Organization for Responsible Governance

Analysis and Recommended Amendments for:

Fiscal Responsibility Bill, 2018

Across international regulatory and multi-national governance bodies there is clear consensus that good governance is central to achieving macroeconomic stability and high-quality growth, and that fiscal responsibility is key in good governance and enhancing its positive impact on the economy. The institution of strong, fair, and transparent fiscal policy has been shown to have the effect of stabilizing government finances, providing more favorable access to domestic and international capital markets, and reducing the incidence and severity of fiscal crises, all of which have knock-on positive effects in key economic indicators.

Faced with a persistent and precarious debt-to-GDP ratio, annual fiscal deficits, and consecutive credit downgrades in preceding years, The Bahamas finds itself at precipice which has the potential to endanger the nation's economic future. Over the past two years, The Organization for Responsible Governance has advocated for a Fiscal Responsibility Bill that would take measures to institute greater transparency in government expenditure and reporting, provide limits to capital and recurrent expenditure relative to GDP, and develop a strategy toward a balanced budget and debt reduction.

ORG is therefore pleased to see a commitment to good governance, accountability, transparency and fiscal responsibility with the introduction of the Fiscal Responsibility Bill, 2018 (FRB) and the invitation for civil society and public consultation on the draft bill ahead of tabling the legislation. If done right, this Bill could be a pivotal milestone in the health of Bahamian financial and fiscal sustainability.

Summary of Analysis and Recommendations

The Bahamas Bill is reflective of many recognized pieces of legislature including New Zealand and Australia, which are considered standards in the space, clearly specifying reporting processes on proposed policies, timelines and measurable objectives and goals to assure the legislature and the public that fiscal management principles are being followed. ORG found that the FRB met many of these standards in the clear outline of processes and commitment to inclusion, transparency and public reporting. The mandatory publishing of Fiscal Policy Statements containing strategic priorities, short and mid-term fiscal objectives, the legislated reporting and publishing deadlines, fiscal updates, and the establishment of an independent Fiscal Council were all viewed as positive implementations, in line with best practice, by ORG and participating partners and members.

Key areas of concern and potential improvement centered largely around the ability for the Fiscal Council and the law itself to affect accountability and rectify errant behaviour. This diverged into two key concerns:

1) Lack of codified penalties, sanctions, or incentives to discourage breach of Fiscal Responsibility and encourage compliance
2) Lack of fungible power of the Fiscal Council to a) proactively contribute to fiscal strategy and decisions and b) enforce its advice, recommendations and decisions

Enforcement, Penalties and Fiscal Responsibilities

Throughout the Bill there is a noticeable lack of reference to penalties or incentives to encourage compliance and rectify behaviour in the implementation of fiscal responsibility and discipline processes. Where there is mention of penalty, said penalties are not defined or codified and are left to Ministerial discretion allowing room for uneven or unfair application, or the perception thereof.

While legislated sanctions are not universal in fiscal responsibility legislation there is great precedent for the implementation of penalties, incentives or both to encourage positive behavioural change with encouraging results. Argentina, Brazil, Colombia, India, and Peru have all set incentives for success or sanctions for failure in meeting Fiscal Responsibility objectives.

Currently Nigeria's Independent Fiscal Responsibility Council, a body and jurisdiction that draws similarities to the proposed Fiscal Council and to The Bahamas, is calling for prescribed measures of enforcement in their law as mechanism for compliance. Furthermore, Brazil's fiscal responsibility legislation has strong enforcement mechanisms and imposes fiscal discipline on budget actors, which have resulted in the withholding of federal transfers to non-complying local states and municipalities.

Given The Bahamas' poor history of compliance with similar reporting laws, such as Public Disclosure, there is concern that without methods of enforcement there is a risk that the Fiscal Responsibility Bill could ultimately be ineffective despite its thorough reporting mandates and methodically outlined goals. Based on our analysis and the feedback of partners, members, and participants in our public feedback exercise ORG recommends that a system of penalties and incentives be developed and codified within the law.

Potency of the Fiscal Council

A recurring theme in ORG's consultation is the function and powers of the Fiscal Council. While there was general commendation for the independence and inclusiveness of the council, being selected from a consortium of private industry and professional association nominees and requiring timely public reporting, concern was repeatedly expressed that the Fiscal Council was not sufficiently included in the development of fiscal strategy and ensuring compliance.

The function of the Fiscal Council, as stated in Section 17, seems to be limited to retroactive assessments and "shadow reporting" on fiscal performance and compliance and furthermore there seems to be no legislated means to require government heed said reports. The Fiscal Council would be more effective in its objective to drive compliance and performance if it were proactively included as a consultant or contributor in key policy development such as fiscal adjustments, amendments to the schedules, determination of breaches, and the assessment of timelines, amongst others.

