

PARLIAMENT OF THE PROVINCE OF THE WESTERN CAPE

ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS

FRIDAY, 8 APRIL 2022

COMMITTEE REPORT

REPORT ON THE WORKSHOPS ON THE PROCEDURES TO DRAFT LEGISLATION TO AMEND MONEY BILLS AS AT 25 MARCH 2022.

1. Introduction

The purpose of this report is to outline the commencement of a procedure introduced by the Budget Committee of Western Cape Provincial Parliament (WCPP) to draft legislation to amend Money Bills.

The Constitution of the Republic of South Africa, 1996, states that in exercising its legislative power, a provincial legislature may – (a) consider, pass, amend or reject any Bill before the legislature; and (b) initiate or prepare legislation, except money bills. Section 114(1) of the Constitution states that a provincial Act must provide for a procedure by which the province's legislature may amend a money bill, and section 120(3) states that this Constitution is the supreme law of the Republic and the obligations imposed by it must be fulfilled. Section 2 of the Constitution also states that the provincial legislatures are, as a matter of law, empowered to amend money bills but the provincial legislatures must do so by following a procedure provided for in a provincial Act and the provincial legislatures must pass such an Act.

It is intended for this Act to determine how the power to amend money bills should be exercised, but it is the Constitution itself that imparts the power to amend money bills.

This law-making power serves as a very powerful oversight tool. Legislation to amend money bills serves only as one element of the oversight framework and is most powerful when it is coordinated with the oversight over votes or departments throughout the financial year; it may also be used to deepen public participation and taking a longer-term view to influence decision-making or priority-setting within sectors.

Section 77(3) of the Constitution imposes the same obligation to pass an Act to provide a procedure for amending money bills for Parliament.

2. Overview and background

On 14 April 2009 the President assented to the Money Bills Amendment Procedure and Related Matters Act (No. 9 of 2009) and the Act commenced on 16 April 2009. This Act was Parliament's attempt to give effect to the obligation imposed by section 77(3) of the Constitution. It includes certain minimum norms and standards that the provincial legislatures must comply with when passing their own laws in terms of section 120(3) of the Constitution.

The Sixth Parliament's Budget Committee held their first meeting on 2 August 2019 and it was at this meeting that the Committee resolved to research the feasibility of the initiation of a provincial money bill amendment procedure. The Committee resolved to seek guidance from the WCPP Rules Committee, Legal Unit, Research Unit and/or Procedural Support, through its Chairperson, on the Committee's behalf. The Committee requested information such as research, presentations and briefing material, as well as input from different parliaments across the world, government departments, entities, NGOs and any other relevant stakeholders that have already implemented a Bill on such a matter, and/or have completed relevant research on this matter.

On 16 August 2019, the Rules Committee resolved that:

mindful of,

- (i) Section 120(3) of the Constitution of the Republic of South Africa, 1996 (the Constitution), which provides that, '[a] provincial Act must provide for a procedure by which the province's legislature may amend a money bill...' and
- (ii) A resolution by the Budget Committee of the WCPP, that the Committee requests input and feedback from the WCPP Rules Committee regarding guidance on the parliamentary procedure for the initiation of a Committee Bill related to a provincial Money Bill Amendment Procedure Bill.

The Rules Committee further requested the Speaker of WCPP to:

- (i) Provide feedback on the process for initiating legislation, through a Committee, as required by Section 120(3) of the Constitution, and
- (ii) Report regularly to the Rules Committee on the progress made in the process of initiating and introducing such legislation, through the relevant Committee.

To give effect to the Rules Committee resolution, the WCPP Legal and Research Unit undertook research that would be presented to the Rules Committee in February 2020.

On 11 February 2020, the Rules Committee referred the matter and its way forward to the Budget Committee.

3. Process

The Budget Committee held three workshops over a three-year period.

While the first two Workshops were held in a hybrid setting (virtually and in person) due to the COVID-19 pandemic and the subsequent COVID-19 restrictions, the easing of those COVID-19 Regulations and restrictions at the end of 2021 allowed the Committee to hold the

third workshop completely in-person, but additional Members and stakeholders were able to participate virtually, as needed.

3.1 Workshop One

The first hybrid workshop took place on 6 October 2020, to initiate research into the probability and feasibility on such a Bill. During this workshop and as part of laying the foundation for future workshops, the Financial and Fiscal Commission (FFC), the Commission on Gender Equality and the WCPP's Research Unit briefed the Committee.

3.2 Workshop Two

The second workshop took place virtually from 20 to 22 July 2021 where the Western Cape Minister of Finance, Mr David Maynier, provided introductory remarks on the values and principles of drafting money bills. The WCPP's Legal Unit, the FFC, the National Treasury, the Provincial Treasury, the Parliamentary Budget Office, the Department of the Premier, the Auditor-General South Africa (AGSA) and the WCPP's Research Unit gave presentations that would assist the Budget Committee to continue its research on the Bill.

3.3 Workshop three

The third workshop was hosted at the Stellenbosch Protea Hotel from 17 to 21 January 2022. The Premier of the Western Cape, Mr Alan Winde, provided introductory remarks on the values and principles of drafting money bills. Statistics South Africa (Stats SA), the Western Cape Department of Health (WCDOH), the Western Cape Education Department (WCED), the FFC, the National Treasury, the Provincial Treasury, the South African Revenue Services (SARS), the WCPP's Legal Unit and the WCPP's Research Unit provided input at the workshop.

4. Stakeholder Engagement

The following briefings were provided to the Budget Committee:

4.1 Auditor-General South Africa (AGSA)

- The auditing process for provincial departments and entities.
- Performance auditing: Costs and measuring performance.

4.2 Department of the Premier

- Legislative drafting.

4.3 Financial and Fiscal Commission

- Understanding the FFC constitutional mandate in relation to provincial legislatures.
- Values, principles and guidelines for amendment procedures related to money bills.
- Recommendations made by the FFC for the review of the Provincial Equitable Share (PES) formula calculation.
- The criteria for conditional grants to provincial and local governments; the method of collection and submission of data and statistics for the criteria for the respective conditional grants; and the constitutional provisions and procedures for borrowing for infrastructure.

4.4 Gender Commission

- How to budget with gender sensitivity.

4.5 International Monetary Fund (IMF)

- Risks posed by legislatures amending budget bills and international best practices.

4.6 National Department of Basic Education (DBE)

- Collection and submission of the data and statistics submitted for the PES formula calculation.

4.7 National Parliament

- Public participation processes in money bills legislation.

4.8 National Treasury

- Values, principles and guidelines for amendment procedures related to money bills.
- PES formula unpacked.
- The criteria for conditional grants to provincial and local governments; the method of collection and submission of data and statistics for the criteria for the respective conditional grants; and the constitutional provisions and procedures for borrowing for infrastructure
- Collection of revenue nationally and per province.

4.9 Parliament Budget Office (PBO)

- Values, principles and guidelines for amendment procedures related to money bills.
- Annual operational expenditure of Parliamentary Budget Office unpacked.

4.10 Professor Geo Quinot

- Introduction to Public procurement in South Africa (SA)

4.11 Professor Sope Williams-Elegbe

- The digital economy and public procurement.

4.12 Provincial Treasury

- PES formula unpacked.
- The criteria for conditional grants to provincial and local governments; the method of collection and submission of data and statistics for the criteria for the respective conditional grants; and the constitutional provisions and procedures for borrowing for infrastructure.

4.13 South African Revenue Services (SARS)

- Collection of revenue nationally and per province.

4.14 Statistics South Africa (Stats SA)

- Collection and submission of the data and statistics submitted for the PES formula calculation.

4.15 WCPP's Legal Unit

- South African Constitution, Western Cape Constitution and national legislation related to money bills procedures.
- Possible options for provincial money bills amendment procedures bill.
- The minimal clauses relating to norms and standards that should be taken into account for the drafting of an amendment to a money bill.

- Relevant South African case law relating to public participation in the legislative process.

4.16 WCPP's Research Unit

- WCPP research capacity.
- Identifying South Africa best-practice procedures.
- Identifying international best-practice procedures.
- The nature and efficacy of legislation and standing rules to empower legislatures to amend money bills.
- International best practices regarding timelines for money amendment procedures legislation for the budget-cycle review; including but not limited to the Canadian and New Zealand jurisdictions.
- International best practices regarding public-participation processes for the money amendment procedure legislation; including but not limited to the Canadian and New Zealand jurisdictions. The costing per annum relating to budget offices in international jurisdictions for the past three financial years; including but not limited to the Canadian and New Zealand jurisdictions.
- Summary of the budget cycle and timelines.

4.17 Western Cape Minister Maynier

- Values and principles of drafting money bills.

4.18 Western Cape Premier Alan Winde

- Values and principles of drafting money bills.

4.19 Western Cape Department of Health

- Collection and submission of the data and statistics submitted for the PES formula calculation.

4.20 Western Cape Education Department

- Collection and submission of the data and statistics submitted for the PES formula calculation.

5. Stakeholder engagement themes

5.1 Budgeting

The Gender Commission emphasised that gender-responsive budgeting is not a separate budget specifically targeted to woman and girls. It is based on targeted interventions (focusing on age, gender and location) and programmes allocated with clear ring-fenced expenditure and utilising the budgetary framework by assessing the different group needs. There are insufficient indicators or tools that enable the government and state agencies to budget for gender-based budgeting resulting in poorer outcomes, poor accountability and poor disaggregation. This makes it difficult to assess revenue and expenditure for the targeted groups. Gender-responsive budgeting, is the promotion of equal opportunities, especially in the public service, to give equal representation to woman in decision-making, equal pay and the improvement of conditions of services as sighted from the United Nations (UN) Women Agency.¹ The

¹ https://www.unisa.edu.au/siteassets/episerver-6-files/global/eass/hri/grb_papers_australia_comm-sec-updf_final-copy-.pdf

legislatures play a huge role in coordination as the departments account to committees to monitor and measure the impact of the target indicators. Institutional capacity is key within the planning of departments' annual performance plans and integrated development plans to have the relevant institutional capacity to roll out gender-responsive budgeting and to audit the expenditure to give better social outcomes.

5.2 Budget cycle, timelines and public participation

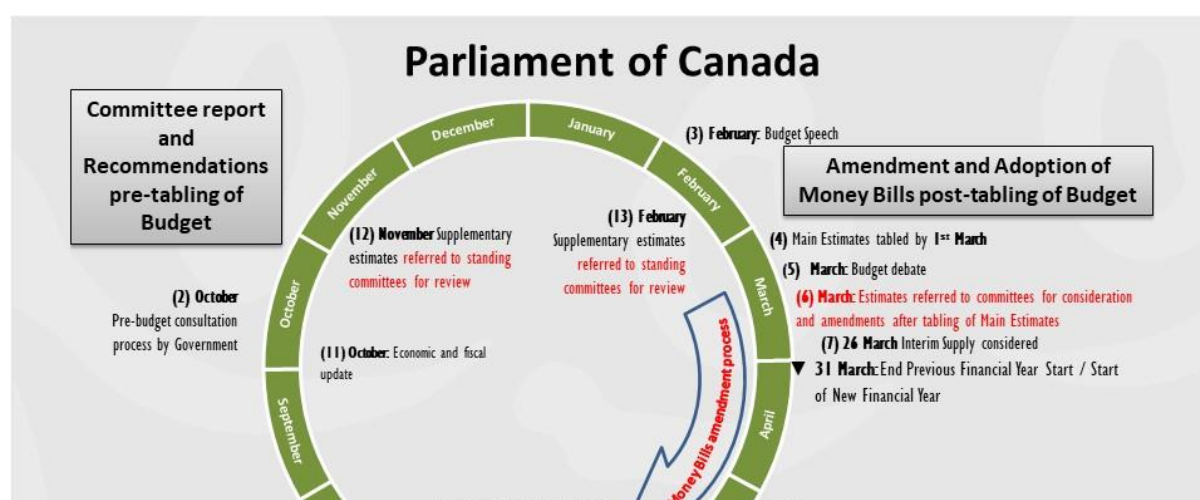
The WCPP's Research Unit conducted comprehensive research on international best practices regarding timelines and public participation for money amendment procedures legislation for the budget-cycle review.

