Report of Standing Committee on Finance on the Public Finance Management Amendment Bill [B 13 – 2020], dated 15 June 2022.

Motion of Desirability on the Public Finance Management Amendment Bill [B 13 – 2020]

1. **INTRODUCTION AND BACKGROUND**
   1. Mr GKU Cachalia, MP, introduced the Public Finance Management Amendment Bill [B13 – 2020] to amend section 65 of the Public Finance Management Act, Act No 1 of 1999 (“the Act”).
   2. Section 65 of the Act provides that executive authorities responsible for departments or public entities must table annual reports, financial statements and audit reports on those statements in the National Assembly, or provincial legislatures in provinces. These must be tabled within a month of receipt of audit reports by the accounting officers or authorities, but not later than six months after the end of the applicable financial year.
   3. The proposed amendment seeks to provide for additional measures in instances where such reports and statements are not tabled within the prescribed six months’ period. Currently section 65 provides for an explanation to be tabled where such reports and audited statements are not tabled as prescribed, but does not provide for the timeframe for the tabling after such a written explanation is tabled.
   4. The Sponsor emphasized that there must be an obligation to table such deferred reports within a specified time-period after that written explanation.
2. **OBJECTS OF THE BILL**
   1. The proposed amendment seeks to provide for the additional measures by setting a time-period within which the annual report and audited financial statements must be tabled in the National Assembly or provincial legislature. It provides that such reports and audited statements, as referred to in section 65(1) must be tabled within 60 days after the written explanation was tabled.
3. **PROCESS**
   1. The Bill was introduced in the National Assembly on 8 July 2020, following a prior notice of intention to introduce being published in Government Gazette No 43418 of 12 June 2020.
   2. On 17 May 2022, Mr Cachalia briefed the Committee on the Bill. A call for public comments was made and on 07 June 2022, public hearings were conducted. Only one public submission was received but did not discuss the proposed amendment contained in this Bill.
   3. The Bill is tagged as a section 76 of the Constitution with no bearing on customary law.
4. **SUBMISSION BY NATIONAL TREASURY**
   1. In light of no submissions received on the Bill, the Committee requested the National Treasury to make a submission on the proposal in this Bill. Following the Committee’s request, the National Treasury made a submission on 13 June 2022 and said that it supported the principle of extended oversight proposed by the Bill.
   2. It however submitted that there is no need for the Act to be amended in order to achieve this. It proposed instead that this oversight be done through a regulatory instruction issued in terms of section 76 of the Act. It said that the instruction should determine 60 days as the period within which the tabling, after the written explanation was tabled in the relevant legislature, must be done. It further suggested that this timeframe could also be included in the instruction issued annually on the submission of annual financial statements and tabling of information.
   3. National Treasury submitted that having a specified time-period without the possibility of extending it could result in non-compliance beyond the control of the responsible Minister. It highlighted that an audit of an institution could be delayed due to unforeseen circumstances such as the going concern status assessment that may still need to be reviewed by external auditors and other relevant authorities. National Treasury said that delays could be as a result of concluding the audit processes.
   4. National Treasury further submitted that if an instruction determines the period within which the annual report and audited financial statements must so be submitted, section 79 of the Act will enable the National Treasury to approve a departure from that 60-day period provided in an instruction where good grounds exist. It added that section 79 of the Act requires the National Treasury to report any departure from an instruction to the Auditor-General.
   5. The National Treasury estimated that the regulatory instruction that it proposes could be issued by August 2022.
5. **RESPONSE TO THE SUBMISSIONS** 
   1. The Sponsor, and the Parliamentary drafter, responded to the submissions made by the National Treasury on 14 June 2022.
   2. The Drafter emphasised the legislative role of Parliament, which includes the initiation of Private Members Bills. She noted that the proposals made by the National Treasury in respect of issuing instructions in terms of section 76(4)*(g)* constituted secondary legislation or delegated power. Citing case law, she added that delegated power in terms of such an “omnibus provision” should be exercised with caution. She warned that since there is no provision in the Act which provides for the oversight proposed in this Bill, the issuing of such instructions could be viewed as an amendment of the Act, which would interfere with Parliament’s plenary powers.
   3. The Drafter further noted that section 65 provides for a written explanation where tabling is delayed. She argued that the legislature appeared to have intended to regulate the submission of the reports in the Act, not through delegation to be done by way of regulatory instructions.
   4. She further argued that considering that the purpose of the Bill is to ensure enhanced oversight by Parliament, allowing the Minister to prescribe how Parliament may do such oversight through regulatory instructions could compromise the principles of delegating plenary power.
   5. The Sponsor added that leaving this to the Executive to determine could create further problems where in the future, a Minister decides not to issue instructions or withdraws them. He firmly emphasized the need to proceed with the amendment in the Bill through primary legislation as opposed to secondary legislation.
6. **COMMITTEE DELIBERATIONS**
   1. The majority in the Committee agreed that the mischief which the Bill sought to remedy could be dealt with through regulatory instruction issued by the Minister of Finance in terms of section 79 of the PFMA.
   2. The majority in the Committee further urged the Minister of Finance to issue the regulatory instruction as soon as possible or within a month of the adoption of this report by Parliament.
7. **MOTION OF DESIRABILITY**
   1. The Committee decided to reject (or not to support) the motion of desirability referred to in Rule 286(4)(i) of the National Assembly Rules.

Report to be considered.