiate or reach a compromise or have another look at the matter in relation to the issues and decide whether it is more expedient to adopt a non adversarial approach to the issue⁴. Non service of pre-action notice where same is statutorily required renders the subsequent action incompetent⁵. However, what is required of the</p>
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² Cap.P41, Laws of the Federation of Nigeria, 2004.

³ . Per Ademola C.J.N. in *L.C.C. v Ogunbiyi* (1969) 6 N.S.C.C. 283 at 284; See also *Nwankwere v Adewunmi* (1966) 4 N.S.C.C. 140 at 143.

⁴ *Mobil Producing (Nigeria) Unltd v LASEPA* (2003) FWLR (Part 137) 1029.

⁵ *Nigercare Development Co. Ltd v Adamawa State Water Board* (2008) 2-3 SC (Part 11) 202; and *International Tobacco Co Plc v NAFDAC* (2007) FWLR (Part 382) 1981.

	<p>(a) the cause of action;</p> <p>(b) the particulars of the claim;</p> <p>(c) the name and place of abode; and</p> <p>(d) the relief which he claims.</p>	<p>Change paragraph (c) to read:</p> <p>(c) the name and place of abode of the claimant</p>	<p>plaintiff once a notice has been given to the statutory body is substantial compliance, not necessarily a strict following of the requirements set out in the statutory body's enabling law⁶.</p>
<p>S.6: Establishment of a Fund for the Commission</p>	<p>6. (1) The Commission shall establish and maintain a Fund from which shall be defrayed all expenditure incurred by the Commission.</p> <p>(2) There shall be credited to the Fund established pursuant to subsection (1) of this section the budgetary allocation from the Government and grants from any other source.</p>	<p>Modify</p> <p>Redraft to read as follows:</p> <p>(1) The Commission shall establish and maintain a Fund from which shall be defrayed all expenditure incurred by the Commission.</p> <p>(2) There shall be credited to the Fund established pursuant to subsection (1) of this section, the sums appropriated by the House of Assembly for the running of the Commission, subventions, grants and all income from any source</p>	<p>The Commission needs a separate fund, financial autonomy and independence to carry out its enormous tasks.</p>

⁶ *Amadi v NNPC* (2000) FWLR (Part 9) 1527.

		<p>whatsoever.</p> <p>(3) The recurrent and capital expenditure of the Commission shall be a charge on the Consolidated Revenue Fund of the State.</p> <p>(4) Any amount standing to the credit of the Commission in the Consolidated Revenue Fund of the State shall be paid directly to the Fund.</p>	
S.7: Composition of Commission	<p>7. (1) The Commission shall consist of -</p> <p>(a) a Chairman, who shall be the Chief Executive and accounting officer of the Commission;</p> <p>(b) one member representing the organized private sector;</p> <p>(c) one member representing Civil Society engaged in causes relating to probity, transparency and good governance;</p> <p>(d) one member representing organized labour;</p> <p>(e) a representative of the State Ministry of</p>	<p>Retain with modifications.</p> <p>Add a new (e) and renumber accordingly to include</p>	<p>In accordance with best practices - FRA.</p>

	<p>Economic Planning of a level not below the rank of a Director;</p> <p>(f) a representative of the State Ministry of Finance who must be a seasoned professional accountant with not less than ten years post-qualification experience;</p> <p>(g) a representative of the State Ministry of Justice of a level not below the rank of Assistant Director;</p> <p>(h) one member to represent each of the following three senatorial districts of the State, that is Anambra Central, Anambra North and Anambra South; and</p> <p>(i) one member to represent the local governments in the State.</p> <p>(2) All members of the Commission shall be persons of proven integrity and must possess appropriate qualifications with not less than ten</p>	<p>(e) one member to represent Anambra State Association of Town Unions.</p> <p>Add a proviso:</p> <p>“Provided that there shall be a minimum of four females in the Commission.</p>	<p>ASATU is brought in to represent the grassroots.</p> <p>The Commission as presently constituted is gender blind. Nigeria is a signatory to a plethora of international standards on gender equality including the Convention on the Elimination of all Forms of Discrimination Against Women. The 1999 Constitution bars gender discrimination.</p>
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	<p>years cognate post qualification experience.</p> <p>(3) The Chairman and other members of the Commission other than ex-officio members shall be appointed by the Governor subject to confirmation by the House.</p> <p>(4) The Chairman and the members representing the three senatorial districts shall be full time members.</p>	<p>Redraft subsection (4) to read:</p> <p>(4) The Chairman, the members representing the three senatorial districts, organized private sector, civil society, Anambra State Association of Town Unions, organized labour shall be full time members.</p>	<p>The representatives of the private sector, organized labour and civil society should be full time members of the Commission if the intention is to have alternative voices in the management of fiscal responsibility. It is very easy to restrict the participation of part time members either deliberately or inadvertently. The fact of their absence from a meeting would generally in law not vitiate the proceedings. Essentially, if the subsection is left as it is, it implies that the participation of aforementioned groups may be tokenistic or peripheral. This would not allow them to contribute meaningfully to the work of the Commission.</p>
S.8: Tenure of Office	<p>8. The Chairman and members of the Commission shall hold office for a term of three years in the first instance, subject to reappointment for another term of three years only.</p>	<p>Consider a single term of five years which is not subject to reappointment as follows:</p> <p>8. The chairman and</p>	<p>The new recommendation is designed to further facilitate the independence of the Commission to the extent that members will not work to please the authorities (but work according to their conscience and the Law) by looking forward to</p>

		members of the Commission shall hold office for a single term of five years	re-appointment for a second term.
S.9: Powers of Commission	<p>9. The Commission shall have power to:</p> <p>(a) formulate and provide general policy guidelines for the discharge of the functions of the Commission;</p> <p>(b) superintend the implementation of the policies of the Commission;</p> <p>(c) appoint for the Commission such number of employees as may in the opinion of the Commission be expedient and necessary for the proper and efficient performance of the functions of the Commission;</p> <p>(d) determine the terms and conditions of service in the Commission, including disciplinary measures;</p> <p>(e) fix the remuneration, allowances and benefits of the employees of the Commission as approved by the Salaries and Wages Commission;</p> <p>(f) do other things which in its opinion are necessary to ensure the efficient performance of the functions of the Commission; and</p>	Retain in its form and content but merge with section 4.	The two sections are about powers of the Commission.

