

Parliament's Scrutiny of the Budget: Money Bills Amendment Procedure and Related Matters Act

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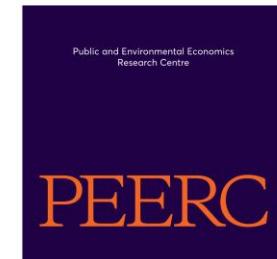
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Important points made on Day 1

- The Budget is a proposal that Parliament may agree to, amend or reject
 - Strictly speaking it is a set of proposals contained in four major parts: Fiscal Framework, Division of Revenue Bill, Appropriation Bill, Tax/Revenue Bills
- Parliament's processing of the Budget and other money Bills is guided by the Money Bills Amendment Procedure and Related Matters Act (2009)
 - NB: some important amendments were made in 2018, Members should refer to the amended Act
- Parliament is under-resourced and under-capacitated relative to its formal duties and responsibilities
- Monitoring of performance and the link to budgets is often time-intensive, complicated and may be 'gamed' by departments

The Budget is based on Money Bills [Constitution s77]

Money Bills

- 1.A Bill is a money Bill if it-
 - a.appropriates money;
 - b.imposes national taxes, levies, duties or surcharges;
 - c.abolishes or reduces, or grants exemptions from, any national taxes, levies, duties or surcharges; or
 - d.authorises direct charges against the National Revenue Fund, except a Bill envisaged in section 214 authorising direct charges.
- 2.A money Bill may not deal with any other matter except-
 - a.a subordinate matter incidental to the appropriation of money;
 - b.the imposition, abolition or reduction of national taxes, levies, duties or surcharges;
 - c.the granting of exemption from national taxes, levies, duties or surcharges; or
 - d.the authorisation of direct charges against the National Revenue Fund.
- 3.All money Bills must be considered in accordance with the procedure established by section 75. An Act of Parliament must provide for a procedure to amend money Bills before Parliament.

Detailing Parliament's role and powers in relation to the Budget

- Constitution (1996) requires that: “An Act of Parliament must provide for a procedure to amend money Bills before Parliament.”
 - I.e. legislation that outlines how Parliament can change the Budget, and associated legislation, tabled by the Minister of Finance
- The Executive was not enthusiastic about this idea at the time
 - Original draft Bill was very limiting and rejected by virtually all non-Finance/Treasury parties
- A new Bill only tabled in 2008 and, after significant amendments, passed in 2009 as the Money Bills Amendment Procedure and Related Matters Act
 - Critical point: the Budget is a *proposal* to be approved, it is not final when announced

Sequencing and associated logic

- ❑ Oversight as sequenced by the Act:

Fiscal Framework → Division of Revenue Bill → Appropriation Bill

- ❑ Rationale: first decide appropriate levels of revenue, borrowing and expenditure, *then* decide how to best allocate the expenditure

- Not universally accepted as the appropriate approach but has its merits
- Crucial that MPs fully understand the implications for what they can and cannot do at each stage

- ❑ Requirements of Act

- Information Treasury needs to provide
- Long list of requirements that any proposed amendment must satisfy (see ‘annexure’ slides)

Brief overview of all oversight areas/processes

Broad area	Specific issue/legislation	Committees?
National Budget (February)	Fiscal framework	Standing and Select Committees on Finance
	Division of Revenue Bill	Standing and Select Committees on Appropriations
	Appropriation Bill	Standing and Select Committees on Appropriations
Adjustment Budget (October)	Adjusted Fiscal Framework, Adjustment Appropriations Bill, Adjustment Division of Revenue Bill	As above
Medium-term Budget Policy Statement (October)	Proposed fiscal frameworks Proposed expenditure and division of revenue	Same committees as per Budget
Tax Bills (timing varies, arguably should align to fiscal framework)	Tax Administration Law and Taxation Amendment Bills; Rates Bill; Tax-specific Bills	Standing and Select Committees on Finance

Legislation centres on the logic of amendment

- It is important not to lose sight of the fundamental purpose of the legislation:
to facilitate legislature amendment of money Bills
- It can be helpful to imagine a practical situation: the select committee on appropriations takes the position that an extra R10billion should be allocated to provinces through the Division of Revenue Bill
 - How might that conclusion be reached?
 - Where will public input happen?
 - How much time would be needed to satisfy any requirements for amendment?
 - Where would the institutional capacity exist to advise on, and substantiate, such an amendment?
 - Etc

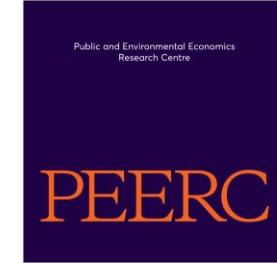
Alternatives to amendment

- The Executive (National Treasury and Ministry of Finance) remains uncomfortable with the notion of Parliament amending its Budget proposals
 - Significant in any political situation where the legislature and Executive are effectively controlled by one political party
- An alternative to amendment is oversight activity that leads to changes in subsequent year's Budgets
- There are some instances where NCOP committees appear to have successfully influenced conditional grant allocations in later years to address specific issues of concern

