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CONTENTS

No.	Page
PART A - BILL	
9. The Elections and Boundaries Commission Bill, 2008	S1

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THE ELECTIONS AND BOUNDARIES COMMISSION BILL, 2008
(Bill No. 9 of 2008)

(To be presented by the Minister of Justice and Constitutional Affairs)

MEMORANDUM OF OBJECTS AND REASONS

The object of this Bill is to further elaborate and give effect to the structure, conduct and procedure of elections, delimitation of electoral boundaries and to provide for other incidental matters.

J. M. DLAMINI
ATTORNEY-GENERAL

A BILL
Entitled

An Act to elaborate the work and powers of the Elections and Boundaries Commission and of the secretariat and to provide for other matters incidental to the effective operation of the Commission.

ENACTED by the King and the Parliament of Swaziland.

Arrangement of Sections

1. Short title and commencement
2. Interpretation
3. The Commission
4. Vacancy in Commission
5. Powers and Functions of the Commission
6. Secretariat of the Commission
7. Conduct of elections
8. Report on elections
9. Contents of report on elections
10. Resolution of disputes
11. Election observers
12. Review of tinkhundla boundaries
13. Report on tinkhundla boundaries
14. Local government areas

15. Power to co-opt
16. Meetings of the Commission
17. Committees of the Commission
18. Conflict of interest
19. Conduct of commissioners
20. Funds of the Commission
21. Books of account and audit
22. Non-liability of commissioner
23. Privilege of communication
24. Legal representation
25. Continuation of service
26. Oath of office
27. Regulations

PART I PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Elections and Boundaries Commission Act, 2008, and shall come into force on the date of publication in the Gazette.

Interpretation

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

"*Ad hoc* committee" means the committee referred in section 3;

"chairperson" means the chairperson appointed in terms of section 3;

"Commission" means the Elections and Boundaries Commission established in terms of section 90 of the Constitution;

"Constitution" means the Constitution of the Kingdom of Swaziland Act 001 of 2005;

"local government area" means a geographical area implicated in section 219 of the Constitution;

"Minister" means the Minister responsible for elections;

"population quota" means the number obtained when dividing the number of inhabitants of the Region (as ascertained by reference to the latest national population census) by the number of *tinkhundla* into which the Region is to be divided in terms of section 12 of this Act or section 80 of the Constitution;

"Secretariat" means the secretariat of the Commission established under section 6.

PART II

THE ELECTIONS AND BOUNDARIES COMMISSION

The Commission

3. (1) The Commission is established, and the Commissioners are appointed and removed, in terms of Section 90 of the Constitution on such terms of remuneration as the Minister may determine.

(2) The Commission is independent and not subject to the direction or control of any other person or authority in the performance of its functions.

(3) The members of the Commission are persons drawn from a wide spectrum of society with due regard to gender and are appointed by the King on the advice of the Judicial Service Commission on such terms and conditions as the Minister shall prescribe.

(4) The Chairperson shall be the spokesperson of the Commission, or the Commission may appoint from outside or designate from amongst its members a person to act as the spokesperson for the Commission;

(5) Where necessary the Commission may be represented by the Chairperson or with the consent of the Chairperson or the Commission by any other member of the Commission.

(6) For the purposes of the removal of a Commissioner as provided in this section the "ad hoc committee" referred to in section 158 of the Constitution shall be constituted by the Minister, the Chairman of the Civil Service Commission and the President of the Law Society of Swaziland or failing which a nominee of the Chief Justice.

Vacancy in Commission

4. (1) The Commission may, subject to the provisions of the Constitution and its own rules of procedure, act notwithstanding any vacancy in its membership or the absence of any member.

(2) A vacancy arising within the membership of the Commission due to any cause shall be filled in accordance with the provisions of the Constitution as soon as may be practicable.

(3) The member appointed to fill a vacancy shall serve only the balance of term remaining for the replaced member.

