



PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

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FACT SHEET 1
Revised August 2010

**RULES GOVERNING
PRIVATE MEMBERS'
LEGISLATIVE
PROPOSALS**

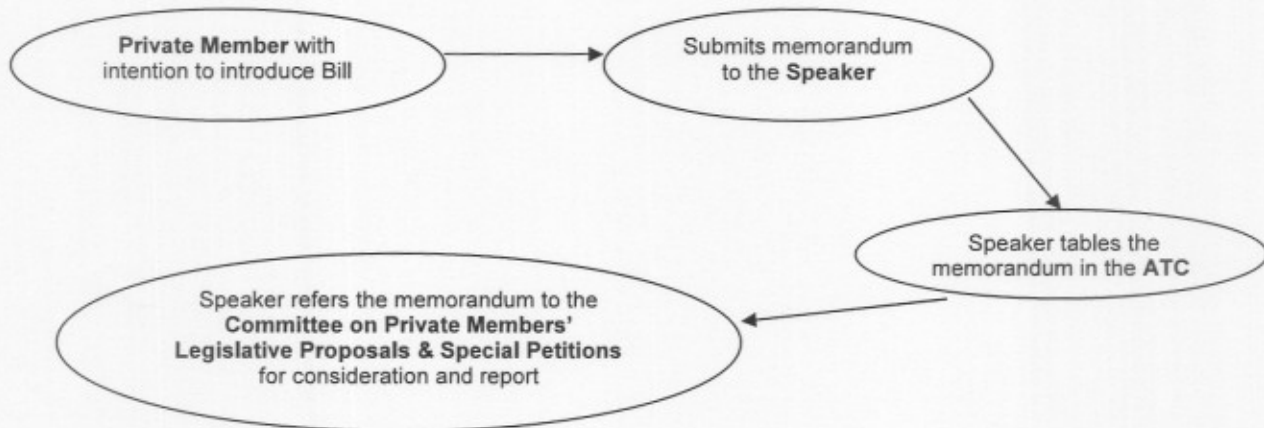
1. What does the Constitution say?

Section 73(2) makes provision for a member of the National Assembly to introduce a bill in the National Assembly, as long as it is not a money bill or a bill dealing with equitable shares and the allocations of revenue as envisaged in section 214. The constitutional right of a member to introduce a bill is however not an absolute or unfettered right.

Section 57(1) of the Constitution provides that the National Assembly may determine and control its internal arrangements, proceedings and procedures. The only qualifications on section 57 are that the internal regulatory rules must respect the constitutional ideals of representative and participatory democracy, accountability, transparency and public involvement.

2. What do the Rules of the National Assembly say?

Rule 230 of the National Assembly echoes section 73(2) of the Constitution by recognising that a member can initiate legislation, but qualifies this right as subject to the permission of the Assembly. A private member must following the process outlined in rules 234 to 237 for the purpose of obtaining the required rule 230 assembly-permission:



3. Who qualifies as a Private Member?

A private member (also colloquially referred to as a backbencher) can be a member of both the majority or opposition parties. A private member is a member of parliament, but not a Cabinet Minister or the Speaker of the House.

4. **What are the content requirements for a Private Member's Memorandum submitted to the Office of the Speaker in terms of Rule 234 of the National Assembly?**

The member's memorandum must:

- (1) Set out the particulars of the proposed legislation.
- (2) Explain the objects of the proposed legislation.
- (3) State whether the legislation will have financial implications for the State and, if so, whether those financial implications may be a determining factor when the proposed legislation is considered.

The general purpose of the memorandum is to outline the underlying principle of the legislative proposal. It is advisable that the member not submit the proposal in the form of a bill at this stage as the Committee is not tasked to consider the detail of a bill and too much legislative jargon can cloud the underlying principle or issue at this stage.

For example:

Memorandum on Legislative Proposal for Party Funding Regulations

Private Member's Bill

Submitted in terms of section 73(2) of the Constitution

1 June 2010

Mr L. Greyling, MP

Independent Democrats

A. Particulars of the proposed legislation

It is proposed that legislation be drafted that comprehensively regulates the private funding of political parties.