	(g) regulate its proceedings and make standing orders with respect to the holding of its meetings, notices to be given, the keeping of minutes of its proceedings and such other matters as the Commission may, from time to time, determine.		
S.10: Cessation of Membership	<p>10. (1) Notwithstanding the provisions of section 8 of this Law, a member of the Commission shall cease to hold office if –</p> <p>(a) he becomes bankrupt or makes a compromise with his creditors; or</p> <p>(b) he is convicted of a felony or any offence involving dishonesty, corruption or fraud; or</p> <p>(c) he becomes incapable of carrying out the functions of his office either by reason of an infirmity of mind or body; or</p> <p>(d) the Governor is satisfied that it is not in the interest of the Commission or the interest of the public that the member should continue in office and the Governor removes him from office; or</p> <p>(e) he has been found guilty of violation of the Code of Conduct or serious misconduct in relation to his duties; or</p> <p>(f) he resigns his appointment by a notice under his hand, addressed to the Governor;</p>	<p>Retain except (1) (c) and (d). Delete (1) (c) and redraft (1) (d) to read as follows:</p> <p>(d) the Governor acts on a resolution supported by two thirds majority of the House of Assembly praying that he be so removed for inability to discharge the functions of his office, (whether arising from infirmity of mind or body or any other cause) or for gross misconduct.</p>	<p>The provision on the Governor being satisfied that it is not in the interest of the Commission or the public is reminiscent of the provisions of draconian military decrees. It does not enhance the independence of the Commission. It is an omnibus ground for removal because the satisfaction of the Governor is subjective and not governed by any objective criteria. It would make greater sense for a member that went through legislative screening before confirmation and approval to be removed through a process that involves the legislature. This would strengthen the independence of the Commission through greater security of tenure for commissioners. It will shield the Commission from arbitrary executive interference if the Commission in the fulfillment of its duties takes action which the powers that be may not approve of.</p>

	<p>and</p> <p>(g) in the case of a person who becomes a member by virtue of the office he occupies, he ceases to hold such office for whatever reason.</p> <p>(2) Where a vacancy occurs in the membership of the Commission, it shall be filled by appointment of a successor to hold office for the remainder of the term of office of his predecessor, provided that the successor shall represent the same interest as his predecessor.</p>		
S.11: Emolument, etc of Commission Members	<p>11. (1) There shall be paid to the Chairman and full time members of the Commission such salaries, allowances and benefits as the Revenue Mobilization Allocation and Fiscal Commission may from time to time approve.</p> <p>(2) There shall be paid to other members of the Commission such allowances and benefits as the Governor may from time to time approve.</p>	<p>The approving authority for salaries, allowances and benefits should be the same for all categories of Commissioners. This should however not be left in the hands of the Governor. Alternatively, the remuneration should be indexed on the salary of a serving permanent secretary or a commissioner.</p>	<p>It is of doubtful legal validity if Revenue Mobilisation Allocation and Fiscal Commission has the power of approving salaries, benefits and allowances for members of State level Commissions that are not creatures of the Constitution but of state law. The appropriate state level agency should determine the remuneration.</p>
S.12: Submission of Annual Report	<p>12. The Commission shall prepare and submit to the House of Assembly not later than</p>	<p>Retain</p>	<p>This is in accordance with legislative powers of oversight over executive</p>

of the Commission	30 th June in each financial year, a report of its activities, all cases of contravention investigated during the preceding financial year, and shall include in the report a copy of its audited accounts for the preceding financial year.		action particularly on the management and allocation public expenditure.
PART II: THE MEDIUM-TERM EXPENDITURE FRAMEWORK	<p>13. (1) The Government after consultation shall –</p> <p>(a) not later than six months from the commencement of this Law, cause to be prepared and laid before the House for its consideration a Medium-Term Expenditure Framework for the next three financial years; and</p>	<p>In subsection (1), please indicate who the government is to consult. Redraft to read: The Government after consultation with local governments, organized private sector, organized labour, civil society organizations including Anambra State Association of Town Unions, Women's groups and such other groups to be determined by the Commissioner shall -</p>	<p>This makes for certainty in the law.</p> <p>The requirement of legislative approval is reasonable. Appropriation powers belong to the legislature and since nothing will be contained in the Annual Appropriation Bill if it is not found in the MTEF, then the</p>

	<p>(b) thereafter, not later than four months before the commencement of the next financial year, cause to be prepared a Medium-Term Expenditure Framework for the next three financial years.</p> <p>(2) The Framework so laid shall be considered for approval with such modifications if any, as the House finds appropriate.</p> <p>(3) The Medium-Term Expenditure Framework shall contain-</p> <p>(a) a Macroeconomic Framework setting out the macroeconomic projections for the next three financial years, the underlying</p>	<p>The time frame of four months should be changed to five months or within six weeks after the approval of the Federal Medium Term Expenditure Framework by the National Assembly.</p> <p>In subsection (2) add at the end after appropriate, removing the full-stop:</p> <p>” by a resolution of the House”</p> <p>Retain the remaining part of this section (except where otherwise indicated) as it is in line with best practices.</p>	<p>legislature needs to approve the MTEF. See the FRA and Model State FR Law and Template.</p> <p>This is imperative because the legislature needs to consider and approve the MTEF (on its own) before the Annual Appropriation Bill derived from the MTEF is presented by the executive. If the MTEF is presented by the end of August, the implication is that the Appropriation Bill may not come to the House earlier than October particularly if there are amendments to the MTEF and negotiations between the executive and the legislature over its contents.</p> <p>The second leg of waiting for the approval of the federal MTEF by the National Assembly is premised on the fact that the federal MTEF will provide macro-economic indicators on which states must draw in finalizing their MTEF.</p> <p>The macroeconomic framework is the overall big picture that situates revenue and expenditure and other fiscal policies for the next three financial years.</p>
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	<p>assumptions for those projections and an evaluation and analysis of the macroeconomic projections for the preceding three financial years;</p> <p>(b) a Fiscal Strategy Paper setting out:</p> <p>(i) the Government's medium-term financial objectives,</p> <p>(ii) the policies of the Government for the medium-term relating to taxation, recurrent (non - debt) expenditure, debt expenditure, capital expenditure, borrowings and other liabilities, lending and investment,</p> <p>(iii) the strategic, economic, social and developmental priorities of the Government for the next three financial years,</p> <p>(iv) an explanation of how the financial objectives, strategic, economic, social and developmental priorities and fiscal measures set out pursuant to paragraph (i), (ii) and (iii) of this subsection relate to the Economic Objectives set out in section 16 of the Constitution.</p>	<p>Introduce a new paragraph (v) which should read:</p> <p>(v) the three year targets and detailed cost analysis for the realization of the right to an adequate standard of living including targets in education,</p>	<p>Fiscal prudence is not an end in itself. It is a means to the larger goal of freeing up resources for investments in life changing human development. Practical experience from the implementation of the federal FRA shows that all MTEFs have paid lip service to paragraph (3) (b) (iv), and the Economic Objectives of the Constitution do not cover the field in terms of the basic rights of Nigerians. Hence, the need for specific delineation of what should be</p>
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	<p>(c) an Expenditure and Revenue Framework setting out;</p> <p>(i) the estimate of aggregate revenues for the State for each financial year in the next three financial years based on the predetermined Projected Statutory Allocations and Projected Internally-Generated Revenue adopted and Tax Revenue projections,</p> <p>(ii) the aggregate expenditure projection for the State for each financial year in the next three financial years,</p> <p>(iii) the aggregate tax expenditure projection for the State for each financial year in the next three financial years, and</p> <p>(iv) the minimum capital expenditure for the State for each financial year in the next three financial years,</p> <p>Provided that the estimates of revenues and expenditures provided pursuant to paragraph (c) of this subsection, shall be</p>	<p>employment, food, health, housing, water and sanitation and such other targets as the legislature may from time to time by resolution specify.</p>	<p>presented in the MTEF.</p> <p>The projected statutory allocations can only be derived from information provided in the federal MTE, hence the earlier link between the state and federal MTEFs.</p>
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	<p>(i) based on reliable and consistent data certified in accordance with subsection, 15 (2) (b) of this Law,</p> <p>(ii) targeted at achieving the macro-economic projections set out in pursuance of paragraph (a) of sub-section (3) of this section and consistent with and derive from the underlying assumptions contained in the Macroeconomic Framework, the objectives, policies, strategic priorities and explanations in the Fiscal Strategy Paper.</p> <p>(d) a Consolidated Debt Statement setting out and describing the fiscal significance of the debt liability of the Government and measures to reduce any such liability; and</p> <p>(e) a statement describing the nature and fiscal significance of contingent liabilities and quasi-fiscal activities and measures to offset the crystallization of such liabilities.</p>		
<p>S.14: Aggregate Expenditure Ceiling</p>	<p>14. (1) The estimates of aggregate expenditure and the aggregate amount appropriated by the House of Assembly for each financial year shall not be more than the estimated aggregate revenue plus a deficit, not exceeding three percent of the estimated Gross Domestic Product or any sustainable percentage as may be determined by the House of Assembly for each financial year.</p>	<p>Consider the following alternative</p> <p>(1) The estimates of aggregate expenditure and the aggregate amount appropriated by the House of Assembly for each</p>	<p>The challenge of determining the aggregate expenditure ceiling for the state is not well determined by the extant provisions in the bill. Using the moving average of the actual accrued revenue for the last three years is preferred because reliance on revenue estimates appear unreliable considering the wide yearly deviations between projected and actual</p>

