



SWAZILAND GOVERNMENT GAZETTE EXTRAORDINARY

VOL. LVI]

MBABANE, Friday, JUNE 22nd 2018

[No. 86

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PUBLISHED BY AUTHORITY

PART B

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THE ELECTION OF WOMEN MEMBERS TO THE HOUSE OF ASSEMBLY ACT, 2018

(Act No. 09 of 2018)



I ASSENT

MSWATI III
King of Eswatini

21st June, 2018

AN ACT ENTITLED

AN ACT to provide for the special election of women members to the House so as to give effect to section 95 and 86 of the Constitution of Eswatini, 2005, and provide for the process and mode of nominating and the election of the women members to the House, the monitoring of the elections and incidental matters.

ENACTED by the King and the Parliament of the Kingdom of Eswatini.

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PART I

PRELIMINARY PROVISIONS

Short title and commencement

1. (1) This Act may be cited as the Election of Women Members of the House of Assembly Act, 2018.

(2) This Act shall come into force on the date to be appointed by the Minister.

Interpretation

2. In this Act, unless the context otherwise requires -

“candidate” means a woman nominated for election as a member of Parliament;

“Clerk” means the Clerk to Parliament;

“Commission” means the Elections and Boundaries Commission;

“election” means an election of the women members to the House of Assembly;

“electoral college” means all members of the House;

“first meeting of the House” means the first meeting of the House after the election and appointment of Senate;

“general election” means the election of the elected members of the House;

“House” means the House of Assembly;

“Minister” means the Minister responsible for elections;

“publication” means the publication of the list of nominated candidates in newspapers and the electronic media;

“returning officer” means the Clerk to Parliament shall be assisted by two polling officers appointed by the Elections and Boundaries Commission in terms of the Elections Act, 2013;

“Speaker” means the person elected in terms of section 102 (1) of the Constitution as Speaker, or in terms of section 103 (2) as Deputy Speaker;

“woman” means a female candidate who has reached the age of eighteen years.

Application

3. This Act shall apply -

(a) at the first meeting of the House after a general election; or

(b) where, at the first meeting of the House after a general election, it appears that female members of Parliament will not constitute at least thirty per centum of the total membership of Parliament.

PART II

**GENERAL PROVISIONS ON ELECTION OF WOMEN MEMBERS
TO THE HOUSE**

List of nominated women

4. The Chairman of the Commission shall, at the first meeting of the House after a general

election, furnish the House with a list of women nominated from each Umphakatsi in terms of section 31 of the Elections Act, 2013.

Electoral college.

5. The House shall, for the purposes of this Act, constitute itself into an electoral college.

Number of women members to be elected

6. The House shall, under this Act, elect one woman from each region to be members of House.

Qualification for nomination.

7. (1) A woman qualifies for nomination by the House under this Act where that woman-

(a) is registered as a voter in terms of the Voters Registration Act, 2013; and

(b) qualifies to be a member of Parliament in terms of section 96 of Constitution of Eswatini; and

(c) has been nominated from an Umphakatsi in terms of section 31 of the Elections Act, 2013.

(2) Where a woman has not been nominated as specified under subsection (1)(c), the House shall make nominations from a list to be provided by the Elections and Boundaries Commission of women who shall be specially nominated for the purpose of subsection (1) in terms of section 31 of the Elections Act, 2013."

Nomination by House.

8. (1) At the first meeting of the members of the House after general elections and subject to section 4, the members of the House shall immediately proceed with nominating women members on regional basis.

(2) The members of the House shall nominate not less than three and not more than five women from each region to be members of the House.

(3) On the nomination day, the returning officer shall call for nominations of candidates.

(4) Each member may propose not more than five candidates per region in order of preference of that member and tender to the returning officer a nomination paper.

Form and manner of nominations

9. (1) Every nomination shall be made to the returning officer and shall be on the approved Form.

(2) In making a proposal for candidacy, a member shall write the names of the candidates which that member proposes in the nomination paper placed at the seat of that member and that member shall also write his name as a proposer and sign the nomination paper.

(3) A nomination paper shall contain the names of the proposed candidates, and a member shall not sign more than one nomination paper as a proposer.

(4) Upon the proposal of a candidate by a member under sub-section (6), any member may second that proposed candidate and shall indicate by writing that member's name in the nomination paper.

(5) Every nomination paper shall be folded as guided by the returning officer and then delivered into a ballot box and the Returning Officer shall then open the nomination papers and determine the names of the persons who have been proposed as candidates.