B. Objects of the proposed legislation

Private funding of political parties is an issue that has starkly come into focus over the last few months and there have been calls from both the public and from senior members of the ruling party for legislation to be formulated that can regulate this area of political activity. It is my considered belief that the absolute lack of regulations governing the private funding of political parties is a major gap in our democratic framework and it is one that now needs to be urgently rectified. All mature democracies around the world have instituted some form of regulation governing the private funding of political parties and South Africa urgently needs to enact similar legislation.

It is proposed that the legislation regulates the following broad issues:

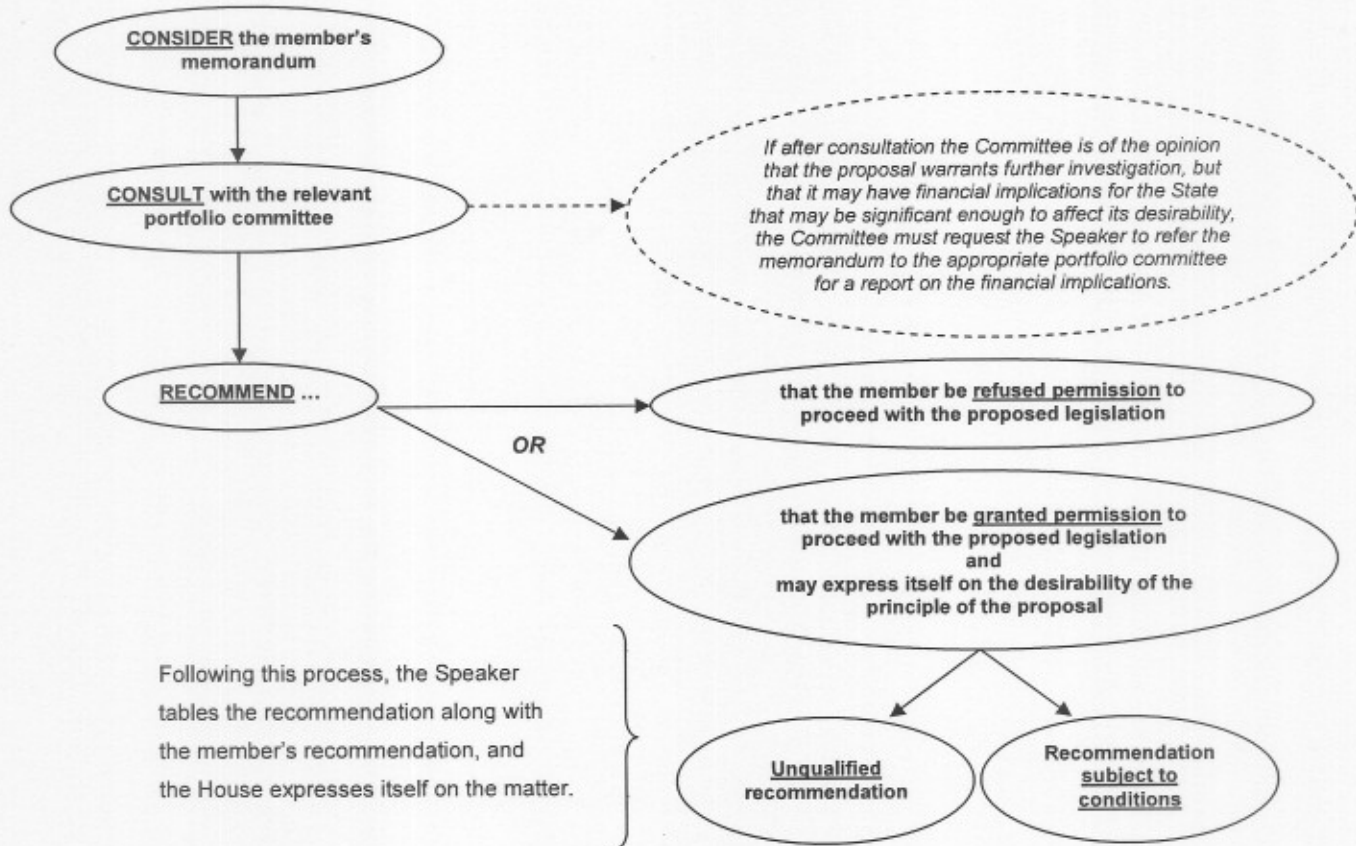
- 1) Disclosure of Private Donations to Political Parties
- 2) Disclosure of Election Expenditure and the possibility of Spending Caps
- 3) Political Parties holding business interests
- 4) Donations from foreign entities

C. Financial implications

No financial implications stemming from this proposed constitutional amendment are foreseen.