	<p>(2) The aggregate expenditure for a financial year may exceed the ceiling imposed by the provisions of subsection (1) of this section, if in the opinion of the Governor, there is a clear and present threat to the security of the State.</p>	<p>financial year shall not exceed the moving average of actual accrued revenue in the last three years plus a deficit not exceeding three percent (3%) of the estimated Gross Domestic Product for each financial year.</p> <p>Another alternative is to limit the Aggregate Expenditure Limit to not more than 115% of the aggregate revenue forecast for the year.</p> <p>Consider including a third subsection as follows:</p> <p>(3) The Commissioner shall within thirty days of the coming into force of this Law set machinery in motion for</p>	<p>revenues.</p> <p>Secondly, it appears that no state has done a credible calculation of its Gross Domestic Product (GDP). GDP figures are only available at the federal level, thus using that GDP terminology when there is no state level calculation creates problems for implementation.</p> <p>This is in consideration of the fact that the State has no empirically computed GDP.</p>
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		the calculation of the Gross Domestic Product of the State.	
S.15: Preparation of Medium Term Expenditure Framework	<p>15. (1) The Commissioner shall be responsible for the preparation of the Medium-Term Expenditure Framework.</p> <p>(2) In preparing the draft Medium-Term Expenditure Framework, the Commissioner:</p> <p>(a) may hold public consultation on the Macroeconomic Framework, the Fiscal Strategy Paper, the economic, social and developmental priorities of Government, and such other matters as the Commissioner deems necessary.</p> <p>Provided that such consultations shall be open to the public, the press and any citizen or authorized representative of any organization or group of citizens who may attend and be heard on any subject matter properly in view;</p> <p>(b) shall seek inputs from, the –</p> <p>(i) State Board of Internal Revenue,</p>	<p>The word “may” at the beginning of paragraph (2) (a) should be changed to “shall”.</p> <p>Add these to the proviso after “in view”;</p> <p>“and the the aforementioned documents shall be made available on the websites of the Ministry of Budget and Economic Planning, Ministry of Information, State website and the print and electronic media at least ten days to the date of the</p>	<p>The word “may” imports “discretion” while the word “shall” imports an obligation. There should be no discretion on the Commissioner whether to hold public hearings or not. It should be mandatory considering the need for popular participation in governance and enhanced transparency and accountability.</p> <p>Meaningful participation in the consultation would only be secured by prior access to the documents, studying and analysing them so as to effectively comment and make inputs to them. Otherwise, the consultation would be perfunctory.</p>

	<p>(ii) House of Assembly,</p> <p>(iii) State Ministry of Economic Planning,</p> <p>(iv) Office of the Head of Service of the State,</p> <p>(v) Any other relevant statutory body as the Governor may determine; and</p>	<p>consultation”</p> <p>In paragraph (v), the word “Governor” should be replaced by “Commissioner”</p> <p>Add a new paragraph c as follows and renumber accordingly:</p> <p>(c) shall seek information from the-</p> <p>(i) National Planning Commission,</p> <p>(ii) Joint Planning Board,</p> <p>(iii) National Commission on Development Planning,</p> <p>(iv) National Economic Commission,</p>	<p>The Commissioner is in charge of the process – section 15 (1) and should actually be in charge. The Governor is too busy to attend to these micro technical details.</p> <p>These institutions will provide statistics and data indicative of the macroeconomic environment for the preparation of the State MTEF.</p>
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<p>S.16: Time Limit for Presentation of Medium Term Expenditure Framework to State Executive Council</p>	<p>(d) shall consider and reflect as may be deemed appropriate the input of the bodies and persons referred to in paragraphs (a), (b) and (c) of subsection (2) of this section.</p> <p>16 (1) The Governor shall before the end of the second quarter of each financial year present the Medium-Term Expenditure Framework to the State Executive Council for consideration and endorsement.</p> <p>(2) The Medium Term Expenditure Framework as endorsed by the State Executive Council shall take effect upon approval by a resolution of the House of Assembly.</p>	<p>(v) Central Bank of Nigeria,</p> <p>(vi) National Bureau of Statistics,</p> <p>(vii) Revenue Mobilization Allocation and Fiscal Commission, and</p> <p>(viii) any other relevant agency or statutory body as the Commissioner may determine;</p> <p>Retain but change the word Governor in the first line to the "Commissioner"</p>	<p>The Commissioner is the person responsible for preparing the MTEF and as such should present same to the State Executive Council.</p>
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<p>S.17: Publication of Medium Term Expenditure Framework in the Gazette</p>	<p>17. The Medium-Term Expenditure Framework as approved by the House shall be published in the Gazette.</p>	<p>Retain with modifications. Put a comma after "Gazette" and add the following at the end of section:</p> <p>"websites of the Ministry of Budget and Economic Planning, Ministry of Information, State website, print and electronic media and copies shall be made available to any interested person at the cost of production".</p>	<p>The MTEF is a public document which should be available to all who need it. Keeping the MTEF document secret will not facilitate public monitoring and evaluation of achievement of targets.</p>
<p>S.18: Adjustments to Medium Term Expenditure Framework</p>	<p>18. (1) Subject to subsection (2) of this section, the Governor may cause adjustments to be made to the Medium-Term Expenditure Framework.</p> <p>(2) Any adjustments to a Medium-Term Expenditure Framework shall be limited to -</p> <p>(a) the correction of manifest error; and</p> <p>(b) changes in the fiscal indicators, which in the opinion of the Governor are significant.</p>	<p>Retain with modification</p> <p>Add a new paragraph (c) of subsection (2) as follows:</p>	<p>In accordance with best practices.</p> <p>Since it is a budgetary framework approved by the legislature, the power of appropriation demands that any changes should also get</p>