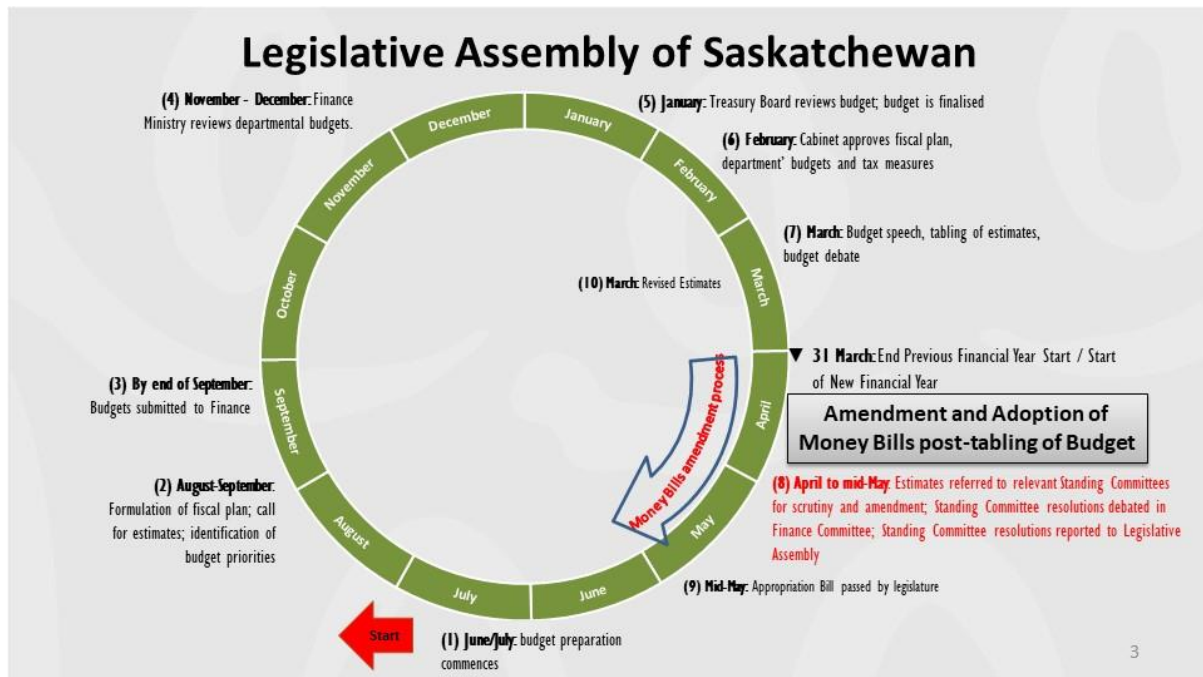
A comparison of the amendment process was done on the following legislatures:

Comparison of Amendment Process within the Budget Cycle

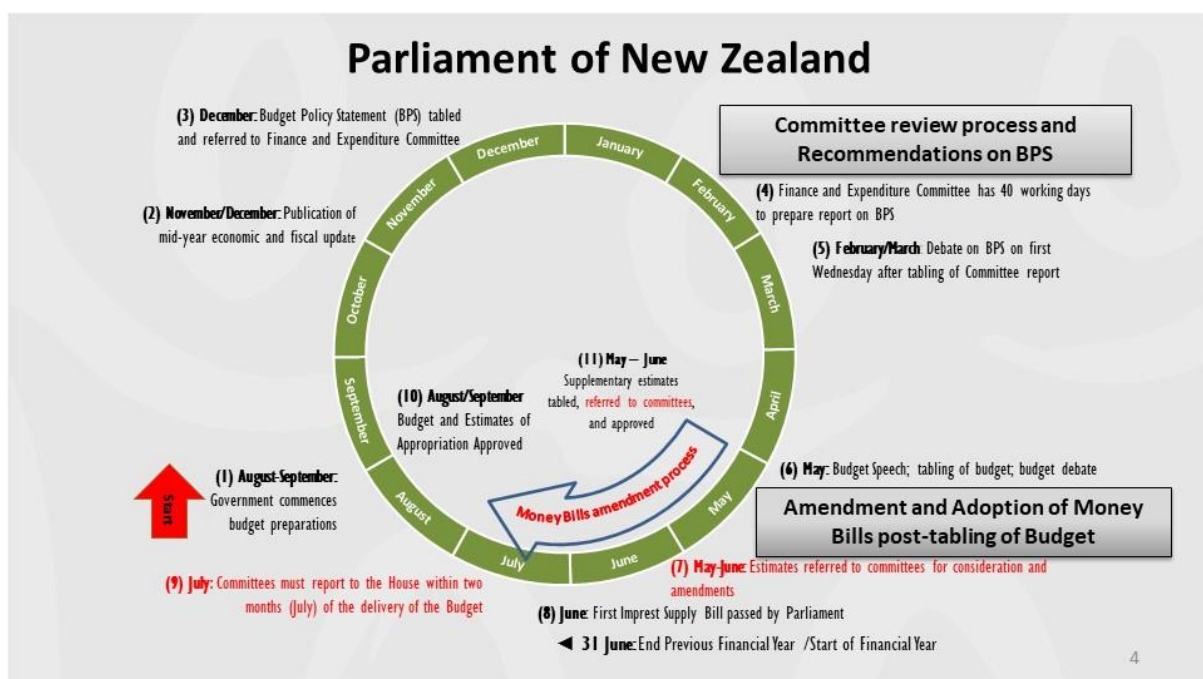
Name of Legislature	When is Budget Tabled	Provision for consultation/engagement between executive and legislature pre-tabling of Budget?	Provision for incorporating changes pre-tabling of Budget? (does not require legislature approval)	Provision for amendments post-tabling of Budget?
Canada	March	Yes October to December	Yes December	Yes March to May
Saskatchewan	March	No	No	Yes April to May
New Zealand	May	Yes December to March	Yes February / March	Yes May to June
South Africa	February	Yes October	Yes October to mid-November	Yes March to July
Gauteng	March	Yes December / 4 months prior to tabling of budget	Yes December to February	Yes March to June

Canada has an extensive pre-budget consultation process and it is at this stage that public participation occurs. The process starts in early June where the government releases the budget priority themes and the deadline for public participation is advertised. The budget process starts in September where the Standing Committee on Finance runs with the process. A consolidated pre-budget report on public recommendations is prepared and presented in December.





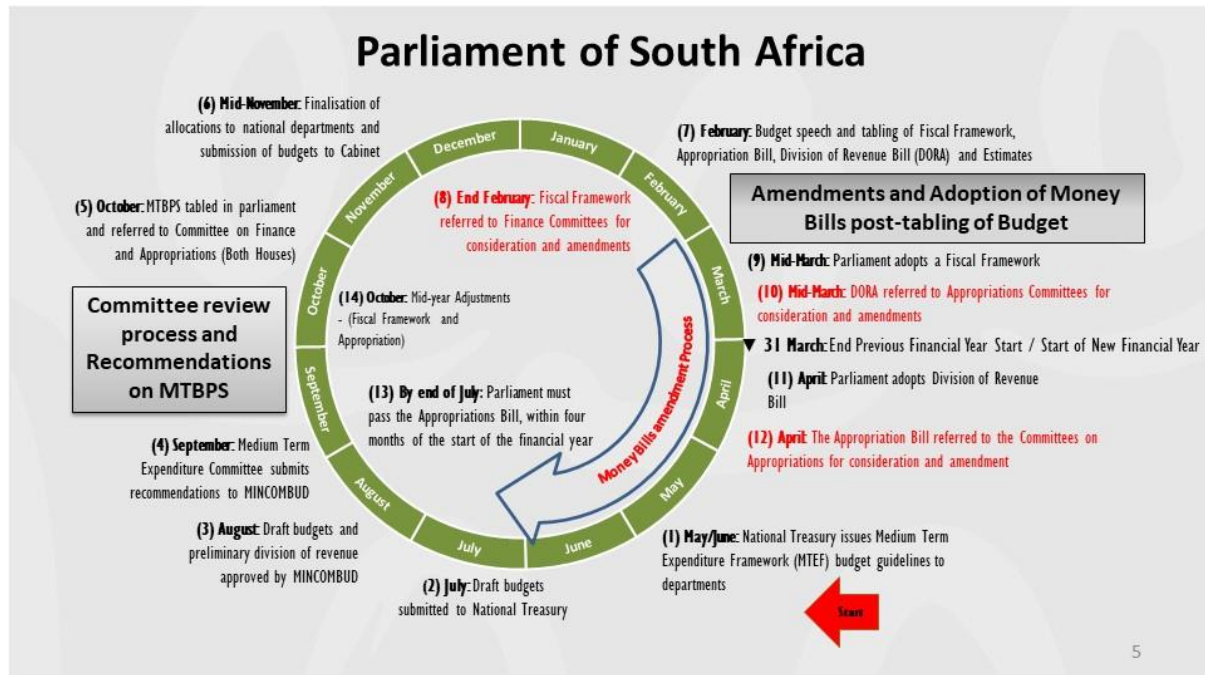
New Zealand engages in public participation during their pre-budget process and during the amendments and adoption of the money bill process. The Budget Policy Statement (BPS) is tabled in December and referred to the Finance and Expenditure Committee. This Committee publishes the public submissions they receive on the budget policy statement and has 40 working days to prepare a report that includes public input. The BPS is debated in February and March after tabling of the Committee's report. During the actual budget process in May, the estimates are referred to the various standing committees for consideration and amendment where another process of public participation takes place and, within in two months of this process, a report must be completed by the Committee that is tabled in August and September.



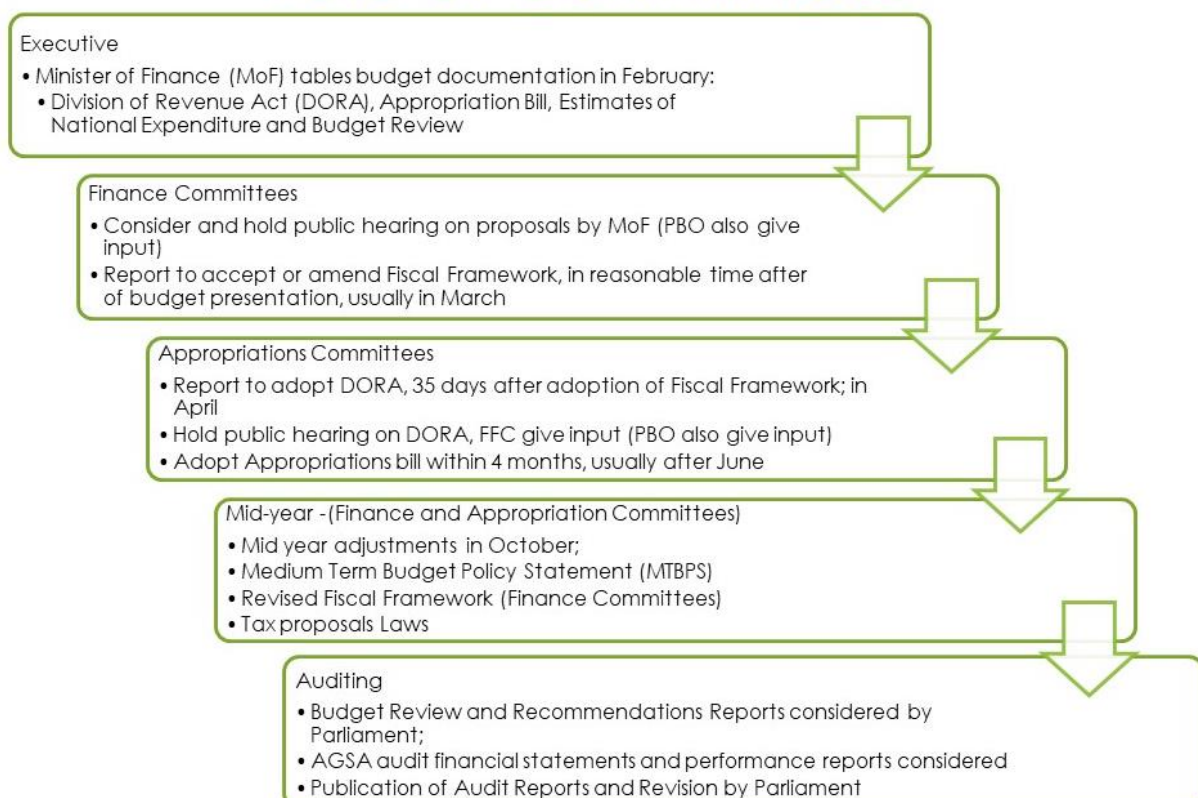
The Parliament of the Republic of South Africa (Parliament) has a short budget period, from the end of February to mid-March. Over a 16-day period from the tabling of the fiscal framework, the Standing Committee on Finance holds public hearings and produces a report

to be adopted. In mid-March the Division of Revenue (DOR) is referred to the relevant committees, both in the National Assembly (NA) and the National Council of Provinces (NCOP), for public hearings, and the consideration and adoption of the DORA takes place in April. The Appropriation Bill is referred to the Standing Committee on Appropriations where more public hearings are held in July. Parliament passes the Bill within four months of the start of the financial year.

