



THE DEMOCRATIC ALLIANCE PRESENTS A
PRIVATE MEMBER'S LEGISLATIVE PROPOSAL

on

PRESIDENTIAL PARDONS

JANUARY 2010

MEMORANDUM
ON
PRESIDENTIAL PARDONS

Private Member's Bill
Submitted in terms of Section 73 (2)
read with Section 75 (1) of the Constitution

'The Presidential Pardons Bill'

NOTICE

Notice is hereby given of the introduction of a Private Member's Bill in terms of Section 73 (2) read with Section 75 (1) of the Constitution. In terms of rule 234 (read with rule 230 (1)), a memorandum is hereby submitted to the Speaker by James Selfe, 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 Rule 235 of the National Assembly Rules.

LEGISLATIVE PROPOSAL

To provide that the President of the Republic of South Africa shall seek advice from the Department of Justice as to the advisability of granting a presidential pardon for an individual or group; to provide that the Department of Justice shall be compelled to take into account certain criteria when preparing this advice and when reviewing applications for presidential pardons to be forwarded to the President for consideration; and to set out the criteria which the President shall be compelled to take into account when considering granting a presidential pardon to an individual or a group.

Preamble

Since the South African Constitution grants the power of the President to pardon or reprieve offenders;

And since the National Assembly is elected to represent the people and to ensure government by the people under the Constitution.

And since the Constitution prescribes that Parliament shall scrutinize and oversee executive action;

And since there are no criteria set out in law to ensure proper checks on the powers of pardon which need be considered

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:

1. Definitions

(1) In this Act, unless the context otherwise indicates -

"presidential pardon" means any exercise by the President or the powers granted to him in terms of section 84(2)(j) of the Constitution of the Republic of South Africa, 1998 (Act 108 of 1996);

"Minister" means the Minister of Justice and Constitutional Development;

"President" means the President of the Republic of South Africa;

"victim" means any person who, individually or together with one or more persons, suffered harm in the form of physical or mental injury, emotional suffering, pecuniary loss or substantial impairment of human rights as a result of the criminal activity of the person(s) for whom a pardon is petitioned or otherwise under consideration.

2. Reporting Requirement

(1) President shall seek advice from the Department of Justice and Constitutional Development as to the advisability of granting a presidential pardon for an individual or group regardless of the channels through which this application(s) for pardon was received.

3. Requirement for advice and consideration

(1) The Minister shall prepare and make available to the President a written report, which shall include—

- (a) a description of the efforts of the Minister to comply with the provisions of this Act;
- (b) a description of advisability of the pardon including all the criteria considered as set out in section 4; and
- (c) Any written statement submitted by a victim in terms of section 4(3).

4. Determinations Required

(1) In the preparation of any report in terms of section 3, the Minister must take into account—

- (a) the age of the offender at the time of the commission of the offence;
- (b) whether a reasonable period (10 years or more) has lapsed since the conviction;
- (c) the circumstances surrounding the commission of the offence;
- (d) the nature and seriousness of the offence;
- (e) the personal circumstances of the offender at the time of applying for pardon; and
- (f) the interest of the State and the community.

(2) In addition to provisions listed in subsection (1), where the applicant was not a minor at the time of the commission of the offence, the Minister must take into account—

- (a) whether the sentence consists of a period of imprisonment;
- (b) the blameworthiness generally attached to the offence;
- (c) whether the negative factors flowing from the conviction are of such a nature that the relevant case can on these grounds be distinguished from those of other South African citizens with similar convictions.

(3) The minister must make all reasonable efforts to:

- (a) where the details of victims are known, inform the victims of each offence that is the subject of a potential presidential pardon, or their next of kin should the victims be deceased or incapacitated, that they may submit written statements for inclusion in the report prepared by the Minister under section 3; and

(b) determine the opinions of those victims regarding the potential grant of a presidential pardon.

5. Presidential Determinations Required

(1) When considering granting a presidential pardon, the President must take into account the report prepared in terms of section 3 and 4.

6. Notification of grant of pardon

(1) If the President grants a pardon to an individual or a group, the Minister shall—

(a) make all reasonable efforts to notify the victims of each offence that is the subject of the grant, or their next of kin, should the victims be deceased or incapacitated, that such grant has been made as soon as practicable after that grant is made, and, if such grant will result in the release of any person from custody, such notice shall be prior to that release from custody, if practicable;

(b) not later than 30 days after a pardon has been granted, cause notification thereof to be published in the *Government Gazette*, which notification shall include—

(i) the name(s) of the recipient(s) of a pardon;

(ii) the type of pardon granted to each recipient thereof;

(iii) the offence(s) in respect of which pardon has been granted with regard to each recipient thereof;

(iv) details of the sentence(s) originally imposed for the criminal offence(s) in respect of which pardon has been granted;

(v) a written report demonstrating, for each pardon granted, how the provisions of section 5 have been considered; and

(vi) an indication as to whether the granting of pardon in each case has led or will lead to the recipient thereof being released from state custody, and if so, the duration of the outstanding period of incarceration that the recipient would have been liable to serve, but for the granting of a pardon.

B. THE OBJECTIVE OF THE PROPOSED LEGISLATION

The objective of this Bill is to prevent any abuse of the executive power to pardon. By prescribing and regulating the process by which the President of the Republic of South Africa considers applications for presidential pardons in terms of section 84(2)(j) of the Constitution of the Republic of South Africa, an appropriate legislative check on the President's power is created.

The Bill also seeks to ensure that the President will obtain advice from the Minister of Justice and Constitutional Development, who in turn is compelled to investigate and make recommendations on potential exercises of pardons

considering specific criteria. Furthermore, this Bill would compel the Minister to advise not only the victims, but the public timeously of any pardon(s).

This Bill aims to ensure transparency and consistency in the procedure to be followed by the President and the Minister in the pardoning process.

C. FINANCIAL IMPLICATIONS

The legislation should not place any undue strain on the existing agencies that would have to implement it and who perform this function in practice anyway. Although there may be financial implications, they are already budgeted for. The need for this type of legislation outweighs the consideration of possible financial implications, which are likely to be secondary in nature.

Name of Member: James Selfe, MP

Date: 13 January 2010

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PRESENTED BY THE DEMOCRATIC ALLIANCE ON 13 JANUARY 2010**