



Parliament of Kenya

The National Assembly

How Law is Made



Fact Sheet
No. 2

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This Factsheet on **How Law is Made** is part of the Kenya National Assembly Factsheets Series that are supposed to enhance public understanding, awareness and knowledge of the work of the Assembly and its operations. It is intended to serve as easy guide for ready reference by Members of Parliament, staff and the general public. The information contained here is not exhaustive and readers are advised to refer to the original sources for further information.

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FactSheet

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How Law is Made

1. Introduction

One of the key functions of Parliament is to make laws in exercise of its legislative authority as provided for in Article 94 of the Constitution. The National Assembly is mandated to make laws and exercises its legislative power through Bills passed by the House and assented to by the President.¹

It is important to note that whereas a legislative proposal can be said to be an idea for a Bill, a Bill is a proposed law for an Act of Parliament that has been published for introduction in the National Assembly. A legislative proposal or a Bill generally seeks to either introduce a new legislation, amend or repeal existing law(s).

2. Origination of Bills

A Bill may be originated in several ways, including—

- (a) a Parliamentary Party; *introduced in the name of the Leader of the Majority Party or Leader of the Minority Party or their respective deputies;*
- (b) the Executive: *introduced in the name the Leader of the Majority Party or Leader of the Minority Party or in the name of the Chairperson of the relevant Committee;*
- (c) individual Member(s) of the National Assembly; *introduced in the name of the Member sponsoring the Bill;*
- (d) a Committee of the House; *introduced in the name of the Chairperson or a member designated by the Committee;*

¹ Article 109 of the Constitution.

- (e) a member of public may also petition Parliament pursuant to the provisions of Article 119 of the Constitution and the Standing Orders to legislate on a matter; *introduced by way of a Petition conveyed by the Speaker and committed to the relevant Departmental Committee for consideration and publication of the consequential Bill;*
- (f) *alternatively, members of the public may forward legislative proposals to Members of Parliament.*

3. Introduction of Bills

A legislative proposal must have a sponsor in order to be introduced in the House. A Member or a Committee of the National Assembly wishing to introduce a Bill in the House has to submit the legislative proposal to the Speaker for approval. The legislative proposal is accompanied by a memorandum of objects and reasons. The memorandum contains a statement of—

- a) objects and reasons of the Bill;
- b) delegation of legislative powers and limitation of fundamental rights and freedoms, if any;
- c) whether the Bill concerns county governments; and
- d) financial implications and if the expenditure of public moneys will be involved should the Bill be enacted, an estimate, where possible, of such expenditure.



Swearing in ceremony of the 12th Parliament



Securing the Vote during Election of the Speaker, 12th Parliament

The memorandum should generally indicate the objectives of the Bill. Upon receiving instructions from a Member or a Committee, the Speaker refers the legislative proposal to the Clerk, who employs the diverse legislative expertise of his office to formally engage the proposer and draft the proposal in the standard form of a Bill in terms of format and style and submit comments to the Speaker on-

- (a) whether the legislative proposal affects or does not affect county governments;
- (b) whether the legislative proposal is a draft money Bill; and,
- (c) whether the legislative proposal is in accord with the Constitution, the law and is order as to.

4. Procedure for processing proposed Bills

Upon receipt of the legislative proposal together with the comments of the Clerk, the process may follow the following course –

(a) Non-Money-Bill legislative proposal-

- (i) in the case of a *Non-Money-Bill* legislative proposal sponsored by a committee the Speaker approves its publication into a Bill; or,
- (ii) in the case of a *Non-Money-Bill* legislative proposal sponsored by an individual Member, the Speaker refers the proposal to the relevant Departmental Committee which undertakes prepublication scrutiny by seeking the views of the proposer and other offices such as the Kenya Law Reform Commission, the Attorney-General and relevant State Departments in considering the legislative proposal. The committee

thereafter makes its recommendations to the Speaker as to whether the proposal ought to be published into a Bill or not. Upon the Speaker's approval, the proposal is published into a Bill.

(b) Money-Bill legislative proposal-

The Speaker refers a Money-Bill legislative proposal to the Budget and Appropriations Committee. This Committee analyses how the proposal affects present and future budgets and other financial aspects and, after taking the views of the Cabinet Secretary for Finance, recommends to the Speaker whether the Bill should be published or not. The recommendations of the committee assist the Speaker to make an informed decision on whether to approve the proposal for publication into a Bill. Upon the Speaker's approval, the proposal is published into a Bill.