		(c) changes to the Medium Term Expenditure Framework shall require prior legislative approval.	legislative approval.
S.19: Application to Local Governments	19. Local Government Councils which so desire shall be assisted by the Government to manage their fiscal affairs within the Medium-Term Expenditure Framework.	Change section 19 to read: (1) Local Government Councils shall plan the management of their fiscal affairs within the Medium Term Expenditure Framework. (2) The Commission shall make rules and regulations for guidance of local governments in their fiscal affairs.	Since Local Governments are represented on the Commission, the Law should apply to them as this will encourage best practices in fiscal governance at the Local Government level. It should not be left to the discretion of Local Governments to adopt fiscal responsibility practices.
PART III-ANNUAL BUDGET S.20: Annual Budget to be Derived from Medium Term Expenditure Framework	20. (1) Notwithstanding anything to the contrary contained in this Law or any other Law, the Medium Term Expenditure Framework shall be the basis for the preparation of the estimates of revenue and expenditure required to be prepared and laid before the House of Assembly under section 81 (1) of the Constitution.	Retain but change section 81(1) in the last line to read section 121 (1).	The benefits of such an arrangement are legion and they include: Assuring predictability of funding; aligning capital and recurrent expenditure over the medium term to ensure programme sustainability; Fiscal (aggregate fiscal) discipline which communicates medium term fiscal policy and targets and the policy of

	<p>(2) The sectoral and compositional distribution of the estimates of expenditure referred to in subsection (1) of this section shall be consistent with the medium term developmental priorities set out in the Medium Term Expenditure Framework</p>		<p>fiscal sustainability and disciplines policy making; Allocation (allocative efficiency) which disciplines decision making and highlights need for action by showing future costs of current policies, future costs of new policies and investments and communicates commitment to specific priorities through forward estimates and indicative medium term allocations; opens up budget space to reallocate funds for new priorities; Resource Use (operational efficiency) which improves predictability of funding and policy for strategic planning and management and operational performance at sector level; etc.</p> <p>The sectoral and compositional distribution refers to issues that are addressed in the Medium Term Sector Strategies and the benefits of this subsection are also legion. They include: Articulating medium-term (three years) goals and objectives against the background of the overall goals of the Vision 2020, the 7 Point Agenda and the attainment of the Millennium Development Goals; Identifying and documenting the key initiatives (that is, projects and programmes) that will be embarked upon to achieve the goals and objectives; Costing the identified key initiatives in a clear and transparent</p>
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			manner; Phasing implementation of the identified initiatives over the medium-term; Defining the expected outcomes of the identified initiatives in clear measurable terms; Linking expected outcomes to their objectives and goals, etc.
S.21: Annual Budget to be accompanied by certain Documents	<p>21. The estimates of revenue and expenditure (in this Law referred to as the Annual Budget) shall be accompanied by-</p> <p>(a) a copy of the underlying revenue and expenditure profile for the next two years;</p> <p>(b) a report setting out actual and budgeted revenue and expenditure and detailed analysis of the performance of the budget for the 18 months up to June of the preceding financial year;</p> <p>(c) a Revenue Framework broken down into monthly collection targets prepared on the basis of the predetermined Projected Statutory Allocations and Projected Internally Generated Revenue as contained in the Medium-Term Expenditure Framework;</p> <p>(d) measures on cost, cost control and evaluation of results of programmes financed with budgetary resources;</p>	Retain	<p>This facilitates budgetary planning since the revenue and expenditure profile for the next two years is kept in view while approving the annual budget - consistent with the forward looking agenda of the MTEF.</p> <p>Detailed performance of the budget is imperative for drawing lessons on what were the successes, failures and lessons to be learnt from budget formulation and implementation.</p> <p>The word evaluation is defined to mean to form an opinion of the amount, value or quality of</p>

	<p>(e) a Fiscal Target Appendix derived from the underlying Medium Term Expenditure Framework setting out the following targets for</p>		<p>something after thinking about it carefully⁷ - some form of assessment. This would essentially involve an analysis of the impact of the programmes on the population or segments of the population targeted by specific programmes. It should deal with such issues as increase in school enrolment and improvements in learning outcomes, greater number of mothers and children reached with maternal and child health services, increased access to immunization, number of new households that have access to portable water, etc. The evaluation of results is not about the fiscal projections in terms of revenue and expenditure projected versus the actual(s) and the reasons for realizing or not realizing the forecasts which the quarterly budget reports are assigned to do. The evaluation should lead us to what has changed positively or negatively through the expenditure of government resources.</p>
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⁷ Oxford Advanced Learners English Dictionary, 6th Edition at page 396.

	<p>the financial year-</p> <p>(i) target inflation rate,</p> <p>(ii) target fiscal account balances</p> <p>(iii) any other development target deemed appropriate and</p>	<p>Change (i) to read target inflation rate as determined by the national budget</p> <p>Change (iii) to read:</p> <p>targets for economic growth, employment rate and targets for the realization of the rights to education, health, adequate housing and to sustainable improvements in the standard of living and any other development target deemed appropriate.</p>	<p>Inflation rate is not Anambra or state specific but determined nationally</p> <p>A clear reading of the subsection indicates that the FRB does not intend that the Commissioner should repeat the fiscal targets of GDP and fiscal account balances which were already mentioned in other sections of the MTEF. The words used are “development target” which is different from mere fiscal targets and balances. Considering that the human person is the central subject of development which is a composite phenomenon that practically impacts on human dignity and the enjoyment of basic existential rights by all segments of the population⁸, involving the full emancipation of the human personality, the Legislature should provide for other targets to focus on such developmental issues such as targets on the Millennium</p>
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⁸ See the Declaration on the Right to Development adopted by United Nations General Assembly resolution 41/128 of 4 December 1986.

			<p>Development Goals, the rights to adequate housing, social security, employment figures, the best attainable state of physical and mental health and the right to education. A more progressive provision found in the sub-national Bayelsa State Fiscal Responsibility Law 2009 in section 20 (1) (e) clearly requires the annual budget to be accompanied by:</p> <ul style="list-style-type: none"> <i>(i) targets for economic growth,</i> <i>(ii) target fiscal account balances,</i> <i>(iii) target employment rate,</i> <i>(iv) targets for the realization of the rights to education, health, adequate housing and to sustainable improvements in the standard of living...</i> <p>Considering that the FRA is anchored on the implementation of the economic objectives of governance found in section 16 of the Constitution which provides inter alia that:</p> <p><i>(2) The State shall direct its policies towards ensuring -</i></p>
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	(f) a fiscal Risk Appendix evaluating the fiscal and other related risks to the Annual Budget and specifying measures to be taken to offset the occurrence of such risks	Retain	<i>(d) that suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care and pensions, unemployment and sick benefits and welfare of the disabled are provided for all citizens.</i>
Preparation of the Annual Budget.	New section 22	Consider the introduction of a new section 22 (retaining the current 22 as a new 23 and then renumber accordingly) (1) The preparation of the Annual Budget shall commence not later than 15 th July in each financial year by the issuance of the Budget Call Circular in such form as the Commissioner may from time prescribe to all ministries, departments and agencies of the State Government. (2) Call circulars shall also be sent to	There is the need to introduce timeliness into budget preparation because late presentation of budgets to the State House of Assembly lays the foundation for late passage of the budget and poor implementation. There is also need to introduce more stakeholders into the budgeting process.

