

**ANALYSIS OF THE BAYELSA STATE FISCAL RESPONSIBILITY
BILL, 2008**

By

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**A
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A Law to provide for prudent management of the State's resources and ensure long term macro economic stability, greater accountability and transparency in fiscal operations within a Medium Term Expenditure Framework and the establishment of a Fiscal Responsibility Commission aimed at reforming and strengthening the state's fiscal management policies and practices and other matters connected therewith.

PREAMBLE

WHEREAS the executive powers of the state has been vested in the Governor of the state and the legislative powers vested in the House Assembly of the state.

WHEREAS under Section 13 of the constitution of the Federal Republic of Nigeria 1999 it shall be the responsibility of all organs of government and of all authorities or persons exercising legislature, executive or judicial power to conform to, observe and apply the provisions of chapter 2 thereof, that is, the fundamental objectives and directive principles of state policy.

WHEREAS the state government has embarked upon several initiatives at reforming and strengthening the fiscal management policies and practices of the state to ensure prudence, accountability and transparency of all arms of government, agencies and parastatals it has by this bill institutionalized the Medium Term Expenditure Framework as a means of integrating the state's planning and budgeting processes.

NOW THEREFORE BE IT ENACTED by the Bayelsa State House of Assembly as follows:-

Consider deleting the preamble as it merely restates the obvious and adds no value.

SECTION	BAYELSA BILL	RECOMMENDATIONS	JUSTIFICATIONS
<p>PART I</p> <p>ESTABLISHMENT, FUNCTIONS AND POWERS OF THE FISCAL RESPONSIBILITY COMMISSION AND THE GOVERNING BOARD.</p> <p>1. Establishment of the Fiscal Responsibility Commission.</p>	<p>1. (1) There is hereby established a body to be known as the Fiscal Responsibilities Commission (hereinafter in this Bill 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 names.</p>	<p>Retain, it is in accordance with the Fiscal Responsibility Act (hereafter called “FRA”) and the State Level Fiscal Responsibility Template.</p>	<p>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.</p>
<p>2. Functions of the Commission.</p>	<p>(1) The Commission shall-</p> <p>a) monitor and enforce the provisions of this Law and by so doing promote the fiscal and economic policies and objectives of the State Government;</p> <p>(b) disseminate such standard practices including international leading practices that will result in</p>	<p>Retain with modifications.</p> <p>Consider changing the phrase “international</p>	<p>In line with best practices.</p>

	<p>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 functions consistent with the promotion of the objectives of this Law.</p> <p>(2) The Commission shall be independent in the performance of its functions.</p>	<p>leading practices” to “international best practices”.</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>3. Powers of the Commission.</p>	<p>(1) In the performance of its functions, the Commission shall have power to –</p> <p>(a) compel a person or government agency, parastatals, institution or ministry to disclose information relating to public revenues and expenditure;</p> <p>(b) investigate whether any person has violated</p>	<p>Retain with modifications.</p> <p>Consider redrafting (1) (a) to read: “Compel any person or government institution to disclose information relating to public revenues and expenditure”</p>	<p>The use of the words “government agency, parastatals, institution or ministry” appears inelegant and the word “institution” covers the field.</p>

	<p>any of the provisions of this Law;</p> <p>(c) to forward the report of its investigation of violation to the Attorney-General of the State for prosecution;</p> <p>(d) compel the observance of this Law; and</p> <p>(e) formulate general policies and guidelines for the internal running of the Commission.</p> <p>(2) Supervise the implementation of the policies of the Commission.</p>	<p>Consider a new subsection (2) as follows and renumber the former subsection (2) accordingly: "Formulate policies and guidelines for the implementation of this Law".</p>	
<p>4. The Governing Board of the Commission.</p>	<p>(1) There is hereby established for the Commission a governing board (hereinafter in this bill referred to as the Board) which shall have power for the overall supervision of the Commission as specified in this Law.</p> <p>(2) The Board shall consist of:-</p> <p>(a) a chairman who shall be a seasoned economist</p>	<p>Consider the option of just having a Commission without a governing board. The Commission made up of commissioners will definitely supervise the implementation of the Law.</p> <p>Consider removing the</p>	<p>The Commission could be modeled after state bodies such as the State Civil service Commission, State Independent Electoral Commission and the State Judicial Service Commission established by S. 197 of the Constitution of the Federal Republic of Nigeria 1999.</p> <p>There are other professionals</p>

	<p>with public finance background and the chief executive and accounting officer of the Commission;</p> <p>(b) one member representing the organized private sector;</p> <p>(c) two members representing civil societies engaged in causes relating to probity, transparency and good governance;</p> <p>(d) a representative of the State Ministry of Finance and Budget who shall not be below the rank of a director;</p> <p>(e) a representative of the State Planning Commission;</p> <p>(f) a representative of each of the established local government areas of the state; and</p>	<p>words “seasoned economist” and rephrase to read”</p> <p>“a chairman who shall be a person with public finance background and the chief executive and accounting officer of the Commission”;</p> <p>Reduce the civil society representative to one and add a representative of organized labour represented by the Nigeria Labour Congress.</p> <p>The representative of the State Planning Commission should also not be below the rank of a director.</p> <p>Reduce representation of local governments to three to be nominated by the state chapter of Association of Local Government</p>	<p>with a strong background in public finance or even persons whose job experience in public finance are so vast but who are not economists. The position should be open to all professionals who can demonstrate a track record and a good understanding of fiscal responsibility issues.</p> <p>It is imperative that organized labour is represented on the Commission considering that critical policy decisions affecting labour would be made by the Commission in the implementation of the law.</p> <p>Same as that of the Ministry of Finance and Budget.</p> <p>Having a representative from all the local government areas may make the Commission unwieldy. The recommendation is for a small, highly competent,</p>
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	<p>(g) a representative of the Ministry of Justice not below the rank of a director.</p> <p>(3) All members of Board shall be persons of proven integrity and must possess a minimum of an honours degree in economics, accountancy, finance or related discipline or law with not less than ten (10) years cognate post qualification experience.</p> <p>(4) All members of the Board other than ex officio members shall be appointed by the Governor in consultation with the state economic team.</p> <p>(5) The members of the Board other than the chairman shall be part time members.</p>	<p>Chairmen in the state and each nominee, to represent a senatorial zone of the State.</p> <p>In line 4 of (2) redraft to read: “finance, law or related discipline with not less...”</p> <p>Consider amending to read: “With the exception of members to be nominated under subsection (2) (f) and ex officio members, all members of the Board shall be appointed by the Governor”.</p> <p>Delete “in consultation with the state economic team”</p> <p>Consider amending subsection (5) to read:</p>	<p>apolitical and cost effective Commission.</p> <p>Is the state economic team a legal body or a body known the law? The law is made for generations to come and a new governor may not see the need for an economic team and as such, there may be a problem of implementation.</p>
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		<p>“The members of the Board other than the chairman and representatives of local government areas shall be part time members”.</p> <p>Consider a new subsection: (6) “All the appointments by the Governor to the Commission and the nominees in subsection (2) (f) shall be subject to the confirmation of the State House of Assembly.</p>	
5. Disqualification of Membership.	<p>(1) Notwithstanding the provisions of Section 4 (3) of this Law, a member of the Board shall cease to hold office if:-</p> <p>(a) he becomes bankrupt or makes a compromise with his creditors;</p> <p>(b) he is convicted of a felony or any offence involving dishonesty, corruption or fraud;</p> <p>(c) he becomes incapable of carrying out the functions of his office either by reason of an</p>	<p>Retain with modifications.</p> <p>Include the need for legislative approval before removal of Commissioners from office.</p>	<p>Demanding legislative confirmation for appointments and approval before removal from office, strengthens 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 actions which the powers that be may not approve of.</p>

