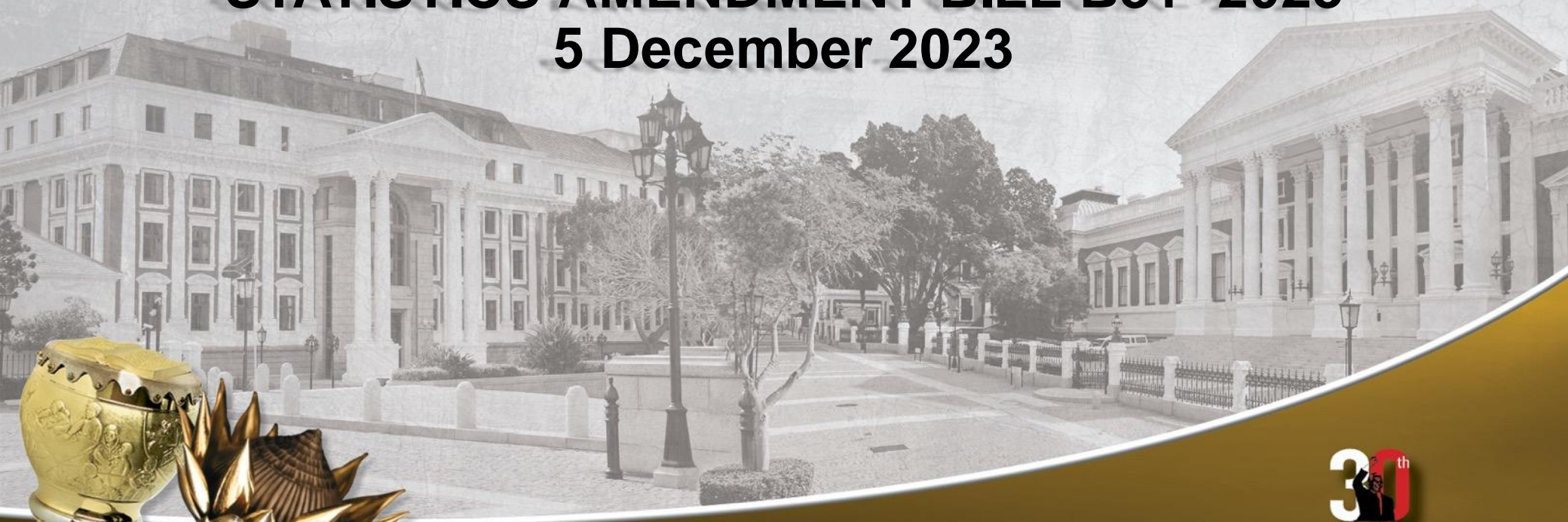




**PARLIAMENT**  
OF THE REPUBLIC OF SOUTH AFRICA

# **STATISTICS AMENDMENT BILL B31- 2023**

## **5 December 2023**



**30<sup>th</sup>**  
**ANNIVERSARY**  
OF THE RELEASE OF  
*Nelson Mandela*

# OUTLINE

- Constitutional provisions creating Parliament as a creature of law
- Distinction between a section 76 and 75 Bill on their processing and the obligation to facilitate public involvement
- Relevant Rules of Parliament
- Constitutional or legal issues for the alert to members of the Committee
- Conclusion



# Parliament and Chapter 4: Constitution

- Chapter 4 informs that Parliament is made up of the National Assembly and National Council of Provinces together with their Committees as Portfolio Committees and Select Committees
- LAMOSA did confirm that a failure of one house will be and is the failure of the other house, hence such failure will be the failure of Parliament having failed its constitutional obligations
- What is then required by s59 of the Constitution? Circumscribed exclusion of the public and minimal facilitation of public involvement is not advised.