	<p>22. In preparing their Annual Budgets, Local Government Councils shall adopt the provisions of this part of the Law with such modifications as may be appropriate and necessary.</p>	<p>organized private sector, organized labour and civil society organizations.</p> <p>(3) The Commissioner shall prepare and present to the State Executive Council not later than the last week of August in each financial year a draft Annual Budget for its endorsement and approval.</p> <p>Change to the following:</p> <p>In preparing their annual budgets, Local Government Councils shall adopt the provisions of this part of the Law with such modifications as approved by the Commission.</p>	<p>In line with earlier provisions.</p>
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<p>PART IV: BUDGETARY PLANNING OF CORPORATIONS AND OTHER RELATED AGENCIES</p> <p>S. 23: Preparation of Estimates of Revenue and Expenditure by Corporations, etc</p>	<p>23.- (1) The Government owned companies listed in the schedule to this Law shall not later than six months from the commencement of this Law and for every three financial years thereafter, not later than the end of the second quarter of every year, cause to be prepared and submitted to the Commissioner, their estimates of revenue and expenditure for the next three financial years.</p> <p>(2) Each of the Government owned companies referred to in subsection (1) of this section shall submit to the Commissioner not later than the end of August in each financial year-</p> <p>(a) an Annual Budget derived from the estimates submitted in pursuance of subsection (1) of this section;</p> <p>(b) projected operating surplus, which shall be prepared in line with acceptable accounting practices.</p> <p>(3) The Commissioner shall cause the estimates submitted in pursuance of subsection (2) of this section to be attached as part of the draft Appropriation Bill to be submitted to the House.</p>	<p>Retain</p>	<p>This is in line with best practices and seeks to bring the unruly horses of the state economy within the purview of executive and legislative control. It appears that these corporations were avenues for fraud and reported to no one except their conscience. Finally it seeks to enhance the revenue of the State by projecting operating surpluses of scheduled corporations.</p>
<p>S. 24: Operating Surplus and General Reserve</p>	<p>24.- (1) Notwithstanding the provision of any written law governing the Government-owned Company, each Government-owned</p>	<p>Retain the concept of the section but include a subsection (3) to the</p>	<p>In line with best practices and will enhance the revenue base of the State. But operating surplus is not</p>

	of the financial year, cause to be prepared and published its audited financial reports in accordance with such rules as may be prescribed from time to time.	owned company shall not later than three months after the end of the financial year, cause to be prepared and published in the print and electronic media its audited financial reports in accordance with such rules as may be prescribed by the Auditor-General from time to time.	
S.26: Cessation of Application of Part IV	26. The provision of this part of the Law shall cease to apply to any of the Government-owned companies from the date of its privatization.	Retain	In line with best practices
PART V: BUDGETARY EXECUTION AND ACHIEVEMENT OF TARGETS S.27: Annual Cash Plan	27.- (1) The Government shall cause to be drawn up in each financial year an Annual Cash Plan which shall be prepared by the Office of the Accountant- General of the State.	Retain	In line with best practices. This provision will facilitate budget implementation because an Annual Cash Plan will evolve from a Cash Management Policy and will inform actual release and disbursements to MDAs. It is hoped that the Annual Cash Plan will be informed by MDAs Annual Cash Plans, requests and demands which will be consolidated to have the overall State Annual Cash Plan. The Annual Cash Plan should cover activities contained in the budget and the timing of activities and expenditure. It should

	<p>(2) The Annual Cash Plan shall span from 1st April of the Financial Year to 31st March of the next Financial Year.</p> <p>(3) The Annual Cash Plan shall be prepared in advance of the financial year setting out projected monthly cash flows and shall be revised periodically to reflect actual cash flows.</p>	<p>Change to read as follows:</p> <p>The Annual Cash Plan shall span from 1st January of the Financial Year to 31st December of the Financial Year.</p> <p>Retain</p>	<p>take cognisance of procurement plans, prioritise expenditure and generally ensure proper management and disbursement of available resources, etc.</p> <p>In the interpretative section, financial year is defined as having the meaning ascribed to it in the Constitution. The Constitution defines financial year as any period of twelve months beginning on the first day of January in any year or such other date as the National Assembly may prescribe. By the Financial Year Act¹¹, the financial year as prescribed by the National Assembly is defined as the period commencing from the first day of January and ending on December 31st of every year.</p>
S.28:Disbursement Schedule	28. The State Commissioner responsible for finance shall within 30 days of the enactment of the Appropriation Law, prepare and publish a Disbursement Schedule derived from the Annual Cash Plan for the purpose of	Retain	A systematic financing plan is necessary for proper budget implementation.

¹¹ Cap. F.27, Laws of the Federation of Nigeria, 2004.

	implementing the Appropriation Law.		
S.29: Power of Commissioner to Approve	<p>29. -(1) The sums appropriated for a specific purpose shall be used solely for the purpose specified in the Appropriation Law.</p> <p>(2) Without prejudice to subsection (1) of this section, the Commissioner responsible for Finance may in exceptional circumstances and in the overall public interest, recommend for the approval of the House virement from sub-heads under heads of account, without exceeding the amount appropriated to such head of account.</p>	<p>Retain but re-title the section to read:</p> <p>Expenditure of Appropriated Funds and Virement.</p> <p>Retain</p>	<p>A careful reading of sections 120 and 121 of the Constitution will reveal that spending without appropriation amounts to a sin against the Constitution. This section seeks to reaffirm the import of constitutional provisions. Appropriation Laws are laws properly so called and are meant to be implemented by the Executive in accordance with its tenor and specific provisions. This section will help to curtail misapplication of resources.</p> <p>If there is the need to vary the provisions of the Appropriation Law by way of virement, then this section provides for legislative approval before such virement can become effective. However, virements are only permitted from amounts within heads of expenditure or from subheads under heads of account. Virements cannot for instance be permitted from education to health.</p>
S.30: Power to Restrict Further Commitments	<p>30.- (1) Where by the end of three months after the enactment of the Appropriation Law, the Commissioner responsible for Finance determines that the target revenues may be insufficient to fund the heads of expenditure in</p>	<p>Retain subsections (1) to (3)</p>	<p>In accordance with best practices.</p>

	<p>the Appropriation Law, he shall within the next 30 days of such determination take appropriate measures to restrict further commitments and financial operations according to the criteria set in the Fiscal Risk Appendix.</p> <p>(2) Where the targeted revenue are re-established, either in full or in part, the appropriations for which further commitments were restricted shall be resolved proportionately.</p> <p>(3) The provisions of subsections (1) and (2) of this section shall not apply to statutory or constitutional expenditure.</p>	<p>Introduce a new subsection (4) to read as follows:</p> <p>(4) Powers of restriction shall not be unduly exercised by the Commissioner and the State House of Assembly shall be notified once the decision to exercise the power to restrict further commitments has been taken by the Commissioner.</p>	<p>In line with best practices. Paucity of funds should not confer arbitrary powers on the Commissioner - the legislature needs to be properly informed on developments related to budget implementation.</p>
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<p>S. 31: Restriction on the Grant of Tax Relief</p>	<p>31. - (1) Any proposed tax expenditure shall be accompanied by an evaluation of its budgetary and financial implications in the year it becomes effective and in the three subsequent years, and shall only be approved by the Commissioner responsible for Finance if it does not adversely impair the revenue estimates in the Annual Budget or if it is accompanied by countervailing measures during the period mentioned in this subsection through revenue increasing measures such as tax rate raises and expansion of the tax base.</p> <p>(2) The provisions of this section shall not apply to-</p> <p>(a) changes in the rates of the taxes mentioned in section 163 of the Constitution; and</p> <p>(b) debt cancellation in an amount lower than the cost of collection</p>	<p>Retain</p>	<p>In line with best practices. This ensures certainty and predictability of revenues over the medium term.</p>
<p>S.32:Responsibility to Monitor and Report on Implementation</p>	<p>32.- (1) The Commissioner, through the Budget Office of the State, shall monitor and evaluate the implementation of the Annual Budget, assess the attainment of fiscal targets and report thereon on a quarterly basis to the Commission and the Finance and Appropriation Committee of the House.</p> <p>(2) The Commissioner shall cause the report prepared pursuant to subsection(1) of this section to be published in the mass and</p>	<p>Retain</p>	<p>In subsection one, the quarterly report to the Fiscal Responsibility Commission facilitates its monitoring of the provisions of the Law while the report to the Legislature facilitates its oversight function. In subsection two, the provision is for public access to the monitoring and evaluation report. This is a commendable development for budgetary transparency and accountability and it will reduce the information asymmetry between the</p>