	<p>infirmity of mind or body;</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 notice under his hand addressed to the Governor; 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>Include a subsection (2) as follows:</p> <p>(2) For any removal contemplated under subsection (1) to be effective, it must be supported by two thirds majority of the State House of Assembly.</p>	
6. Filling of Vacancy.	Where a vacancy occurs in the membership of the Board, it shall be filled by the appointment of a successor to hold office for the remainder of the	Retain.	In line with best practices.

	term of office of his predecessor so however that the successor shall represent the same interest as his predecessor.		
7. Tenure of Membership.	Subject to provisions of Section 5 (1) (f) and 6 (1), the chairman and members of the Board shall hold office for a single term of four (4) years.	Consider changing to a single term of six years. Their tenure should not coincide with the tenure of elected office holders.	Membership of the Commission is not just any other political appointment but a specialized position requiring technical knowledge and depth of experience and the Commission should not be dissolved simply because of elections or the ascension to office of a new governor.
8. Remuneration of Members of the Board.	(1) There shall be paid to the chairman of the Board such salaries, allowances and benefits as the Salaries and Wages Commission may from time to time approve. (2) There shall be paid to the other members of the Board such sitting allowances and benefits as may be determined by the Board.	Include the representatives of the local government areas among those to be paid salaries, allowances and benefits as recommended by the Salaries and Wages Commission.	The earlier recommendation is for representatives of local governments to be full time members of the Commission.
9. Proceedings of the Board.	(1) At any meetings of the Board, the chairman shall preside and in his absence such member as the other members may elect from amongst the members for that purpose shall preside. (2) The quorum for meetings of the board shall be – (3) The Board shall have power to regulate its	Retain subsections (1) and (3) but delete subsection (2).	Once the Commission has power to regulate its proceedings, fixing the quorum for meetings in the Law is unnecessary.

	proceeding and make standard orders with respect to the holding of its meetings, notices to be given, the keeping of minutes of its proceedings and such other matters of the Board may, from time to time determine.		
10. Finances of the Commission.	<p>(1) The Commission shall establish and maintain a Fund from which it shall defray all expenditures incurred by the Commission including amounts payable to the members of the Board.</p> <p>(2) There shall be credited to the Fund established pursuant to subsection (1) of this section, the budgetary allocation from the state government and grants from any other source, provided that it shall be mandatory for the state government to adequately fund the Commission.</p>	<p>Retain with an addition.</p> <p>In subsection (2), the budgetary allocation should come from state and local governments.</p> <p>Introduce a new subsection (3) as follows:</p> <p>“The recurrent and capital expenditure of the Commission as approved by legislative appropriation shall be a charge on the Consolidated Revenue Fund of the State”.</p>	<p>The law applies to both state and local governments; both should therefore partake in the funding of the Commission.</p> <p>Considering the crucial work of the Commission, if its funding is not made a first line charge, it will suffer from neglect and poor funding. This will frustrate the Commission in the fulfillment of its mandate. Independence is enhanced if the source of funding is guaranteed and not subject to the whims and caprices of the individuals and institutions, the Commission is supposed to monitor.</p>
11. Submission of Annual and Financial Report.	The Board shall prepare and submit to the State House of Assembly not later than 30 th June in each financial year cases of contravention investigated during the preceding financial year and shall include in the report a copy of its audited report and	Retain	In accordance with legislative powers of oversight over executive action and the management and allocation public expenditure.

	accounts for the preceding financial year.		
<p>PART II</p> <p>THE MEDIUM-TERM EXPENDITURE FRAMEWORK</p> <p>12. The Preparation of the Medium Term Expenditure Framework.</p>	<p>(1) The State government shall:-</p> <p>(a) Not later than six (6) months from the commencement of this Law cause to be prepared a Medium Term Expenditure Framework for the next three (3) financial years; and</p> <p>(b) thereafter not later than four (4) months before the commencement of the next financial year, cause to be prepared a Medium Term Expenditure Framework for the next three (3) financial years.</p>	<p>Add in the second line after “prepared” and before “a”</p> <p>“and laid before the State House of Assembly for consideration and approval”</p> <p>The time frame of four months should be changed to six months or within six weeks after the approval of the Federal Medium Term Expenditure Framework by the National Assembly.</p>	<p>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 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</p>