(6) The Returning Officer shall then consider the nomination paper and where the paper indicates that the candidate was duly proposed by a member and seconded by another member and has received majority proposals for a region, the proposed candidate shall be declared nominated.

(7) In the event of any member signing more than one nomination paper as a proposer, every nomination paper so signed shall be invalid and shall be rejected.

(8) The Returning Officer shall thereafter inform the members about the names of proposed candidates who have been duly nominated.

(9) Every candidate shall, for the purpose of accepting a nomination, sign the nomination paper relating to that candidate, but if that candidate is not interested, that candidate shall not sign the nomination paper.

(10) Subject to subsection (11), every proposer, seconder, and candidate, shall sign the nomination paper in the presence of the returning officer, who shall also sign the nomination paper as a witness and state on the nomination paper their office and the date of signing.

(11) Notwithstanding subsection (9), a candidate may, by letter including a faxed letter or electronic mail with a signature, personal identification number, voter registration number of the candidate, addressed to the Returning Officer, notify the acceptance by the candidate of a nomination of that candidate.

(12) Before witnessing any signature in terms of sub-section (10), the returning officer shall satisfy oneself as to the identity of the signatory and draw the attention of the signatory to the provisions of this section.

Publication of list of nominated candidates

10. The Commission shall publish the list of nominated candidates in at least two local newspapers and in the electronic media for at least three consecutive days.

Canvassing for votes.

11. (1) A nominated candidate has the right to canvas for votes from the members of the House at any time after nominations.

(2) For purposes of canvassing for votes, the Commission may in consultation with the returning officer allow the nominated candidates to address the members of the House prior to the polling day.

(3) During campaigns, the provisions of Sections 42 and 43 of the Elections Act, 2013 shall apply.

Death of nominated candidate before election

12. If a duly nominated candidate dies before the commencement of the sitting at which the election is to proceed, the returning officer shall upon being satisfied of the fact of death, inform the members of that death at the commencement of the sitting and shall call for further nominations to be made at the sitting.

Polling station.

13. Notwithstanding section 17 of the Elections Act, 2013, and for purposes of this Act, the Commission in consultation with the Clerk to Parliament shall establish one polling station.

Election material.

14. (1) The returning officer shall ensure that all tools and materials required for purpose of conducting the election as provided in sections 20 and 21 of the Elections Act, 2013 are brought into the polling station.

(2) The Commission shall ensure that a copy of this Act is provided on the day of the election.

Polling day.

15. (1) The Elections and Boundaries Commission shall in consultation with the returning officer fix the polling day for the taking of the poll of the women members.

(2) The polling day for election of women shall-

(a) in the case of an election, a day appointed for the taking of the poll which shall be ten days from the date of the last publication of the list of nominated candidates; and

(b) in relation to an by-election, a day appointed for the taking of the poll in a by-election which shall be forty five days from date of the occurrence of the vacancy.

PART III **VOTING AND VOTING PROCEDURE**

Right to vote.

16. (1) Every member present shall be entitled to vote in person.

(2) A member shall cast not more than one vote per region when a poll is taken.

Hours of voting.

17. The voting hours shall be prescribed and published by the Commission in all the media houses.

Voting.

18. (1) The returning officer, having ascertained that the person desiring to vote is entitled to do so, shall enter the voter registration number of that person upon the counterfoil in the ballot paper book.

(2) The returning officer shall then tear out the ballot paper corresponding to that counterfoil, and having marked the ballot paper on both sides with the official mark provided for the purpose, shall hand the ballot paper to the member.

(3) Every ballot paper shall be in the approved Form, and there shall be typed or printed on every ballot paper, in alphabetical order, the full names of all the duly nominated candidates at the election and their addresses and occupations.

(4) When the member has received the ballot paper, the member shall take that ballot paper to the seat of that member and shall there signify in the manner prescribed in section of the Election Act, 2013 for whom the member desires to vote.

(5) The member shall then fold the ballot paper so that the official mark is visible, and having held up the ballot paper so that the returning officer can recognise the official mark, shall drop the ballot paper into the ballot box placed in front of the returning officer.

(6) If a member inadvertently spoils a ballot paper, the member may return the ballot paper to the returning officer who shall, if satisfied as to the inadvertence, give the member another paper and retain the spoiled paper, and the spoiled paper shall be immediately cancelled and the fact of that cancellation shall be noted upon the counterfoil.

(7) A member in giving the vote -

- (a) shall place on the ballot paper of the member the figure 1 in the square opposite the name of the candidate for whom the member votes; or
- (b) may, in addition, place on the ballot paper of the member the figure 2 or the figures 2 and 3, or 2, 3 and 4, and so on, in the squares opposite the respective names of other candidates in the order of the preference of the member.