Some suggestions

1. Important to understand the logic embedded in the Money Bills Act and the constraints placed on legislature decisions as the Budget process plays out
2. Amendment power should be taken seriously and clear, practical procedures developed for implementing a range of different kinds of amendments
3. Endeavour to focus oversight on to a selected number of crucial issues – necessitated by demands on Parliament relative to resources/capacity
4. While not neglecting the significance of amendment, utilise the ability to inform future Budgets, through contributions on the Budget and MTBPS
5. Utilise the FFC, PBO and civil society inputs to strengthen oversight: requires FFC and PBO to be more focused (as per 3. above)

The Role of Provincial Legislatures



Enacting the Constitutional imperative for provincial oversight

- Relevant to NCOP: each *provincial legislature* is supposed to enact their own money bills legislation.
- Compliance with s120 of the Constitution is long overdue but besides that the process of drafting a provincial money bills act presents an opportunity and a risk
 - **Opportunity:** reflect on experience of last 23 years, continuing challenges and limitations of oversight, involve civil society – then draft legislation and processes that will guide improvements in terms to come
 - **Risk:** treat as a compliance exercise, limit consultation and involvement of civil society, then draft legislation which is superficial and not accompanied by substantive processes – leading to an entrenchment of past/current limitations

Progress to date

- Two provincial legislatures have passed such legislation: Gauteng in 2019 and Eastern Cape in 2020
- To our knowledge, two other PLs have begun the process of considering such legislation: KwaZulu-Natal and Western Cape
- A notable issue for the NCOP is how the mandating process in relation to the Division of Revenue might be affected by such changes
- As it happens, both the GPL and the ECPL have failed to address that question in their legislation

Gauteng Provincial Legislature (GPL)

GPL first to pass such legislation in 2018, but unfortunately various problems.

High-level problems with the GPL's Money Bills Act

- Failure to think through the nature of the *provincial* oversight process
- Drafting and revision process was rushed resulting in errors and ambiguities

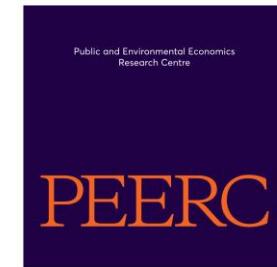
Specific problems with the GPL's Money Bills Act

1. Does not incorporate the Division of Revenue mandating process
2. Lacks detail and decisiveness on the PLBO it seeks to establish

(And fails to learn from the *national* legislation which was better than the GPL version even in its 2009 form and was further improved by the amendments of 2018)

Unfortunately, similar problems appear in the ECPL Act

Brief notes on Parliamentary Budget Offices



The broad role of a PBO

- The basic role of a PBO is to provide MPs with the technical support to fulfil their oversight role in relation to public finances
- There are three aspects to the PBO role that are often misunderstood:
 1. Arguably should not play day-to-day advice role (therefore different from committee staff) and have most impact by providing detailed analysis of selected, important, specific issues
 2. Support to MPs does not imply direct instruction or non-transparent interaction
 3. Key role is to produce substantive, technically credible, reliable and independent research and analysis on important public finance issues
- Amendments to the 2009 Act have improved the support in legislation for these aspects but implementation is at best unclear

Nature of analysis and research

- An important starting point is to recognise that the potential scope vastly exceeds the resources available (of both the PBO and members themselves)
 - Nature of possible research varies from forecasting economic growth to costing specific policy proposals and estimating distributional effects
- Quality should be equivalent to highest in public or private sectors
 - Requires appropriate staffing, management and long-term planning
- Research should be made public wherever possible, as that serves at least two purposes:
 - Tests/establishes credibility of the research
 - Adds significant value to broader public engagement with public finance issues (*if* credibility is achieved)

Considerations relating to institutional structure, powers, etc

- A PBO can achieve a great deal if properly structured, staffed and managed; correspondingly, it can be a serious liability if this is not the case...
- The Director and senior management must be robustly independent in order to command the respect of all political parties and ideological groupings
- One important dimension of independence is access to information from other institutions
- Consistent pattern across countries is that economists, with requisite knowledge of quantitative methods and public finance, are the core of a successful PBO
 - PBOs tend to advise finance and appropriations committees, not SCOPA
 - Experts of other kinds can be contacted, or contracted, on an ad hoc basis

Some resources for Members



Some resources/references for Members

- Members have already been provided with the detailed report titled *Fiscal Oversight by Parliament and Provincial Legislatures*
 - Note in particular p.18-p.21, which briefly considers the roles of the select committee on finance, select committee on appropriations, and the FFC

- More high level and less dense resources

“Why has Parliament not yet made a substantive amendment to the national Budget?”, *PMG Review of the 5th Parliament*, https://pmg.org.za/parliament-review/article/sean_muller

<https://theconversation.com/explainer-the-nitty-gritty-of-south-africas-annual-budget-72901>

<https://theconversation.com/why-south-africas-public-finance-watchdog FAILED ITS MANDATE ON NUCLEAR-65128>