

Business

Parliamentary

Office

A conduit for effective organised business – parliamentary advocacy

*Comprising Business Unity South Africa (BUSA) and
Chambers of Commerce and Industry South Africa (CHAMSA)*

**Submission to the Portfolio Committee on Finance
Parliament of the Republic of South Africa**

*Public Hearings on the Draft Money Amendment Procedure and
Related Matters Bill*

4th August 2008

1. BACKGROUND

The Business Parliamentary Office (BPO) is a facility servicing the parliamentary and legislative advocacy and information needs of the broader organised business sector in South Africa, as represented by:

- The South African Chamber of Commerce and Industry (SACCI)
- Business Unity South Africa (BUSA)
- Chambers of Commerce and Industry South Africa (CHAMSA)
- National African Federated Chamber of Commerce (NAFCOC)
- Afrikaanse Handels Instituut (AHI)
- Foundation for African Business and Consumer Services (FABCOS)

As the principal conduit facilitating the interface between the organised business sector and Parliament, the statement of mission of the BPO and its strategic objectives are informed and underpinned by a commitment to meaningfully and constructively contribute to the advancement of participatory parliamentary democracy in South Africa that is mutually inclusive with the attainment of national economic development outcomes.

2. INTRODUCTION

The BPO welcomes the opportunity afforded by the National Assembly Portfolio Committee on Finance to make written and oral submission as it concerns the Draft Money Bill Amendment Procedure and Related Matters Bill.

The comments articulated in this submission are put forward from the perspective of the its immediate interest and core activities in co-creating the advancement of vibrant and robust participatory parliamentary democracy that establishes benchmarks for good practice for an emerging democracy and economy, within the context of the oversight and law-making mandate of Parliament. This includes views informed by research undertaken by the BPO within the realm of participatory parliamentary democracy e.g. the discourse on interaction between legislatures and economic actors, as garnered through our engagement and interaction with august international bodies supporting the work of parliaments e.g. the Inter-Parliamentary Union, the Commonwealth Parliamentary Association and the International Association of Business in Parliament.

These comments are informed by submissions previously made by the BPO to the independent panel of eminent persons appointed by the Honourable Speaker of Parliament to undertake an independent assessment of the performance of Parliament in fulfilling its Constitutional mandate. We would like to note that the deliberations of the panel also brought into focus the powers of Parliament in amending money bills

Having carefully observed the proceedings of the Portfolio Committee on Finance during the initial briefing by the parliamentary legal advisor on the draft bill and having studied the draft bill itself, we believe it important that the Portfolio Committee on Finance in reporting to the House on the processing of the draft bill satisfies itself that sufficient consideration is afforded to the matters contained herein.

3. GENERAL

The BPO supports the general principle of legislation which seeks to enhance the oversight and law-making abilities of Parliament, in a manner which strengthens democracy itself. The ability of Parliament to continuously improve on the manner in which it participates in national budget issues and facilitates public interaction therein, should remain an area of continuous improvement and an important feature of the work of Parliament as a representative of the people.

At the outset, it is vital to contextualise and reaffirm the view of the BPO of the positive manner in which Parliament has enabled and facilitated broad public and civil society engagement and input into parliamentary process around the national budget, in particular the Medium Term Budget Policy Statement (MTBPS) since its introduction in 1996 and proposals for revenue law amendments.

We have consistently and proudly upheld these practices by Parliament as a world-class example of good practice and transparency in providing an ideal opportunity for broad public discourse of and engagement with long-term trends in economic and fiscal policy. This is evident through our interaction with various stakeholders locally and abroad involved with deepening parliamentary practices, such as the Parliamentary Network on the World Bank, the Inter-Parliamentary Union and the Commonwealth Parliamentary Association.

As an example the MTBPS has emerged as a centre-piece within the national budget process and has introduced a longer-term planning horizon into the budget process, thereby promoting fiscal sustainability as it aligns the longer-term financial implications of various policy options with the available resources.

The MTBPS provides Parliament and civil society with a good opportunity to engage for the forthcoming budget, to reflect on broader macro-economic issues and to consider any input that may influence and inform government spending over the medium-term, as well as in the external environment where the budget is to have its impact.