In addition, there is a need to ensure meaningful consideration of the Council's advice and reports. The law requires the reports but sets no expectation on how those reports should be received or utilized by the government nor does the law outline any recourse The Council might have in the event that it disagrees or advises against actions taken by government or if it's advice or recommendations are repeatedly disregarded by The Minister or other government actors.

ORG advises that The Council be proactively included in development of timelines, objectives, and policies beyond the retroactive shadow reporting body structured in the FRB. Furthermore, ORG suggests that clear responsibilities of government on the treatment and consideration of advice and content from The Council be outlined within the legislation.

ORG's Public Consultation and Feedback Process

The Organization for Responsible Governance believes in the importance of consultation to both the quality and the success of all policy. Public consultation gives the policy the benefit of broader perspective and expertise, improving the quality of the legislation, and supports greater public buy-in lowering the threshold for implementation and compliance. Public buy-in and Political consensus for fiscal prudence is necessary to successfully launch and integrate Fiscal Responsibility Laws. A Public in support of the fiscal responsibility is better equipped to hold powers that be accountable and the test of effective implementation comes when another party comes to power or when the consensus otherwise breaks down, the institution is tested on how it works to continue to restrain fiscal excesses. Often popular support can be the determinative factor.

ORG is pleased that the Ministry of Finance committed to public consultation in soliciting feedback for this bill and hopes that moving forward public consultation will be regularly instituted on a timeline that allows for wider more in depth and multifaceted consultation.

As is ORG's practice, the FRB was circulated internally to ORG staff, Council and volunteer committees as well as to ORG partners, members, and the public via ORG digital platforms to solicit diverse feedback on the bill for submission. Please see in the table below a point by point catalogue and analysis documenting ORG et al's recommendations and concerns for the Fiscal Responsibility Bill 2018.

Section Reference	**Section Quote**	**Recommendation/Note**
Part I Section 2	In this Act — … "chief executive officer" means the chief manager and includes permanent secretaries, chief executives of public bodies, management heads of constitutional bodies, management heads of local government and chief executives of government owned or controlled companies;	The use of "CEO" is positive language which reinforces the appropriate tone of the role for the public officials which are stewards of public funds
Part I Section 2	"public body" means a ministry, department, the senate, the house of assembly, a constitutional body, non-profit making statutory body, public corporation, any commission, authority, committee or other body, whether paid or unpaid, appointed by the Governor-General or a Minister of the Government; or any other governmental entity;	Public body should be expanded to include entities that are majority funded or receive over a certain threshold of funding from government

Part I Section 2	“public office holder” means the holder of an elected or appointed office in the Parliament, the Senate, the Judiciary, Government, a Government appointee to a board or commission or other advisory or governance position, and includes but is not limited to Ministers, constitutional office holders, and appointees to Government advisory bodies and to boards of public bodies and government owned or controlled companies and the staff supporting the public office holder;	Again, while this is quite inclusive, the term "government controlled" should be broadened to include entities receiving over a threshold of government funding.
Part I Section 4	Unless otherwise stated, this Act shall apply to all public entities, public officers and public office holders responsible for receiving, using or managing public resources, revenues or moneys at all levels of Government, including — departments and ministries; b) the legislature and its agencies, entities and institutions; (c) the judiciary and its agencies, entities and institutions; (d) constitutional and semi-autonomous agencies and special funds under the control of the government; (e) decentralized agencies and local governments, including their subsidiary bodies; (f) public bodies; and (g) government owned or controlled companies and their subsidiaries.	Needs to be expanded to include entities receiving partial but significant funding from the government. "Significant" should be clearly defined as a threshold of funding.
Part II Section 6 (a)	stability, which means fiscal policy shall be conducted in a manner that does not cause destabilizing changes in the macroeconomic and fiscal indicators;	More definition is needed on what constitutes stable and "destabilizing" in this context