Powers and Functions of the Commission

5. (1) The functions of the Commission are set out in sections 90, 91 and 92 of the Constitution and include the following-

- (a) to prepare and update the voters roll;
- (b) to conduct or oversee and supervise the registration of voters for purposes of national and local elections;
- (c) to ensure free, fair and democratic elections;
- (d) to conduct or facilitate civic or voter education from time to time as may be necessary;

- (e) to declare and publish election results under its authority;
- (f) to review and determine the number and boundaries of *tinkhundla* areas or polling divisions;
- (g) to produce periodic reports in respect of its work;
- (h) to promote conditions which are conducive to open, democratic and credible elections;
- (i) to promote knowledge of sound democratic election processes;
- (j) to promote public awareness of electoral matters by means such as civic education or appropriate information programmes;
- (k) to adjourn, postpone, cancel or order fresh elections if scheduled elections are disrupted by natural disaster, civic violence or strife;
- (l) to prepare annual budget for due approval;
- (m) to perform such other functions and exercise such other powers in connection with elections and boundaries as may be prescribed.

PART III SECRETARIAT

Secretariat of the Commission

6. (1) Subject to the provisions of the Constitution or any other law, the Commission shall have a qualified and competent secretariat consisting of a secretary and a support staff all of whom shall be public officers.

(2) The secretariat shall -

- (a) provide technical and administrative support to the Commission;
- (b) keep proper files and correspondence for the Commission;
- (c) keep proper records of minutes;
- (d) convene and prepare for meetings as the chairperson may direct;
- (e) advertise for new or vacant posts; and
- (f) carry out any other function which the Commission or the chairperson may direct.

(3) The secretary shall also-

- (a) organize and manage the secretariat; and
- (b) keep the chairperson informed of all activities of the Commission.

(4) The size, qualifications and grading of the secretarial staff shall be determined in terms of section 183(1) of the Constitution.

**PART IV
ELECTIONS**

Conduct of elections

7. (1) The Commission is the sole authority for the conduct of national elections subject to the Constitution, this Act and the laws relevant to elections.

(2) In preparing for elections, the Commission may mobilize and engage any available temporary assistance to ensure that the elections are successful, free, fair and democratic.

(3) The provisions of the Elections Order 1992 and the Voters Registration Order 1992 shall be read with such adaptations, modifications and qualifications as may be necessary to bring those Orders into conformity with this Act and the Constitution.

Report on elections

8. (1) The Commission shall within three months after every election produce and submit a report on that election to the Minister.

(2) The Commission shall submit the report whether -

(a) the entire elections or part of the elections are challenged and a decision is still pending;
or,

(b) the elections were cancelled or voting suspended in any inkhundla.

(3) Where necessary, the Commission shall produce and submit a supplementary report.

(4) The report under this section shall be tabled before Parliament so soon after it has been submitted as may be practicable.

Contents of report on elections

9. (1) The report of the Commission under section 8 shall contain among other things, the following information -

(a) the general conduct of the elections and the number and percentage of voters who participated;

(b) any irregularities observed and how dealt with;

(c) whether any nomination or election was disputed and with what result;

(d) whether an election at any inkhundla or polling station was suspended or cancelled;

(e) any observed or remarkable peculiarities; and,

(f) recommendations, if any.

(2) The report shall also state whether any election observers (and if so, how many) covered the elections and the report or reports the observers made on the elections.

Resolution of disputes

10. (1) Unless the dispute is otherwise resolved at a lower level, the Commission shall examine and decide any alleged irregularity or unfair advantage in connection with an election process made in prescribed manner.

(2) Where the irregularity or unfair advantage is confirmed, the Commission shall take appropriate action to correct the irregularity and any adverse effects caused by that irregularity or unfair advantage.

(3) An appeal or review of the decision of the Commission shall lie to the High Court.

Election observers

11. (1) The Commission may accredit any individual, group or institution as an election observer at any election.

(2) An individual, group or institution accredited under subsection (1) shall be issued with an appropriate identity.

(3) The Commission may require, as a condition of accreditation, an election observer to make a written report to the Commission on the election or part of the election within such a period as the Commission may specify in writing.

(4) A person who contravenes subsection (3) commits an offence and is liable on conviction to a fine not exceeding Five thousand Emalangeni.

(5) An election observer who is required to submit a report under this section may be required to make a deposit of an amount not exceeding Five thousand Emalangeni or some other security of similar value as a condition for accreditation.