	<p>(2) The Medium Term Expenditure Framework shall contain:</p> <p>(a) a macroeconomic framework setting out the macroeconomic projections for the next three (3) financial years, the underlying 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>Add a paragraph c as follows: “The Medium Term Expenditure Framework so laid before the State House of Assembly shall be considered for approval with such modifications if any as the House of Assembly considers appropriate by a resolution”.</p>	<p>premised on the fact that the federal MTEF will provide macro-economic indices on which states must draw in finalizing their MTEF.</p> <p>Appropriation powers belong to the legislature - see sections 120 and 121 of the 1999 Constitution.</p>
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	<p>(i) the state government’s medium term financial objectives;</p> <p>(ii) the policies of the state government for the medium term relating to taxation, recurrent (non debt) expenditure, debt expenditure, borrowing and other liabilities, lending and investment.</p> <p>(iii) the strategic economic, social and developmental priorities of the state government for the next three (3) financial year.</p> <p>(iv) an explanation of how the financial objectives, strategic economic, social and developmental priorities and fiscal measures set out pursuant to paragraphs (i), (ii), and (iii) of this subsection relate to the economic objectives of the state.</p> <p>(c) an expenditure and revenue framework setting out –</p> <p>(i) estimates of aggregate revenues for the state for each financial year in the three (3) financial years based on the predetermined projected statutory allocation and internal revenue projections.</p> <p>(ii) aggregate expenditure ceiling for the state for each financial year in the next three (3) financial years;</p>	<p>Add “capital expenditure” after “debt expenditure”.</p>	<p>Capital expenditure completes the list of expenditures. And this is in accordance with the FRA and best practices.</p>
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	<p>(iii) aggregate tax expenditure for each financial year in the next three (3) financial years;</p> <p>(iv) minimum capital expenditure floor for each financial year in the next three (3) financial years;</p> <p>Provided that the estimates and expenditure provided pursuant to the paragraph of this subsection shall be;</p> <p>(i) based on reliable and consistent data certified in accordance with section 14 (2) of this bill</p> <p>(ii) consistent with and derive from the underlying assumptions contained in the macroeconomic framework, the objectives, policies, strategic priorities and explanation 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 State Government and measures to reduce</p>	<p>Change (i) to read:</p> <p>“based on reliable and consistent data obtained from the relevant authorities mentioned in section 14 (2) (b)” and other official federal sources.</p>	<p>There is no certification process in section 14 (2) of the Bill.</p>
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	<p>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>13. Aggregate Expenditure Ceiling.</p>	<p>(1) Subject to the provisions of subsection (2) of this section but notwithstanding anything to the contrary contained in any other law, the estimates of aggregate expenditure and the aggregate amount appropriated by the State House of Assembly for each financial year shall not be more than the estimated aggregate revenue plus a deficit not exceeding three percent (3%) of the estimated Gross Domestic Product for each financial year.</p>	<p>Consider an amendment to read:</p> <p>“Subject to the provisions of subsection (2) of this section but notwithstanding anything to the contrary contained in any other law, the estimates of aggregate expenditure and the aggregate amount appropriated by the State House of Assembly for each 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</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 appears unreliable considering the wide yearly deviations between projected and actual 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>(2) The aggregate expenditure for a financial year may exceed the ceiling imposed by the provision of subsection (1) of this section if in the opinion of the Governor there is a clear and present threat to state security or sovereignty.</p>	<p>year.</p> <p>Another alternative is to limit the Aggregate Expenditure Limit to no more than 115% of the aggregate revenue forecast for the year.</p> <p>Delete the word “sovereignty” at the end of the subsection.</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 the calculation of the Gross Domestic Product of the State.</p>	<p>The word “sovereignty” is an attribute of the Nigerian Federation, not of a subnational entity or government.</p> <p>Considering the fact that no state has an empirically computed GDP.</p>
<p>14. Preparation of the Medium-Term Expenditure Framework.</p>	<p>(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 hearings which may be widely publicized on the Macroeconomic Framework, Fiscal Strategy Paper, the Revenue and Expenditure Framework, the strategic, economic social and developmental priorities of government and such other matters as the Commissioner may deem necessary</p> <p>Provided that such hearing if held shall be open to the public, the press and any citizen or authorized representative of any organization, group of citizens who may attend and be heard on any subject matter properly in view</p> <p>(b) shall seek the inputs of the –</p> <p>(i) State Planning Commission;</p> <p>(ii) State Council on Development Planning;</p> <p>(iii) State Economic Team; and</p> <p>(iv) State House of Assembly.</p>	<p>The word “may” at the beginning of paragraph (2) (a) should be changed to “shall”.</p> <p>Delete in line 1 of the proviso, the words “if held”.</p>	<p>The word “may” imports a “discretion” while the word “shall” imports an obligation. There should be no discretion on the Commissioner whether to hold a public hearings or not. It should be mandatory considering the need for popular participation in governance and enhanced transparency and accountability.</p> <p>A recommendation for an obligation to hold hearings has been made above.</p>
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		<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>(v) Central Bank of Nigeria;</p> <p>(vi) National Bureau of Statistics;</p> <p>(vii) Revenue Mobilization Allocation and Fiscal Commission;</p> <p>(viii) any other relevant</p>	<p>These institutions will provide statistics and data indicative of the macroeconomic environment for the preparation of the MTEF.</p>
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		agency or statutory body as the Commissioner may determine;	
	(d) shall consider and reflect as may be deemed appropriate the inputs of the bodies and persons referred to in subsection (a), (b) and (c) of this section.		
15. Time Limit for Presentation of the Medium Term Expenditure Framework to the State Executive Council.	The Commissioner 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 approval.	Change the timing from “the end of the second quarter of each financial year” to “the end of the month of May”. Consider a new subsection 15 (2) The Medium Term Expenditure Framework as endorsed by the State Executive Council shall take effect upon approval by a resolution of the State House of Assembly.	This is to harmonize the positions in the Bill since the MTEF has to go to the legislature for approval not later than six months before the beginning of the next financial year.
16. Publication of the Approved Medium-Term Expenditure Framework.	The Commissioner shall cause the Medium Term Expenditure Framework as approved by the State House of Assembly to be published in the Gazette.	Retain with modifications. Add the following at the end of section: “ website of the Ministry of	In accordance with best practices.

		Finance and copies shall be made available to any interested person at the cost of production”.	
17. Adjustments to the Medium Term Expenditure Framework.	<p>(1) Subject to subsection (2) of this section, the Governor may cause adjustments to be made to a 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 errors; and</p> <p>(b) changes in the fiscal indicators which in the opinion of the Governor are significant.</p>	Retain	In line with best practices.
18. Application to Local Government Areas.	<p>(1) The Local Governments shall plan the management of their fiscal affairs within the Medium Term Expenditure Framework.</p> <p>(2) In planning their fiscal affairs as prescribed under subsection (1) of this section, Local Government Councils shall be guided by and adopt the provisions of section 12, 13, 14, 15, 16 and 17 of this Law with such modifications as may be appropriate and necessary.</p>	<p>Retain</p> <p>Consider addition of subsection (3) as follows:</p> <p>“The Commission shall</p>	<p>Instead of leaving LGAs to adapt these provisions, the Commission should make standard regulations for the</p>

		make special rules and regulations for guidance of local governments in their fiscal affairs”.	guidance of all LGAs.
<p style="text-align: center;">PART III</p> <p style="text-align: center;">THE ANNUAL BUDGET</p> <p>19. Annual budget to be derived from Medium Term Expenditure Framework.</p>	<p>(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 State House of Assembly.</p> <p>(2) The sectoral and compositional distribution of the estimates and 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>	Add at the end of subsection (1) after the word State House of Assembly “under section 121 of the Constitution.”	In accordance with the 1999 Constitution.
20. Annual Budget to be Accompanied by Certain Documents.	<p>(1) The estimates of revenue and expenditure in this bill referred to as the Annual Budget shall be accompanied by –</p> <p>(a) copy of the underlying revenue and expenditure profile for the next two (2) 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 eighteen (18) months up to June of the preceding financial year;</p>	Retain with modifications.	