An illustration from PBO:



Role of Committees



Planning and budgeting process

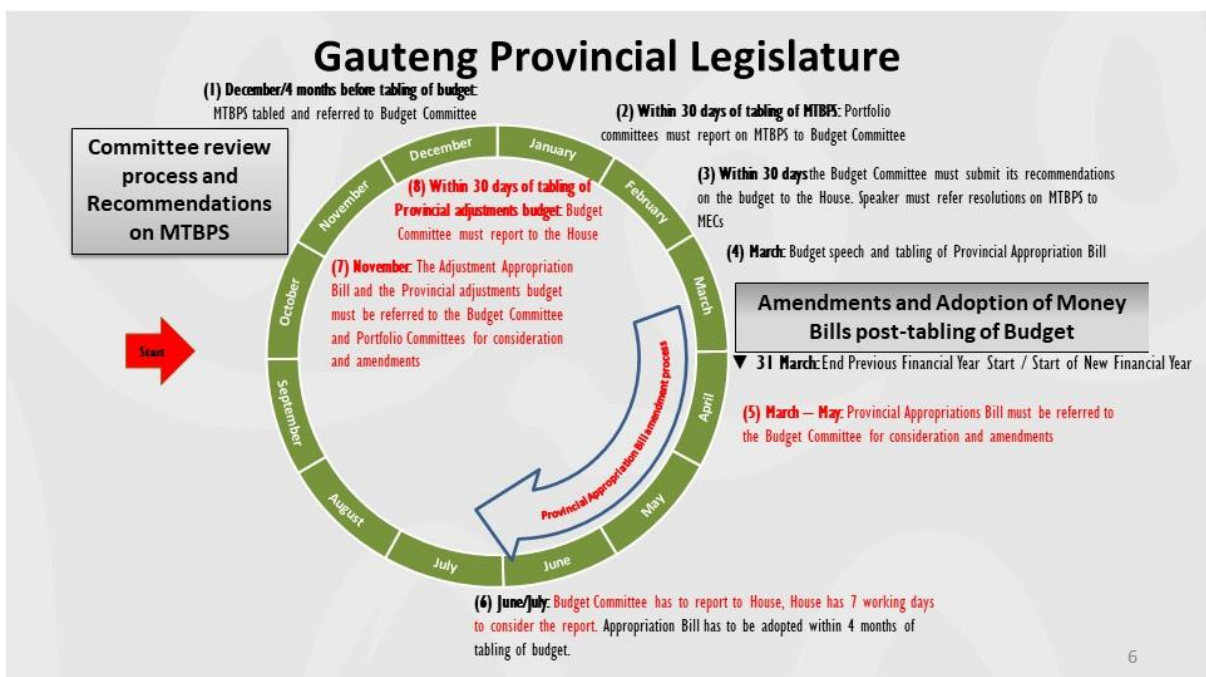


The process of budgeting requires:

- Strategic direction provided by SONA, MTBPS and other policies: prioritisation of budget allocations
- Alignment of policies and plans with budget programmes
- Alignment of capacity and resources across spheres of government
- Monitoring and evaluation: the ability to deliver projects and programmes within consecutive medium term expenditure frameworks
- Evaluation or review of programmes should inform reprioritisation activities and budgets

4

The Gauteng Provincial Legislature do not have a public participation process during the pre-budget process. The tabling of the Provincial Appropriation Bill takes place in March. The Bill is referred to the Budget Committee for consideration and amendments from March to May to hold public hearings and report to the House; which includes public input. Within seven working days the report must be considered by the House and the Appropriation Bill has to be adopted within four months of the tabling of the budget.

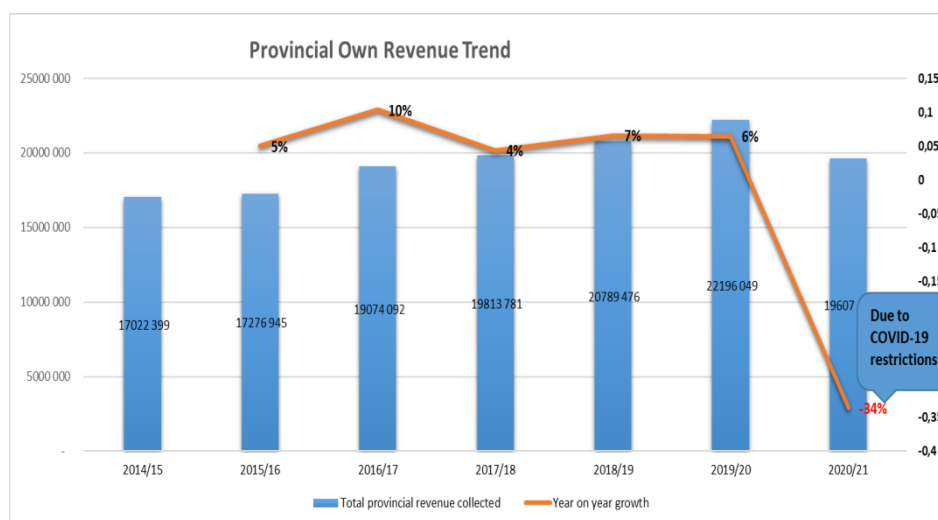


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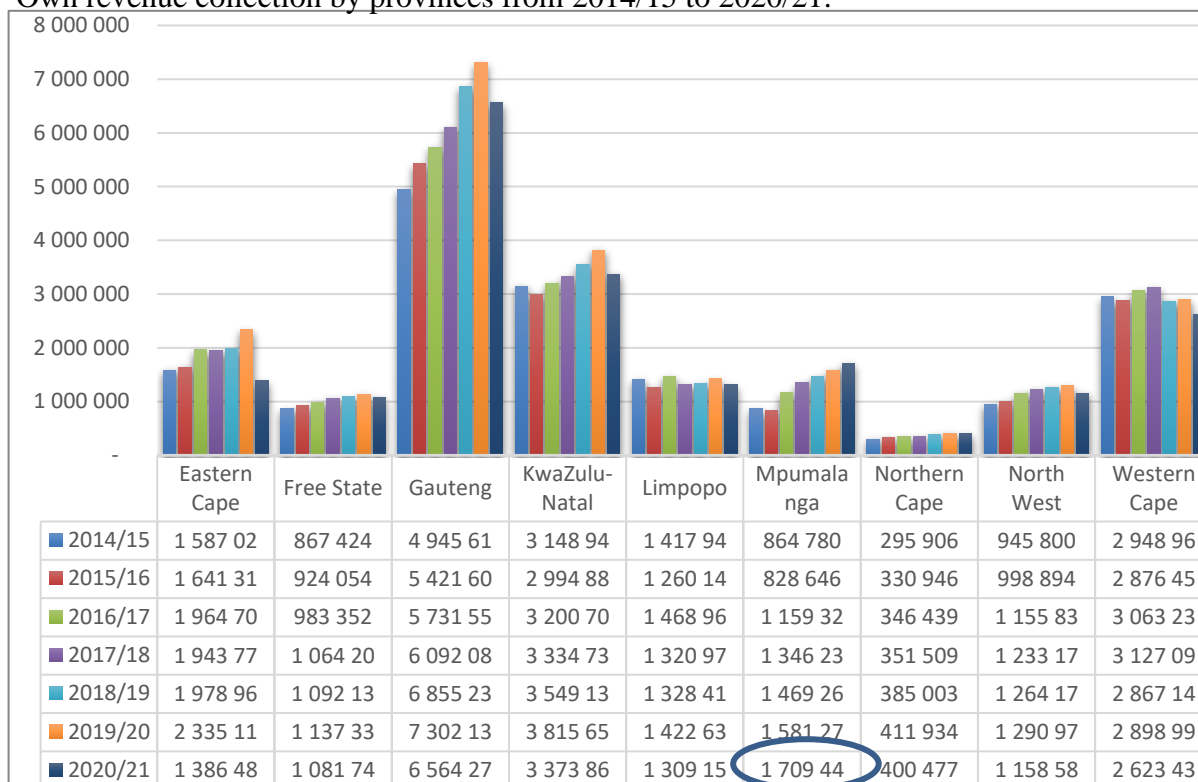
5.3 Collection of Revenue

The Constitution empowers provinces to raise their own revenue through taxes outside of taxes levied at the national level. These revenue streams include motor vehicle licences, gambling taxes, liquor licences, as well as horse betting taxes. The first two types of provincial taxes are the most common and the often the largest earners of tax revenue for provinces.

The National Treasury depicted the provincial own revenue trends from 2014/15 to 2020/21:



Own revenue collection by provinces from 2014/15 to 2020/21:



Provinces are researching enhancement strategies to increase the revenue over their medium-term expenditure framework (MTEF). The National Treasury gives support and advises provinces on ways to optimise or maximise own revenue collection. The National Treasury has

a Provincial Own Revenue Workgroup comprising all nine provincial treasuries that meet quarterly.

This working group hosts benchmark sessions across provinces to improve the quality of revenue collection, as well as to coordinate with the implementing sector departments. They are in the process of capacitating revenue officials through intensive training on revenue issues where 204 officials were trained.

Provinces are also developing a Revenue Enhancement Strategy (RES) that is supposed to help provinces identify channels they have available to boost their revenue base. The National Treasury engaged the provinces on contents and approach of RES to identify possible revenue streams better.

The SARS reported that the consolidated fiscal framework included the national and provincial government, social security and a diverse set of public entities (including SARS), under the review of a single budget process and provides a fuller picture of government's contribution to the economy.

The main budget finances the bulk of spending and includes funds appropriated by parliament in the form of budget votes, as well as the provincial share of revenue and other direct charges mandated by the Constitution. Own revenue of provincial governments and social security funds are included.

Government finance is presented in two ways:

- Main budget: The national government borrowing requirement. First appropriation by Parliament through budget votes and this includes transfers to provinces, local government and public entities.
- PES, debt-service costs and the salaries of judges and public representatives.

The national budget revenue includes all revenue streams into the fiscus, both tax revenue and non-tax revenue, and is reduced by payments made to Botswana, Eswatini, Lesotho and Namibia (BELN) in terms of the Southern African Customs Union (SACU) agreement. SACU disbursements are determined according to a revenue-sharing formula described in Chapter 6.²

In addition to tax revenue, SARS collects Mineral and Petroleum Resources Royalties (MPRR), as well as Mining Leases and Ownership, which are included in non-tax revenue. SARS also collects revenue on behalf of the Road Accident Fund (RAF) and the Unemployment Insurance Fund (UIF).

Table 1.4 shows that in 2019/20, tax revenue remained roughly 90% of the national consolidated revenue.

² <https://www.sacu.int/docs/agreements/2017/SACU-Agreement.pdf>

Table 1.4: Total budget revenue and consolidated revenue, 2015/16 – 2019/20

R million	Tax revenue	% of budget revenue	% of consolidated revenue	Non-tax revenue ¹	Total tax and non-tax revenue	Less: SACU payments	Budget revenue	Other ²	Consolidated revenue
2014/15	986 295	102.2%	90.0%	30 900	1 017 195	-51 738	965 457	129 865	1 095 322
2015/16	1 069 983	99.4%	88.0%	57 274	1 127 256	-51 022	1 076 234	139 035	1 215 270
2016/17	1 144 081	100.5%	89.0%	33 264	1 177 345	-39 448	1 137 896	147 700	1 285 690
2017/18	1 216 464	101.7%	90.0%	35 886	1 252 350	-55 951	1 196 399	155 015	1 351 415
2018/19	1 287 690	101.0%	89.1%	35 869	1 323 559	-48 289	1 275 270	170 154	1 445 424
2019/20	1 355 766	100.8%	89.3%	39 834	1 395 601	-50 280	1 345 320	172 192	1 517 512

1. Includes interest, dividends, rent on land, sales of goods and services, fines and penalties, sales of capital assets, financial transactions in assets and liabilities, MPRR as well as extraordinary receipts.

2. Includes provinces, social security and selected public entities.

South Africa subscribes to the Government Finance Statistics (GFS)³ classification of revenue as prescribed by the International Monetary Fund (IMF). According to the GFS classification, tax revenue comprises of taxes on income and profits; taxes on payroll and workforce; taxes on property; domestic taxes on goods and services; taxes on international trade and transactions as well as revenue allocated to the state miscellaneous revenue category. The table shows the main categories of tax revenue.



5.4 Collection and submission of data and statistics submitted for the PES formula calculation

The exercise is to study the raw data that is fed into the different formulas.