5. What are the functions and powers of the Committee on Private Members' Legislative Proposals and Special Petitions?

The Committee is created by Rule 209 of the National Assembly. The Committee is tasked to consider and make recommendations to the Assembly in terms of Rule 211(a) on all referred legislative proposals made by members intending to introduce bills. To inform this recommendation the Committee must follow the procedure outlined in Rule 235:



6. What are the implications of the Rules on the Processing of Legislative Proposals?

As a legislative proposal can be in the form of a memorandum, the Committee is not required to consider the proposal in the same manner that a portfolio committee would consider a bill. Such detailed consideration will follow when the bill is formally introduced after the member has been given permission by the Assembly to proceed.

The Committee is tasked to do an initial screening of the proposal, essentially to avoid time and money being spent by the National Assembly on an unrealistic proposal.

The Committee is required to consult with the relevant portfolio committee to determine the feasibility of the proposal in the context of the relevant department's statutes, policies and plans. This consultation does not mean that the Committee should be unreasonably delayed in its consideration of a proposal if no response is forthcoming from the relevant portfolio committee. If a

reasonable time has been granted for consultation, the Committee can proceed with deliberations in the absence of a formal response from the relevant portfolio committee.

Though the Committee may express itself on the desirability of the principle of a proposal, it is not the primary responsibility. The issue of desirability does, in itself, not provide grounds for recommending rejection in this initial screening stage. Desirability as a primary consideration is a matter reserved for the relevant portfolio committee after a bill is formally introduced. Consequently, the invitation of submissions from stakeholders and associated public hearings on a bill does not fall within the mandate of the Committee as far as legislative proposals are concerned. Stakeholder submissions and public hearings, along with the power to approve, reject, amend or redraft a bill, is a power granted to portfolio committees.

The Committee is, in the main, a technical committee tasked to facilitate the work of the National Assembly by speedily and timeously recommending, in accordance with specific criteria and rules, whether or not to grant permission to a private member to introduce a bill. The Committee uses factors (based on past precedents and practices) to assess a legislative proposal for this purpose.

7. What factors are considered by the Committee on Private Members' Legislative Proposals and Special Petitions?

- (1) Does the legislative proposal go against the spirit, purport and object of the Constitution?
- (2) Does the legislative proposal seek to address a lacuna or remedy a defect in existing legislation?
- (3) Is there a necessity or demand for the proposed measure in light of public interest or opinion?
- (4) Is there existing legislation or regulations in place addressing the issue which the proposal speaks to?
- (5) Is there already a similar bill awaiting consideration by the National Assembly?
- (6) Is there the possibility of a similar comprehensive bill being introduced by a government department in the near future?

For example:

In a recent legislative proposal of Hon V Mentor (submitted 26 August 2009) the Committee recommended that the sponsor be refused permission to continue with the legislative proposal. The Committee took into consideration the listed factors.

Objectives of the proposals

The proposals seeks to empower the Commission on Gender Equality and the Human Rights Commission to be able to actively champion the gender and human rights of all South Africans when such rights are violated both in the Republic and outside the Republic of South Africa.

**Proposed Amendments to the
Human Rights Commission Act No.54 of 1994**

1. I seek to propose amendments to the Human Rights Commission Act No.54 of 1994, by adding the following clause to Subsection 7(c)

7(c) may bring proceedings in a competent court or tribunal, *including international courts and tribunals*, in its own name, or on behalf of a person or a group or class of persons

FINANCIAL IMPLICATIONS TO THE STATE

The legislation has no financial implications to the state.

During deliberations on the quoted legislative proposal, with due regard to the mentioned factors, the Committee concluded:

- (1) The proposed amendments to the Human Rights Commission Act are likely to be unconstitutional as it would bestow extra territorial powers on the Human Rights Commission.
- (2) The proposed legislative amendment would not bind other states as they are sovereign and would also be unconstitutional as section 43 of the Constitution limits Parliament's legislative authority to pass legislation within the Republic of South Africa.
- (3) The proposal is not feasible and should not be proceeded with.