	<p>(c) a revenue framework broken down into monthly collection targets prepared on the basis of the predetermined projected statutory allocations and internal revenue projections as contained in Medium Term Expenditure Framework;</p> <p>(d) measures on cost, cost control and evaluation of results of programmes financed with budgetary resources;</p> <p>(e) a Fiscal Target Appendix derived from the underlying Medium Term Expenditure Framework setting out the following targets for that financial year:</p> <p>(i) target inflation rate;</p> <p>(ii) target fiscal account balances; and</p> <p>(iii) other development target deemed appropriate;</p>	<p>Delete target inflation rate and replace it with “targets for economic growth”</p> <p>Include a new (iii) and (iv) as follows and renumber accordingly:</p> <p>“target employment rate”</p> <p>“targets for the realization of the rights to education, health, adequate housing and to sustainable</p>	<p>Inflation rate is not Bayelsa or state specific but determined nationally. It appears that extant targets are just about expenditure and fiscal balances. It should rather be about results of expenditure and what sustains and propels society in terms of economic growth that creates wealth and ensures employment.</p> <p>It is important to estimate the jobs that will be created as a result of budget implementation in both the public and private</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.	improvements in the standard of living.	sectors. It is also imperative to indicate the impact of the budget on the standard of living of the people and specific rights that impact on that standard of living.
21. Criteria for Admission of Projects and Programmes into the Appropriation Bill.	<p>(1) Projects and programmes shall only be admitted into an Appropriation Bill if they –</p> <p>(a) are derived from the Medium Term Expenditure Framework;</p> <p>(b) have complied with public procurement guidelines or laws; and</p> <p>(c) have undergone a cost – benefit analysis</p> <p>(2) New projects shall only be admitted into an Appropriation Bill if adequate funding has been provided for on-going projects and for the conservation of existing public assets.</p> <p>(3) All expenditure involving public securities or contractual debt shall be contained in the Appropriation Bill.</p>	<p>Retain with modifications.</p> <p>Deleting paragraph (b)</p>	The need for compliance with public procurement guidelines comes after appropriation, not before appropriation.

	<p>(4) The refinancing of public debt shall be stated separately in the Appropriation Bill.</p> <p>(5) Liabilities arising by reason of judgment of the courts established under the Constitution shall be stated separately in the Appropriate Bill.</p> <p>(6) Provisions for borrowing with imprecise objectives in the Appropriate Bill are prohibited.</p>		
22. Preparation of the Annual Budget.	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, offices, departments, state executive bodies and other executing agencies of the State Government.	Retain with modifications. Change the words “ministries, offices, departments, state executive bodies and other executing agencies of state government” to “ministries, departments and agencies”	The sections introduces some timeliness into the commencement of the appropriation process. The changes are needed for elegance in draftsmanship.
23. Responsibility for Preparation of the Annual Budget.	<p>(1) The Commissioner shall prepare and present to the State Executive Council not later than the third week of September in each financial year a draft Annual Budget and the Governor shall in turn present the draft budget to the State House of Assembly not later than the second week in October.</p> <p>(2) The draft annual budget shall be passed by the State House of Assembly not later than the last</p>	<p>Delete subsection (1), it is unconstitutional.</p> <p>Subsection (2) stands on the pillar of subsection (1) and as such should be deleted once subsection (1) is gone.</p>	S.23 of the bill as it relates to timing is unconstitutional. The power of the Commissioner to prepare Appropriation Bill is a delegated power of the Governor under S. 5 (2) (a) of the Constitution. The 1999 Constitution [S.121(1)] grants the Governor the freedom to prepare and lay before the legislature the appropriation bill “at any time

	week of December.		before the commencement each financial year". Unfortunately, to change the situation needs a constitutional amendment as no ordinary legislation can amend the constitution.
24. Application of Part III to Local Government Councils and Other Executing Bodies.	In preparing their annual budget, local government councils, ministries, extra ministerial office, departments, state executive bodies and other executing agencies of the state government shall be guided by and adopt the provisions of this part with such modification as may be appropriate and necessary.	Retain with modifications. Consider redrafting the second and last lines to read: "with such modifications as may be stipulated by the Commission from time to time."	There is the need for the Commission to make regulations to guide LGAs in their fiscal duties.
PART IV BUDGETARY PLANNING OF CORPORATIONS AND OTHER RELATED AGENCIES 25. Preparation of Estimates of Revenue and Expenditure by Corporations.	(1) The state's corporations, agencies as well as government owned companies listed in the schedule to this Law (hereinafter in this Law referred to as the corporations) shall not later than six (6) months from the commencement of this Law cause to be prepared and submitted to the Commissioner their estimates of revenue and expenditure for the next three (3) financial years (2) Each of the bodies referred to in subsection (1) of this section shall submit to the Commissioner not later than the end of August in each financial year –	Retain	In line with best practices.

	<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 an Appendix to Annual Budget.</p>		
26. Operating Surplus and General Reserve Fund.	<p>(1) Notwithstanding the provisions of any written law governing the corporation, each corporation shall establish a general reserve fund and shall allocate thereto at the end of each financial year one-fifth of its operating surplus for the year.</p> <p>(2) The balance of the operating surplus shall be paid to the Consolidation Revenue Fund of the State Government not later than one (1) month following the statutory deadline for publishing each corporation's account.</p>	Retain.	In line with best practices.
27. Classification of Corporation Operating Surplus.	(1) The corporation's surpluses shall be classified as State Treasury Revenue.		

	<p>(2) Where a corporation's result is a deficit, the deficit shall be classified as the corporation's loss for the fiscal year.</p> <p>(3) Each corporation shall not later than three (3) months after the end of its 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.</p>		
28. Cessation of Application of Part IV	The provisions of this Part shall cease to apply to any corporation from the date of its privatization.		
<p style="text-align: center;">PART V BUDGETARY EXECUTION AND ACHEVEMENT OF TARGETS</p> <p>29. Annual Cash Plan.</p>	<p>(1) The State 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.</p> <p>(2) 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>	Retain	In line with best practices-FRA and Model Law.
30. Disbursement Schedule.	The Commissioner shall within thirty (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 implementing the Appropriation Law.	Retain	In line with best practices-FRA and Model Law.

<p>31. Power of Commissioner to Approve Virement.</p>	<p>(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 may in exceptional circumstances and in the overall interest approve virement from subheads under heads of account without exceeding the amount appropriated to such head of account, provided that, such virement and the justification therefore shall be approved by the State House of Assembly.</p>	<p>Retain with modifications. The heading should read “Power of Commissioner to Recommend Virements” instead of “Power of Commissioner to Approve Virement”</p> <p>Redraft to read:</p> <p>“Without prejudice to subsection (1) of this section, the Commissioner may in exceptional circumstances and in the overall public interest recommend for the approval of the State House of Assembly virements from subheads under heads of account, without exceeding the amount appropriated to such head of account”.</p>	<p>The power of appropriation belongs to the legislature and should be guarded jealously. Virements <i>stricto sensu</i> is an act of appropriation and as such it needs prior legislative approval. The extant draft gave the Commissioner power to “approve” virements. He can only recommend virements for the approval of the House.</p>
<p>32. Power to Restrict Further Commitments.</p>	<p>(1) Where by the end of three (3) months after the enactment of the Appropriation Law, the Commissioner determines that the targeted revenues may be insufficient to fund the heads of</p>	<p>Retain.</p>	

	<p>expenditure in the Appropriation Law, the Commissioner shall within the next thirty (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 revenues are re-established either in part or full, the appropriations for which further commitments were restricted shall be restored proportionately.</p> <p>(3) Powers of restriction and restoration shall not be unduly exercised by the Commissioner.</p> <p>(4) The provisions of subsections (1) and (2) of the section shall not apply to statutory or constitutional expenditure.</p>	<p>Redraft subsection (3) to read:</p> <p>“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 has been taken by the Commissioner”.</p>	<p>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>
<p>33. Restriction on the Grant of Tax Relief.</p>	<p>(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 (3) subsequent years, and shall only be approved by the Commissioner if it does not adversely impair the revenue estimates in the Annual Budget or if it is accompanied by</p>	<p>Retain.</p>	