5. Stages of a Bill

Upon publication, a Bill follows the following process-

A. First Reading

The Bill is introduced in the House for the first time by way of reading the Title of the Bill by the Clerk. No debate or vote arises at this stage. Upon being read a first time, the Bill stands committed to the relevant Departmental Committee for consideration. The Committee facilitates public participation on the Bill through appropriate mechanisms which may include-

- (i) inviting submission of memoranda;
- (ii) holding public hearings;
- (iii) consulting relevant stakeholders; and
- (iv) consulting experts on technical subjects.

The Committee takes into consideration the views and recommendations of the public while considering the Bill and while preparing its report to the House. The Committee proceeds to scrutinize the Bill by calling in the sponsor of the Bill, inviting various stakeholders and later compiles a report to the House with any specific proposed amendments which are later considered in the Committee of the Whole House.

B. Second Reading

This is the debate stage, wherein the House, seated in plenary debates the merits and any demerits of the Bill. The debate follows the moving of the Bill by the sponsor and its seconding by any Member. A Bill originating in the National Assembly but which is not seconded is withdrawn. Debate mostly focuses on all aspects of the Bill, including its principles, objects and how its enactment into law is likely to affect the general citizenry. The report of the departmental Committee also assists Members to debate the Bill, particularly in grasping the views of the public and other relevant organs who may have made comments on the Bill through the Committee and the effects of the Bill on other laws. Depending on the character of a Bill, debate stage may take a short or long period, ranging from a few hours to several sitting days. At the end of debate, the Speaker allows the proposer to respond to any issues raised by the House and then puts the question, that is, causes the House to vote, to determine whether the Bill moves to the next stage.

C. Committee Stage

Committee of the Whole House refers to a phase where the entire membership of the House is seated in form of a Committee to consider a Bill on clause by clause basis. At this stage, the House resolves itself into a Committee, which is comprised of the whole membership of the Assembly. The Committee is presided by the Deputy Speaker or any member of the Chairpersons Panel who, at this stage sits at the Clerks' Table "sandwiched" between the two clerks who call out the clauses of the Bill, sequentially for consideration.

Any proposed amendments to the Bill are considered and a vote taken on each. Consideration normally commences with *Clause 3* (or *Clause 2* if it does not provide for definition of terms) and terminates with the consideration and vote on any *schedules*, and ultimately *Clause 1* which provides for the Bill's *Title* and *commencement*. The Committee of the whole House approves clauses and any schedules of the Bill with or without amendments. At the conclusion, the Committee, through the Chairperson, immediately submits a report to the House seeking the approval of the House.

The guiding principle is that the Committee should make such amendments in the Bill as may seem likely to render it more acceptable, practical or efficient without having to severely deviate from its primary principles and objectives.

D. Report Stage

Upon resumption of the House to plenary, the report is made to the House which, following a procedural Motion, votes on it. At this stage, any Member may, with reasons, also move the House to resolve itself into a Committee again to reconsider any specified clauses of the Bill. This is known as **re-committal**.

E. Third Reading

The final stage of the passage of a Bill through the House is the Third Reading. No further substantive amendments are taken up at this stage, though drafting amendments and re-numbering of clauses may be accepted. Generally, there is very little debate during the third reading, and a final vote is taken.

F. President's Assent

Once a Bill has been passed by the House, the Speaker presents it to the President for assent in a form known as the *Vellum*. The President may, within fourteen days