5.4.1 Department of Basic Education

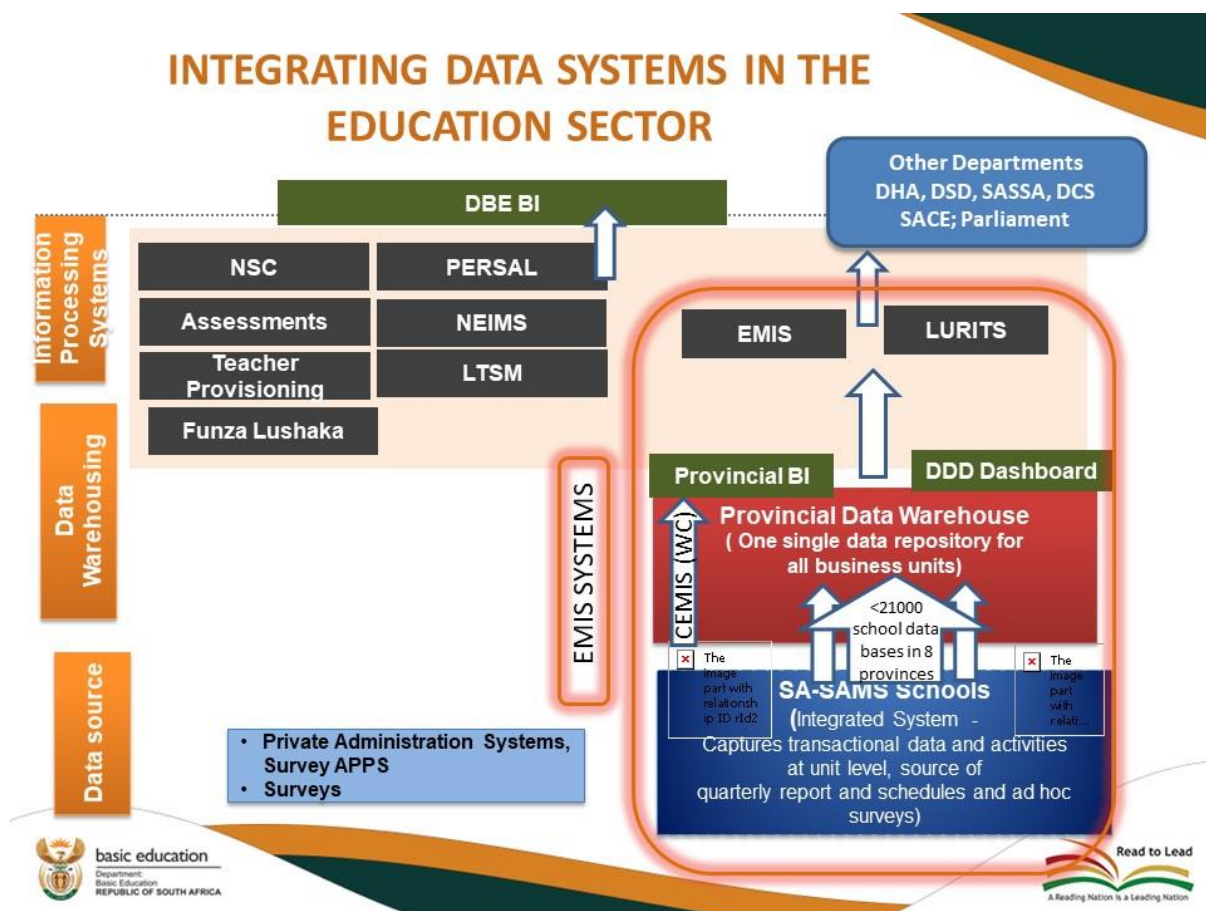
The Department of Basic Education's (DBE's) vision of the Integrated Education Information System is to have a single source system at an institutional level to provide a single entry point of truth. 98% of schools in the eight provinces make use of the South African School

³ <https://www.imf.org/external/pubs/ft/gfs/manual/pdf/all.pdf>

Administration and Management System (SA-SAMS). The Western Cape makes use of the Centralised Educational Management Information System (CEMIS). The purpose of these systems is to capture the transactional information by the provincial education departments quarterly and store the information in provincial data warehouses. Biannually, the data is moved to the national data warehouse, which is the Learner Unit Record Information and Tracking System (LURITS). This data is used by various intergovernmental departments, such as the National Population Register with the Department of Home Affairs, the South African Social Security Agency (SASSA), Stats SA, the Department of Social Development and the Department of Higher Education and Training. The system is not only used as a cost-effective package for public schools but also by independent schools. SA-SAMS was designed to be a cost-effective, free of any licensing, easy-to-use and a fully integrated computer solution with the main purpose to assist the schools with the administrative, management and reporting needs of (public) schools in South Africa and is therefore kept updated according to policy changes.

To keep abreast with the 21st century, the DBE changed its collection method from aggregated data (that was reported manually through two surveys) to unit-level data (received electronically by provincial education departments quarterly), from schools through the DBE's supported School Administration and Management System (SA-SAMS) and this process change was approved by the Council of Education Ministers (CEM) in 2012 with SA-SAMS being the single source of data. In 2016, CEM approved that all reporting should be done by using the data from SA-SAMS that is uploaded to LURITS for reporting of the sector, and from 2017 the conduction of school surveys were stopped in favour of data being collected by SA-SAMS and LURITS.

The data flow:



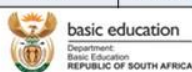
Data is collected quarterly from schools and collections are aligned not only to be used for LURITS but also to be used for multiple purposes, e.g. reporting on percentages of schools that used SA-SAMS for reporting, NSC Grade 12 learner registrations, as well as the learner performances for Grades 3, 6, 9 and 12 per quarter as requested by the National Examinations and Assessments.

An anomaly of the DBE is duplicate learners, learners appearing in more than one school in the provinces versus learners appearing in more than one school across provinces. There are 13,4 million learners registered in ordinary schools and 143 416 in Special Needs Education Centre (SNEC) schools; totalling 13,552 million learners in the education sector. This information was provided to the National Treasury to assist with the funding allocation to each province.

Preliminary Feedback Report of ID verification with NPR 2021 *

- Numbers and % of learners **per Province** indicating the **status of ID Numbers provided** are tabled below that includes verification of Learners with ID numbers against the NPR

Province	Learner Enrolment (Ordinary + SNE)	Total Learners On LURITS	Total Learners with ID Nos on LURITS - Verified with DHA					
			Total Learners with ID's on LURITS	% of Learners with IDs	Verified ID's with NPR	% Verified (Authentic) Learners	Learners Alive (whose ID number verified with NPR)	Learners Deceased (whose ID number verified with NPR)
Eastern Cape	1,858,043	1,688,327	1,620,414	87.21%	1,612,153	86.77%	1,611,857	296
Free State	733,221	738,304	697,398	95.11%	695,056	94.79%	694,985	71
Gauteng	2,626,424	1,899,470	1,646,870	62.70%	1,607,654	61.21%	1,607,403	251
KwaZulu Natal	2,914,503	2,251,344	2,135,114	73.26%	2,122,383	72.82%	2,122,090	293
Limpopo	1,807,734	1,780,306	1,720,406	95.17%	1,712,546	94.73%	1,712,315	231
Mpumalanga	1,138,620	1,128,591	1,061,226	93.20%	1,052,018	92.39%	1,051,766	252
Northern Cape	306,361	304,675	297,722	97.18%	297,210	97.01%	297,164	46
North West	880,403	862,259	823,786	93.57%	816,303	92.72%	816,204	99
Western Cape	1,287,356	1,252,233	1,020,427	79.27%	958,568	74.46%	958,307	261
Total	13,552,665	11,905,509	11,023,363	81.34%	10,873,891	80.23%	10,872,091	1,800



*2021 Figures are preliminary and currently being verified and retrieved from NPR



5.4.2 Statistics South Africa

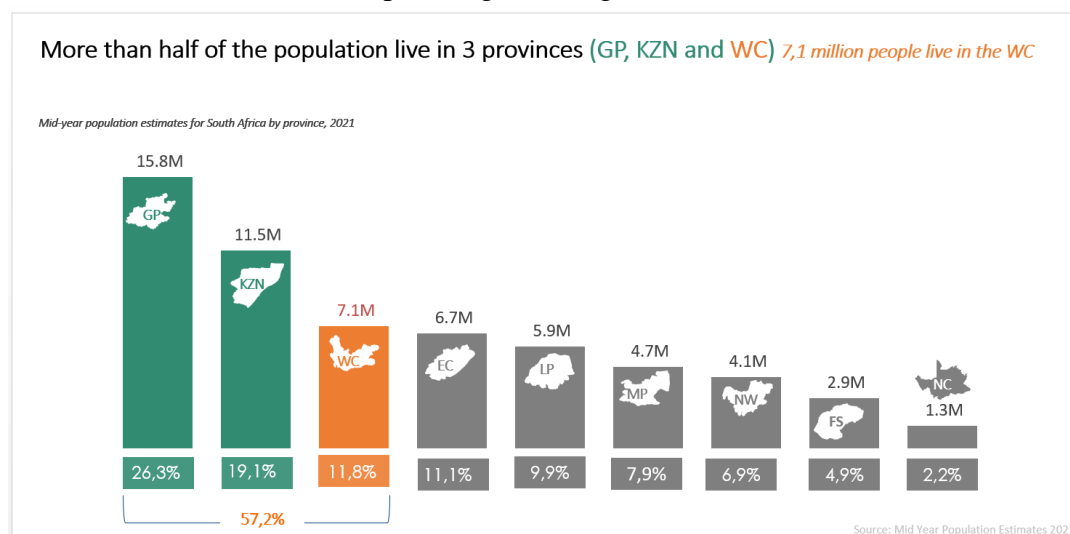
Every year Stats SA releases over 300 publications, providing insight into the statistics on four general themes: People; Living Conditions; Economy and the Natural Environment of South Africa. The data for the equitable share formula components from the National Treasury⁴ includes:

- An education component (48 percent), based on the size of the school-age population (ages 5 to 17) and the number of learners (Grade R to 12) enrolled in public ordinary schools;
- A health component (27 percent), based on each province's risk profile and health system caseload;

⁴ <http://www.treasury.gov.za/documents/National%20Budget/2021/review/Annexure%20W1.pdf>

- A basic component (16 percent), derived from each province's share of the national population;
- An institutional component (5 percent); divided equally between the provinces;
- A poverty component (3 percent), based on income data. This component reinforces the redistributive bias of the formula; and
- An economic activity component (1 percent), based on the regional gross domestic product (GDP-R, measured by Stats SA).

Annually in July, Stats SA releases the mid-year population estimates to determine the share of the population per municipality. This proportion is projected to future years and then applied to the district population estimates to calculate the local municipality population formula, which is used as a toolkit for planning the budget.



The other data ecosystems that are used to collect data are the National and Regional Economy. The economic growth is important to create jobs in South Africa, the economy should grow at least 5% yearly but has not picked up since the economic crash in 2009 and plans should be put in place to improve the economy.

Stats SA also uses selected Healthcare Indicators, Education Statistics and Poverty Indicators to provide insight to the PES and to report at local municipality level the use of Census and Community Survey data is used.

Between Censuses 1996–2001 indicated that working parents used to move alone to the Western Cape, but now after 2001 entire families were migrating to the Western Cape.

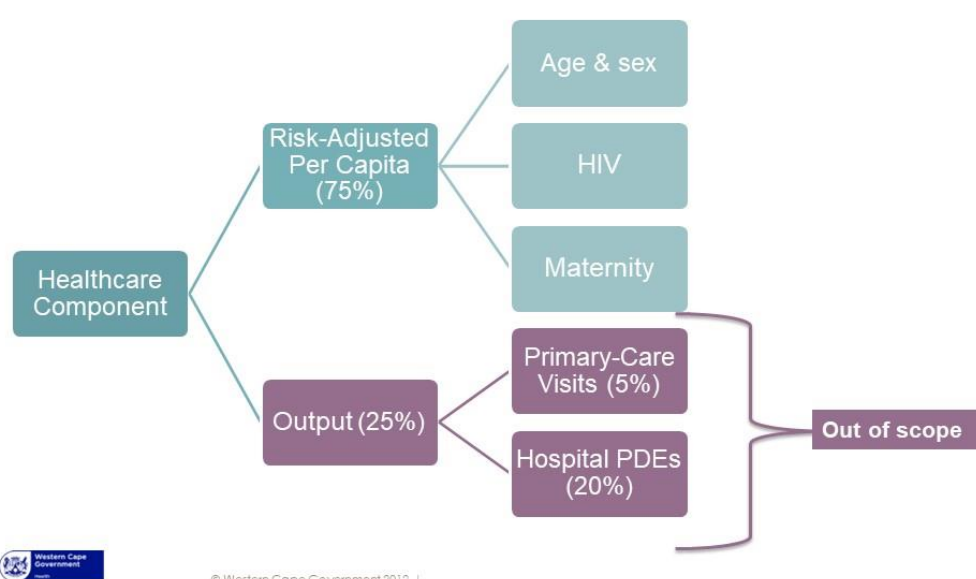
Between 2011 and 2015 poverty has started to rise in South Africa. However, since 2014 Stats SA has never conducted an income and expenditure survey to identify the financial challenges or lack of budgets. This in turn results in the last official number released remains until the new survey is done. A census cannot be done regularly so Stats SA makes the population estimates available annually to assist policy makers, the FFC and the NT.