	<p>countervailing measures during the period mentioned in this subsection through revenue increasing measures such as tax rate raises and expansion of 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 the laws of the state; and</p> <p>(b) debt cancellation in an amount lower than the cost of collection.</p>		
34. Responsibility of the Budget Office to Monitor and Report on Budget Implementation.	<p>(1) The Commissioner through the Department of Budget and Control in the Ministry of Finance and Budget shall monitor and evaluate the implementation of the Annual Budget to assess the attainment of fiscal targets and report thereon on a quarterly basis to the Commission and the Joint Finance Committee of the State House of Assembly.</p> <p>(2) The Commissioner shall cause the report prepared pursuant to subsection (1) of this section to be published in the mass and electronic media and on the Ministry of Finance website not later than a month after the end of each quarter.</p>	Delete in the second to the last line in subsection (1), the word "Joint".	There is only one Finance Committee (or equivalent Committee) in the Bayelsa State House of Assembly. The words "Joint Finance Committee" came from the FRA where there are two Committees in the bicameral relationship between the Senate and the House of Representatives.
35. Application of Part V to Local Government Councils.	In implementing their annual budget, Local Government Councils, Ministries, extra ministerial offices/departments, shall be guided by and adopt	Delete ministries, departments and agencies.	Modifications as appropriate applies only to LGAs.

	the provisions of this Part with such modifications as may be appropriate and necessary.		
PART VI - PUBLIC REVENUES 36. Forecast and Collection of Public Revenues.	Prompt remittance of all revenue collected by each tier of government into the appropriate pool account, shall be a condition precedent to any transfer of share of revenue to the respective tier of government.	Retain.	
37. Revenue Forecast.	<p>(1) Revenue forecast revisions by the legislative arm of government shall only be permitted upon proof of technical or legal error or omission.</p> <p>(2) The estimated receipts accruing from borrowing shall only be applied towards capital expenditures included in the appropriation law.</p> <p>(3) The executive arm of each tier of government shall at least thirty (30) days before the deadline for the submission of their budget proposals, place at the disposal of the other arms of government the revenue estimates for the following year, including the net current revenue and the respective memorandum items.</p> <p>(4) Non – compliance with subsection (3) of this section shall attract a reprimand.</p>	<p>Delete subsection (1).</p> <p>Delete subsection (2)</p> <p>Delete subsection (3)</p>	<p>It unduly shackles the legislature and the legislature should not be seen to shackle itself.</p> <p>Subsection (2) has no place in the issue of revenue forecasting.</p> <p>Subsection (3) does not add any value to the section and goes to no issue.</p>
38. Executive to Breakdown Estimated Revenue.	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	Retain.	

	fraud and evasion.		
<p>PART VII- SAVINGS AND ASSET MANAGEMENT</p> <p>39. Saving of Excess Revenues.</p>	<p>(1) Where the reference commodity price rises above the predetermined level, the state government shall save its share of the resulting excess proceeds in accordance with subsection (2) of this section.</p> <p>(2) The savings of the state government including its local government councils in pursuance of subsection (1) of this section shall be deposited in a separate account, which shall form part of its Consolidated Revenue Fund to be maintained by the Central Bank of Nigeria (CBN).</p> <p>(3) The Central Bank of Nigeria shall in consultation with the Commissioner, invest for and on behalf of the state government and its local governments, the savings of each government and such investment can be undertaken in a consolidated manner, provided that, the shares of each local government and income due them from the investment are clearly identified.</p> <p>(4) The state government shall only have access to the savings made in pursuance of subsection (1) of this section if the reference commodity price falls below the predetermined level for a period of three (3) consecutive months.</p> <p>(5) The argumentation referred to in subsection (4) of this section shall be limited to such sums</p>	<p>Consider deleting the entire section and replace it with provisions on a State Reserve Fund as follows:</p> <p>(1) To strengthen economic stability, the State shall maintain a Fund to be called the State Reserve Fund (in this Law referred to as “the 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</p>	<p>Providing for an already existing Excess Crude Account (ECA) which exists by the provisions of the FRA adds no value to the Law. ECA will continue to exist whether Bayesla 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> <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>

	<p>that will bring the revenue of government to the level contained in its budget estimates</p> <p>(6) Notwithstanding the provisions of subsections (4) and (5) of this section and subject to agreement by the state and the local government councils, a proportion of the savings may be appropriate in following financial year for the capital projects and programmes.</p>	<p>Federation Account due to a rise in commodity prices above the reference 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 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 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</p>	
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		<p>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 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</p>	
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		<p>due from them shall be clearly identified in the Fund.</p> <p>Provided however that investment by the Fund shall be 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>40. Condition for Increasing Government Expenditure.</p>	<p>(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 the two subsequent years;</p> <p>(b) a statement by the person requesting for the expenditure, stating that the increase is consistent with the Appropriation Law and the Medium Term Expenditure Framework of the State.</p> <p>(2) The provisions of this section shall not apply to expenditures deemed inconsequential.</p>	<p>Retain with modifications</p> <p>Redraft subsection (2) to read:</p> <p>“The provisions of this section shall not apply to expenditures below thresholds to be set by the Commission”.</p>	<p>An expenditure deemed inconsequential is not defined in the interpretative section of the Bill or the FRA and who determines inconsequentiality of the expenditure is not stated in the Law. Thus, such determination should be filled by regulations made by the Commission.</p>
41. Conditions for	(1) The granting of any advantage or increase of	Retain.	Makes eminent sense.

Increasing Personnel Expenditure.	remuneration, the creation of posts or alternation of career structures and admission of personnel on any account by bodies and entities including foundations established and maintained by each tier of government shall only be effected if there is a prior budgetary allocation sufficient to cover the estimated expenditure in the financial year.	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”	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 has defeated an incumbent and will definitely contend with organized labour if he declares that the state cannot afford the increase.
42. All Contracts to Comply with Rules and Guideline.	All contracts with regards to the execution of Annual Budget shall comply with the state’s rules and guidelines on- (a) procurement and award of contracts; and (b) due process and certification of contract.	Retain with modifications. Add a subsection (2) to read as follows: (2) Violations of the Public Procurement Law shall attract penalties as stipulated in the law	
43.Application of Part VIII	In incurring public expenditure local government	Delete section.	We do not need to repeat the

