

Procedure for a committee Bill

National Assembly Approval

1. NA rule 230 read with NA rule 238 - the NA initiates legislation through its committees acting with permission of the Assembly – NA Resolution of 20 September 2012 constitutes such permission.

Preparation of the Bill

2. NA rule 239 determines that the Committee must –
 - a. prepare a draft bill and explanatory memorandum setting out the object of the bill;
 - b. consult with the JTM for advice on the classification of the bill; and
 - c. comply with NA rule 241.
3. NA rule 241 - publication of an explanatory summary of the bill in the *Gazette* or publication of Bill (as introduced). The latter publication choice would facilitate timely processing of the bill, as rule 241(2) then requires that the bill itself is published in the *Gazette* with a notice of its publication containing “an invitation to interested persons and institutions to submit written representation on the draft legislation”. This amounts to a call for public participation.
4. Publication of the bill together with a call for submissions would allow the Committee to facilitate public participation in a manner that enables speedy processing of the amendment.

Facilitation of Public Participation

5. There is no set prescript as to the form public participation should take. The Constitutional Court in *Doctors for Life International v Speaker of the National Assembly and Others*¹ (in considering the scope of section 72 of the Constitution that resembles that of section 59 in tone) highlighted the following considerations –
 - a. Public participation refers to the facilitation of public involvement in the legislative process and calls for steps to be taken by Parliament to ensure that such involvement can be realised.²
 - b. In doing so, a constitutional balance is called for between the representative and participatory democratic elements which both inform the legislature’s constitutional duties: “It imposes a special duty on the legislature and pre-supposes that the legislature will have

¹ 2006 (12) BCLR 1399 (CC).

² *Doctors for Life International v Speaker of the National Assembly and Others* 2006 (12) BCLR 1399 (CC) at 1443.

considerable discretion in determining how best to achieve this balanced relationship."³

- c. The required degree of public participation that is left to discretion of Parliament, as long as the opportunity granted for public participation is reasonable. The context (scope, importance, impact) of every bill (and the processing it requires) will inform the degree of participation that is regarded as reasonable in the circumstances.⁴
6. Rule 249 (dealing with committee processing of bills) - committee to which the bill is referred must arrange its business in such a manner that interested persons and institutions have an opportunity to comment on the Bill.

Amendments to the PFMA

7. Section 4 of the Public Finance Management Act, 1999 (Act No. 1 of 1999) (PFMA) requires consultation with the Minister of Finance prior to introducing legislation in Parliament directly or indirectly amending the PFMA.
8. Section 22(3) of the PFMA requires consultation with the Minister of Finance prior to introducing legislation in Parliament prior to introducing legislation excluding money from payment into a Provincial Revenue Fund. The consultation must be on the reasonableness of the exclusion and the Minister must consent to the exclusion.
9. Clause 72 proposes to amend sections 3, 22 and 89 of the PFMA.

Conclusion

10. The Standing Committee on Finance must:
 - a. consult with the JTM for advice on the classification of the Bill;
 - b. publish the Bill to be introduced in the GG and call for public submissions;
 - c. facilitate public participation, whether written submissions or public hearings;
 - d. consult the Minister of Finance on the amendments to the PFMA;
 - e. report to the NA, with a amendment Bill attached.

³ *Doctors for Life International v Speaker of the National Assembly and Others* 2006 (12) BCLR 1399 (CC) at 1443.

⁴ *Doctors for Life International v Speaker of the National Assembly and Others* 2006 (12) BCLR 1399 (CC) at 1444 with reference to *Minister of Health and Another NO v New Clicks South Africa (Pty) Ltd and Others (Treatment Action Campaign and Another as Amicus Curiae)* 2006 (2) SA 311 (CC); 2006 (1) BCLR 1 (CC) at par 630: "The forms of facilitating an appropriate degree of participation in the law-making process are indeed capable of infinite variation. What matters is that at the end of the day a reasonable opportunity is offered to members of the public and all interested parties to know about the issues and to have an adequate say. What amounts to a reasonable opportunity will depend on the circumstances of each case."