The indicative nature of the MTBPS has therefore and is likely to continue to be closely watched by the public, especially the business and investment community, to the extent that it promotes the willingness of the private sector to invest in productive capacity based on the degree of knowledge it has concerning government's medium-term intentions.

The need for Parliament to continue on this path must be regarded as a part of good fiscal governance, as articulated by the International Monetary Fund's (IMF) *“Manual on Fiscal Transparency”* and the Organisation for Economic Cooperation and Development's (OECD) *“Best Practices for Budget Transparency”* .

In assessing the provisions proposed in the current Draft Money Bill Amendment Procedure and Related Matters Bill, the BPO's main points of departure therefore include:

- 3.1 The imperative for the draft bill to lend itself to being favourably disposed to further contributing to fiscal transparency in the amendment process itself and help ensure that like the overall budget, amendment votes are without surprises and shocks to the attainment of broad macro-economic and national development goals.
- 3.2 Examining more closely recent global experience in the realm of the role of parliaments in influencing budgetary process and managing effective legislative budget offices, and adapting these to South African circumstances where applicable and appropriate. This includes due consideration for the partisanship, objectivity, core functions, staffing, resourcing and capacity required for establishing an effective parliamentary budget office.
- 3.3 Sharing experience and knowledge and know-how in the management of effective parliamentary budget offices with other parliaments, international and multilateral agencies.
- 3.4 The Bill should strive towards a procedure for the amendment of money bills that is:- (a) predictable; (b) proportionate in relation to the overall budget parameters and medium-term economic outlook; (c) workable in relation to Parliament's legislative and committee schedule and government's planning cycle; (d) practical in relation to the efficiency of spending; (e) pragmatic in relation to the institutional processes of Parliament; and (f) which minimises unintended consequences for the economy.

Against this background, the BPO believes the focus is therefore not on whether legislation dealing with the amendment of money bills by Parliament and the establishment of a supporting budget office should be introduced. Instead it should be on how it is drafted to contain the most enabling provisions that will make it practically and workably implementable to enhance the capacity and ability of Parliament in fulfilling its Constitutional mandate within the context of national development outcomes.

4. SPECIFIC COMMENTS

4.1 Amendments to Money Bills

As fundamental as the ability of Parliament to amend money bills is, it is equally important - especially from the perspective of cooperative governance and confidence in Parliament as a custodian of democracy and a public institution representing the people, that such powers contribute positively to strengthening fiscal discipline in a manner that:

- a) Improves the service delivery and performance of the state
- b) Ensures macroeconomic stability, certainty and cohesion
- c) The attainment of agree-to socio-economic and national development goals
- d) Eradicates poverty

Its potential value should at no point be overwhelmed by issues such as the balance of power between the executive and the legislature on budget issues. This value extends beyond the significance of budget oversight and approval by Parliament, as vital as these

are. If implemented effectively, it will also see Parliament fulfilling a budget ‘influencing’ role.

In this regard and with respect to prudent fiscal discipline, we believe more careful consideration needs to be given to:

- a) The provincial and local government implications of the implementation of the Bill. While the draft bill has not identified any particular implications, the reason therefore and the rationale supporting this view is unclear. An evidence-based approach to this matter, which takes into account the intricate system of intergovernmental transfers and cooperation between the three spheres of government is required.
- b) Whether there will be any minimum and maximum thresholds or ceilings that apply to budgetary amendments recommended by Parliament, within the overall volume and resource envelope of the total budget and individual budget programmes.

4.2 Oversight of macroeconomic policy

As expressed through previous engagement and interaction with the National Assembly Portfolio Committee on Finance, our organised business constituency has emphasised the importance for measures by Parliament to establish the ‘institutional home’ within Parliament for oversight of current initiatives driving the implementation of present-day macroeconomic policy e.g. the Accelerated and Shared Growth Initiative of South Africa (AsgiSA).

On the occasion of engaging with the first draft bill relating to money amendments and related matters, the BPO would like to take the opportunity of reaffirming the potential value to both Parliament and the nation, of institutionalising a coherent approach to macroeconomic policy oversight, monitoring and evaluation, further in support of what is already contemplated in the provisions of Sections 4, 5 and 6 of the draft bill, as it relates to macro-economic policy.