	Councils shall be guided by and adopt provisions of this Part with such modification as may be appropriate and necessary.		applicability of this Law to local governments after every part.
PART IX- DEBT AND INDEBTEDNESS 44. Framework for Debt Management.	(1) The Framework for debt management during the financial year shall be based on the following rules- (a) 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 (b) Government shall ensure that the level of public debt as a proportion of the state's income is held at a sustainable level.	Retain with modifications. Add at the end of subsection (1) (a) before the semicolon " subject to the approval of the State House of Assembly" Add at the end of subsection (1) (b) before the full stop "as prescribed by the State House of Assembly from time to time on the advice of the Commissioner 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, 2007 " Add a subsection (2) as follows:	Borrowing needs legislative approval because paying back will definitely involve appropriation. Since the legislature has the power of appropriation, it should be a key player in the determination of sustainable levels of debt for the state. However, the issue of borrowing and debts is matter 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>“Notwithstanding the provisions of subsection (1) of this section and subject to the approval of the State House of Assembly, the State Government may borrow from the capital market”.</p>	<p>The capital market is a good source of long term development funds although its interest rate may not be concessional which under the FRA, means three percent and below.</p>
<p>45. Limits on Consolidated Debt of State and Local Government Councils.</p>	<p>(1) The Governor shall on advice of the Commissioner set overall limits for the amounts of consolidated debt of the state and local government councils and the limits and conditions shall be consistent with the rules set in this bill and with the fiscal policy objectives in the Medium Term Expenditure Framework.</p> <p>(2) The Governor may chose to delegate this function to the Commissioner who shall be advised by the Debt Management Office (DMO) as part of management of the overall fiscal framework.</p> <p>(3) Outstanding judgment debts not paid shall be considered part of the consolidated debt for the purpose of application of the respective limits set out in pursuance of this section.</p> <p>(4) For the purpose of verifying compliance with the limits specified pursuant to this section, the Commission shall in consultation with the Debt Management Office, at the end of each</p>	<p>Delete subsection (1)</p> <p>Delete subsection (2)</p> <p>Retain.</p> <p>Recast subsection (4) to read:</p> <p>“For the purpose of</p>	<p>Section 42 (1) of the FRA has covered the field in accordance with items 7 and 50 of the Exclusive Legislative List. There is no value added by repetition.</p> <p>Subsection (2) is a follow-up to subsection (1).</p> <p>This is in consonance with the rule of law and its due process.</p> <p>The federal Fiscal Responsibility</p>

	<p>quarter determine the amount of the consolidated debt of each level of government.</p> <p>(5) The Commission shall publish on a quarterly basis a list of the local government councils in the state that have exceeded the limits of consolidated debt indicating the amount by which the limit was exceeded.</p>	<p>verifying compliance with the limits specified pursuant to this section, the Commission shall in consultation with the Debt Management Office and the federal Fiscal Responsibility Commission, at the end of each quarter determine the amount of the consolidated debt of state government and local governments”.</p> <p>Recast subsection (5) to read:</p> <p>The Commission shall publish on a quarterly basis a list of the local government councils in the state that have exceeded the limits of consolidated debt indicating the amount by which the limit was exceeded.</p> <p>Add a new subsection (6) and renumber accordingly:</p> <p>“The Commission shall publish information on a</p>	<p>Commission is already assigned the function of determining the consolidated debt level of each tier of government under section 42 (3) of the FRA.</p> <p>To enhance transparency and accountability.</p> <p>To enhance transparency and accountability.</p>
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	<p>(6) Where at the end of any quarter the consolidated debt of the State or its Local Government Council exceed the respective limits, it shall be brought within the limit not later than end of the three (3) subsequent quarters with a minimum of twenty-five percent (25%) reduction in the first quarter.</p> <p>(7) Violators of the limits specified pursuant to this section shall-</p> <p>(a) be prohibited from borrowing from internal and external sources except for the refinancing of existing debts</p> <p>(b) bring the debt within the established limit by inter alia restricting, funding commitments accordingly.</p> <p>(8) Where non – compliance with the limit specified pursuant to this section persists after the time limited by subsection (6) of this section the affected tier of government shall also be prohibited from receiving grants from any government in the Federal Republic of Nigeria.</p>	<p>quarterly basis on whether the State has exceeded the limits of consolidated debt, indicating the amount by which the limit was exceeded”.</p>	
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	(9) Whenever the fundamentals of the proposals referred to in this section are changed due to economic instability or changes in monetary or exchange policies, the Governor shall submit to the State House Assembly a request for a review of the current limits.	Delete subsection since the determination is made at the national level.	
46. Servicing of External Debts.	(1) Servicing of external debts shall be the direct responsibility of the tier of government that incurred the debt. (2) The cost of servicing State Government guaranteed loans shall be deducted at source from the share of the debtor Local Government from the Consolidated Revenue Fund.	Retain	In line with best practices.
PART X- BORROWING 47. Conditions of Borrowing and Verification of Compliance with Limits.	(1) Any Local Government Council in the state or state executing bodies or agencies and corporations desirous of borrowing shall specify 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 to the Debt Management Office. (2) Without prejudice to subsection (1) of this section each borrowing shall comply with the following condition-	Recast the first two line to read “ “The State Government, its agencies, corporations and Local Government Councils in the state desirous of borrowing...” Still in subsection (1), delete the Debt Management Office.	The subsection needs to be clear that it is binding on the state government and not the local governments alone. Which Debt Management Office - the federal or the Bayesla State Debt Management Office - confirm. If it is the Bayelsa State DMO, don't delete, but if it is the federal DMO, then delete. The federal DMO can only advise the state and not to take over

	<p>(a) the existence of prior authorization in the Appropriation 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-time capital expenditures.</p> <p>(3) Nothing in this section shall be construed to authorize borrowing in excess of the limits set-pursuant to sections 44 and 45 of this Law.</p> <p>(4) The Commission shall verify on a quarterly basis compliance with the limits and conditions for borrowing by each of the state’s ministries, extra ministerial offices/departments, agencies and its Local Government Councils.</p> <p>(5) Without prejudice to the specific responsibility to the State House of Assembly, the Debt Management Office shall maintain comprehensive, reliable and current electronic database of internal and external debts, guaranteeing public access to the information.</p>	<p>Consider a new subsection (3) 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>Delete “Without prejudice to the specific responsibilities to the State House of Assembly”.</p> <p>Which DMO - federal or state?</p>	<p>decision making for the state.</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 phrase is not properly contextualized.</p>
<p>48. Lending by Financial Institutions.</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 any Local Government Council, Ministry, Extra – ministerial Office/Departments or Agencies.</p>	<p>Recast to read as follows:</p> <p>“All banks and financial institutions shall request and obtain proof of compliance with the provisions of this Part</p>	<p>This is make the section clearer that it applies to the State Government as well.</p>

		<p>before lending to the State Government and any of its agencies or corporations or to any Local Government Council in the State”.</p> <p>Add a subsection (2)</p> <p>“Lending by financial institutions in contravention of the section shall be illegal”.</p>	<p>This subsection re-emphasizes the objective of this section.</p>
<p>49. Power of Commissioner to grant Guarantees.</p>	<p>(1) Subject to the provisions of this part, the Commissioner may with the approval of the State Executive Council grant guarantee on behalf of any Local Government Council or Government Agencies in the State.</p> <p>(2) Any guarantee granted by the Commissioner shall be conditional upon the provision of a counter –guarantee in an amount equal to or higher than the guaranteed obligation, provided that, there are no overdue obligations from the requesting Local Government Council or Government agencies to the guarantor and its controlled corporation and such guarantee shall also be in compliance with the following-</p> <p>(a) counter- guarantee shall only be accepted from a Local Government Council.</p>	<p>Retain with modifications.</p>	

