

SUBMISSION ON PROPOSED AMENDMENTS TO THE MONEY BILLS AMENDMENT PROCEDURE AND RELATED MATTERS ACT OF 2009

1. PRIMARY ISSUES

1.1. Timing of the MTBPS and Budget process

The purpose of addressing timing is presumably to facilitate more substantive oversight, including greater public participation, and allow time for amendments processes in the event those should take place.

The question that arises is whether the addition of the phrase “or as soon as reasonable thereafter” satisfactorily addresses concerns regarding short timelines for certain processes. Might it not be preferable to extend certain timelines – notably the time for processing the fiscal framework (Budget) and proposed fiscal frameworks (MTBPS) – by a specific number of days?

Introducing uncertainty into the Budget process is, as a general rule, undesirable.

1.2. Institutional status and structure of the Parliamentary Budget Office (PBO)

Institutional status and integrity

The amendments to definitively state the PBO’s institutional status as a juristic person with its own accounting officer, and the implications thereof, are welcome.

These do not, however, address an omission in the original Act that only addresses technical and managerial qualifications required to manage the Office but not integrity. It would be appropriate for the amendment to 15(5)a specify that the PBO Director be a ‘fit and proper person’. This requirement is used in relation to other posts for independent or quasi-independent public institutions; its legal meaning has been tested and is now well-understood.

Access to information

The proposed additions covering the PBO’s access to information are also welcome. This was a significant flaw/omission in the original Act. However, it would be desirable to strengthen these to require that information be provided *timeously and in the format requested*. For example, if data exists in a spreadsheet it should be possible to provide it within a week. But if there is a desire to hinder the work of the Office, the current amendments allow a situation where it is provided after 6 months and in hard copy.

Budget

Notional independence can be compromised if an institution is vulnerable to budgetary pressures. The current Act and the proposed amendments do not at any point state precisely how, or on what basis, the PBO budget will be decided. There is no simple way to address this, but some minimum protections for the Office’s budget may be appropriate.

Advisory board

The proposal to replace the role of committees in overseeing aspects of the PBO’s functioning with an advisory board is of concern. That concern is compounded by the change that would allow the proposed advisory board to appoint an acting director (see further comment on that below).

The practical reality is that all six of the positions on the proposed board are currently held by one political party, making this proposal incompatible with the non-partisan role the PBO is expected to play. Furthermore, the advantage of the committees playing this role is that the PBO would account in the public domain, much as other independent institutions do. The fact that an advisory board-type arrangement has been used to date does not make the proposal any more credible. It should be scrapped.

If the concern is that the four committees playing this role is impractical, there are many alternatives that include cross-party representation as opposed to the current proposal.

Director's performance and accountability

It is unclear, in the Act and in the proposed amendments, to whom (if anyone) the Director is practically accountable. This takes on additional significance with the proposed amendment, in 15(5)c, that the Director's contract may "on performance" be renewed. How would such performance be assessed? And would it not contradict the role of the committees in appointing a Director if performance was determined by a person, or institutional structure, other than the committees themselves?

Other accountability/reporting

The current Act is unsatisfactory in its phrasing, in 15(9), of the requirement to report interference. I note three particular issues here.

First, the requirement is "report to Parliament". What does this mean in practice? The Executive Authority? The committees? (Or the proposed advisory board?) What if some, or all, of those are in some way implicated?

Second, the phrase "inappropriate interference" is possibly too vague and may allow too much discretion to the Director. Surely, *any* 'interference' should be reportable.

Finally, why does this requirement not extend to staff of the PBO? It assumes that such staff would report these issues to the Director, but one must consider all possible scenarios: what if the Director is facilitating such interference?

On the basis of these concerns, I suggest: removing the term 'inappropriate'; specifying precisely to whom the Director should report interference; add the requirement that staff must report interference as well; and, add the requirement that any such report should be copied to the Public Protector and the Public Service Commission.

1.3. Revenue Bills and revenue proposals

The amendments make revenue proposals part of the fiscal framework, which is unobjectionable. However, the tension between the in-principle approval of those proposals in February, with the passing of the associated legislation much later in the year, remains.

The logical requirement would seem to be that the relevant revenue Bills be tabled with the Budget. It is unlikely that this could be implemented immediately, due to bureaucratic obstacles faced by SARS and Treasury. Nevertheless, some consideration should be given to how this could be addressed in the current set of amendments.

1.4. Provincial legislatures

It may be appropriate to revisit the actual purpose of the schedule of norms and standards for provincial legislatures. While the proposed amendments may remedy the potentially unconstitutional nature of the provisions in the original Act, the value of what remains is not entirely clear.

For example, some of the provisions in 17(b) and 17(c) refer to matters at the national level that may not be plausibly relevant to provincial matters. Furthermore, there seems to be a tension between retaining the use of the term “must” in 17(b) and 17(c), and the rephrasing of the preamble to 17(a).

2. MATTERS REQUIRING CLARIFICATION

2.1. Discretionary tabling of adjustments budget and BRRRs [clause 4(c) and 11]

The discretion referred to in the memo in relation to clauses 4 and 11 are concerning at first sight. However, the actual amendments indicate that the discretion in 4 only refers to “additional budgetary and recommendation reports”, not all of them.

Most importantly, one assumes that the discretionary tabling of an adjustments Budget [12(1)] is a mere change in phrasing to recognise the (highly unlikely) situation in which no adjustments are made. If the Bill were proposed to allow the Minister not to table an adjustments Budget even when changes had been made, that would be undesirable.

2.2. Fiscal framework: ‘all revenue’ versus ‘all revenue proposals’ [clause 1(h)]

Can it be assumed that “all revenue proposals” includes all revenue that would be gathered from existing instruments? Certainly, one would not want to remove baseline revenue estimates from the fiscal framework.

2.3. Requirement of openness and transparency in appointment of acting Director

Above I have argued that the replacement of committees with an advisory board is not desirable. In this regard, it is also unclear whether the board would be bound by appropriate requirements in relation to the appointment of an acting director.

Is the new subsection 15(15) – that the advisory board appoint an acting director – covered by the requirement of 15(5c) that such a recommendation must be made “in an open and transparent manner”? It clearly should be.

2.4. Application of requirements of Director to Acting Director

It appears unclear from the current phrasing whether the requirements for the Director, as stated in 15(5)a apply to an acting Director. Clearly they should.

Therefore I suggest this be made explicit in the amendments.

The associated requirement that the individual be a ‘fit and proper’ person has already been covered above.

3. MINOR ISSUES

The amendments make a number of sensible changes to phrasing or logic of the Act, which are to be welcomed.

Some possible additional minor corrections are:

- For consistency, the amendment to 7(4) of the Act under clause 6 should perhaps read “the recommendations contained in the reports referred to in section 5(5), 6(7) and 6(12)” – not “5(2)”.
- It is not clear that it is necessary to include section 10 in 13(1) of the original Act, since all Money Bills mentioned under that section *are* sent “to the respective committees on appropriations”.

4. ADDITIONAL NOTES

The requirement in the current Act that the PBO receive a transfer, as well as a comparison of the original draft Money Bills Act (2008) with the final Act, shows that the Act intended the Office to be independent from the administration. Yet this has not been implemented. So while the new amendments put the PBO’s status beyond any doubt or misrepresentation, there remains the concerns that the same institutional dynamics that sabotaged implementation of the previous provision may undermine these new provisions. It may be appropriate for the finance and appropriations committees to state, prior to (or upon) referring the final Bill to the House, their expectations as to when certain milestones should be reached, so that the relevant officials – in the PBO and Parliament administration – can be held accountable for those.