	electronic media and on the Ministry of Finance and or State Government website, not later than 30 days after the end of each quarter.		Executive and Legislative arms of government and the public in fiscal matters.
S.33: Application of Part V to State and Local Government	33. In implementing their Annual Budgets, the State and Local Governments shall adopt the provisions of this part with such modifications as may be appropriate and necessary.	Amend the heading to read: Application of Part V to Local Governments Amend the body of the provision to read: In implementing their annual budgets, Local Government Councils shall apply the provisions of this part in accordance with rules to be made by the Commission.	The heading and the body appears to be a re-copying of the federal FRA without adapting it to the context of Anambra State and its Local Governments.
PART VI: PUBLIC REVENUES S.34: Forecast and Collection of Public Revenue	34. Any fund due to the State from any Local Government Council in the State may be set off by the State in or towards payment or remittance of any sum due to that Local Government Council from the State.	Amend - the section should read: Subject to any prior agreement, any fund due to the State from any Local Government Council in the State may be set off by the State in	Where there is a prior agreement, such repayment schedule should take pre-eminence.

		or towards payment or remittance of any sum due to that Local Government Council from the State.	
S. 35: Revenue Forecast	35. The Executive arm of the State Government shall at least 30 days before the deadline for the submission of its budget proposals, place at the disposal of the House, the revenue estimates for the following year, including the next current revenue and the respective memorandum items.	Retain but amend slightly by changing the word “next” in the second to the last line with “net”.	This provision will facilitate the Legislature’s consideration of the annual budget. Considering an expenditure estimate without the revenue estimates will be an exercise in futility. It will also reduce the information asymmetry between the Executive and the Legislative arms of government. However, the revenue estimates must be Medium Term Expenditure Framework compliant.
S.36: Executive to Break down Estimated Revenue	36. Estimated revenue shall be broken down by the Executive arm of Government into monthly collection targets, including, where applicable, a separate description of measures to combat tax fraud and evasion.	Retain	This would facilitate budgetary planning.
PART VII-SAVINGS AND ASSET MANAGEMENT S.37: Excess Proceeds to be Saved	37.- (1) Where the Projected Statutory Allocations and Projected Internal Revenue rise above the predetermined level, the resulting excess proceeds shall be saved in accordance with the provisions of subsection (2) of this section. (2) The savings of each Local Government in the State in pursuance of subsection (1) of this section shall be deposited in a separate account which shall be maintained at the Central Bank of Nigeria by the Government.	Consider deleting the entire section and replace it with provisions on a State Reserve Fund as follows: (1) To strengthen economic stability, the State shall maintain a Fund to be called the State Reserve Fund (in	Providing for an already existing Excess Crude Account (ECA) or a model of it which exists by the provisions of the FRA adds no value to the Law. ECA will continue to exist whether Anambra State provides for it in its FRL or not. Although the constitutionality of ECA is being challenged by some states, we have to await the decision of the Supreme Court.

	<p>(3) The State Ministry of Finance in consultation with the Governor and Local Government Chairmen or heads of Local Governments in the State where there are no elected local government council shall take investment decisions on behalf of the state and Local Governments and such investment can be undertaken in a consolidated manner, provided that the shares of the State and of each Local Government as well as income due to each from the investment are clearly identified.</p> <p>(4) The State Ministry of Finance in the discharge of its obligation under subsection (3) of this section shall observe the limits and conditions imposed by safety and prudential considerations and the need to maintain macroeconomic stability and such safety and prudential conditions are to be agreed upon with the Governor and Local Government Chairmen or heads of Local Government as the case may be.</p> <p>(5) No Local Government in the State shall have access to the savings made in pursuance of subsection (2) of this section unless the Projected Statutory Allocations and Projected Internally-Generated Revenue fall below the predetermined levels for a period of three consecutive months.</p>	<p>this Law referred to as “the Reserve Fund”).</p> <p>(2) The Fund shall form part of the Consolidated Revenue Fund of the State.</p> <p>(3) Monies payable into the Fund shall include</p> <p>(a) five percent of all statutory allocations of the State and Local Governments from the Federation Account;</p> <p>(b) thirty percent of all additional revenue accruing to the State and Local governments from the Federation Account due to a rise in commodity prices above the reference commodity price;</p> <p>(c) other revenues accruing to the State in excess of the Aggregate Expenditure Limit in a year;</p> <p>(d) such additional sums as may be</p>	<p>The State Reserve Fund is an independent state controlled fund that would be accessible to the state when it needs it in accordance with the FRL.</p>
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	<p>(6) The augmentation referred to in subsection (5) of this section shall be limited to such as are required to bring the revenue of the Local Government to the level contained in its budget estimates.</p> <p>(7) Notwithstanding the provisions of subsection (5) and (6) of this section and subject to agreement between the Government and Local Governments in the state, a proportion of the savings may be appropriated in the following year for capital projects and programmes.</p>	<p>approved in the annual appropriation by the State House of Assembly on the proposal of the Governor.</p> <p>(4) The Fund shall be maintained at the Central Bank of Nigeria or a commercial bank approved by the Commission.</p> <p>(5) A part of the Fund may be invested in securities, bonds, investment instruments, etc in accordance with approved prudential guidelines developed by the Commission.</p> <p>(6) No withdrawals shall be made from the Fund within ten years of the coming into force of this Law except when the Governor acts on an address supported by two thirds majority of the State House of Assembly praying that the money</p>	
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		<p>be so withdrawn to forestall a clear and present threat to the security and livelihoods of residents of the State.</p> <p>(7) Withdrawals from the Fund after the first ten years shall only be made for the purpose of funding:</p> <p>(a) economically viable infrastructure projects in accordance with the Appropriation Law;</p> <p>(b) to augment a persistent shortfall in budgeted revenues for the implementation of the capital estimates of an Appropriation Law.</p> <p>(8) The shares of the State Government and the local governments and income due from them shall be clearly identified in the Fund.</p> <p>Provided however that investment by the Fund shall be</p>	
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		<p>undertaken in a consolidated manner.</p> <p>(9) The State Government and Local Governments shall draw from the Fund in accordance with their respective investments and accrued income.</p>	
<p>PART VIII - PUBLIC EXPENDITURES</p> <p>S.38: Conditions for Increasing Government Expenditure</p>	<p>38.- (1) The creation, expansion or improvement in government action which results in an expenditure increase shall be accompanied by-</p> <p>(a) an estimate of the budgetary or financial impact in the year it becomes effective and in two subsequent years;</p> <p>(b) a statement by the person requesting for expenditure, stating that the increase is consistent with the Appropriation Law and the Medium Term Expenditure Framework.</p> <p>(2) The provisions of this section shall not apply to expenditure deemed inconsequential and shall apply to the State and Local Governments only to the extent to which they have adopted these provisions.</p>	<p>Retain subsection (1).</p> <p>Redraft subsection (2) to read:</p> <p>“The provisions of this section shall not apply</p>	<p>In accordance with best practices.</p> <p>An expenditure deemed inconsequential is not defined in the interpretative section of the Bill and who determines inconsequentiality of the expenditure is not stated in the bill. Thus, such determination should</p>

