

# The Interface between the Government and the Knesset with Regard to Government Bills

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Noa Kwartaz-Avraham



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Abstract



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## **ABSTRACT**

During the past 150 years, the modern democratic state has seen a change in the power relations between the legislative and executive branches in all matters related to the role of the parliament in enacting legislation. One of the main manifestations of this change was a significant increase in the number of bills drafted by the executive and submitted to the legislature for passage. Staff work on such bills begins in government departments and ministries, which produce texts that are submitted to the legislature for the formal procedures leading to enactment of the law. Despite these changes, from which Israel has not been exempt, the legislative process has been studied only from the time the bill is submitted to the Knesset, with no attention to the process by which Government-sponsored bills are drafted and approved by the Government prior to that stage. In consequence, the interface between the executive branch and the Knesset—including the staff work in the former and the legislative process in the latter—has also been neglected.

This study presents a comprehensive and inclusive picture of the process by which bills initiated by the executive branch (“Government bills”) are drafted and then approved by the Government and the Knesset. It tracks the drafting process and examines the duration of the legislative process as bills move through the Knesset (plenum and committees). It breaks new ground by describing the interface between the executive and legislature. It concludes with questions for further discussion and research.

## Findings

### A. The Workload of Knesset Committees

(1) From the First Knesset until late in the term of the 20th Knesset, there was a steady increase in the total volume of Government bills submitted to the Knesset. Although the trend was not consistent, there was an increase (sometimes small) in the number of bills discussed by every Knesset committee from the First Knesset until the date of this study (July 2018).

(2) There is a large disparity in the number of Government bills referred to the various committees: two of them—the Constitution, Law and Justice Committee and the Finance Committee—handle roughly 54% of all Government bills submitted to the Knesset. Three other committees—Labor, Welfare and Health; Economic Affairs; and Interior and the Environment—deal another 32%. Thus only five committees are responsible for discussing 86% of all Government bills. Three other committees—Education, Culture and Sports; Foreign Affairs and Defense; and the House Committee—handle about 11% of Government bills. Only one percent of Government bills pass through four other standing committees—the State Control Committee; the Science and Technology Committee; the Immigration, Absorption and Diaspora Affairs Committee; and the Committee on the Status of Women and Gender Equality. No data are available for the remaining 2% of Government bills.

### B. Duration of the Stages of the Legislative Process

For all Knesset committees, large and small, there was a serious disproportion between the duration of their actual work on the legislation bills and how long the bill spent waiting in the pipeline to be considered by them. For 80% of the bills worked on, by all the committees, the longest idle period came between the bill's approval by the plenum on first reading and the beginning of the relevant committee's deliberations on it; in fact, this was longer than the time the committee actually devoted to marking it up for return to the plenum.

### C. Length of Bills (pages)

The longer a bill (as measured by the number of pages), the longer the committee deliberations about it. This correlation holds for short bills (up to 10 pages) as well as for bills longer than 10 pages.

### D. Special Committees and Joint Committees

(1) The 20<sup>th</sup> Knesset saw a sharp rise in the use of committees established to address a specific issue and of joint committees. In fact, the special committees created during the 20<sup>th</sup> Knesset account for fully a third of all such committees convened between 1949 and 2018.

(2) For 90% of the bill examined, the duration of the deliberations by special or joint committees and by standing committees was effectively the same.

### E. Arrangements Laws

(1) Over the years, the average duration of the Knesset's work on the Arrangements bill, from its submission through its approval on third reading, has decreased—even as the bill's length has grown consistently.

(2) In terms of pages, during the term of the 20<sup>th</sup> Knesset the Arrangements bills accounted for approximately 20% of all the Government bills submitted to the plenum.

(3) The Finance Committee considered the most chapters (articles, sections) of the bill (about 40%). Most of the other sections of the bill were referred to the five large Knesset committees, as well as to joint or special committees—between 10%-20% to each committee. Most sections of the Arrangements bills were referred to other committees.

(4) When measured by the number of pages, the median duration of committee deliberations on routine bills was shorter than that on the sections of Arrangements bills. The median duration of the deliberations on a two-page routine bill was one day. At first glance, that on a two-page section of an Arrangements bill was seven days.

(5) However, a look at the minutes of the Knesset committees' final consideration of sections of the Arrangements bill on which they deliberated for more than one day disclosed that in 40% of these cases the substantive deliberations lasted only a single day.

(6) No significant difference was found between the number of hours that Knesset committees devote to routine legislation and the number of hours devoted to Arrangements bills.

## **Conclusions and Recommendations**

A survey of the process by which Government bills are drafted and enacted—from their initiation by a ministry through final passage—reveals some elements of advance planning and prioritization. Nevertheless, these elements are not uniform and often give way to other considerations, such as a change in the minister's preferences or the need to pass the State Budget and Arrangements Law by a fixed deadline.

To contend with the phenomenon of the delay in the consideration of bills, as it affects the drafting of Government bills, the following points are recommended:

(1) An annual legislative plan, based on each ministry's work plans, should be submitted to the Justice Ministry's Counseling and Legislation Department. It should include the anticipated duration of the staff work on each bill as well as the approximate dates when other ministries, including the Counseling and Legislation Department, will be asked to submit their comments.

(2) When ministries estimate the duration of the staff work, the findings of this study should be taken into account, including how the length (in pages) of the bill will affect the duration of the legislative process, the volume of legislation handled by the committee to which the bill is sent, and whether an RIA (regulatory impact assessment) process will be required.

(3) The opinion of the Counseling and Legislation Department should be seen as only a recommendation. It should not replace the ministry's discretion as to the start of staff work on a bill.