The introduction of the aforementioned legislation provides a timely opportunity to ensure an optimal and coherent institutional oversight approach which is aligned with the interlinked nature of fiscal and macroeconomic policy, in the nation’s development trajectory.

4.3 Establishment of a Parliamentary Budget Office

The rate at which parliamentary or legislative budget offices have been established has increased over the past decade. Independent, non-partisan offices began being established as long as 60 years ago in the United States. In recent years, parliaments in Africa, Asia and Latin America have begun establishing offices. The oldest and biggest of these is the United States Congressional Budget Office. We have also seen the establishment of budget office at sub-regional (i.e. provincial) government level. In Africa, the establishment of Uganda’s Parliamentary Budget Office, its successes and challenges offer valuable lessons for other parliaments.

The proliferation of budget offices can be attributed to:

- a) The deepening of democracy itself, with there simply being more democracies today than at any time in history. Democratisation and democratic governance approaches in one country has provided powerful incentives and impetus to other nations, especially those who share cooperative relations.
- b) Increasing demand and pressure for improving transparency and accountability.
- c) Increasing demand and pressure for playing a greater role in public finance management.
- d) The emergence of strong executive government and ever increasing budgets.
- e) Improving oversight of fiscal and macroeconomic policy.
- f) Developing the institutional capacity and expertise of parliaments as institutions critical to the upkeep of democratic governance worldwide.
- g) Pressure by individual members, political parties and internal inquiries by parliaments themselves, into its potential value.
- h) Growing expectations and societal interest by civil society, including the media, budget transparency think tanks, workers organisations, organised business, and research bodies.

Parliaments and legislatures in different countries are at different levels of participating in the budget matter and in the establishment and maintenance of the budget offices. There are numerous institutional lessons which may be worth reflecting and conducting deeper analysis into, based on the experience of these countries. A broad snapshot reveals the following mix of experiences.

Positive experiences include:

- a) There are better opportunities for Parliament to engage and influence budget matters because of better flow of information for Parliament to scrutinise budget information and make rapid responses where necessary.
- b) Donors seem to have more confidence in the process than before.
- c) The ability to create a shared sense of ownership between the Executive and the Legislature on budget matters, recognizing the differentiated yet interlinked nature of their respective budget implementation and budget oversight functions.

Negative experiences include:

- a) The need for parliaments to balance the requirements of the budget unit with other competing priorities.

- b) The bureaucracy in the administration of parliament and the executive sometimes causing delays to the budget unit's work.
- c) Being overwhelmed by the requests of individual members of parliament, as opposed to these being channeled through portfolio and budget committees.
- d) Being too reliant on information furnished by the executive and the inadequacies, inaccurateness and lack of timeliness of these.
- e) Unhealthy tension between the Executive and the Legislature.

4.3.1 Partisanship

International experience has illustrated the potential value of clarifying clearly perceptions and questions that may arise regarding the partisanship of parliamentary budget offices. Research conducted for the Commonwealth Parliamentary Association has made the case for ensuring that these offices are non-partisan, independent and objective analytical budget units.

The BPO strongly concurs with this principle, recognising the non-partisan nature of such a unit as a fundamental characteristic for its future success. It is important to distinguish the difference between the implication of such a unit being '*non-partisan*' and '*bipartisan*'. The former suggests lack of political affiliation and subservience in the execution of the core functions of the unit.

The latter suggests that the unit would attempt to present its analysis from the perspective of all political parties, whereas a '*non-partisan*' unit would not present its analysis from a political perspective at all.

Clearly a non-partisan unit would be more effective in presenting *objective* analytic budget information to the legislature, including the provision of the same information to both majority and minority parties as prescribed by clear legislative provisions. Once established, the office must be operated and managed in a credible and impartial manner if its value is to be derived by the legislature and sustained to the benefit of the legislature's public purpose democratic mandate.

4.3.2 Objectivity

By producing and generating work that is objective in relation to the budget, ensures the budget office promotes greater budget transparency, not just from the executive, but to the public as well. This enhances credibility of democracy as a whole and may contribute to making the budget process simpler to follow.

4.3.3 Codification of core functions in law

Coupled with the non-partisan nature of a budget office, it is worthwhile placing the core functions of the unit into law for several reasons.

Firstly, this ensures that the functions of the unit cannot be changed easily to suit political purposes.

