

SUBMISSION TO THE EASTERN CAPE PROVINCIAL LEGISLATURE ON THE MONEY
BILLS AMENDMENT PROCEDURE AND RELATED MATTERS BILL
(NO: 4389-2020)

**Submission by the Public Service Accountability Monitor,
Rhodes University**

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INTRODUCTION

This submission was prepared by the Public Service Accountability Monitor ([PSAM](#)). PSAM forms part of the School of Journalism and Media Studies at Rhodes University, Makhanda. PSAM's activities include research, monitoring, advocacy and capacity building. Working throughout Southern Africa, PSAM generates and shares knowledge about social accountability and the tools that can build more open, participatory and accountable government. Social accountability places an explicit duty on members of the executive arm of governments, public officials and private service providers to justify their decisions and performance regarding the manner in which their use of public resources has affected the progressive realisation of socio-economic rights. Contributing to strengthened oversight over public resources by Parliament and the provincial legislatures constitutes an important aspect the PSAM's objectives.

We value the opportunity afforded to us by the Eastern Cape Provincial Legislature to submit written comment and proposals on the draft Money Bills Amendment Procedure and Related Matters Bill (hereinafter referred to as "the Bill"). As per Sections 77 and 120 of the Constitution, a money bill appropriates money, imposes taxes, levies or surcharges, abolishes or reduces or grants exemptions from, any national taxes, levies, duties or surcharges. A money bill may also authorise direct charges against the National Revenue Fund.

Public participation in processes relating to money bills at the provincial level has the potential to strengthen overall oversight and people-centred policy-making.

On 30 April 2020, the International Budget Partnership (IBP) released the outcomes of the 2019 Open Budget Survey (OBS). The OBS is a biennial survey and is the world's only independent measure of fiscal openness. The survey assesses 117 countries on the transparency of their budgets, measuring the expanse and timeliness of budget information that they publish.

South Africa's transparency scores in the OBS 2019 were the highest of all countries, at 87 out of 100. Public participation in budget process, however, received a dismal score at 24 out of 100. Ensuring meaningful public participation is a fundamental component of developing responsive, rights-based fiscal tools.

The PSAM urges the Eastern Cape Legislature to proactively foster public participation in the development, implementation and evaluation of fiscal policy.

We support a money bills process in which public input is sought at all stages of the budget process - not only at the approval stages when decisions are effectively near-final. This is particularly pertinent under conditions such as appropriations towards COVID-19 and other disaster conditions and applies to opportunities within budget (re)formulation, expenditure and auditing.

Our primary submission relates to the need for mechanisms to be introduced into the Bill to support improved budget oversight and public participation in the budget process.

CONSIDERATION OF MONEY BILLS DURING NATIONAL OR PROVINCIAL STATE OF DISASTER:

The declaration of a national State of Disaster in March 2020 as a consequence of the COVID-19 pandemic raised pertinent questions in relation to budget oversight. The Public Finance Management Act (PFMA) primarily regulates financial management in national and provincial governments. Clauses within the PFMA provide guidance on financial management in emergency situations. Section 16 of the PFMA states that;

‘The Minister (of Finance) may authorise the use of funds from the National Revenue Fund to defray expenditure of an exceptional nature which is currently not provided for and which cannot, without serious prejudice to the public interest, be postponed to a future parliamentary appropriation of funds.’ (S16 (1)).

Section 16 (4) obliges the Minister to account for decisions taken in this regard to Parliament and the Auditor-General within 14 days. Section 25 of the PFMA makes similar provisions for the allocation and expenditure of emergency funds at the provincial level from the Provincial Revenue Fund. In this instance, the relevant MEC for Finance is required to report to the Legislature and Auditor-General (s.25(4)). In both instances, the Minister or MEC must table this expenditure either in the next adjustments budget or in another appropriation within 120 days – whichever is sooner.

Given the complexity of such arrangements – the PSAM urges the Legislature to incorporate clear provisions within the Bill for consideration of money bills during emergency contexts. In particular, it is suggested that the Legislature specify within the Bill exactly:

- what level of reporting and accountability is required by the Finance MEC and relevant departments, including the regularity of such reporting;
- what specific reporting details relating to the allocation and expenditure of emergency funds by the MEC and relevant departments
- what mechanisms for receiving and considering public inputs on such emergency funds have been made available and how have these informed the allocation and expenditure of such funds?

SUBMISSION SUMMARY

Effective public participation has the potential to improve the capacity of legislatures to fulfil their role to build a capable, accountable and responsive state that works effectively for its citizens. The PSAM acknowledges the inclusion of public participation in the draft Bill. To allow for effective public participation, it is important that relevant materials or deliberations are promoted in at least two of the province’s dominant languages.