Part II Section 6 (e)	transparency, which means — (i) the roles and responsibilities of all government entities, public officials and public office holders with respect to the management of fiscal policy are clearly established and defined; (ii) timely financial and non-financial information related to the management of fiscal policy is made available so as to permit effective public scrutiny of the conduct of fiscal policy and the state of the public finances; and (iii) public officials and public officer holders do not withhold financial or other performance information without lawful cause;	section (i) should be revised to: the roles and responsibilities of all government entities, public officials and public office holders with respect to the management of fiscal policy are clearly established, defined, and publicly posted;
Part II Section 7	The fiscal responsibility principles are — (a) achieving and maintaining a sustainable fiscal balance; (b) achieving and maintaining prudent levels of public debt; and (c) prudently managing fiscal risks.	These Principles should be expanded to include "Maintaining predictable and stable levels of taxation" and section (b) should be modified to either clarify what "prudent" levels of public debt are or for a less static definition, to outline how "prudent" levels of debt are to be determined.
Part II Section 8 (2)	During the period in which the Government does not comply with the requirements for the fiscal objectives contained in the First Schedule, the Government shall implement a fiscal adjustment plan to be specified in the next fiscal strategy report which shall include the fiscal adjustment measures and the time to achieve compliance, provided that if section 13 applies the procedure in that section shall be applied.	Limits on the timeline for compliance and fiscal adjustment measures should be implemented. Enforcement measures such as penalties for not meeting adjustments or timelines is needed ensure accountability and should be codified to ensure fairness and consistency.
Part II Section 8 (3)	The Government shall ensure the fiscal adjustment plan contains intended actions to return to compliance with the requirements for the fiscal objectives in the First Schedule as soon as practicable	How will "as soon as practicable" be determined. Will the Council have recourse in the event that they disagree with the timeline or actions?
Part II Section 10 (2)	Once the fiscal strategy report has been approved by the Cabinet and no later than the 3rd Wednesday of November of each financial year, the Minister shall submit the fiscal strategy report to the Parliament and the	The timeline put forth for presentation to Parliament is proactive and realistic however there should be specific mention of the Fiscal Council's role in the process. The

	Fiscal Responsibility Council.	Fiscal Council should be allowed review prior to parliamentary presentation to allow consultation and draw on the collective expertise.
Part II Section 10 (7)	The Minister may by order subject to affirmative resolution of the House of Assembly amend the Second Schedule.	Amendment of the second schedule should require consultation with the Fiscal Council prior to presentation to HoA
Part II Section 11 (1)	The Financial Secretary shall, not earlier than thirty working days, nor later than twenty working days, before the day appointed as polling day in relation to any general election of members of the Parliament, arrange to be published on an official website of the Government, a Pre-election Economic and Fiscal Update which shall include the information specified in the Third Schedule	The Fiscal Update should require review from the Fiscal Council ahead of publication to preserve objectivity and protect against bias and political motivations.
Part II Section 12 (3)	The Minister may by order subject to affirmative resolution of the House of Assembly amend the Fourth Schedule.	Again, this should require consultation with the Fiscal Council prior to presentation to the HoA
Part II Section 13 (1)	The Government may temporarily depart from the requirements for the fiscal objectives in the First Schedule only when sudden and unexpected events arising from external shocks resulting in a significant economic downturn, national security considerations, or natural disasters so require, provided that the Minister provides a fiscal adjustment plan to Parliament...	This should require consultation with the Fiscal Council prior to presentation to the HoA
Part II Section 15 (1)	(1) If the Government is in breach of — (a) the fiscal responsibility principles in section 7; (b) the requirements for the fiscal objectives in the First Schedule; or (c) the fiscal adjustment plan required by section 8(2), the Minister shall appear before the Public Accounts Committee of	How is it determined that a Minister is in breach? What is the process for reporting and assessing a suspected breach and who is eligible to report it? What is the role of the Fiscal Council in this process?

	Parliament to explain the cause of the breach and the fiscal adjustment plan.	
Part II Section 15 (3)	The Public Accounts Committee may recommend to the Minister that consideration be given to applying a financial or other penalty to a public office holder or public official deemed responsible by the Public Accounts Committee for a failure to comply with a requirement of this Act.	Language is unclear on appropriate penalties. Rules of enforcement should be codified within the law and correlative to the level of breach, so that public officers can be clear on responsibilities and consequences, driving greater levels of accountability. Also, this should not be left to the discretion of The Minister which leaves it open to variability and bias.
Part II Section 15 (5)	A public office holder or public official who has had a penalty imposed subsequent to a determination by the Public Accounts Committee under this section shall have a right of appeal to the Supreme Court.	Who would pay for the appeal to the Supreme Court? We recommend this be at the individual's expense, unless the Supreme Court finds in the individual's favor.
Part III Section 17 (1)	The Council shall have responsibility to assess compliance with the general principles, fiscal responsibility principles and fiscal objectives and to advise on fiscal and budgetary matters of the Government including reviewing the — (a) fiscal strategy report; (b) annual budget; (c) mid-year review; (d) pre-election economic and fiscal update; (e) Government annual accounts; (f) reports on deviations from the fiscal responsibility requirements; and (g) fiscal adjustment plan of the Government in response to deviations.	1) The responsibility to communicate findings with the public should be added and supported 2) The power of the Fiscal Council and its assessment need to be supported and defined. Language needs to be added to ensure that the Fiscal Council's assessment and "advice" is appropriately considered by government entities and is not a nominal exercise. 3) Beyond review, one of the functions of the Fiscal Council should be proactive consultation on the development of fiscal strategy
Part III Section 18 (2)	Subject to laws on information, all public officials and public office holders shall provide information and documentation required by the Council to comply with its functions and responsibilities under this Act in the form and by the time required by the Council and this section relates	This should include economic modelling and other data or information that contributes to decision-making. Penalties, such as a fine, should be instituted for non-compliance to produce requested information. Penalties can increase with the length of time that the entity