(4) Each ministry will track the reasons why a particular draft Government bill is never submitted to the Knesset or fails to pass its third reading.

(5) Updates on the implementation of the ministries' legislative plans, and thus of the Government's legislative plan, will be presented to the ministries, the Knesset, and the public at large in an accessible and transparent manner via the Justice Ministry website; for example, by means of digitization that brings together information about the state of the staff work on various Government bills. The digitization process is already under way.

(6) Parameters should be defined for the discretion of the Ministerial Committee on Legislation—for example, the methods to be utilized when deciding to approve or reject a proposed Government bill, so that the extent of the deliberations about a bill is not influenced by the policies of the incumbent justice minister.

(7) The Counseling and Legislation Department should submit the consolidated governmental legislation program, based on the work plans of the various ministries, to the Ministerial Committee on Legislation. The committee will announce, as far in advance as possible, which bills it intends to submit to the Knesset.

**To contend with the phenomenon of the delay in the consideration of bills, as it affects legislation by the Knesset, the following points are recommended:**

(1) If the Government's legislative program is consolidated and posted on the Justice Ministry website, consecutive dates for the consideration of complex government bills should be scheduled in advance, by the Knesset speaker and committee chairs, to the extent possible.



(2) If there is a consolidated Government legislation plan, the hearings on bills that address overlapping topics and areas should be scheduled for adjacent dates (for example, the Economic Affairs Committee should plan blocks of hearings on legislation related to agriculture, transport, or consumer protection).

(3) When priorities are determined for the consideration of Government bills by committees, attention should be paid to not overburdening the Knesset Legal Bureau and Research and Information Center, as is already done in certain cases today.

(4) Thought should be given to setting a limit on the number of Government bills that can be debated during each Knesset session, and the ministries should prioritize their staff work on these bills accordingly. These limits should take account of the complexity of a bill's content, its length and the number of days that will be needed to debate it.

(5) When a special committee or joint committee is established, the reasons for doing so should be made clear, along with why it is preferable for the deliberations to take place there rather than in a standing committee. In this context, it is important to evaluate whether the establishment of such a committee will detract from the Knesset's oversight of the government or, in particular, weaken the opposition's parliamentary power.

## **The Passage of Arrangements Laws**

The present research shows that the longest stage in the passage of Government legislation is the wait for the start of committee deliberations. This may indicate that Knesset committees are fully occupied in work on routine legislation and not only on Arrangements bills. If this is indeed the case, it is not surprising that the duration of deliberations about Arrangements bills tends to be similar to those on routine legislation: For a fixed period of time, the debates and hearings about the Arrangements bill consume all of the Knesset's resources, including those that are normally devoted to other bills on a range of topics.

The research literature describes the process of Arrangements legislation as more intricate, inasmuch as it relates to fiscal policy, which tends to be complex. Hence it is not certain that the length of time that suffices for exhaustive consideration of a routine bill is adequate for a thoroughgoing deliberation of an Arrangements bill. In this sense, the manner in which Arrangement bills are discussed and approved impairs the Knesset's ability to conduct a professional and substantive debate on them.

Recent years have seen a change in the preparation of Arrangements bills—both with regard to the staff work on the text of the bill and in its separation into fiscal and non-fiscal bills. But the vast majority of the preparatory work still takes place in the Finance Ministry, with the partial involvement of other ministries. In addition, the two bills (the fiscal and non-fiscal) cover a vast range of topics, making it difficult for Knesset members to understand all their sections and to express professional and objective criticism of them. Finally, the Knesset's deliberations on them remain bound to a rigid timetable.

**To contend with the shortcomings in the staff work and legislation process of the Arrangements laws, the following is recommended:**

- (1) The cooperation between the various ministries and the Justice Ministry's Counseling and Legislation Department during the earlier stages of bill's drafting by the Finance Ministry should be expanded.
- (2) The Arrangements bill should include only fiscal legislation necessary for implementing the budget policy at the time the budget is passed.
- (3) Non-fiscal topics should be included in routine legislation considered by the various Knesset committees and not subject to the rigid schedule of budget approval. In this way the staff work on them can be included in the Government's consolidated legislation program.
- (4) The chapters or sections of the Arrangements bill that are seen as more complex from the perspective of the professional treatment they

require should be identified in advance and sufficient time allotted for their consideration, but without derogating from the committee chairs' authority to hold back the discussion on certain points of the bill whose substance is controversial.

(5) Thought should be given to an official and advance extension of the hours allotted to deliberations by Knesset committees during the period of the debates on the Arrangements bill.

(6) It should be verified that the topics left for consideration by the Finance Committee itself are indeed part of its routine expertise.

## **Future Research**

The present study found that the median time devoted to consideration of a routine bill of up to 10 pages is a single day. In view of this, it is recommended that the complexity of a bill's provisions be examined so as to check the compatibility between the complexity and the amount of time allotted to deliberations about it. This would make it possible to produce a detailed assessment of whether the Knesset committees are fulfilling their professional duty when deliberating the Government bills brought before them.

Among world parliaments, the Knesset is considered to be one that enacts a vast amount of legislation and in which the government controls the agenda and the legislative process. How is this reflected in the enactment of government bills, beginning with when a ministry comes up with the idea, until the bill is passed, and incorporated into the law book? What strengths and weaknesses are revealed in this process? Which of the two branches of government—the legislative or the executive—controls the process of passing government bills? This study is a pioneering attempt to study the role of the Knesset and the government in this process. It surveys and analyzes the process and identifies the strong and weak points along the road. This is the first full and comprehensive picture of the stages in the legislative process in the passing of government bills in Israel, and identifies ways to improve the process.

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