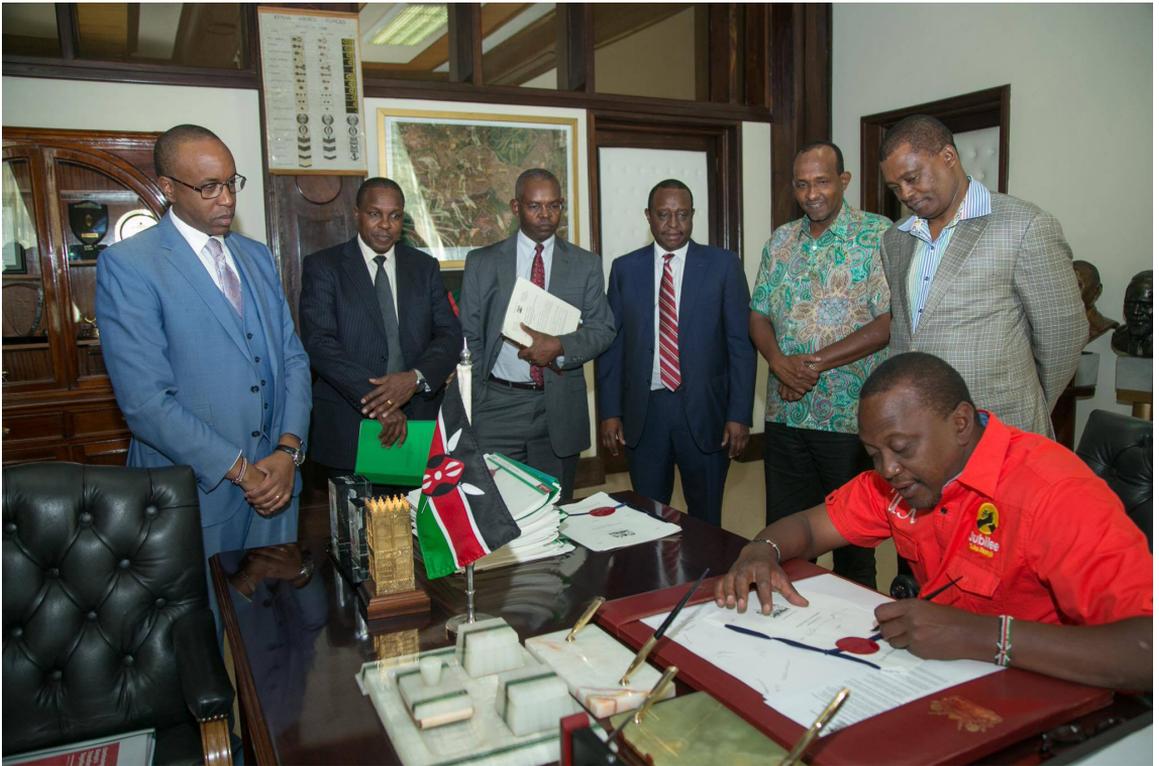
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- (a) assent to the Bill; or
- (b) refer the Bill back to the House with a memorandum outlining his reservations.

G. Referral of a Bill back to Parliament

If the President refers a Bill back to the House, the House re-considers the Bill confining itself to the clauses to which the President has expressed reservations including any recommendations that the President may have made on the clauses and-

- a.) the House may either amend the Bill in light of the President's reservation or pass the Bill a Second time without amendments. If the House passes



His Excellency President Uhuru Kenyatta assents to Bills passed by the National Assembly

the Bill fully accommodating the President's reservations, the Speaker presents the Bill to the President for assent.

- b.) the House may pass the Bill a second time and notwithstanding the President's reservations insist on its initial text, or pass the Bill a second time with amendments that do not fully accommodate the President's reservations. This requires a two-third majority of the House. Thereafter, Speaker presents the Bill again to the President for assent.

6. Procedure for processing Bills requiring passage by the National Assembly and the Senate

With the introduction of bicameralism by the Constitution of Kenya, 2010, the consideration of Bills is processed as follows²-

- a) any Bill may originate from the National Assembly;
- b) a Money Bill may only be introduced in the National Assembly;
- c) a Bill not concerning county governments is only considered by the National Assembly; and,
- d) a Bill concerning county governments may be introduced in the National Assembly or the Senate.

7. Consideration of Bills concerning county governments

After Third Reading in the National Assembly, a Bill concerning county

governments is referred to the Senate for consideration and passage. The Senate processes the Bill following the same process of considering ordinary Bills, beginning with First Reading through to the Third Reading. The Senate may either reject the Bill or pass it with amendments.

- (a) If the Senate passes a Bill concerning county governments originating in the National Assembly without amendments, the Senate, by way of a Message refers the Bill back to the National Assembly. Thereafter, Speaker presents the Bill to the President for assent.
- (b) If the Senate passes a Bill concerning county governments originating in the National Assembly with amendments, the Senate, by way of a Message refers the amendments to the National Assembly for consideration. If the National Assembly accepts the amendments made by the Senate, Speaker presents the Bill to the President for assent. However, if the National Assembly declines **any** of the amendments made by the Senate, the Bill is referred to a Mediation Committee.
- (c) If the Senate rejects a Bill concerning county governments originating in the National Assembly, the Bill is referred to a Mediation Committee.