Invalidity of ballot paper.

19. A ballot paper shall be invalid-

- (a) upon which a member signs the name of that member or writes anything or makes any mark by which the name of that member becomes unrecognisable;
- (b) where it does not bear the official mark;
- (c) on which the figure 1 is not marked;
- (d) on which the figure 1 is set opposite the name of more than one candidate;
- (e) on which the figure 1 and some other figure is set opposite the name of the same candidate; or
- (f) which is unmarked or void for uncertainty.

Value of ballot paper.

20. (1) For the purpose of facilitating the processes prescribed by this Act, "value" means the number of valid ballot papers in favour of the candidate.

(2) Each valid ballot paper shall be deemed to be of the value of one.

Disregard of fractions, etc.

21. In carrying out this Act, the returning officer shall -

(a) disregard all fractions;

(b) ignore all preferences recorded for candidates already elected or excluded from the poll.

Counting votes

22. (1) The ballot papers shall be examined and the returning officer, after rejecting any invalid ballot papers, shall divide the remaining papers into parcels according to first preferences recorded for each candidate.

(2) The returning officer shall, after dividing the remaining papers into parcels in terms of subsection (1), count the number of papers in each parcel.

(3) The returning officer shall then add together the values of the papers in all the parcels and divide the total by a number exceeding by one the number of vacancies to be filled, and the result increased by one shall be the number sufficient to secure the return of a candidate, herein called the "quota".

(4) If at any time under this Act a number of candidates equal to the number of persons to be elected has obtained a quota, those candidates shall be declared elected, and no further steps shall be taken.

(5) Any candidate the value of whose parcel, on the first preference being counted, is equal to or greater than a quota shall be declared elected.

(6) If the value of the papers in a parcel referred to in subsection (5) is equal to a quota, the papers shall be set aside as finally dealt with.

(7) If the value of the papers in a parcel referred to in subsection (5) is greater than a quota, the surplus shall be transferred to the continuing candidates indicated on the ballot papers as next in the order of the preference of the voters in the manner prescribed in section of the Election Act, 2013.

Surplus.

23. (1) If and whenever, as a result of any operation prescribed by this Act, a candidate has a surplus, that surplus shall be transferred in accordance with the provisions of this section.

(2) If more than one candidate has a surplus, the largest surplus shall be dealt with first and the others in descending order of magnitude, except that every surplus arising on the first count of votes shall be dealt with before those arising on the second count, and so on.

(3) Where two or more surpluses are equal, the returning officer shall decide, according to the terms of section 27, which shall first be dealt with.

(4) If the surplus of any candidate to be transferred arises from original votes only, the returning officer shall examine all the papers in the parcel belonging to the candidate whose surplus is to be transferred and divide the unexhausted papers into sub- parcels according to the next preference recorded on them.

(5) The returning officer shall also make a separate sub-parcel of the exhausted papers.

(6) The returning officer shall ascertain the value of the papers in each sub-parcel and of all the unexhausted papers.

(7) If the value of the unexhausted papers is equal to, or less than, the surplus the returning officer shall transfer all the unexhausted papers at the value at which they were received by the candidate whose surplus is being transferred.

(8) If the value of the unexhausted papers is greater than the surplus the returning officer shall transfer the sub-parcels of unexhausted papers, and the value at which each paper shall be transferred shall be ascertained by dividing the surplus by the total number of unexhausted papers.

(9) If the surplus of any candidate to be transferred arises from transferred as well as original votes, the returning officer shall re-examine all the papers in the sub-parcel last transferred to the candidate and divide the unexhausted papers into sub-parcels according to the next preference recorded on the sub-parcels.

(10) The returning officer shall deal with the sub-parcels in the same manner as is provided in the case of the sub-parcels referred to subsections (4) to (8).

(11) The papers transferred to each candidate shall be added in the form of a sub-parcel to the papers already belonging to that candidate.

(12) All papers in the parcel or sub-parcels of an elected candidate not transferred under this section shall be set aside as finally dealt with.

Exclusion of candidate lowest on poll.

24. (1) If, after all surpluses have been transferred, as provided in section of the Election Act, 2013, less than the number of candidates required has been elected, the returning officer shall exclude from the poll the candidate lowest on the poll and shall distribute the unexhausted papers of the candidate among the continuing candidates according to the next preferences recorded on them; any exhausted papers shall be set aside as finally dealt with.

(2) The papers containing original votes of an excluded candidate shall first be transferred, the transfer value of each paper being one.

