

MEMORANDUM

on the

EXECUTIVE MEMBERS ETHICS ACT (82 OF 1998)

Private Member's Bill

Submitted in terms of Section 73 (2)

read with Section 76 (1) of the Constitution

~~'The Executive Members' Ethics Amendment Bill'~~

NOTICE

Notice is hereby given of the introduction of a Private Member's Bill in terms of Section 73 (2) read with Section 76 (1) of the Constitution. In terms of rule 234 (read with rule 230 (1)), a memorandum is hereby submitted to the Speaker by Ian Davidson, MP, which:

- (a) Sets out particulars of the proposed legislation;
- (b) Explains the objects of the proposed legislation; and
- (c) States whether the proposed legislation will have financial implications for the State and, if so, whether those implications may be a determining factor when the proposed legislation is considered.

The Honourable Speaker is requested to deal with this Bill in terms of Section 235 of the National Assembly Rules.

GENERAL EXPLANATION

 Words underlined with a solid line indicate insertions in existing enactments

[] Words in bold type in square brackets indicate omissions from existing enactments.

PRIVATE MEMBER'S BILL

To amend the Executive Members' Ethics Act (Act no 82 of 1998) to eliminate anomalies in the Act in order to ensure better accountability by the President in respect of the declaration of interests; to make it obligatory to publish the Code of Ethics after each general election or when it is amended; and to provide for sanctions in the event of breaches of the Code.

Be it enacted by the Parliament of the Republic of South Africa as follows –

1. Amendment of section 2 by the insertion of the following new subsection to follow subsection 2 (1).

(2) The President must within 14 days after the opening of Parliament after a general election, as well as whenever amendments are made to the code, by proclamation in the Gazette publish the code of ethics.

2. Amendment of section 3 (2), as follows:

(2) The Public Protector must submit a report on the alleged breach of the code of ethics within 30 days of the receipt of the complaint –

- ~~(a) to the President, if the complaint is against a Cabinet member,~~
excluding the President, Premier or Deputy President;
- (b) to the Deputy President, if the complaint is against the President;
and
- (c) to the Premier of the province concerned, if the complaint is against an MEC.

3. Amendment of section 3(5)(a), as follows:

(a) The President, or Deputy President in respect of a report on the President, must within a reasonable time, but not later than 14 days after receiving a report on a cabinet member or deputy minister referred to in subsection 2(a) or (b), submit a copy of the report and any comments thereon, together with a report on any action taken, or to be taken in regard thereto, to the National Assembly;

4. Insertion of the following new section to follow section 4:

Sanctions

5 (1) If the Public Protector has found that a cabinet member, excluding the President, or deputy minister has breached the code the President may impose any one or more of the sanctions in subsection (6).

(2) If the Public Protector has found that the president has breached the code the Deputy President, in consultation with the Cabinet, excluding the President, must impose any one or more of the sanctions in subsection (6) (a), (b) or (c).

(3) If the Public Protector has found that the deputy president has breached the code the President must impose any one or more of the sanctions in subsection (6) (a), (b) or (c).

(4) If the Public Protector has found that a Premier has breached the code the President must impose any one or more of the sanctions in subsection (6)(a), (b) or (c).

(5) If the Public Protector has found that an MEC has breached the code the President must refer the report and findings to the relevant Premier who must impose any one or more of the sanctions in subsection (6).

(6) Subject to the provisions of subsections (1) to (5) one or more of the following sanctions must be imposed –

(a) a reprimand;

(b) a fine not exceeding the value of 30 days' salary;

(c) a reduction of salary or allowances for a period not exceeding 15 days; or

(d) the suspension of privileges or a member's right to a seat in parliamentary debates or committees for a period not exceeding 15 days.

(7) Details of breaches and sanctions imposed must be made public by the person imposing the sanction within 7 days of such imposition.

Short Title

5. This Act is called the Executive Members' Ethics Amendment Act, 2010.

B. The objectives of the proposed legislation


The objects of the proposed amendments to the Executive Members' Ethics Act are to eliminate anomalies in the Act in order to ensure better accountability by the President in respect of the declaration of interests, to make it obligatory to publish the Code after each general election or when it is amended, and to provide for penalties in the event of breaches of the Code.

C. Financial Implications

This legislation should not have financial implications.

Name of Member: Ian Davidson, MP

Signature:



Date: 30 April 2010