8. Mediation Committees

A Mediation Committee comprises of Members drawn from each House and is required to formulate a version of the Bill agreeable to both Houses, within 30 days. If both Houses approve the version of the Bill proposed by the Mediation Committee, the Speaker of the National Assembly presents the Bill to the President for assent. However, if the Mediation Committee fails to agree on a version of the Bill within thirty days, or if a version proposed by the Committee is rejected by either House, the Bill is considered to have been lost.

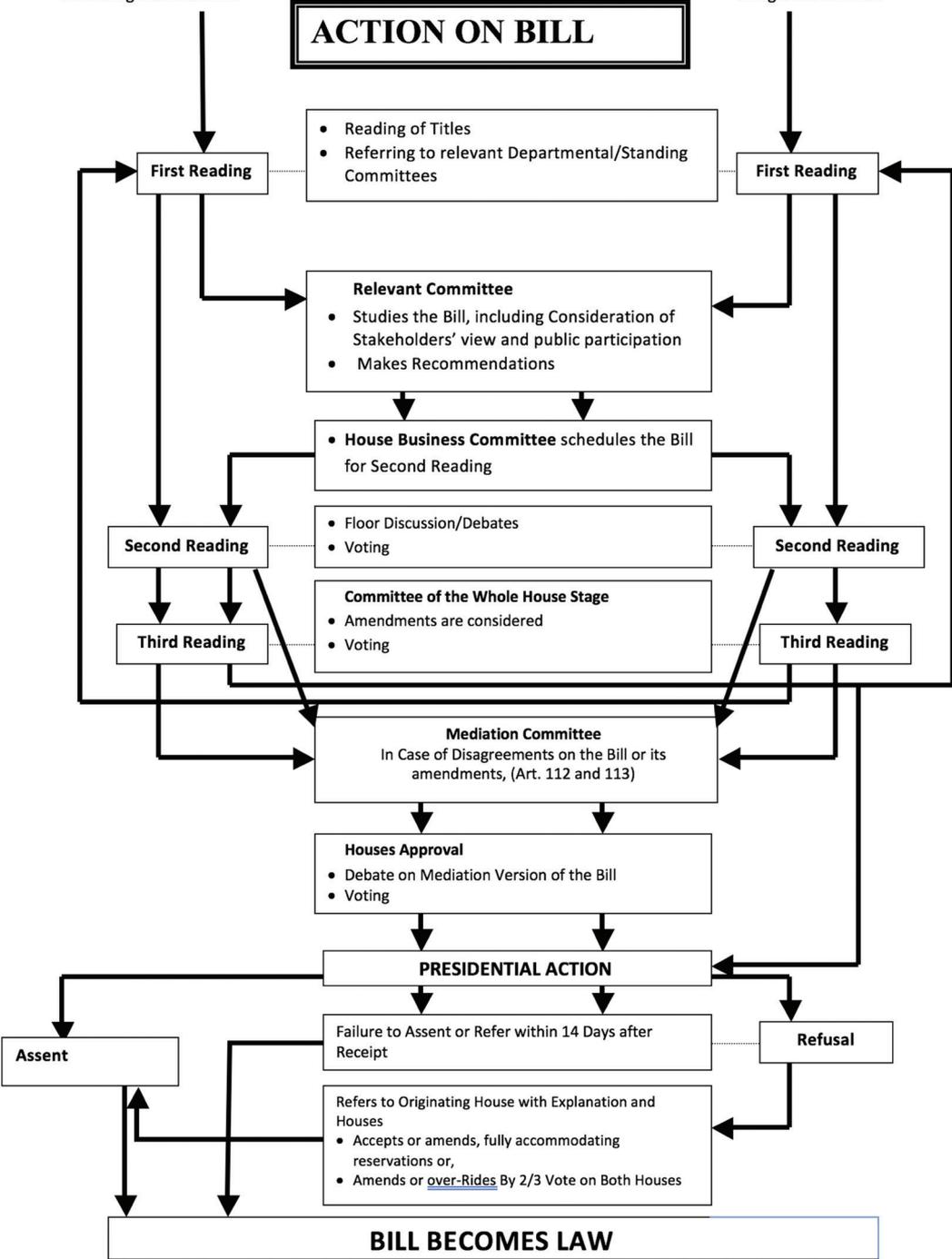
A Bill originating in the Senate, passed in the Senate but which is rejected by the National Assembly is also referred to a Mediation Committee