		to expenditures below thresholds to be set by the Commission”.	be filled by regulations made by the Commission. Subsection (2) appears to be a poor way of copying the provisions of the FRA.
S.39: Conditions for Increasing Personnel Expenditure	39.- (1) The granting of any advantage or increase of remuneration, the creation of posts or alteration of career structures and admission of personnel on any account by bodies and entities including foundations established and maintained by the Government shall only be effected if there is a prior budgetary allocation sufficient to cover the estimated expenditure.	Retain subsection (1) and consider including a new subsection (2) as follows: “No across the board personnel expenditure increase shall be made within 180 days to the end of the term of office of the Governor or the State House of Assembly”	In accordance with best practices. Across the board increases can be used a political weapon to campaign for re-election or to make the state ungovernable for an opponent who will defeat an incumbent and will definitely contend with organized labour if he declares that the state cannot afford the increase.
S.40: Contracts to Comply with Rules and Regulations	40. All contracts with regard to the execution of the Annual Budget shall comply with the rules and guidelines on - (a) procurement and award of contracts; and (b) due process and certification of	Retain	The Fiscal Responsibility Law compliments the Public Procurement Law

	contract.		
S.41: Application of Part VIII to Local Governments	41. In incurring public expenditures, Local Governments shall adopt the provisions of this part of the Law with such modifications as may be appropriate and necessary.	Retain with modification. Add at the end, after “necessary” as prescribed by the Commission.	In accordance with best practices.
PART IX: DEBT AND INDEBTEDNESS S.42: Framework for Debt Management	<p>S.42.- (1) The framework for debt management during the financial year shall be based on the following rules-</p> <p>(a) The Government and each Local Government shall only borrow for capital expenditure and human development, provided that such borrowing shall be on concessional terms with low interest rate and with a reasonably long amortization period and shall be subject to the approval of the House.</p> <p>(b) The Government shall ensure that the level public debt as a proportion of State income is held at a sustainable level as prescribed by the House from time to time on the advice of the State Commissioner responsible for finance.,</p> <p>(c) Notwithstanding the provisions of subsection 1(a) of this section and subject to the approval of the House, the Government may borrow from the Capital Market.</p>	<p>In subsection 1 (b), add a proviso as follows after the word “finance”</p> <p>provided however that the prescription by the State House of Assembly shall not exceed the levels set by the National Assembly under section 41 (1) (b) of the Fiscal Responsibility Act and the limits on consolidated debt set by the President under section 42 of the Fiscal Responsibility Act.</p>	The issue of borrowing and debts are matters under the purview of the Exclusive Legislative List for the National Assembly - see items 7 and 50 of Part 1 of the Second Schedule on the Exclusive Legislative List.

	<p>(4) The Commission shall publish on a quarterly basis a list of Local Governments in the State that have exceeded the limits of consolidated debt, indicating the amount by which the limit was exceeded.</p> <p>(5) Where at the end of any quarter, the consolidated debt of the State or Local Governments exceeds the respective limits, it shall be brought within the limit not later than the end of three subsequent quarters with a minimum of 25 percent reduction in the first</p>	<p>Commission, at the end of each quarter determine the amount of the consolidated debt of the State Government and Local Governments”.</p> <p>Retain</p> <p>Add a new subsection (5) and renumber accordingly:</p> <p>“The Commission shall publish information on a quarterly basis on whether the State has exceeded the limits of consolidated debt, indicating the amount by which the limit was exceeded”.</p> <p>Retain</p>	<p>To enhance transparency and accountability.</p>
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<p>S.45: Conditions of Borrowing and Verification of Compliance with Limits</p>	<p>the purpose for which the borrowing is intended and present a cost benefit analysis, detailing the economic and social benefits of the purpose to which the intended borrowing is to be applied.</p> <p>(2) Without prejudice to subsection (1) of this section, each borrowing shall comply with the following conditions -</p> <p>(a) there must be prior authorization in the Appropriation Law or other law for the purpose for which the borrowing is to be utilized; and</p> <p>(b) the proceeds of such borrowing shall solely be applied towards long term capital expenditure.</p> <p>(3) Nothing in this section shall be construed to authorize borrowing in excess of the limits set pursuant to section 43 of this Law.</p>	<p>Add a new paragraph (c) to subsection (2) as follows:</p> <p>Legislative public hearings and consultations to get stakeholder input on the appropriateness of the borrowing.</p>	<p>This is based on the need for decisions to borrow to be the outcome of a participatory process.</p>
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<p>Lending by Financial Institutions</p>	<p>(4) The Commission shall verify on a quarterly basis compliance with the limit and conditions for borrowing by the State and Local Governments in the State</p> <p>(5) Without prejudice to the specific responsibilities of the House of Assembly, the Ministry of Economic Planning shall maintain comprehensive, reliable and current electronic database of internal and external public debts, guaranteeing public access to the information.</p> <p>Add a new section and renumber according</p>	<p>Consider a new subsection (4) and renumber accordingly.</p> <p>“No borrowing shall be incurred by an administration within 180 days to the end of a term of office of the Governor”</p> <p>Retain</p> <p>Delete “Without prejudice to the specific responsibilities of the House of Assembly”, but leave the other parts of subsection (5).</p> <p>(1) All banks and financial institutions shall request and obtain proof of compliance with the provisions of this Part before lending to the</p>	<p>Last minute, surreptitious and dubious borrowing by out going governors helped increase the debt profile of many states in the Federation and as such, needs to be curtailed by Law.</p> <p>The words do not add any value.</p> <p>In line with best practices as it places obligations on banks and financial institutions to avoid reckless lending or lending in contravention of the law.</p>
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<p>S.46: Power of the Governor to Grant Guarantees</p>	<p>S.46 (1) Subject to the provisions of this part of the Law, the Governor may with the approval of the State Executive Council, grant guarantees on behalf of the State to Local Governments in the State.</p> <p>(2) Any guarantee granted by the Governor shall be conditional upon the provision of a counter-guarantee by the Local Government in an amount equal to or higher than the guarantee obligation, provided that there are no overdue obligations from the requesting Local Government in the State to the guarantor and its controlled corporations and such guarantee shall also be in compliance with the following-</p> <p>(a) counter-guarantee shall also be accepted from Local Governments; and</p>	<p>Retain but change the word “Governor” in the second line to “Commissioner”</p> <p>Retain the remaining subsections except where the contrary is stated.</p> <p>Change the word “also” in line 1 to “only”</p>	<p>In line with best practices - see section 47 of the FRA and other state level Fiscal Responsibility Laws.</p>