5.4.3 Western Cape Department of Health

27% of the PES formula is allocated to the health component. In the 2010 review of the PES formula, the health component was updated to use a risk-adjusted capitation index and output data from public facilities to estimate each province's share of the health component. The risk-adjusted capitation component accounts for the estimated healthcare needs of each province,

while the output component accounts for the realised demand for health services. The risk-adjusted index subcomponent accounts for 75% of the total health component, whereas the output subcomponent accounts for 25%.

2010 PES architecture



The new health risk-adjusted index replaces the current risk-adjusted index, which was last updated in 2010. The change seeks to account for changes in health risk profiles and the associated cost curves for age and sex thus making the formula more equitable by taking into account poverty and sparsity. The 75% relating to the data elements are collected and pushed into various formulas and risk adjustments are done.

Data elements

Data used to revise provincial equitable share formula

Data	Source	Comments
Total population	Statistics South Africa	Number of lives is broken down by age, sex and province.
Total population covered by a medical scheme	Council for Medical Scheme data (CMS): 2020	Number of lives is broken down by age and sex, but not by province.
Population covered by a medical scheme, by province	General Household Survey (GHS) 2018	The GHS 2018 estimates the number of people insured by province. This number is restated into percentages so that the audited CMS total insured population can be multiplied out to arrive at provincial estimates. The share of the insured population by age and sex from the CMS is then applied to the provincial totals to

Data used to revise provincial equitable share formula

Data	Source	Comments
Uninsured population		Total population by age, sex and province, less the insured population by age, sex and province.

Data used to revise provincial equitable share formula

Data	Source	Comments
Sparsity	Statistics South Africa	The SA population is split into quintiles, municipalities are sorted by population density, and a cumulative total is used to determine which municipalities fall into each quintile (i.e. population of municipalities are summed until the quintile cut off population number is reached). Factor adjusts for the diseconomies of scale for sparsely populated areas.
Premature mortality	Statistics South Africa cause of death data	Deaths occurring below age 65 for any cause. Factor adjusts for the burden of disease.
Multiple deprivation index (MDI)	Statistics South Africa: Community Survey 2016	Followed Alkire and Foster's multi-dimensional poverty index methodology ² . It adjusts for the social determinants of health (running water for example) that contribute to population health.

25% of the output adjustment data of the PES model is for actual utilisation of services in the province. This adjustment grounds the allocation in terms of the reality of demand, which is not always neatly aligned to the need. The PES model includes two output components: Primary Health Care (PHC) utilisation (headcount) and hospital patient day equivalents. PHC utilisation (headcount) is weighted 5% and hospital patient day equivalent is weighted at 20%.

Output data is collected at facilities in the province and then imported monthly in the National Department of Health's District Health Information System (DHIS).

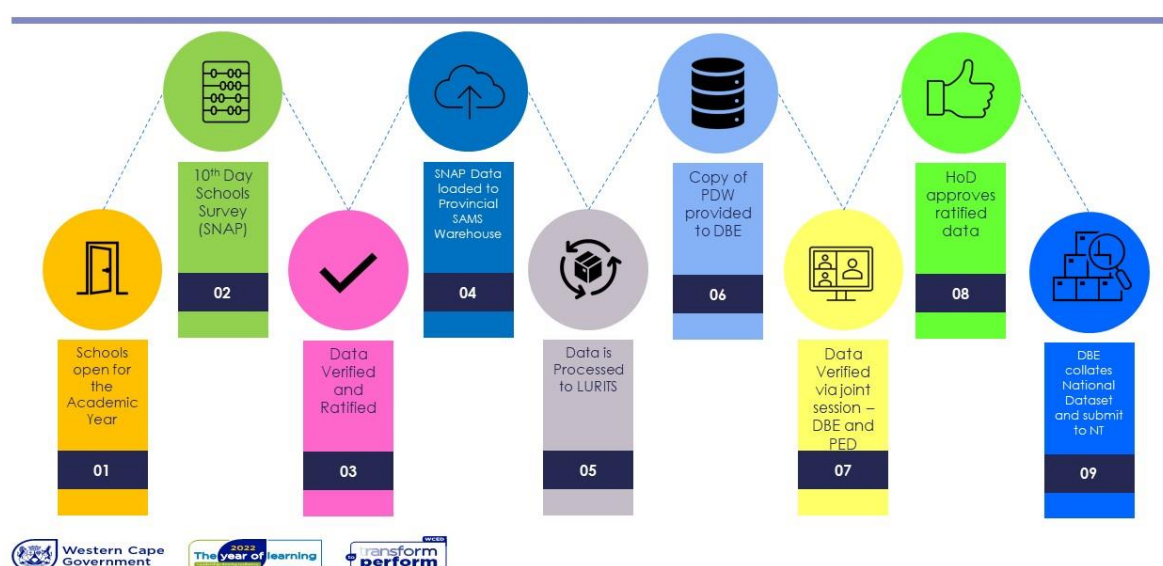
These alterations to the formula have seen a downward adjustment to the shares of both the Western Cape and Gauteng. The Western Cape's share of the risk-adjusted index declines from 11 to 10,7%. This impact is marginally mitigated as a result of the data adjustments to the output subcomponent, weighted 25% of the Health component, resulting in a 0,2166 percentage point decline overall in the Health component. This is because the Western Cape's share of the output component at 12,9% is higher than its relative share of the risk-adjusted component. The Western Cape's overall share of the Health component declines from 11,4 to 10,2%. Given the significance of the impact on provinces, this is an estimation of R1,8 billion cut in funding that the Health component is subject to a special phase-in over the next three years, ending in 2024/25.

5.4.5 Western Cape Education Department

The utilisation of data is used from a planning perspective and assists the WCED to forecast with regard to placement of learners. The WCED engages with DBE to verify the data and engages with the district and school level. The WCED also conducts site visits to engage

principals and its senior management to verify the data that is provided. The WCED mentioned that it is the first time that the Department had sight of the migration data as presented by Stats SA. If the learner migration data was more accurate, it would assist the WCED to forecast more efficiently and effectively and it would be able to identify the limitations and plan ahead. Minister Schäfer reported that the PES formula does not take the historical backlog of learner migration, policy changes, non-compliance with national policies on the formula and the allocation by the National Treasury, i.e. the quantile system and special needs learners, into account. The WCED does not have other sources of funding and rely solely on the PES allocation. The PES formula also did not take into account the impact of unexpected crises, e.g. the drought and COVID-19, and most times the infrastructure budget had to be utilised for these crises resulting in not complying with maintenance at schools and delaying the much needed building of classrooms or schools.

2021 Data Collection Process (LURITS)



The WCED uses the CEMIS system as it is an online web-based system that is centrally hosted in the province. This allows the WCED to see the data at a single point in real time. The DBE suggested that the WCED use SA-SAMS; but due to the challenge of not viewing the data in real time, this makes it difficult for the WCED. The departments are in development to update SA-SAMS to provide this function to the WCED.

5.5 Conditional grants and the constitutional provisions and procedures for borrowing for infrastructure

Conditional grants are used in most decentralised systems of government to enable specified national objectives. Grants and other monetary transfers to local governments are either conditional or unconditional. Conditional grants⁵ are designated for a specific purpose and may not be used for another project, while unconditional grants⁶ may be used for any purpose the recipient local government sees fit.

The Constitution states that conditional grants must be provided from the national equitable share and that the DOR must recognise the role played by conditional grants within the national

⁵ <http://www.treasury.gov.za/documents/national%20budget/2020/Part%202%20-%20Provincial%20conditional%20grant%20frameworks.pdf>

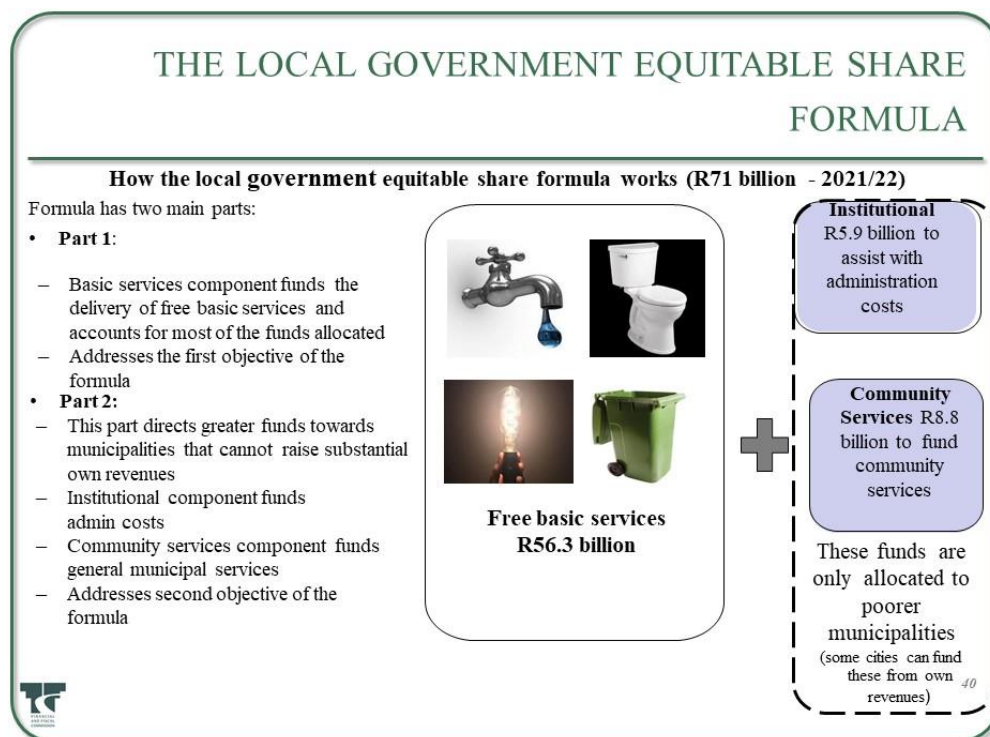
⁶ <http://www.treasury.gov.za/documents/national%20budget/2020/Part%203%20-%20Local%20government%20conditional%20grant%20frameworks.pdf>

equitable share. There should be a trade-off between increasing conditional grants to provinces or municipalities and the total amount available for equitable sharing between the three spheres of government. Accountability for conditional grants is shared between the national government and the recipient government. Sector departments are responsible for determining allocations for conditional grants per province and municipality, as well as the collection and processing of data used to determine allocations and the alignment of allocations to sector policies.

The National Treasury is responsible for ensuring that allocations are within the available resources, that there is equity in the allocations and ensuring stability of the allocations within available resources.

Official data, generally from Stats SA, endorsed by sector departments, and performance data are used to determine the allocations of funds for conditional grants.

Local government conditional grants account for approximately 40% of the total national transfers to the local government in South Africa.



Provincial infrastructure is mainly financed through the PES and infrastructure. This is due to services being provided by the provincial sphere, mainly being of a social nature that do not lend themselves to generating revenue. When financing infrastructure through borrowing, the revenue generated from the financed assets should be sufficient to repay the loan. Only economic infrastructure (mainly located in municipalities) is able to generate sufficient revenue to justify its financing through borrowing. However, provinces still have leeway to finance their infrastructure through borrowing. This is done to fast track infrastructure to improve service delivery. Future transfers to the provinces can be pledged or used as a guarantee for loan repayments. If a province decides to finance infrastructure through borrowing, there are legislative prescripts available to guide the province. The Municipal Borrowing Policy Framework is intended to strengthen the capital market and help creditworthy municipalities to access capital.

5.6 Digital Economy

Increased pressure on procurement to produce results, combined with cost and workforce constraints, makes it critical to adopt tools and systems, which can increase efficiency and effectiveness in the service-delivery environment. Professor Elegbe, Head of Department of Mercantile Law and the Deputy Director of the African Procurement Law Unit at Stellenbosch University briefed the Committee as to how the digital economy improves public procurement. The digital economy provides the opportunity and need for organisations and individuals to use technologies to execute tasks better, faster and often differently than before. It provides the ability to leverage technologies to engage in activities that were not possible in the past. Opportunities to do better, to do more, to do things differently and to do new things is made possible by pursuing digital transformation. The digital economy improves public procurement through guided buying where Internet of Things (IoT) and big data analysis automatically guides officials to services that should be procured.

5.7 Legislation

The WCPP's Legal Unit informed the Committee that legislation enacted by a provincial legislature to provide a procedure to amend money bills must take into account that the purpose of amending money bills is to give effect to resolutions of the legislature on oversight, and must comply with the following principles:

(a) A money Bill sent to the Premier for assent must be consistent with:

- The relevant fiscal framework adopted by Parliament; and
- The relevant DOR adopted by Parliament.