Secondly, by having legislative provisions underpin and inform its core functions will ensure that the unit is able to effectively support the national legislative authority of Parliament (a key factor and rationale behind the draft bill).

Thirdly, it is far more systematic to have the mandate of the unit codified in law and to have similar provisions which align its core functions to its mandate also integrated into the legal provisions.

Fourthly, a budget unit serving parliament will need to access and liaise government and executive budget information. Having its core functions in this regard codified in law will assist in ensuring effective cooperation with budget offices that may be established and operating centrally within government (e.g. the National Treasury Budget Office). This will also assist in further achieving sound intergovernmental cooperation between the legislature and the executive around budget matters.

Fifthly, so that there are clear guidelines that will inform operating procedures and business plans.

4.3.4 Core functions

It is now worthwhile turning to the core functions that an independent, non-partisan objective budget office should provide in the South African context.

a) Economic forecasts

All budgetary analysis must begin with an economic forecast. These should be objective and independent based on the best available information, taking into account those of the executive, private forecasters, bankers and other experts.

b) Analysis of the Executive's Budget Proposals

Performing a budgetary assessment of the executive's proposed budget can be a time consuming oversight and political exercise. Rather, a technical review of the budgetary estimates contained in the executive's budget, can enhance the credibility of the executive's budget if the difference between the two is not great.

c) Medium to Long-Term Analysis

All of the core functions of the Budget Office should be performed over at least the medium term. This can be valuable in alerting the executive and the public to the out-year consequences of current and proposed policy actions. It is particularly important to do a medium term analysis to take into account potential fiscal risks which need to be managed, such as those inherent in loan programmes, commitments to pension funds, public-private partnership initiatives and other conditional liabilities. This medium term analysis can be useful in providing the basis for an independent long term analysis, the importance of which grows as democratic societies and economies in transition (such as South Africa) age, requiring inter-generational programs to evolve.

d) Analysis of legislative proposals

Many legislative proposals are made during a budget cycle by members of parliament. The Budget Office can provide constructive and valuable assistance of benefit to both the legislature and the executive, as well as the potential service delivery benefits to the public in estimating the costs of these proposals and their incorporation into future budget programmes. This may require the Budget Office to determine a systematic criteria to determine which proposals to evaluate because of the time consuming nature of such evaluations. Possible criteria could include evaluation of proposals which appear to have the largest potential budgetary impact as well as those endorsed by a budget committee or portfolio committee.

e) Regulatory impact assessment

Various legislation introduced by Parliament can result in the formulation and enforcement of regulations by the executive which may have an impact on the economy, corporations, individuals, and provincial and local governments. In recent times, there has been a growing trend to better understand the regulatory impact assessment of legislation introduced on private actors, organs of state and society as a whole. It is an areas of growing importance to Parliament as overseer of legislation that is workable and therefore requires continuous improvement. An independent budget unit can provide valuable information to the legislature in asking probing questions and estimating economic impacts. Again, this can be a time consuming task dependent exercise, depending on how complex the specific mandate in question is.

f) Servicing committees

While it may be unavoidable to limit interaction between budget offices and individual members of parliament and the general public, budget offices should primarily and principally service the relevant budget committees and portfolio committees of Parliament.

g) Engaging the public and civil society

The role of citizens in a democracy is not exhausted by the act of electing a government and the representatives of political parties into Parliament. Both Parliaments and the citizenry need to be continually engaged in a vibrant and robust manner on the key issues which affect democratic governance and the needs of society. Prime amongst these is matters related to the national budget, as one of the single most important tools through which economic and social development is achieved and influenced.

If a Budget Office is to effectively serve its purpose to Parliament (as an institution representing the people and as a custodian of democracy), then the Budget Office as an extension of Parliament should be favourably disposed toward engaging with public and civil society stakeholders with an active interest in Parliament's oversight and participation of budget related matters, within the overall framework of Parliament's engagement of the public and civil society on national budget issues.

To this extent the budget office should be in a position to:

- Meet with lobby and advocacy groups.

- To receive information and submission by public and civil society stakeholder either directly from Parliamentary committees or from the public.
- Share budget information that is in the public interest with the broader public.
- To be accessible to the public either through its physical location, the publication of its material or electronic media (e.g. Internet websites)

This will assist in informing the citizens about the work and contribution of the Budget Office and enhance its transparency.