	<p>(b) the counter-guarantee required by the Government from Local Governments may consist in the appropriation of tax revenue directly collected and resulting from statutory transfers and the guarantor shall be authorized to retain such revenue and use the respective amount to repay overdue debts.</p> <p>(3) In the case of foreign currency borrowing, Government guarantee shall be a requirement and no Local Government or State Agency or Commission shall, on its own, borrow externally.</p> <p>(4) Any guarantee provided in excess of the debt limits set pursuant to section 43 of this Law shall be void.</p>		
<p>PART XI: TRANSPARENCY AND ACCOUNTABILITY S.47: Fiscal Transparency</p>	<p>47.- (1) The Government shall ensure that its fiscal and financial affairs are conducted in a transparent manner and accordingly shall ensure full and timely disclosure and wide publication of all transactions and decisions involving public revenue and expenditures and their implications for its finances.</p> <p>(2) The House shall ensure transparency during the consideration of the Medium - Term Expenditure Framework, the Annual</p>	<p>Add to the end of subsection (1), removing the full-stop and adding it at the end of the new inclusion.</p> <p>“including publications in book form, print and electronic media and websites”.</p> <p>Include at the end of (2) “and oversight of</p>	<p>In line with best practices. Access to information is a pre-condition for informed participation and contribution to state level fiscal dialogue. The State Government’s obligation for conducting its fiscal affairs in a transparent manner involving full and timely disclosure and wide publication is a step in the right direction.</p>

	Budget and the Appropriation Bill.	ongoing projects”.	
S.48: Publication of Audited Accounts of all Arms of Government	<p>48.- (1) The Government through the office of the State Accountant-General in conjunction with the Office of the State Auditor-General Shall publish the audited accounts not later than six months following the end of the financial year.</p> <p>(2) The Government shall, not later than two years following the commencement of this Law and thereafter, not later than 12 months following the end of each financial year, consolidate and publish in the mass media, its audited accounts for the previous year.</p> <p>(3) The publication of general standards for the consolidation of public accounts shall be the responsibility of the Office of the Accountant General of the State.</p>	<p>Subsections (1) and (2) should be merged to read as follows:</p> <p>(1) The State Government and Local Government Councils shall publish their audited accounts not later than six months following the end of the financial year.</p> <p>Add a new subsection(2) as follows:</p> <p>(2) The Auditor General shall cause the audited accounts to be published in the mass and electronic media and on the website of the Ministry of Budget and Economic Planning.</p> <p>Retain subsection (3)</p>	<p>The two subsections contradict one another - while subsection (1) gave a timeframe of six months, for the publication of audited accounts, subsection (2) gave a timeframe of 12 months. There is as such a need to harmonize their provisions.</p> <p>To enhance transparency and accountability.</p>

S.49: Publication of a Summarized Report on Budget Execution.	49. The Government through its budget office in the State Ministry of Budget and Economic Planning shall within 30 days after the end of each quarter, publish a summarized report on budget execution in such a form as may be prescribed by the Commission and not later than 6 months after the end of the financial year, a consolidated budget execution report showing implementation against physical and financial performance targets. The consolidated budget execution report shall be published by the Commissioner for submission to the House and dissemination to the public.	Retain but add the Commission as the second recipient of the reports.	The Commission as a specialized technical agency is properly positioned to analyse the report.
S.50: Application of Part XI to Local Governments	50. For purposes of accountability and transparency, Local Governments in the States shall adopt the provisions of this Part of the Law with such modifications as may be appropriate and necessary.		
PART XII: ENFORCEMENT S.51: Enforcement	51. Any person shall have legal capacity to enforce the provisions of this Law by obtaining prerogative orders or other remedies at the State High Court without having to show any particular interest.	Retain	In line with best practices. Legal capacity as it relates to this section is a legal qualification, competency, power or fitness to institute proceedings in a court of law and this is usually referred to as <i>locus standi</i> . It is a right of a party to seek redress or assert a right enforceable at law ¹² . To a great extent, it is

¹² See Blacks Law Dictionary, supra.

			<p>grounded in the constitutional provision in section 6 (6) (b) to wit; <i>the judicial powers vested in accordance with the foregoing provisions of this section shall extend to all matters between persons, or between government or authority and any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person.</i></p> <p>The standard practice in our courts has been to ask a petitioner to show personal and particular interests to ground his locus in the suit. Thus, the petitioner's legal rights and obligations must have been affected or threatened before he can approach the courts with his prayers. This has been the position in a long list of decided cases including <i>Senator Adesanya v the President of Nigeria</i>¹³, <i>J.S. Olawoyin v Attorney General, Northern Region</i>¹⁴. Essentially, decided cases affirm that a person has no locus standi in an action to enforce a duty owed to the public. In an action to assert a</p>
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¹³ Led by *Adesanya v The President* (1981) N.S.C.C., Vol. 12, 146.

¹⁴ (1961) N.N.L.R. 84.

		<p>public right or to enforce the performance of a public duty, it is only the Attorney General of the Federation or of a State who in law has locus standi¹⁵. However, the courts have also leaned against undue restrictive interpretation of locus standi as in <i>Chief Gani Fawehinmi v Akilu & Anor</i>¹⁶, <i>Adediran v Interland Transport Ltd</i>¹⁷, <i>Fawehinimi v President Federal Republic of Nigeria</i>¹⁸.</p> <p>However, this section qualifies legal capacity with the words “without having to show any special or particular interest”. This effectively limits the strict application of the locus standi principle because the FRA has expressly conferred locus standi on all Nigerians. Further, the remedies in section 51 include prerogative orders. These prerogative orders are mandamus, certiorari and prohibition. Mandamus lies to compel the performance of a public duty. Certiorari lies to quash the decision of an administrative body or order of an inferior tribunal</p>
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¹⁵ *Pierce v Superior Court*, 96 ALR 1020; *Gouriet v Union of Post Office Workers* (1978) A.C. 435.

¹⁶ (1987) 4 N.W.L.R. (Pt. 67) 797 S.C

¹⁷ (1991) 9 N.W.L.R. (Pt. 214) 155.

¹⁸ (2007) 14 N.W.L.R (Pt.1054) 275

			in violation of the due process of law. Prohibitions seeks to prohibit an action or omission that will breach the rules of natural justice, promote fraud, collusions, excess of jurisdiction, error of law, etc. Other remedies will include declarations, injunctions and damages, etc.
PART XIII- MISCELLANEOUS PROVISIONS S.52: Government Securities as Collateral to Guarantee Loan	52. Government securities, provided that they are duly listed on the Stock Exchange, may be offered as collateral to guarantee loans or other financial transactions under the Law for their economic value as defined by the Ministry of Finance.	Retain	In line with best practices
S.53: Restriction on Utilization of Proceeds of Sale of Public Assets	53. The proceeds derived from the sale or transfer of public properties and rights over public assets shall not be used to finance recurrent and debt expenditure, provided that such proceeds may be used to liquidate existing liabilities directly charged against such properties or assets.	Retain	In line with best practices
S.54: Technical and Financial Assistance to Local Governments	54. The Government may provide technical and financial assistance to Local Governments that adopt a similar legislation along the same lines as this Law for the modernization of their respective tax, financial and assets administration.	Recast to read The State Government through the Commission shall provide technical and financial assistance to Local Governments for the implementation of this Law	Virtually all the parts of the Law are applicable to Local Governments. The Local Governments also have a representative on the Commission. As such, no new Law is needed for LGAs on fiscal responsibility.

<p>S.55: Power of Governor to make Recommendations</p>	<p>55. The Governor shall in addition to any other powers conferred on him under this Law make regulations generally for the purposes of carrying into effect the provisions of this Law.</p>	<p>Delete the section.</p>	<p>The power to make regulations for the implementation of this Law belongs to the Commission unless where specific duties have been entrusted to the Governor. We cannot find any such duties in the Law.</p>
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