(3) The papers containing transferred votes of an excluded candidate shall then be transferred in the order of the transfers in which and at the value at which the candidate obtained them.

(4) Each of such transfers shall be deemed to be a separate transfer.

(5) The process directed by this section shall be repeated on the successive exclusions one after another of the candidate lowest on the poll until the last vacancy is filled either by the election of a candidate with a quota or as provided in section 26.

Completion of transfer proceedings.

25. If, as a result of a transfer of papers under section 24, the value of the votes obtained by a candidate is equal to, or greater than, a quota, the transfer proceeding shall be completed, but no further papers shall be transferred to the candidate.

Candidate to be declared elected.

26. (1) If, after the completion of any transfer under section 25, the value of the votes of any candidate shall be equal, to or greater than, a quota, the candidate shall be declared elected.

(2) If the value of the votes of any candidate referred to in subsection (1) is equal to a quota, the whole of the papers on which those votes are recorded shall be set aside as finally dealt with.

(3) If the value of the votes of any candidate referred to in subsection (2) is greater than a quota, the surplus of those votes shall be distributed in the manner provided in section 25 before the exclusion of any other candidate.

Continuing candidates declared elected.

27. (1) When the number of continuing candidates is reduced to the number of vacancies remaining unfilled, the continuing candidates shall be declared elected.

(2) When only one vacancy remains unfilled, and the value of the votes of a continuing candidate exceeds the total value of all other votes capable of transfer, that candidate shall be declared elected.

(3) When only one vacancy remains unfilled, and there are only two continuing candidates, and those two candidates have each the same value of votes, and no surplus remains capable of transfer, one candidate shall be declared excluded under the next succeeding section and the other declared elected.

Regard to be had to original vote before surplus is distributed.

28. (1) If, when there is more than one surplus to distribute, two or more surpluses are equal, or if at any time it becomes necessary to exclude a candidate, and two or more candidates have the same value of votes, and are lowest on the poll, regard shall be had to the original votes of each candidate, and the candidate for whom fewest original votes are recorded shall have the surplus of that candidate first distributed or shall be first excluded.

(2) If the values of their original votes are equal, the returning officer shall decide by lot which candidate shall have the candidate's surplus distributed or shall be excluded.

Notice after elections.

29. The Commission shall, as soon as practicable after receiving the names of persons declared elected under section 26 of this Act, cause a notice containing the full names of the elected persons and the date on which they were elected to be published in the Gazette.

By-election to fill vacancy of woman

30. (1) Whenever a vacancy occurs in the membership of women elected under this Act, the Clerk to Parliament shall notify the Speaker in writing within seven days after the vacancy occurred, and a by-election shall be held within forty five days after the vacancy occurred.

(2) The Clerk to Parliament shall after consulting the Speaker within 10 days of the occurrence of the vacancy, notify the Commission.

(3) Notwithstanding sub-section (1), a by-election shall not be held to fill a vacancy where Parliament is to be dissolved within a period of less than nine months.

(4) As soon as the Commission receives the notice in sub-section (2), the Commission shall, after consultation with the Speaker and the Clerk, publish a notice in the Gazette declaring a vacancy and fixing a date on, and a time and place at which -

(a) a meeting of the elected members from each Region will be held to nominate persons for election as regional woman representative to fill the vacancy; and

(b) a sitting of the members of the House will be held to elect a person to fill the vacancy.

(5) The procedure to be followed in the election to fill a vacancy shall, with the necessary modifications be the procedure followed in electing women members specified in this Act.

LEGAL NOTICE NO. 103 OF 2018

THE ELECTION OF WOMEN MEMBERS TO THE HOUSE OF
ASSEMBLY ACT, 2018
(Act No. 9 of 2018)THE DATE OF COMMENCEMENT (THE ELECTION OF WOMEN MEMBERS
TO THE HOUSE OF ASSEMBLY ACT, 2018) NOTICE, 2018.
(Under Section 1)

In exercise of the powers conferred by Section 1 of the Election of Women Members to the House of Assembly Act, the Minister for Justice and Constitutional Affairs issues the following Notice -

Citation and Commencement

1. (1) This Notice may be cited as the Date of Commencement (The Election of Women Members to the House of Assembly Act, 2018) Notice, 2018.

(2) This Notice shall come into force on the date of publication in the Gazette.

Date of Commencement

2. The Election of Women Members to the House of Assembly Act, 2018, shall come into force on the 2nd July, 2018.

EDGAR E. HILLARY (SENATOR)
MINISTER FOR JUSTICE AND CONSTITUTIONAL AFFAIRS