(b) When considering an amendment to a money bill, a provincial legislature or any of its committees must:

- Ensure that there is an appropriate balance between revenue, expenditure and borrowing;
- Ensure that debt levels and debt servicing charges are reasonable;
- Ensure that the cost of recurrent spending is not deferred to future generations;
- Ensure that there is adequate provision for spending on infrastructure;
- Ensure that there is development, overall capital spending and maintenance;
- Consider the short, medium and long-term implications of the fiscal framework, division of revenue and national budget on the long-term growth potential of the economy and the development of the country;
- Take into account cyclical factors that may have an impact on the prevailing fiscal position; and
- Take into account all public revenue and expenditure, including extra budgetary funds and contingent liabilities.

(c) In amending revenue Bills and revenue proposals a provincial legislature and its committees must:

- Ensure that the total amount of revenue raised is consistent with the fiscal framework approved by Parliament and the relevant Division of Revenue Bill adopted by Parliament;
- Take into account the principles of equity, efficiency, certainty and ease of collection;
- Consider the impact of the proposed change on the composition of tax revenue with reference to the balance between direct and indirect taxes;

- Consider regional and international tax trends; and
 - Consider the impact on development, investment, employment and economic growth.
- (d) The standing rules of the provincial legislature must provide for time frames to introduce and consider money bills, with or without amendments, with due regard to:
- Its constitutional obligation to facilitate public involvement in its legislative and other processes of the legislature and its committees;
 - Comments from the Member of the Executive Council who is responsible for financial matters in the province;
 - The provision that a provincial legislature may appropriate an amount specifically and exclusively for a purpose mentioned under a main division within a vote; and
 - The provision that a provincial legislature must pass, with or without amendments, or reject the provincial annual budget within four months after the start of the financial year to which it relates.

In considering the research presented, the following issues were highlighted as matters to take into account of which there may be policy options required when amending a money bill:

- Whether to provide for the substance of a Money Amendment Bill in the body of a provincial Act, or, rather, in a subordinate or alternative instrument, such as regulations or standing rules.
- Whether a Money Amendment Bill should establish a full-time, dedicated, independent advisory body to advise the legislature on the specialist matters referred to in the schedule to the Money Bills and Related Matters Act, 2009, or whether such a need for specialist advisory support can be provided for in a less cumbersome manner.
- Whether to provide for a pre-budget public consultation process to alleviate pressures on the legislature to involve the public in its processes in the relatively short time periods ordinarily available to process money bills, and other ways of improving public involvement.
- Whether to centralise the drafting of recommendations in respect of the amendment to money bills to one committee, or to decentralise the making of recommendations to various committees or to the standing committees having oversight of the budget votes of particular provincial departments.
- Whether to empower the provincial executive to veto amendments proposed by the provincial legislature.

Political parties present at the Workshop 3 were allowed an opportunity to indicate their views on the aforesaid five legal and / or policy questions posed by the WCPP Legal and Research Unit.

Below are countries with legislatures who have various legislated powers to amend money bills:

United States: The President's budget is a policy document that has varying influence over Congress. The United States (US) Congress has the "power of the purse", a plenary power grounded in specific constitutional clauses. The US budget is the product of Congress – a joint resolution. Congress does not increase or decrease funding – it decides the level of funding, which must be effectuated through appropriations legislation. This is the strongest example of an empowered legislature.

Sweden: The Riksdag Act, 2014, provides the legislature with unlimited powers to amend annual draft budget law.

Norway: The Legislature has extensive power to amend the draft budget.

France: Limited powers of the legislature to amend annual draft budget law. The legislature cannot create new “missions” but may amend proposed revenue and expenditure by increasing or decreasing tax rates or shifting the amounts allocated among programmes within the same mission.

United Kingdom: The Legislature is permitted to amend the budget but only to decrease the aggregate, e.g. reduction of expenditure. Generally, parliamentary powers to amend the draft budget are very limited. The House of Commons may amend tax proposals. The House of Commons cannot increase the government’s spending proposals and in practice its ability to do other than accept them is very limited.

Chile: Legislatures are permitted to amend the budget but only to decrease the aggregate, e.g. reduction of expenditure. Amendments to increase expenditure are not permitted. Additionally, Congress cannot approve any new expenditures without the provision of the funding for such increase.

Australia: The Legislature is permitted to amend the budget only for new policies. On a separate note, looking at the Constitution Act, 1902, of New South Wales, it provides that the Legislative Council (the Upper House of its Parliament) is permitted to amend money bills other than the annual appropriation bill (see section 5A).⁷

Canada: Very limited powers to amend. Any amendment in revenue or expenditure of the annual draft law by the legislature requires consent of the executive.

South Korea: Any amendment in revenue or expenditure of the annual draft law by the legislature requires consent of the executive. The National Assembly may not introduce any amendments that increase any expenditure item or create a new expenditure item without the consent of the executive.

Mexico: A Legislature may amend the draft budget, but cannot change the programmatic structure or deny funding for mandatory expenditures. The legislature may increase expenditure only if it identifies additional sources of revenue.

Republic of Ireland: A Legislature may not amend the annual draft budget law proposed by the executive. They may only approve or reject the law.

5.8 Parliamentary Budget Office

Based on the research conducted by the WCPP’s Research unit, only the Parliament of Canada and the National Parliament of South Africa’s established Parliamentary Budget Offices (PBOs). The function and scope of these offices can determine the extent to which a legislature can either amend budget proposals from the executive or merely scrutinise the budget to understand the proposals made by the executive. This office helps to improve parliamentary oversight on the budget process, enhance fiscal discipline and promote greater fiscal transparency and accountability, and raise the quality of the public debate as it pertains to fiscal policy.

⁷ [Constitution Act 1902 No 32 - NSW Legislation](#)

Parliament of Canada	National Parliament of SA
Legislature's Amendment Powers	
<ul style="list-style-type: none"> House of Commons can make amendments to Money Bills during the budget process. The Parliament has limited, and arguably ineffective, powers to amend Money Bills. 	<ul style="list-style-type: none"> Legislature has broad and significant powers to amend Money Bills. Legislature also has the power and function to consider and report on the national macro-economic and fiscal framework and revenue proposals.
PBO Mandate & Functions	
<ul style="list-style-type: none"> Mandate and function of the PBO is primarily focussed on increasing budget transparency and enhancing the parliamentary and public debate on public finances rather than providing support and advice to Parliament during the consideration of Money Bills and proposed amendments. The PBO's functions are mostly concentrated during the pre-budget process, where the PBO's role is to provide the parliament with comprehensive analysis of the government's budget proposals at the outset rather than during the amendment process. 	<ul style="list-style-type: none"> Mandate and function of the PBO is therefore primarily focussed on providing reviews and analysis on proposed amendments to the Fiscal Framework, Division of Revenue Bill and Appropriation Bill, as well as any other reports with fiscal implications.

The WCPP's Research Unit guided the Budget Committee as follows:

- A key consideration that a legislature needs to make when establishing a PBO is the type of budget amendment powers that have been granted to the legislature;
- The mandate and functions of a PBO are dependent on the extent to which a legislature is able to make amendments to money bills;
- By first ascertaining the extent of its amendment powers, a legislature will in turn be able to determine the nature, type and extent of the technical support required during the scrutiny of the budget and amendment process;
- Importantly, should a legislature opt to establish a PBO with the mandate that it will assist in amending the budget, proper funding will be required; and
- The mandate and scope of a PBO in a provincial legislative environment will differ from a national legislature due to differences in scope and powers to amend a budget.

During a briefing in October 2020, the Parliamentary Budget Office informed the Committee that a budgeting system is arguably the most important component of public service delivery. The following was stated:

- It is a fundamental part of the process by which a government turns its developmental vision, policies and plans into implementable programmes and projects, including the delivery of public goods and services;
- Policies or plans cannot be concretised into deliverable government programmes and projects without the availability of capacity to deliver (human and capital); and
- Economic successes depends on the ability of government to employ limited resources with maximum effect and having effective management and procurement systems.

PBO Outputs	Description of the Output
Pre-Budget and Pre-MTBPS briefs	Provides analysis to Parliament about the status of the economy and public finance and government performance before the presentation of the National Budget (February) and Medium Term Budget Policy Statement (October);
Budget and MTBPS analysis	Subsequent to the presentation by the Minister of Finance and before Parliament adopt or amend or reject the budget and MTBPS proposals, the PBO provides analysis on economic and fiscal issues to be taken into account;
Policy Analysis on National Development Plan-	Several analysis on the implementation of the National Development Plan, vision 2030 (NDP) in terms of content, context and progress made with the implementation.
Quarterly Economic and Fiscal Briefs	Quarterly Economic Brief, the PBO provides parliament with an analysis of the economic outlook as the economic performance affects public finances outlook. Fiscal Brief appraise MPs on the status of the government's performance in relation to the budget allocated, and these updates are given within six months (pre-MTBPS) of the financial year and just after the end of a financial year.
In-year revenue forecast and Forecast Audits	In-year revenue forecast, within the first six months of the financial year, PBO provides an estimate of whether government revenue targets for that year will be realised. The PBO estimates are based on historic trends and including first five months of the year's outcomes being forecasted. Forecast Audits, annually provides an analysis of the government growth estimates. This analysis gives indications of the likelihood of realising forecasted growth given historic performance of the forecasts.
Briefs on Taxation and Revenue Matters	On request from finance committees, PBO provides an analysis of taxation proposals made during the budget reviews.
Research and Analysis Requests from Committees	During the financial year Committees may request an analysis on a particular issue with public finance implication. E.g., Votes budget analysis, SOEs financial analysis, Electricity generation technology choices: Costs and considerations, Public Sector Wage Bill, Free Fee HE Costing Analysis, Business incentives for development

21-Feb-22

5.9 Provincial Equitable Share (PES)

In the 1996 submission, the FFC recommended a formula-based approach to the division of revenue and at inception the formula comprised of seven components. Each component used certain variables as a needs indicator weighted equally across provinces. The formula has undergone numerous reviews since its inception.

-
- 1996 FFC proposal
 - Partly implemented
 - 2000 - Costed norms proposal
 - Essence – improve linkages between PES and services provided
 - 2004 – Social security reforms
 - 2006 – Provincial boundary re-demarcations
 - 2007 – FFC CMBS recommendations
 - Balancing constitutionally mandated basic services with macro constraints
 - 2009 – FFC Client norms recommendations
 - Block grants for health and education
 - 2011 – Review of education and health component weightings

The PES is a transfer or grant mechanism that distributes funds amongst provinces, underpinned by the Constitution. It is a formula-based approach to the horizontal distribution of the Division of Revenue (DOR) that was introduced in 1998. Other countries do not necessarily use formulas, but use different mechanisms of distribution for the allocation to provinces. Sections 217 and 214 of the Constitution places emphasis on equalisation. This mainly supports redistribution by taking into account provinces that are unable to raise revenue, while also noting the constraints on provinces to generate revenue.

The PES formula enables the Bill of Rights to be fulfilled and provides intergovernmental cooperation. The principles of the PES are the promotion of autonomy; equity; and stability, transparency and fairness. The PES functions within an Intergovernmental Relations (IGR) System comprising of the PFMA, the MFMA, the National Treasury, the FFC, sector departments and IGR forums, such as the Budget Council, budget forums and the Technical Committee on Finance (TCF).

The DOR is considered at a vertical and horizontal level. The vertical level is when the DOR is divided across the three spheres of government and the horizontal level is when the DOR is divided across the nine provinces and the 257 municipalities. In terms of the current framework, the national government accounts for 49,5%, province for 41,5% and local governments for 9% of the revenue. It is difficult to determine whether the allocations are sufficient due to the lack of costing of services. The Western Cape has had an increase in the PES share under the Education and Health component and the overall Basic Share since 2003, due to the population shifts and policy changes.

The PES amount increases yearly, yet the growth is not necessarily in line with the service needs. The PES is complemented by an elaborate system of conditional grants that mainly addresses historical backlogs. The rate of growth in conditional grants tends to outpace PES allocations, i.e. more assets are being developed, need maintenance or must be operated but there is insufficient revenue.

The key factors affecting the decline in PES are the weak economy; migration and population updates; updates on component needs indicators; provincial boundary reconfigurations and functions shifts, i.e. social security, pathology services, the National Health Laboratory Services (NHLS), Further Education and Training (FET) and agriculture colleges and the National Health Insurance (NHI).