The Bill, in seeking to establish a Budget Committee provides for an important budget monitoring and oversight mechanism. In this submission, a range of amendments to the current formulation are proposed, especially in relation to the composition and objectives of the Budget

Committee. The functions of the Budget Committee should also include more direct/proactive engagement with the public in order to promote meaningful public participation.

On the establishment of the Provincial Legislature Budget Unit, we recommend that its roles and powers be explained further. We propose, too, that more explicit mechanisms of linking the Unit's mandate to provide important research to committees of the Legislature.

<p>receive reports on budget from portfolio committees and must –</p> <p>(a) consider total aggregates of the budget;</p> <p>(b) invite members of portfolio committees to attend the Budget Committee meetings when issues relating to their sector are being considered; and</p> <p>(c) make recommendations to the House on the overall budget allocation.</p>		<p>Clause 5 (3) must be amended to read as follows:</p> <p>The Budget Committee must receive reports on budget[s] from portfolio committees and must -</p> <p>(a).....</p> <p>(b).....</p> <p>(c)</p> <p>(d) Publish these reports on the Eastern Cape Provincial Legislature website within 5 days of the house sitting</p>
<p>Clause 6(2) The Budget Committee must - (d)hold public hearings, receive comments from the public</p>	<p>In clause 6(2) (d), the Bill mentions that the “the Budget Committee must hold public hearings, receive comments from the public”, but it is not clear how often these public hearings are held. Public hearings are special meetings held by committees, where members of the public Bill for tabling in the legislature for each Department.</p> <p>Public hearings represent the most common form of public participation and are usually convened when Parliament or provincial legislatures seek to</p>	<p><u>Proposal for Revision:</u></p> <p>It is proposed that this clause be reworded and provide clarity on how often the public hearings will be held. These could be scheduled in March (before the tabling of the Provincial Budget), in July and in October (aligned with the tabling of the Provincial MTBPS).</p>

	engage with the general public on a particular issue or a specific segment of the society which might be greatly affected by proposed legislation.	
<p>Clause 7 Procedure prior to introduction of the Provincial budget (1) The Legislature, through its committees, must annually assess the performance of each Provincial Department, with reference to the following: (a) the medium term estimates of expenditure of each Provincial Department, its strategic goals and measurable objectives, as tabled in the Legislature with the Provincial budget; (b) prevailing strategic plans; (c) annual performance plans and operational plans; (d) the expenditure report relating to each Department published by the Provincial Treasury; (e) the financial statements and annual report of each Department; (f) the reports of the Auditor General relating to each Department; (g) the reports of the Standing</p>	<p>Clause 7 (1) states that the Legislature, through its committees, must annually assess the performance of each Provincial Department, with reference to the following: (a) the medium term estimates of expenditure of each Provincial Department, its strategic goals and measurable objectives, as tabled in the Legislature with the Provincial budget; (b) prevailing strategic plans; (c) annual performance plans and operational plans; (c) the expenditure report relating to each Department published by the Provincial Treasury; (d) the financial statements and annual report of each Department; (e) the reports of the Auditor General relating to each Department;</p>	<p><u>Proposal for Revision:</u> The PSAM proposes that clause 7(1) be amended as follows: “the Legislature, through its committees, must annually assess the performance of each Provincial Department, with reference to the following: (a) (b)..... (c)..... (d)..... (e)..... (f)..... (g)..... (h) Quarterly statements of receipts and payments and quarterly provincial budgets and expenditure reports</p>