(6) The deposit or security made under the foregoing subsection is returnable on the report being duly submitted to the Commission.

PART V
ELECTORAL BOUNDARIES
REVIEW OF TINKHUNDLA BOUNDARIES

12. (1) Every fourth year of Parliament, the Commission shall review the number and boundaries of tinkhundla into which Swaziland is divided for election and incidental purposes.

(2) The Commission shall ensure that the number of inhabitants of an inkhundla is as nearly equal to the population quota as is reasonably practicable, taking into account the terrain, the availability of transport and other relevant community interest.

(3) The boundaries of an inkhundla shall not extend beyond one Region.

(4) Where alteration to the boundary of an inkhundla or the creation of a new inkhundla is approved, the King shall not later than six months before the dissolution of Parliament, by proclamation in the Gazette, declare the new boundary or inkhundla to be effective at the next dissolution of Parliament or so soon thereafter as may be convenient for the next general election.

Report on tinkhundla boundaries

13. (1) The Commission shall submit the report on tinkhundla boundaries to the King and the Minister at least nine months before the dissolution of Parliament.

(2) The Minister shall table the report before Parliament within a month of the report being available to the Minister.

(3) The report on the boundaries shall state among other things -

- (a) whether any alteration is necessary to the boundary of any inkhundla;
- (b) whether any new inkhundla should be established;
- (c) whether any existing inkhundla should be abolished or merged with another;
- (d) the proposed boundaries of the affected inkhundla or tinkhundla;
- (e) any other recommendation or observation.

Local government areas

14. (1) The Commission may on the request by the Minister responsible for local government undertake a review or determination of the boundaries of local government areas.

(2) In defining boundaries of local government areas, the Commission shall -

- (a) take into account existing chiefdom areas;
- (b) redefine tinkhundla boundaries as may be necessary;
- (c) integrate urban and rural areas where necessary; and,
- (d) take into consideration-
 - (i) the population, the physical size, the geographical features, the economic resources or potential, the existing or proposed infrastructure of each area;
 - (ii) the possibilities of facilitating the most rational management and use of the resources and infrastructure of the area with a view to ensuring that a local government area is, or has the potential for becoming, economically self-sustaining.

(3) Subject to the recommendations of the Commission and the provisions of subsection (4), the Minister responsible for local government may abolish, alter the boundary of, or establish a local government area by notice in the Gazette.

(4) A recommendation which seeks to alter the boundaries of a chiefdom or inkhundla shall be approved by Ingwenyama before publication in the Gazette in terms of subsection (3).

**PART VI
GENERAL**

Power to co-opt

15. (1) The Commission may co-opt any person of suitable qualification or expertise not being otherwise disqualified, to assist the Commission on a temporary basis in the discharge of any function in terms of this Act.

(2) The Commission may with the consent of the Minister responsible for the civil service confer powers or impose duties on any public officer or on any authority of the Government for the purpose of the exercise of its functions.

(3) The co-option of a person under this section shall be determined on the basis of that person being able to add value to the work of the Commission.

(4) The appointment under this section shall be on such terms and condition as the Commission may determine.

Meetings of the Commission

16. (1) The Commission shall hold its meetings at such a place and time as the chairperson may determine.

(2) The chairperson shall convene the meetings of the Commission.

(3) A special meeting of the Commission may be convened at any time convenient to most members.

(4) A decision of the Commission shall be a majority of the members present and the chairperson shall have a deliberative and a casting vote.

Committees of the Commission

17. (1) In order to make easy the carrying out of its functions, the Commission may establish such number of committees, not exceeding three at any point in time, as the Commission may consider necessary to perform any such function and carry out such other responsibilities as the Commission may determine.

(2) A committee of the Commission shall consist of not more than any five persons at least one and not more than two of whom shall be a member of the Commission.

(3) The chairperson shall appoint as chairman of a committee a person who is a member of the Commission.

(4) A committee established under this section shall act in accordance with such terms and conditions (not being beyond the powers of the Commission) as shall be determined by the Commission.