DETERMINING THE HORIZONTAL POOL- PES MODEL

- The PES model is deterministic
- Comprises of six components

Component	Need indicators	Weight
Education	Schoolage population School enrolment	48%
Health	Risk adjusted index Primary health care visits Hospital workload	27%
Basic	Share of population	16%
Economic activity	Contribution to GDP	1%
Poverty	Share of poor population	3%
Institutional	None - shared equally	5%



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The PES formula is expected to address policy issues but this is a matter that needs to be addressed through intergovernmental relations. These intergovernmental relation forums are mostly represented on a national level.

According to the FFC, the following must be noted in order for the PES to improve:

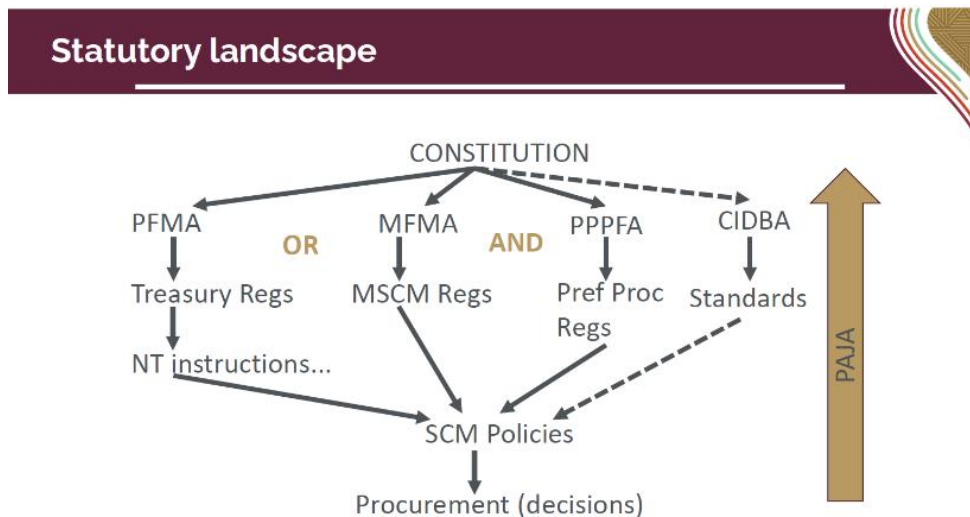
- There is a need to make a distinction between PES as a distribution mechanism, and a broader part of intergovernmental fiscal relations (IGFR) instruments;
- The PES must comply with the principle of fiscal transfer;
- The PES need not be overloaded with many objectives;
- PES reforms should not be carried out in isolation from other important pillars of the IGFR system, including better assignment of functions, conditional grant design and expenditure management;
- Results of reforms may not necessarily result in desirable outcomes for all provinces;
- Parliament and provincial legislatures can ensure that FFC recommendations on PES and conditional grants are implemented through fiscal oversight processes; and
- Implementation of the recommendation made by the FFC also requires the active and wider participation of provincial officials in IGFR committees.

5.10 Public procurement

Professor G Quinot from the Department of Public Law at University of Stellenbosch, presented on the linkage between public procurement to service delivery areas and how public procurement should be used as a policy tool in functional areas such as education, housing and transport.

The last consolidated analysis was exercised in 2016/17 showing R938 billion spend across national, provincial, local and public entities on public procurement. Procurement, as a category of spend is larger than the public wage bill, making it the biggest category type of spend and a significant material portion of abuse or irregular expenditure of public money.

Procurement is a cyclical process of identifying the need and transferring the need into a specification that the market has to fulfil, and engaging the market in a prescribed manner. The procurement cycle functions within a budget. The budget process should have an Annual Procurement Plan that should be used as an instrument to inform all supply chain management activities for the following year and to review budget spending.



Public procurement must be used a policy tool to obtain value for money, gauge efficiency, ensure accountability, curb corruption and align policies. Professor Quinot made reference to SL Schooner & E Mastude GW, Legal Studies Research Paper No. 2021-44 (Sept 2021) that states, “sustainable procurement considers the long-term effects of Government acquisitions, including impacts beyond the procuring agency and end user; incorporates that perspective into purchasing decisions, entails ‘adopting social, economic and environmental factors alongside the typical price and quality considerations ... [in] procurement processes and procedures,’ and builds healthy communities, economies, and environments all along local and global supply chains”.

5.11 Risks

The International Monetary Fund (IMF) provided insight to the risks when amending money bills. The IMF indicated that theory and empirical evidence are equivocal on whether broader legislative powers to amend money bills lead to superior outcomes. A “one-size fits all” approach does not exist as benefits and outcomes depend on country-specific characteristics. There were key questions as to, what the objective to amend a money bill would be, what problem is being fixed, and whether there are alternative reforms that could generate more efficient outcomes.

Legislatures amending money bills could improve resource allocations by reflecting preferences of affected constituencies, enhanced accountability and enhanced legitimacy of the budget. As mentioned by Minister Maynier, the IMF stated that the risks to amending money bills would lessen efficient outcomes due to inadequate processes and/or lack of technical capacity; deadlocks and fiscal sustainability or unsustainability.

The key factors to consider in mitigating these risk due to lack of technical capacity, would be to develop capacity to generate sound amendment proposals from a strong apolitical budget office, to put a mechanism in place to ensure that proposed amendments are consistent with national and provincial priorities, and have realistic limits to what can be amended. It is crucial to avoid amendments that cause risks or disrupt service delivery.

The scope for the amendment of Appropriation Bills in the House is inherently limited as the process has already switched to the delivery phase.

It would be of utmost importance to establish mechanisms for conflict resolutions and to ensure that the government continues to function, especially in the event of any deadlocks.

5.12 Values and principles of drafting money bills

Minister Maynier shared his experience when proposals were made on the amendments in terms of the Money Bills Amendment Procedure Act in the National Assembly. The Minister focused on measures that contribute to deepening the democratic processes in relation to the budget process. He indicated that the procedure to amend a Money Bill amendment must not be done in isolation from the overall objective. The Constitution requires that national, provincial and local government budget processes must promote transparency, accountability and effective financial management.

On a national level, the Minister proposed amendments using the Money bills Amendment Procedure and Related Matters Act (Act 9 of 2009) and shared that, in practice, the procedure that was set in the National Assembly at the time was very complex, requiring several processes in more than one committee. The time frames were constrained and the processes were technical and beyond the capacity of an ordinary person. The Minister stated that the National Legal Services and the Parliamentary Budget Office were in the process of improving the procedures set out in the Money Bills Amendment Procedure and Related Matters Act, 2009 and suggested that the Committee should consider meeting with these offices to reflect on the lessons learnt.

Consideration had to be given to how the planning and budgeting processes could be influenced before the main budget is to be tabled. Some of the budget processes that could be scrutinised were the Medium-term Budget Policy Statement that sets out the strategic decisions and drives expenditure over the next three years, the impact of allocations on the outcomes of service delivery; consideration of the budget process on the effect of past resource allocations, and the impact on service delivery so that funds are not allocated again to resources that have failed in the past. Consideration should also be given to developing a way to deepen public participation, which would avert the need to amend money bills.

The Premier stated that the principle of financial management is the continual rethinking of the finance oversight for better service delivery outcomes. The constitutional framework dictated how funding was allocated. Realistically, the funding was being reduced, however, the utilisation of the funding should satisfy the demand to influence the improvement of service delivery to the citizens. The regulations and legislative frameworks were not aligned to the increase of service delivery demands. The government should start “future-thinking” to craft changes to the regulatory frameworks and the service delivery environment. An area that is failing dismally, is the ability to make use of up-to-date data in the budgetary process.

6. Resolutions and actions

Requests		
Details	Action	Way forward
<p>That the WCPP's Research Unit conduct research on the following:</p> <ul style="list-style-type: none"> a. International best practices regarding timelines for money amendment procedures legislation for the budget-cycle review, including but not limited to the Canadian and New Zealand jurisdictions. b. International best practices regarding public participation processes for the money amendment procedure legislation, including but not limited to the Canadian and New Zealand jurisdictions. The costing per annum relating to budget offices in international jurisdictions for the past three financial years, including but not limited to the Canadian and New Zealand jurisdictions. c. Summary of the budget cycle and timelines. 	<p>The research was conducted and presented to the Committee on 20 January 2022</p>	Resolved
<p>That the WCPP's Legal Unit provide the Committee with a summary of relevant South African case law relating to public participation in the legislative process.</p>	<p>The research was conducted and presented to the Committee on 20 January 2022</p>	Resolved
<p>That the FFC provide a breakdown of expenditure relating to its research and office expenditure respectively, for the past three financial years.</p>	<p>The FFC responded on 9 September 2021: The mandate of the FFC is to provide statutorily mandated advice with regard to the DOR among the three spheres of government and in the enactment of legislation pertaining to provincial taxes, municipal fiscal powers and functions, and provincial and municipal loans. The request falls outside this legislative framework. The requested information is publicly</p>	Resolved

	available through the ENE, APP, SP and annual reports. Please consult these public accountability documents and any other resources at disposal to assist in your benchmarking exercise.	
That the National Parliamentary Budget Office (PBO) provide a breakdown of expenditure relating to its research and office expenditure respectively, for the past three financial years.	Information was received on 9 December 2021	Resolved
That the Provincial Treasury provide the Committee with the following: <ul style="list-style-type: none"> • A copy of the Fiscal Budgetary Framework; • A copy of the Annual Procurement Plan; • A report listing the names of the grants that the Department accesses when a disaster takes place, including the list of grants that was used for the Masiphumelele Disaster that took place in December 2020; and • A list of municipalities that borrowed money from the Provincial Treasury. 		Resolved at third Workshop. To be implemented.
That the Department of the Premier provide the Committee with the following: A report explaining how the Western Cape Government plans to ensure that the learner migration data is synchronised and accurate.		Resolved at third Workshop. To be implemented.
That the National Treasury provide the Committee with the following: <ul style="list-style-type: none"> • A copy of the Excel spreadsheet that calculates the provincial equitable share for the Western Cape; • A copy of the Municipal Infrastructure Grant formula; • A report explaining how the migration data, provided by the Department of Basic 		Resolved at third Workshop. To be implemented.

<p>Education, is taken in to account in order to allocate funding to schools, feeding schemes, equitable share and infrastructure grants, and how this is integrated into the provincial equitable share;</p> <ul style="list-style-type: none"> • A report explaining how the national reserves are being utilised for the Western Cape, and if it is not being utilised, the reasons for the non-utilisation; • A breakdown of the costs for a learner with special needs compared to a learner with regular needs; • A copy of the poverty distribution formula that calculates the guideline for the National School Nutrition Programme; • A brief explanation about the legislative instruments that need to be implemented in order to have seamless data shielding; • A list of disaster programmes and the allocated amounts that are available if there is a disaster; • A list of grants that departments can access when a disaster takes place; • A copy of the three loan committee agreements, the minutes of all the meetings held on this matter and the terms of reference; and • A report indicating the timelines in which the Department envisages that the publishing of all the formulas for the different grants will take place. 		
<p>That the Financial and Fiscal Commission (FFC) provide the Committee with the following:</p> <ul style="list-style-type: none"> • A copy of the Excel spreadsheet that calculates the 		<p>Resolved at third Workshop. To be implemented.</p>

<p>provincial equitable share for the Western Cape;</p> <ul style="list-style-type: none"> • A report providing the calculation used that informed the allocated amount of R11 700 per household in respect of rural municipalities; • A breakdown of what the average costs would be to send a learner to a public school; • A copy of the research that was completed on the district municipalities in the years 2017 and 2018; and • The list of stakeholders who are consulted before making the recommendations for the DOR. 		
<p>That the Department of Basic Education (DBE) provide the Committee with the following:</p> <ul style="list-style-type: none"> • A report providing information on the process that was followed to collect the data, which stated that 116 282 learners migrated from Limpopo to the Western Cape. The report should also include the migration data collected over the last four years and who this information was provided to; • A brief explanation indicating whether the Department takes into account the number of schools, feeding schemes, the equitable share, conditional grants and infrastructure grants when providing allocation amounts to the National Treasury; • A breakdown of the maintenance and running costs of the South African School Administration and Management System (SA-SAMS); • A brief report on the number of children that are of school going age receiving child 		<p>Resolved at third Workshop. To be implemented.</p>

<p>support grants and enrolled at schools; and</p> <ul style="list-style-type: none"> • A report providing evidence that verifies the data which indicates that 48% of the equitable share is allocated to the Western Cape Education Department (WCED). 		
<p>That the Western Cape Education Department (WCED) provide the Committee with the following:</p> <ul style="list-style-type: none"> • A brief explanation regarding data used to allocate funding to schools; • A breakdown of the maintenance and running costs for the Central Education Management Information System (CEMIS); • A brief report indicating whether learners receiving child support grants enrolled at schools; and • A breakdown of the costs to send a learner with a profound intellectual disability to school. 		Resolved at third Workshop. To be implemented.
<p>That Statistics South Africa (Stats SA) to provide the Committee with the following:</p> <ul style="list-style-type: none"> • A report on the process that is followed to check the validity of data; • A report explaining the impact on the Western Cape Government's budget allocation as a result of using Census 2011, which is outdated; • A list of the different formula components used to determine the data for the equitable share in terms of the 2021 budget. The information provided should also include the latest data per formula component and should be aligned to the past three financial years; 		Resolved at third Workshop. To be implemented.