4.3.5 Staff

It is imperative that the Budget Office is able to attract and retain high-caliber, appropriately qualified and experienced, competent, knowledgeable and proficient personnel. This includes expertise in the areas of:

- a) Macroeconomic
- b) Data analysis
- c) Fiscal policy
- d) Public finance
- e) Public policy
- f) Tax policy
- g) Constitutional and public law

4.3.6 Size and resourcefulness

It is important to remain cognisant of the fact that the size of the budget office and the resources available to it will ultimately impact on the extent and frequency of the services it provides. Decisions on its resourcing should therefore be seen as an investment into the oversight capacity of Parliament itself and fiscal management more broadly.

Ensuring that staff, especially scarce skills are appropriately rewarded will be key to ensuring the retention of human capital, as well as attracting new graduates and recruits in respect of succession planning.

4.3.7 Capacity

There are two broad areas of capacity to consider in relation the establishment of an effective Parliamentary Budget Office. Namely, *capacity utilisation* and *capacity building*.

a) *Capacity utilisation*

If indeed significant resources are to be invested into the establishment and management of a Parliamentary Budget Office, then such a facility should be utilised to maximum effect to enhance the public purpose objectives of Parliament. This is a question of how best its capacity is utilised and to guard against its under-utilisation as well as its misuse. On the one hand this reinforces the importance of having its mandate and core functions clearly defined in law. On the other hand it requires significant awareness and advocacy on the services it provides and how best these can be utilised, which includes those

aspects related to avoiding overburdening the Budget Office with non-core activities relative to its resource constraints and core activities.

b) Capacity building

Given the continued global and international significance and focus on parliamentary and legislative budget offices, there are opportunities which must be sought for the exchange of experience, knowledge and expertise at an inter-parliamentary level. In fact there is a need for parliaments to share experiences and assist each other in capacity building in one form or the other to make their budget offices more effective. This creates the potential basis for value-adding partnerships and collaborative initiatives and capacity building opportunities with willing donor agencies as well . This should include participation and engagement with international and multilateral fora and bodies.

4.3.8 Institutional issues

a) Budget Committees

It may be worthwhile exploring the practicality of chairpersons of portfolio committees in the National Assembly and select committees in the National Council of Provinces becoming ex-officio members of the two proposed budget committees. This should be considered from the perspective of making it easier to receive reports from other committees on budget related matters that may affect amendments to money bills, as well as to give the proposed budget committees a broad picture of the national budget and the government programmes and activities in particular sectors.

b) Institutional memory

As indicated at the outset, much good work has taken place with regard to budget oversight and participation in Parliament, since 1996. This includes the significant role played by the Portfolio Committee on Finance and the Joint Budget Committee.

It may be prudent and beneficial to consider how best to incorporate the good practices and lessons learnt over the past 12 years since 1996 into the new proposals envisaged by the draft bill where appropriate, in order that this valuable institutional memory is not lost altogether and that it can be harnessed to cultivate new institutional learning.

The first step in this regard may entail undertaking a significant assessment of , good practices and lessons learnt, and recommendations for incorporating these into future institutional practices, that can contribute to further assessing the performance of parliament in fulfilling its Constitutional mandate.

5. CONCLUSION

While the BPO supports the principle and rationale informing introduction of the proposed legislation and the potential value that may be accrued there from to Parliament and the nation as a whole, it believes that as currently drafted the bill requires significant revisions with regards the considerations outlined herein. Where this leads to revisions of the draft legislation, we would welcome the opportunity meaningfully and constructively the Committee on these as well, in the same spirit as has characterised the first draft.

The BPO believes that this is possible given the draft nature of the bill, which in itself is a first and necessary step for which the BPO would like to recognise the effort and initiative of Parliament and the legislative drafting team.

We sincerely hope that the nature of the considerations contained in this submission will be taken into account in positively, constructively and meaningfully contributing to not only ensuring workable and practical legislation in respect of the aforementioned matters, but also contribute to deepening the Constitutional performance of Parliament as a custodian of democracy, as an overriding national concern and imperative. This includes the role of Parliament in contributing to best practices and knowledge application in the global discourse around the aforementioned matters.

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