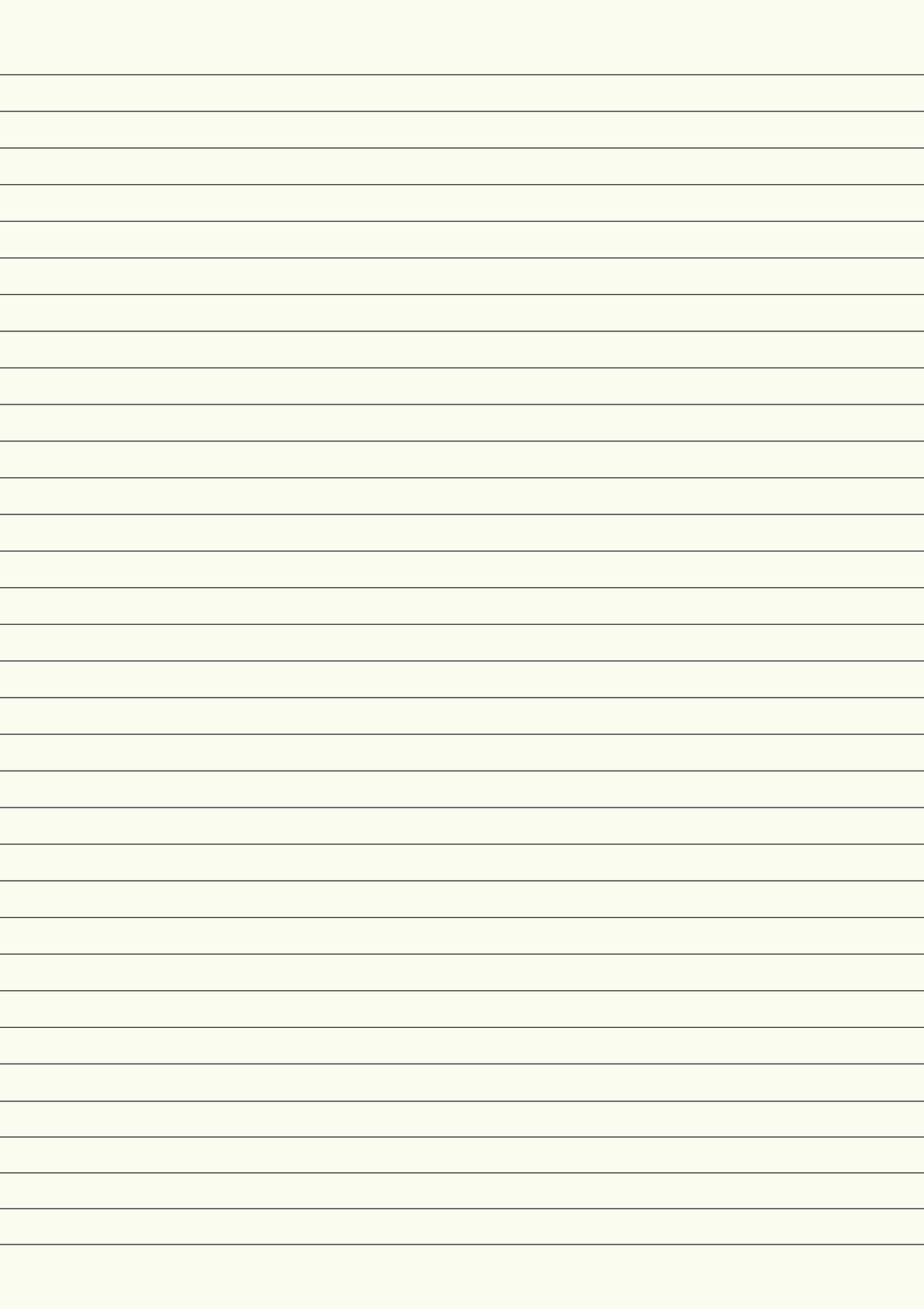
HOW A BILL BECOMES LAW

A bill, introduced in the National Assembly is labeled "NA" And assigned a number

A bill, introduced in the Senate is labeled "S" and assigned a number

ACTION ON BILL







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