<ul style="list-style-type: none"> • A copy of the Census 2009 and the provincial equitable share for 2010; • A brief report on the number of children that are of school going age receiving child support grants and enrolled at schools; and • A report providing the metrics used for conditional grants and the survey or research report that is used to provide the latest data. 		
<p>That the Department of Health provide the Committee with the following:</p> <ul style="list-style-type: none"> • A report indicating the reasons why learners with special needs were not taken into account when calculating the provincial equitable share; • A report proving the data for the past five years, in respect of the education and employment training; and • A report providing information on the Multiple Deprivation Index that is used in the United Kingdom. The report should explain how this can be used to access data in the Western Cape. 		Resolved at third Workshop. To be implemented.
<p>That the South African Social Security Agency (SASSA) provide the Committee with the following:</p> <ul style="list-style-type: none"> • A brief report on the number of children who are of school going age receiving child support grants and enrolled at schools. 		Resolved at third Workshop. To be implemented.
<p>That the South African Revenue Services (SARS) provide the Committee with the following:</p> <ul style="list-style-type: none"> • A brief report explaining the legislative instruments that must be implemented in order to have seamless data shielding; • A report providing details on any investigations undertaken 		Resolved at third Workshop. To be implemented.

<p>by SARS, together with the South African Police Service (SAPS), on high-flyer or gang members suspected of illegal money trade in the Western Cape;</p> <ul style="list-style-type: none"> • A list of all small, medium and micro enterprises (SMMEs), the categories of the industries and the total tax contributions collected for the past five years; • A feedback report explaining how SARS plans to assist unregistered businesses, such as spaza shops, which have an impact on the economy; • A brief feedback report on the percentage of tax that was collected from the taxi industry over the past three years; • A brief report explaining what is being done to make information and communications technology (ICT) systems accessible to SMMEs; • A report indicating whether or not SARS has a mechanism in place that allows the banking industry to report to the national and provincial governments about substantial amounts of money that are deposited into individual company accounts. The report must provide the relevant details of this mechanisms; and • The contact details that SMMEs can use when they have any business queries. 		
<p>That the National Parliament provide the Committee with the following:</p> <ul style="list-style-type: none"> • A copy of its Oversight and Public Participation Model. 		<p>Resolved at third Workshop. To be implemented.</p>
<p>The Gauteng Legislature to provide the Committee with the following:</p> <ul style="list-style-type: none"> • A copy of the legal opinion that the Gauteng Legislature used 		<p>Resolved at third Workshop. To be implemented.</p>

<p>when drafting the procedure to amend a money bill; and</p> <ul style="list-style-type: none"> • A list of the amendments in its Standing Rules that refers to the procedures to amend a money bill. 		
Resolutions		
Details	Action	Way forward
To hold a follow up in-person workshop at an agreed-to venue on possible money bill amendment procedures either in late October or early November 2021.	Workshop took place at Stellenbosch Protea Hotel from 17 to 21 January 2022.	Resolved
To send all recommendations made by all stakeholders over the three-day workshop to the different caucuses and request feedback relating to the policy considerations for a process to amend a money bill; to be discussed at the next Budget Committee workshop on the matter.	Feedback from caucuses was discussed at the third workshop	Resolved
To include a budget-cycle review activity including timelines at the next workshop	Discussed at the third workshop	Resolved
To engage with the diplomatic corps and/or public representatives from countries with best practices related to money bills amendment procedures; including but not limited to the Canadian and New Zealand jurisdictions.		Planned for 2022 due to difference in parliamentary terms and recesses
The national Minister of Finances, Hon Tito Mboweni, and Western Cape Premier, Hon Alan Winde, to engage the Committee on values and principles for money amendment procedures legislation.	The national Minister of Finance, then Hon T Mboweni, sent an apology and an apology was received by the current Minister, Hon E Godongwana for the third workshop. Advocate E van Schoor from the National Treasury's Legislation Unit provided the committee with introductory remarks about the values and principles of drafting money bills at the second workshop. The Premier gave introductory remarks on the matter on 17 January 2022.	Resolved
The Gauteng and Limpopo legislatures and the National Parliament to brief the Committee	The Gauteng and Limpopo legislatures will be invited. Advocate F Jenkins from the	Invitations sent to Gauteng and Limpopo legislatures. One reply

on their public-participation processes in money bills legislation.	National Parliament briefed the Committee on the matter.	was received from the Gauteng Legislature on the afternoon of the second last day of the third workshop. To be rescheduled for a future session.
The International Budget Partnership and the World Bank to brief the Committee on the guidelines for public participation in money amendment bills legislation and best practices internationally.		Invitations sent. Apology received from the International Budget Partnership due to prior commitments. To be rescheduled for a future session.
The National Treasury and SARS to brief the Committee on the collection of revenue nationally and per province.	Briefing took place on 19 January 2022	Resolved
The FFC, the National Treasury and the Provincial Treasury to brief the Committee on criteria for conditional grants to provincial and local governments and the method of collection and submission of data and statistics for the criteria for the respective conditional grants.	Briefing took place on 19 January 2022	Resolved
Statistics South Africa, the national Department of Health, the Western Cape Department of Health, the national Department of Basic Education and the Western Cape Education Department to brief the Committee on the collection and submission of the data and statistics submitted for the provincial equitable share formula calculation.	Briefing by the different stakeholders took place on 18 January 2022. No response was received from the national Department of Health.	Resolved
The FFC to brief the Committee on their recommendations for the review of the provincial equitable share formula calculation.	Briefing took place on 18 January 2022.	Resolved
The FFC, the National Treasury and the Provincial Treasury to brief the Committee on constitutional provisions and procedures for borrowing for infrastructure.	Briefing took place on 18 January 2022.	Resolved

The Commissioner for Children to brief the Committee on budgeting for children in money bills legislation.	The Commissioner for Children sent an apology.	Invitation sent. Apology received. To be rescheduled for a future session.
The Gender Commission to brief the Committee on budgeting for women and gender-based violence in money bills legislation.	The Gender Commission sent an apology.	Invitation sent. Apology received. To be rescheduled for a future session.
The WCPP's Legal Unit to brief the Committee on the minimal clauses relating to norms and standards that should be taken into account for the drafting of an amendment to a money bill.	Briefing took place on 20 January 2022.	Resolved
In addition, invite public procurement professors or academics to brief the Committee on public procurement.	Professor Quinot briefed the Committee on 18 January 2022. Professor Sope Williams-Elegbe briefed the Committee on 20 January 2022.	Resolved. Three Professors were invited from two universities within the Western Cape province. Two were able to attend. One submitted apology due to prior commitments.
<p>The Office of the Secretary must advise the Committee regarding:</p> <ul style="list-style-type: none"> • indicate which WCPP unit has the internal capacity to assist the Committee with the research and legal capabilities with the preparation of a draft Bill. • request all the Law faculties of the universities in the Western Cape Province in order to provide a list of suitable legal specialists within their respective faculties capable of drafting legislation relating to money bills procedures. • request from the (a) Western Cape High Court a list of retired judges within the Western Cape Province that are specialists in finance related legislation; and (b) the Cape Bar (Society of Advocates) and the Law Society of South Africa to submit a list of 		Resolved at third Workshop. To be implemented.

<p>advocates within the Western Cape Province that are specialists in finance-related legislation.</p> <ul style="list-style-type: none"> • assist the Budget Committee to establish a panel of five specialists (consisting of two legal academic, two advocates and one retired judge based on the aforementioned criteria), to assist in drafting the draft Bill for the procedure for the amendment of money bills in the Province, based on the lists received from the organisations listed in 12.4.1 (b) and (c). • consult with universities within the Western Cape Province to develop accredited courses that will capacitate members with knowledge of legislative drafting and parliamentary processes. • request the Research Unit within the WCPP to provide a report detailing the reasons which gave rise to the Money Bills Amendment Procedure and Related Matters Act (Act 13 of 2018). The purpose of the research report is to establish the intention of the provision that was included in the Constitution. 		
<p>The Research Unit of the WCPP should provide a report detailing the reasons which gave rise to the Money Bills Amendment Procedure and Related Matters Act, 2018 (Act 13 of 2018). The purpose of the research report is to establish the intention of the provision that was included in the Constitution.</p>		<p>Resolved at third Workshop. To be implemented.</p>

The WCED, the DBE and Stats SA to compare and collate their learner migration data and provide an updated report by 25 February 2022.		Resolved at third Workshop. To be implemented.
Recommendations		
Details	Department Responses	Resolved
The Committee further RECOMMENDED that the national Department of Education provide its migration data relating to learner population increases in the WCED.		Resolved at third Workshop. To be implemented.
The Western Cape Government submit recommendations to the FFC on the division of revenue before its annual publication.		Resolved at third Workshop. To be implemented.
The WCPP assist the Budget Committee to establish a panel of specialists to draft the procedure for the amendment of money bills in the province. This panel must consist of two legal academics from the lists of the three universities within the Western Cape province; two advocates selected from the list received from the Cape Bar (Society of Advocates); and one retired judge selected from the list received from the Western Cape High Court.		Resolved at third Workshop. To be implemented.
The National Treasury consider penalising provincial departments with negative audit findings and non-compliance of submission of the non-financial quarterly reports to all grants. Examples where these penalties already occur are within the Public Works Infrastructure and Social Sector Grants.		Resolved at third Workshop. To be implemented.
The National Treasury should consider incentives for departments that receive clean audits.		Resolved at third Workshop. To be implemented.

7. Conclusion

The findings on the Procedure to Amend Money Bills by the Research Unit indicated the following:

- South Africa is the only country that uses legislation in addition to the parliamentary Standing Rules to amend Money Bills;
- Legislation provided by the National Parliament and the Gauteng Provincial Legislature provides detailed, in depth procedures on how and when to amend Money Bills;
- Legislation provided by National Parliament also makes provision for certain Money Bill amendment procedures to be included in the Standing Rules;
- There is a mandatory public participation process indicated in both National Parliament and Gauteng Legislature's Money Bill legislation, while there is emphasis on a pre-budget consultation process in the Standing Rules of the international cases studies; and
- The establishment of a Parliamentary Budget Office is specified only in South African national legislation.

In South Africa, there are more stringent conditions to amend Money Bills compared to other countries e.g. it is mandatory to engage in a public participation process when amending all legislation, including Money Bills. The legislation at National to amend Money Bills primarily focuses on the annual budget process and therefore Revenue and Appropriation Bills. At provincial level, the primary focus of a framework for the amendment of Money Bills is Appropriation Bills e.g. Gauteng Provincial Legislature.

The Committee intends to hold further workshops and continue its research, and political parties will receive a further opportunity/(ies) to present their views on matters relating to the amendment of a Money Bill as the Committee's research and drafting journey unfolds.

As guided by the Research Unit, the effectiveness of Parliament to implement the Act depends on the access to and availability of technical and specialised expertise in economics and public financial management; which the WCPP within its current programmes and/or units may not be able to provide. The Budget Committee, therefore, resolved to conduct further research and analyses by seeking lists of experts from the law faculties of universities within the Western Cape Province, the Cape Bar (Society of Advocates) and Western Cape High Court. The lists will allow the Committee to collate a panel of experts that will assist the Committee with the drafting of money bills amendment procedure legislation.

In order for the Committee to overcome pressing time constraints and capacity challenges for the completion of the procedure to amend Money Bills, it is imperative that the Committee has a supportive system in place consisting of experts to advise and guide the Committee, the assistance of an efficient administration within the Legislature, and the guidance of a pragmatic set of procedures to amend Money Bills. The Committee will also consider international best practices and continue its research, while engaging with various stakeholders on the content until the conclusion of the consideration of the bill.

The Committee conveys its sincere thanks and appreciation to the WCPP's Procedural Officials, Research Unit and Legal Advisers for their hard work and dedication to providing logistical, procedural, administrative and research support, and for the compilation of the report. The Committee further thanks the various stakeholders and entities thus far in engaging with and assisting the Committee in a frank, open and constructive manner towards the goal of drafting the best provincial money bills amendment procedure legislation of its sort in the world.

The Committee's objective is to draft the best procedure to amend Money Bills for a legislature, based on the constitutional values emanating from the South African and Western Cape Constitutions, thereby effectively strengthening the law-making, oversight and public participation roles and practices within the Western Cape.