	<p>(b) the counter – guarantee required by the State Government from the Local Government Council 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) There shall be no foreign currency borrowing.</p>	Consider deleting.	Although foreign currency borrowing is regulated by the FRA and needs federal approval, it may not be proper to totally rule it out because this may prohibit borrowing from concessional windows such as from the World Bank.
<p>PART XI- TRANSPARENCY AND ACCOUNTABILITY 50. Fiscal Accountability.</p>	<p>(1) The State as well as its Local Government Councils 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 revenues and expenditures and their application for its finances.</p> <p>(2) The legislative arm of each tier of Government shall ensure transparency by way of public hearing during the preparation and discussion of the Medium Term Expenditure Framework, Annual Budget and the Appropriation Bill.</p>	Retain.	In line with best practices
51. Publication of Audited Accounts by the State and its Local	(1) The State Government as well as Local Government Councils shall publish their audited accounts not later than six (6) months following the	Subsections (1) and (2) should be merged to read as follows:	The two subsections contradict one another- while subsection (1) gave a timeframe of six

Government Councils.	<p>end of the financial year.</p> <p>(2) The State Government shall not later than two (2) years following the commencement of this Law and thereafter not later than twelve (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>(4) The Accountant – General of the state shall not later than nine (9) months following the end of the financial year cause to be consolidated and published in the mass media the accounts of all Local Government Councils in the state.</p>	<p>“The State Government as well as Local Government Councils shall publish their audited accounts not later than seven (6) months following the end of the financial year”.</p>	<p>months, or the publication of audited accounts, subsection (2) gave a timeframe of 12 months. There is as such need to harmonize their provisions.</p>
52. Publication of a Summarized Report on Budget Execution.	<p>The State Government through its Budget and Control Department of the Ministry of Finance and Budget shall within a month after the end of each quarter, publish a summarized report on budget execution and not later than six months after the end of the financial year, a consolidated budget execution report showing implementation against fiscal and financial performance targets shall be published by the Commissioner for submission to the State House of Assembly.</p>	<p>Add the Commission as the second recipient of the reports.</p>	<p>The Commission as a specialized technical agency is properly positioned to analyse the report.</p>
<p>PART XII- OFFENCES AND PENALTIES</p> <p>53. Unlawful Acts.</p>	<p>(1) Any violation of the requirements of Part VII as Part VIII of this Law shall be considered unlawful.</p> <p>(2) Lending by banks and financial institutions</p>	<p>Kindly cross check the Parts as the Parts mentioned appear not to contain issues for offences.</p>	

	<p>in contravention of Part XI of this Law shall be considered unlawful.</p> <p>(3) A guarantee provided in excess of debt limits shall be considered unlawful.</p>	<p>Part VII is on “Savings and Asset Management” while Part VIII is on “Public Expenditures”.</p> <p>The Legislature should carefully consider the penalty for banks that lend in contravention of the law.</p>	
54. Offences.	<p>(1) Non compliance with any of the provisions of Part II, III, VII and IX of this bill shall constitute an offence punishable under this Law.</p> <p>(2) Where the non-compliance is by agency or institution, the head of such organization shall be guilty of an offence punishable under this Law.</p> <p>(3) For the purpose of sub-section (2) above the Commissioner, Clerk of the State House of Assembly, Chief Registrar, Commissioners of the various Ministries, Chairmen of the Local Government Councils and the Accountant-General where applicable shall be liable for the contravention</p>	<p>Retain but cross check the parts whose violation will amount to a fiscal crime.</p> <p>Before singling out this category of officials, consider that some of them may be carrying out orders from political superiors which they may only disobey at great risk to their careers.</p>	
55. Penalties.	<p>(1) Any person who willfully or negligently fails to perform this obligation under this Law or who knowingly or recklessly makes a false statement in the discharge of his obligations under this Law commits an offence and is liable on conviction to one year imprisonment or a fine of N1 million.</p>	<p>From other jurisdictions, penalties and punishments range from naming and shaming, loss of civil service or political office, forfeiture of a full salary, percentage of salary or</p>	<p>See the Fiscal Responsibility Laws of Brazil, Argentina, Mexico, etc.</p>

	(2) Any person who willfully or negligently acts in contravention of the provisions of this Law commits an offence and is liable on conviction to a term of imprisonment of not less than three years.	salaries, prohibition from occupying elected office and jail terms.	
PART XIII- MISCELLANEOUS PROVISIONS			
56. Government Securities as Collateral to Guarantee Loans.	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 Ministry of Finance and Budget.	Retain .	In line with best practices
57. Restriction on Utilization of Proceeds of Sale of Public Assets etc.	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
58. Conditions for Local Government Contribution.	A Local Government shall only contribute to cover cost of expenditure incurred by the other tiers of Government, if authorized in a covenant, agreement, accord or any similar arrangement.	Retain.	In line with best practices
59. Technical and Financial Assistance to Local Governments.	The State Government may provide technical and financial assistance to Local Governments for the modernization of their respective tax, financial and asset administration, for the purpose of complying with the provisions of this bill.	Retain.	In line with best practices
60. Staff of the Commission.	The Commission may in consultation with the Civil Service Commission appoint such employees as	Recasts the section as follows:	A strong and independent Commission is anticipated under