<p>Committee on Public Accounts relating to each Department; and (g) any other information requested by or presented to the Legislature. (2) Committees must annually submit budgetary review and recommendation reports before adoption of the Appropriation Bill for tabling in the Legislature for each Department. (3) A budgetary review and recommendation report, which is derived from findings on the consideration of annual reports, half year financial oversight reports, Medium Term Budget Policy Statement report, SCOPA findings and Auditor-General recommendations must- (a) provide for an assessment of the Department's service delivery performance; (b) provide for an assessment on the effectiveness and efficiency of the Department's use of available resources; and (c) include recommendations on the advance use of resources. 4. Each Portfolio Committee must submit its report to the Committee within 15 days. 5. The Budget Committee must- (a) scrutinize the allocations and the reports of the Portfolio committees; and</p>	<p>(f) the reports of the Standing Committee on Public Accounts relating to each Department; and (g) any other information requested by or presented to the Legislature. Clause 7(3) states that a budgetary review and recommendation report, which is derived from findings on the consideration of annual reports, half year financial oversight reports, Medium Term Budget Policy Statement report, SCOPA findings and Auditor-General recommendations must- (a) provide for an assessment of the Department's service delivery performance; (b) provide for an assessment on the effectiveness and efficiency of the Department's use of available resources; and (c) Include recommendations on the advance use of resources.</p>	<p>The PSAM proposes that Clause 7(3) be amended as follows: "a budgetary review and recommendation report, which is derived from findings on the consideration of annual reports, half year financial oversight reports, Medium Term Budget Policy Statement report, SCOPA findings and Auditor-General recommendations must- (a)..... (b)..... (c)..... (d) be published on the Legislature's website within 7 days of tabling.</p>
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<p>(b) within 30 days after receiving reports from portfolio committees submit its recommendations to the House.</p> <p>6. Any budgetary review and recommendation report must after the adoption of the reports on the medium term budget policy statement-</p> <p>(a) be submitted to the MEC for Finance and MEC responsible for the vote to which the report applies after its adoption by the Provincial Legislature.</p>		
<p>Clause 12 Public Participation</p> <p>(1) The Budget Committee when considering the economic and budgetary policies, Provincial appropriation Bill and other money Bills should seek representations from the public and such recommendations shall be taken into account when the budget committee makes recommendation to the House.</p>	<p>Clause 12 (1) reads as follows:</p> <p>As it stands, the current clause on public participation does not provide the ways in which the Budget Committee will seek representations from the public. Therefore, there needs to be clarity on how the representations from the public will be sought. Committees must facilitate public involvement in the Legislature by ensuring efficient, transparent government and allowing public input in the law-making process.</p>	<p><u>Proposal for Revision</u></p> <p>The PSAM proposes the amendment of clause 12 (1) to read as follows:</p> <p>“Budget Committee when considering the economic and budgetary policies, Provincial appropriation Bill and other money Bills should seek representations from the public by:</p> <p>12.1.1. conducting public hearings on the budget and revenue proposals and availing policy materials in accessible language(s) and formats;</p> <p>12.1.2 holding public hearings to engage the public on economic and budgetary policies;</p> <p>12.1.3 collaborating with the media and community radio stations to inform the public about</p>

	<p>In the decided case of <i>Doctors for Life international v Speaker of the National Assembly and others</i> the court held that</p> <p><i>“All parties interested in legislation should feel that they have been given a real opportunity to have their say, that they are taken seriously as citizens and that their views matter and will receive due consideration at the moments when they could possibly influence decisions in a meaningful fashion. The objective is both symbolic and practical: the persons concerned must be manifestly shown the respect due to them as concerned citizens, and the legislators must have the benefit of all inputs that will enable them to produce the best possible laws”.</i></p> <p>Portfolio Committees play a vital role in facilitating public participation by providing forums such as public hearings for the public to air their views.</p>	<p>opportunities to contribute to money bill considerations in the legislature;</p> <p>12.1.4 Allowing the public sufficient time to submit written and oral representation. <i>(for instance at least 30 days from the date of call for comment for the submission of written and oral representation on the Provincial Appropriation Bill).</i></p> <p>(2) Such recommendations received shall be taken into account when the Budget Committee makes recommendations to the House.</p> <p>Add a clause obliging the Committee to provide feedback to the public/civil society organisations on their inputs</p>
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<p>Clause 15 Provincial Legislature Budget Unit</p> <p>(1) The Legislature hereby establishes the Provincial Legislature Budget Unit, the main objective of which is to provide non-partisan, high quality and independent technical analysis, objective and professional advice to the Legislature on matters related to the budget and other money Bills. (2) The core function of the Provincial Legislature Budget Unit is to support the implementation of this Act by undertaking research and analysis for the committee referred to in clause 4, including-</p> <p>(a) annually providing reviews and analysis of the documentation tabled in the Provincial Legislature by the MEC in terms of this Act;</p> <p>(b) monitoring and synthesizing matters and reports tabled and adopted in the House with budgetary implications, with particular emphasis on reports by other committees;</p> <p>(c) keeping abreast of policy debates and developments in key expenditure and revenue areas; ...</p>	<p>Budget Unit reporting process</p> <p>1) A Head of Unit with the requisite experience, leaderships skills and qualifications to direct the affairs of the Budget Unit as required by Sections 15 (1) and (2) of the Act</p> <p>Clause 15 (4) outlines the need for collaboration between the Budget Unit and other research structures within the legislature. While this is an important principle – it is not easily measurable or enforceable.</p> <p>In order to increase the strength of these relationships as a means of deepening the rigour with which committees provide budget oversight – there is a need for a clearer link between accountability/performance link.</p>	<p><u>Proposal for addition</u></p> <p>Add a clause on the appointment of staff working in the Budget Unit with emphasis on the requisite financial and research skills.</p> <p>This must include an explicit clause pertaining to the competencies of research/content/advisory staff.</p> <p>Add a clause outlining how reporting is done by the Budget Unit and to whom.</p> <p>Add explicit mandated role of the Unit to provide content to committees.</p> <p>Add a clause requiring the Budget Unit to publish its research reports</p>
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We hope that this submission will assist the Committee during its deliberations on and finalization of the Bill.

We would value the opportunity to make oral submissions at the hearings in Parliament.

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