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# GENERAL NOTICE

## NOTICE 281 OF 2011

## DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

**Invitation to comment on the Executive Members' Ethics Amendment Bill, 2011**

Interested parties are invited to submit written comments on the Executive Members' Ethics Amendment Bill, 2011 ("the Bill") set out below to the Director General: Justice and Constitutional Development on or before **3 June 2011.**
**Comments should be directed for the attention of Mr J A de Lange and -**

- If forwarded by mail, be addressed to: The Director General: Justice and Constitutional Development, Private Bag X81, PRETORIA, 0001
- If delivered by hand, be delivered at - Momentum Building, 329 Pretorius Street, PRETORIA or 120 Plein Street Building, fifth floor, CAPE TOWN
- If sent by E-mail, be sent to jdelange@justice.gov.za
- If faxed, be faxed to 086 507 2569

By way of background the following:
In terms of section 3 of the Executive Members' Ethics Act, 1998 (Act No. 92 of 1998) (the principal Act), the Public Protector must submit any report on an alleged breach of the Executive Ethics Code (the Code) by a member of the Cabinet to the President. The President must, in turn, submit a copy of that report and any comments thereon, together with a report on any action taken or to be taken in regard thereto, to the National Assembly.

However, since the President is also a member of the Cabinet, the afore-mentioned procedure would seem to be inappropriate where the report concerns an alleged breach of the Code by the President.

Since the President is elected by the National Assembly (section 86(1) of the Constitution) and may, in cases of serious misconduct, be removed from office by the National Assembly (section 89(1) of the Constitution), as well as the fact that the Public Protector is accountable, and must report, to the National Assembly (section 181(5) of the Constitution), it would be appropriate for the Public Protector to submit a report on the conduct of the President to the Speaker of the National Assembly. The Bill consequently aims to make provision for such a procedure.

The Bill amends section 3 of the principal Act, by providing that the Public Protector must submit a report on an alleged breach of the Code by the President to the Speaker of the National Assembly. The Speaker must table that report in the Assembly and, if the report is on an investigation that has been completed, the Speaker must refer the report to a committee of the Assembly for consideration and a report thereon by the committee.

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REPUBLIC OF SOUTH AFRICA

# EXECUTIVE MEMBERS' ETHICS AMENDMENT BILL

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(Working draft)

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(MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

[B —2011]

GENERAL EXPLANATORY NOTE:

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

_____ Words underlined with a solid line indicate insertions in existing enactments.

## BILL

**To amend the Executive Members' Ethics Act, 1998, so as to further regulate the procedure to be followed by the Public Protector when reporting on conduct of the President; and to provide for matters connected thereto.**

**PARLIAMENT** of the Republic of South Africa, enacts as follows:—

**Substitution of section 3 of Act 82 of 1998**

**1.** The following section is hereby substituted for section 3 of the Executive Members' Ethics Act, 1998 (Act No. 82 of 1998):

**"Public Protector to investigate breaches**

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**3.** (1) The Public Protector must investigate any alleged breach of the code of ethics on receipt of a complaint contemplated in section 4.

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

*(a)* to the Speaker of the National Assembly, if the complaint is against the President;

**[***(a)***]***(b)* to the President, if the complaint is against a Cabinet member, Premier or Deputy Minister; and

**[***(b)***]***(c)* to the Premier of the province concerned, if the complaint is against an MEC.

(3) If the Public Protector reports at the end of the period referred to in subsection (2) that the investigation has not yet been completed, the Public Protector must submit another report when the investigation has been completed.

(4) When conducting an investigation in terms of this section, the Public Protector has all the powers vested in the Public Protector in terms of the Public Protector Act, 1994 (Act No. 23 of 1994).

(4A) *(a)* The Speaker must within a reasonable time, but not later than 14 days after receiving a report referred to in subsection (2)*(a)*, table that report in the National Assembly.

*(b)* If the report is on an investigation that has been completed, the Speaker must, in accordance with the Rules of the Assembly, refer the report to a committee of the Assembly for consideration and a report thereon by the committee.

*(c)* The report of a committee referred to in paragraph *(b)* must be considered by the Assembly in accordance with its Rules.

(5) *(a)* 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)*]** (2)*(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.

*(b)* The President must within a reasonable time, but not later than 14 days after receiving a report on a Premier referred to in subsection **[(2)*(a)*]** (2)*(b)*, submit a copy of the report and any comments thereon to the National Council of Provinces.

(6) The Premier must within a reasonable time, but not later than 14 days after receiving a report referred to in subsection **[(2)*(b)*]** (2)*(c)*, 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 provincial legislature.".

**Short title**

**2.** This Act is called the Executive Members' Ethics Amendment Act, 2011.

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