Conflict of interest

18. (1) If at any stage during the course of any proceeding before the Commission it appears that any member of the Commission has or may have an interest which may cause a conflict of interest on the part of that member -

- (a) that member shall forthwith disclose in full the nature of interest and leave the meeting so as to enable the remaining members to determine whether that member is precluded from participating in the meeting by reason of a conflict of interest; and
- (b) the disclosure of the interest and the decision taken by the remaining members regarding that interest shall be recorded in the minutes of the meeting.

(2) Notwithstanding any provision of this Act, if any member fails to disclose any interest and is present at a meeting of the Commission the meeting or proceeding may be reviewed and varied or set aside by the Commission of its own or by the High Court at the instance of any person.

Conduct of Commissioners

19. (1) A member of the Commission -

- (a) shall serve impartially and independently and perform in good faith and without fear, favour or prejudice, the functions of that member;
- (b) if appointed on full time basis, shall serve as such to the exclusion of any other duty or obligation arising out of any other employment or occupation or the holding of any other office, unless specifically authorized by the King on the recommendation of the Minister; or,
- (c) shall not at any meeting of the Commission during the discussion of any matter in respect of which that member has any financial or other interest which might prevent that member from performing the functions of that member in a fair, impartial and proper manner be present, cast a vote, or in any other manner participate in that meeting unless permitted by the Commission.

(2) A contravention of this section is a matter for disciplinary action.

Funds of the Commission

20. (1) All funds appropriated to the Commission shall be under the control of the Commission and disbursed by an officer or staff seconded by the Accountant General or employed by the Commission after consultation with the Accountant General.

(2) Administrative expenses of the Commission including salaries, allowances and pensions payable to or in respect of persons serving in the Commission and all monies required to defray the expenses that may be incurred in the discharge of the functions of the Commission shall be a charge on the consolidated fund.

(3) The Commission may receive for its work funds and other donations from local and international persons or bodies.

Books of account and audit

21. (1) The Commission shall keep proper books and other records of account in respect of receipts and expenditures of the Commission in accordance with acceptable principles of accounting and the Financial Management and Accounting Regulations made under the Finance Management and Audit Act, 1967.

(2) The accounts of the Commission shall be audited annually by the Auditor General or by independent registered auditors appointed by the Auditor General.

(3) The expenses of the audit shall be paid out of the funds of the Commission.

(4) The audited accounts of the Commission shall be part of the annual reports of the Commission to be tabled before Parliament.

Non-liability of commissioner

22. A member of the Commission is not liable for anything done or omitted or spoken in good faith and has such and like protection and privilege in the case of any action or suit brought against that member for anything done or omitted in the honest execution of duty as is by law given to acts done or words spoken by a judge of the High Court in the exercise of judicial function.

Privilege of communication

23. A person shall not in any legal proceedings be permitted or required to produce or disclose any oral or written communication between -

- (a) the Commission, a member or employee of the Commission and the Government, a Minister or any officer of the Government; or,
- (b) any members or employees of the Commission in the exercise of or in connection with the exercise of the function of the Commission unless a judge of a superior court orders otherwise.

Legal representation

24. (1) The Commission may request the Attorney General or with the approval of the Attorney General instruct any legal practitioner to provide advice or legal representation to the Commission in any matter or legal proceedings before any court or tribunal in which the Commission is involved.

(2) A person appearing in person or by counsel before the Commission or a committee of the Commission or any person or body conducting an inquiry or investigation on behalf of the Commission shall appear at the person's own expense unless that person is a witness called by the Commission in which case the expenses of that person shall be borne by the Commission.

Continuation of service

25. If a person in the service of the Commission was immediately before being so appointed a public officer, the service of that person in the public service shall be counted as service with the Commission for purposes of leave, pay instead of leave or pension, gratuity or other retirement benefits.

Oath of office

26. (1) A member of the Commission shall not enter upon the duties of office until that member takes and subscribes the oath or affirmation of allegiance and the due execution of office as set out in the Second Schedule to the Constitution or any other law.

(2) The secretary and support staff shall take or where necessary be deemed to have taken the oath of secrecy.

Regulations

27. (1) The Commission may by regulation or otherwise regulate its own procedure.

(2) The Minister or the Commission after consultation with the Minister may make regulations for the better carrying out of the provisions of this Act or any law regulating elections.