	<p>in the opinion of the Board be expedient and necessary its functions.</p>	<p>“The Commission shall</p> <p>(a) appoint such number of employees as may be expedient and necessary for the proper and efficient performance of its functions”</p> <p>(b) within six months of the inauguration, determine through regulations the terms and conditions of service including disciplinary measures for its employees</p> <p>Provided however that until such regulations are made, any instrument relating to the conditions of service of officers in the civil service of the State shall be applicable”.</p> <p>(c) fix the remuneration, allowances and benefits of employees as approved by the Salary and Wages Commission</p>	<p>this Law and as such, tying the Commission to the apron strings of the Civil Service Commission will not facilitate independence, hence these provisions on appointment, remuneration and conditions of service of employees.</p> <p>This proviso relates to transitional provisions so as to avoid a lacuna in the law.</p>
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61. Salaries, Allowances and Other Benefits of Staff.	The staff of the Commission shall be paid salaries allowances and other benefits commensurate to staff with those paid to officers of equivalent rank in the Civil Service of the State.	Delete	Covered by section 60.
62. Pensions.	Notwithstanding the provisions of the Pensions Act, it is hereby declared that service in the Commission shall be public service for the purposes of that Act and accordingly officers and other staff of the Commission shall in respect of their services in the Commission be entitled to such pensions, gratuities and other retirement benefits as are prescribed by the Pensions Act.	Retain	In line with best practices.
63. Staff Regulations.	Subject to the provisions of this law, the commission may make regulations relating generally to the allowances, other benefits and conditions of service in the Commission subject to existing guidelines including disciplinary measures for the staff of the Commission.	Delete	Already covered in section 60.
64. Interpretation of Other Laws.	In the event of any inconsistency between the provisions of the Law and the provisions of any other legislation, the provisions of this Law shall prevail and the provisions of that other legislation shall, to the extent of the inconsistency, be void		
65. Power of Governor to make Regulations.	The Governor shall in addition to any other powers conferred on him under this Law make regulations generally for the purpose of carrying into effect the provisions of this bill.	Delete	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.
66. Immunity Against Staff and Members.	No suit shall lie against any member of the Commission for any act done in pursuance of the functions of the Commission under this Law.	Recast to read: “No suit shall lie against any member of the Commission in his personal capacity for any act done in pursuance of the functions of the Commission under this Law”.	Suits in law will always lie against officials of government agencies and commissions in their official capacity and no legislation can take away the citizen’s power to challenge executive action in the determination of his rights and obligations under the law.
67. Mode of Commencement of Action for Enforcement .	(1) Legal action may be commenced by way of administrative action at the State High Court. (2) The leave of court must be obtained before the commencement of any legal action. (3) Notwithstanding (2) above, a right of action occurs after three months when the Attorney-General of the State receives a report of investigation but declines, fails or neglects to prosecute within three (3) months of receiving the report. (4) A private individual need not show any special or particular interest to be able to maintain an action.	Recast to read: “A person shall have the 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 special or particular interest”.	Asking for leave of court is to unduly lengthen legal proceedings for the enforcement of the law while requesting the Attorney General to prosecute within three months after receiving a report of investigation is undue red tape. The general interest of all Bayelsans is for the Law to be implemented to the letter. As such, any person should be free to approach the courts in the general interest without undue hindrance.
PART XIV- INTERPRETATION AND SHORT TITLE	In this Law, unless the context otherwise requires: “ <i>Appropriation Law</i> ” means a law passed by the State House of Assembly authorizing spending from the Consolidated Revenue Fund and includes a Supplementary Appropriation Law.		
68. Interpretation:			

	<p><i>“Appropriation Bill”</i> means the bill referred to in section 121 of the Constitution.</p> <p><i>“Arms of Government”</i> means the Executive, Legislature and Judiciary.</p> <p><i>“Borrowing”</i> means any financial obligation arising from -</p> <p>(i) any loan including principal, interest, fees of such loan;</p> <p>(ii) the deferred payment for property, goods or services,</p> <p>(iii) bonds, debentures notes or similar instruments;</p> <p>(iv) letters of credit and reimbursement obligations with respect thereto;</p> <p>(v) trade or bankers’ acceptances;</p> <p>(vi) capitalized amounts of obligations under lease entered into primarily as a method of raising finance or of financing the acquisition of the asset leased;</p> <p>(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</p>		
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	<p>and;</p> <p>(viii) a conditional sale agreement, capital lease or other title retention agreement;</p> <p><i>“Budget call circular”</i> means a circular-</p> <p>(i) requesting the submissions 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</p> <p>(ii) giving detailed guidelines and instructions on the preparation of the estimates and expenditure in a manner consist with the medium term developmental priorities set out in the Medium Term Expenditure Framework;</p> <p><i>“Capital expenditure”</i> means spending on an asset that lasts for more than one financial year and expenses associated with the acquisition of such assets.</p> <p><i>“Commissioner”</i> means the Commissioner charged with the responsibility for Finance and Budget;</p> <p><i>“Concessional terms”</i> means the terms of the loan must be at an interest rate not exceeding 3 percent</p>		
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	<p>“<i>Consolidated debt</i>” means the aggregate of the outstanding financial obligations of Government including those of its Parastatals and agencies at any point in time arising from</p> <p>(i) borrowed money including principal, interest, fees of such borrowed money;</p> <p>(ii) the deferred payment for property, goods or services;</p> <p>(iii) bonds, debentures, notes or similar instruments;</p> <p>(iv) letters of credit and reimbursement obligations with respect thereto;</p> <p>(v) guarantees ;</p> <p>(vi) trade or bankers’ acceptances;</p> <p>(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.</p> <p>(viii) agreement providing for swaps, ceiling rates, ceiling and floor rates, contingent participation or other hedging mechanism with respect to the payment of interest or the convertibility of currency and</p>		
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	<p>(ix) a conditional sale agreement, capital lease or other title retention agreement.</p> <p><i>“Cost – benefit- analysis”</i> means an analysis that compares the cost of undertaking a service, project or programme with the benefits that citizens are likely to derive from it;</p> <p><i>“Established Local Government”</i> means the eight (8) Local Government Areas of Bayelsa State provided in the 1999 Constitution i.e. Brass, Ekeremor, Kolokuma/Opokuma, Nembe, Ogbia, Sagbama, Southern Ijaw and Yenagoa.</p> <p><i>“Financial year”</i> has the meaning ascribed thereto in the laws of Bayelsa State which is from January to December.</p> <p><i>“Fiscal Policy Objectives”</i> means the goals set by government for attainment of set targets for a given period.</p> <p><i>“Government owned company”</i> means a statutory corporation, government agency and a company in which the government has controlling interest;</p> <p><i>“Governor”</i> means the Governor of Bayelsa State of Nigeria;</p> <p><i>“Medium Term Expenditure Framework”</i> means the document referred to and the contents of which is prescribed in the Section 12 of this Act;</p>		
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	<p><i>“Net debt”</i> means the consolidated debt less what is owed to Government, its parastatals and agencies at any point in time;</p> <p><i>“Public debt securities”</i> means public debt represented by securities issued by the Federal Government (including those of the Central Bank of Nigeria), the State and Local government.</p> <p><i>“Public expenditure”</i> means outlays other than those resulting into debt reduction;</p> <p><i>“Public revenue”</i> refers to all money received by a Government in the State;</p> <p><i>Quarter”</i> means one quarter of a financial year (a 3 – Month period);</p> <p><i>“Recurrent Expenditure”</i> means normal overhead and administrative expenses and personnel cost including salaries, emoluments and other benefits of employees;</p> <p><i>“Reference Commodity Price”</i> means such price as may be determined by the President subject to the approval of the National Assembly.</p> <p><i>“Refinancing of debt securities”</i> means issuance of securities to repay existing debts;</p> <p><i>“State financial institution”</i> means any financial institution in which the state Government has</p>		
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	<p>controlling shares;</p> <p>“State” Shall be construed to include the entire Bayelsa State Territory; and</p> <p>“Tiers of Government” means the State and Local Government;</p>		
<p>SHORT TITLE</p> <p>69. This Law may be cited as the Bayelsa State Fiscal Responsibility Law 2008 .</p>	<p>SCHEDULE (Section 25)</p> <p>List of corporations, agencies and Government owned Companies</p> <ol style="list-style-type: none"> 1. 2. 3. 4. 		