	to existing information and does not require public officials or public office holders to provide new or additional analysis except as provided for in subsection (1).	does not comply.
Part III Section 19 (1)	The Council shall consist of five members appointed by the Governor General on advice of the Speaker of the House (hereinafter referred to as "the Speaker") of whom — (a) one person shall have qualifications and experience in law nominated by the Bar Association; (b) one person shall have qualifications and experience in business nominated by the Chamber of Commerce; (c) one person shall have qualifications and experience in economics nominated by the University of The Bahamas; (d) one person shall have qualifications and experience in accounting nominated by The Bahamas Institute of Chartered Accountants; and (e) one person shall have qualifications and experience in finance nominated by the Certified Financial Analysts' Society of The Bahamas	Ensuring an independent council is paramount to the function and objectives of the entity and this bill. The mandatory inclusion of nominations from an array of relevant professional and private industry organizations presents a more inclusive, unbiased process and is strongly supported. Collected feedback expressed the independence and integrity of the council as a high priority consideration. One concern was consideration to include other relevant groups as necessary (e.g. economic policy groups or broader civil society groups)
Part III Section 20 (1)	A member of the Council shall hold office for such period, not exceeding three years, as the Governor-General may direct in the instrument appointing such member, but such member shall be eligible for reappointment.	According to best practice, term limits should be set. 2 to 3 years is in accordance with international standards.
Part III Section 21 (1) (f)	A member of the Council may be removed from office by the Governor General on the advice of the Speaker if — the Speaker considers the member unsuited to the position after considering reviews of performance of the Council and the member.	Feedback or votes from the other Fiscal Council members should be a central consideration in any decision to remove a member.

Part III Section 23 (1)	The Council shall — (a) submit to the Parliament by the 31st day of January in every year a report containing an assessment of the fiscal strategy report of the Government against the general principles, fiscal responsibility principles and fiscal objectives; (b) submit to the Parliament by the 31st day of March in every year a report containing an assessment of the mid-year review against the general principles, fiscal responsibility principles and fiscal objectives; (c) submit to the Parliament by the 31st day of July in every year a report containing an assessment of the annual budget of the Government against the general principles, fiscal responsibility principles and fiscal objectives; (d) submit to the Parliament a report containing an assessment of the Government annual accounts, the general principles, fiscal responsibility principles and fiscal objectives no later than one month after the Government Accounts have been published; and (e) publish in a timely manner reports to fulfil its functions under this Act on the fiscal adjustment plan of the Government in response to deviations.	Beyond reporting, concerns are that the Council does not have a sufficient role in consulting on the development of fiscal strategy. We would like to see more proactive inclusion of The Council in these processes.
Part III Section 23 (5)	(5) The Council shall ensure it communicates its reports to the public in an effective manner.	Openness and Transparency are crucial components to Fiscal Responsibility. We are happy to see a commitment to communication with the public. However, "effective" needs to be qualified. Also, what are the consequences in the event that the Council does not meet this requirement?
Part IV Section 24 (1)	The Minister may make regulations generally as may appear to the Minister to be necessary and expedient for the proper implementation of the intent and objectives of this Act.	This clause provides sweeping powers to the Minister which, in a worst-case scenario, opens the Fiscal Responsibility processes to misuse.

First Schedule Section 3	The long-term debt fiscal objective is to reduce debt from 57 percent of GDP in FY 2016/17 to a debt level of no more than 50 percent of GDP and the Government shall state the financial year by which this long-term debt objective is intended to be achieved in the fiscal strategy report.	Other fiscal responsibility legislation tends to have specific deadlines for these reforms. We suggest a stipulation that the objective be met "no later than" a predetermined date outlined in the legislation.
First Schedule Section 5 (i)	As achieving the fiscal objectives for the debt and fiscal balance requires significant fiscal adjustments in the FY2018/19 to FY2020/21 period, a gradual adjustment towards these objectives would allow time for the public sector and the economy to achieve the fiscal objective in an orderly manner. Accordingly, the fiscal objective for the fiscal balance for the years FY2018/19 and FY2019/20 shall not exceed a deficit of 1.8 percent of GDP and 1.0 percent of GDP, respectively	This is an ambitious goal.
Second Schedule Section 12	If the Government is unable to provide any of the information required by this Schedule the Ministry shall state in the fiscal strategy report the reasons for any missing information and shall ensure that such information is available as soon as practicable for future fiscal strategy reports.	There should be consultation on the strategy with the Fiscal Council and assessment by the Council on the validity of delays and consequences