# Facilitation of public involvement

- Parliament must enable the public to engage it, be it through public awareness, public education, notices that call for submissions with explanations on what the Bill is about and what is expected of the public in order to influence the decision of the legislature
- Submissions received- their content and indication and the application of the Rules of Parliament must be respected and considered well even if eventually do not change the mind of the legislature through them being accomodated
- The deliberations and meetings that have taken place to date are in line with NA Rule 286



# CONSTITUTIONAL CONCERNS

- Constitution has defined “organ of state” and we cannot depart from that definition in any legislation because all legislation including regulations are subject to the supreme law of the land being the Constitution
- Section 239 defines organ of state in (b)(ii) to mean any other functionary or “**institution**” exercising a public power or performing a public function in terms of any legislation.
- SARB in terms of the SA Reserve Bank Act 90 of 1989 section 2 is a juristic person formed under legislation, hence it falls under the above –mentioned as a constitutional institution that is an organ of state.



# LEGAL CONCERNS & SUBMISSION

- In general SARB is thus covered under the proposed amendments to the Statistics Amendment Bill where new changes are brought relating to organs of state in broad terms than just mere departments under the public service
- The further amendment sought through the submission of SARB invokes NA Rules and specifically NA Rule 286 which deals with process of a Bill in committees
- The Statistics Amendment Bill is tagged by the JTM as a s75 Bill.



# S75 Bills and NA Rule 286

- A 75 Bill is a bill that does not affect provinces by virtue of not addressing a concurrent legislative matter mentioned under schedule 4 or functional legislative competence areas exclusive to provincial or local government as found under schedule 5. Therefore a s 75 Bill B 31 of 2023 the Statistics Amendment Bill is a Bill on a functional area exclusive to Parliament since its subject area is not mentioned in any of the Schedules to the constitution as the content of this Bill is.
- The veto powers and processes of the NCOP differ extensively when a Bill is a 75 or 76 Bill.



# S 75 Bill

- According to s75(1), a Bill that does not affect provinces once referred to the NCOP after being passed by the NA and its Portfolio Committee, can move straight to assent by the President if the NCOP passes the referred Bill without making proposals that amend the NA passed Bill or where it does not reject it.
- The second House once a Bill is referred to them can either pass the Bill as received, pass the Bill subject to amendments proposed by its Select Committee or reject the Bill in its entirety- where if the last two options are the NA must once-more consider the Bill and may pass it again with or without the amendments of the NCOP or decide not to proceed with the Bill.





# NA Rule 286

- Today NA 286(4)(i) is to be engaged which require that after due deliberations, the Committee must consider a motion of desirability on the subject matter of the Bill and if; rejected must immediately table the Bill and its report on the Bill or;
- 286(4)(j) but if the motion of desirability is adopted, the Committee must proceed to deliberate on the details of the draft legislation.
- B 31-2023 being an amendment Bill means that it is seeking to amend existing legislation normally known as the “principal Act”.



# NA Rule 286(4)(c)

- If the Bill amends provisions of legislation, the **Committee must**, if it intends to propose amendments to other provisions of that legislation, **seek the permission of the Assembly to do so.**
- **Should the Committee wish and decide to** engage and decide on the submission by South African Reserve Bank in respect of section 17 of the Principal Act, provision NA Rule 286(4)(c must be invoked and the Committee must request permission to do so, since section 17 is not part of the proposals found in the introduced Bill sponsored by the Executive-namely Minister in the Presidency.



# NA Rule 286(6) in the process of enquiring into a Bill

- In as far as possible the Committee must consider public comments, make an invitation for further public comment and submissions on the substance of the Bill, followed by hearing and examination of such or other oral submissions if deemed necessary and the adoption of a motion of desirability, relating to whether the principles of the Bill and the need for the Bill are accepted.
- Hence, the stage the Bill is at now is both on sub-(4 and (6 of this Rule.



# Should Committee worry about recess and lapse of Bill

- As we ask the Committee to heed the warnings of the LAMOSAs judgment that it is not necessary that Parliament steamroll its work for fear that elections are approaching, we also present a solution that a Bill which has lapsed at the end of the session of Parliament can be revived
- In terms of NA Rule 333 where apparently every Bill lapses at the last sitting of the Assembly if such a Bill has only had a first reading but not a second reading, unless the Assembly decides otherwise. The Bill is capable of being revived by a request and placing back to the order paper for the Assembly to decide its fate in the following year and further processing from where it last stopped and lapsed.



**THANK YOU-  
SIYABONA**



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