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SENATE (ELECTIONS) ACT, 2013

Act No. 7 of 2013

**I ASSENT****MSWATI III
KING OF SWAZILAND**25th July, 2013

**AN ACT
ENTITLED**

AN ACT to provide for the manner of electing Senators in terms of section 94(2) of the Constitution and for matters connected therewith.

ENACTED by the King and the Parliament of Swaziland.

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**AN ACT
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**PART I
PRELIMINARY**

Short title and commencement.

1. (1) This Act may be cited as the Senate (Elections) Act, 2013.
- (2) This Act shall come into force on the date of publication in the Gazette.

Interpretation.

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

“absolute majority” means more than one-half of the value of all the votes for the time being counted in favour of candidates, no account being taken of the value of the exhausted votes given in favour of an excluded candidate;

“approved form” means a form approved by the returning officer for the purposes contained in sections 5(4) and 13(3);

“by-election” means an election to fill a casual vacancy or vacancies occurring at any time other than at an election;

“continuing candidates” means candidates not elected or not excluded from the poll at any given time;

“day of nomination” shall be the day of first meeting of the House of Assembly referred to in section 5 in the case of an election, or the date specified in the notice published under section 28 in the case of a by-election;

“election” means an election of Senators in consequence of the dissolution of the Senate constituted in terms of section 93 of the Constitution, as provided in section 94(2) of the Constitution;

“exhausted papers” mean ballot papers on which no further preference is recorded for a continuing candidate, provided that a paper shall also become exhausted in any case in which—

- (a) the name of two or more candidates, whether continuing or not, are marked with the same figure and are next in order of preference; or
- (b) the name of the candidate next in order of preference, whether continuing or not, is marked—
 - (i) by a figure not following consecutively after some other figure on the ballot papers, or
 - (ii) by two or more figures;

“first preference” means the figure 1 set opposite the name of any candidate; “second preference” means the figure 2; “third preference”, the figure 3; and so on;

“member” includes a person appointed or elected as a member of the House in terms of the Elections Act, 2013;

“original votes”, in regard to any candidate, means the votes derived from ballot papers on which a first preference is recorded for such candidate;

“President” means the person elected in terms of section 100(1) of the Constitution as President or, in terms of section 104(1) of the Constitution as Acting President, of the Senate, and where no such President or Acting President has been elected, the Clerk to the Senate;

“Speaker” means the person elected in terms of section 102(1) of the Constitution as Speaker, or in terms of section 104(2) of the Constitution as Acting Speaker, of the House of Assembly;

“surplus” means the number by which the value of the votes of any candidate, original and transferred, exceeds a quota;

“transferred votes” in regard to any candidate means votes, the value or part of the value of which is credited to that candidate, and which are derived from ballot papers on which a second or subsequent preference is recorded for that candidate;

“unexhausted papers” means ballot papers on which a further preference is recorded for a continuing candidate.

PART II

ELECTION OF SENATORS

Returning officer.

3. (1) The Clerk to Parliament shall act as returning officer, and shall, subject to this Act, do all things necessary for the conduct of the election.

(2) The Clerk to Parliament shall designate public officers to be Assistant Returning Officers, who shall, subject to this Act, carry out such duties as may be assigned to that officer by the Returning Officer.

Oath or affirmation.

4. Before entering upon their duties, the returning officer and the assistant returning officer shall be required to take an oath or make an affirmation before a judge or magistrate that they will faithfully and impartially discharge the duties of their offices according to this Act or such other law as may be lawfully made in regard to the election of Senators, and that they will not disclose any facts or information coming to their knowledge in the performance of their duties under the law.

Manner of electing Senators.

5. (1) When the House of Assembly first meets after any general election and as soon as the House shall have elected a person to be Speaker in terms of section 102 of the Constitution, the House shall immediately proceed to the business of the election of Senators.

(2) On the day of nomination, the Speaker shall call for nominations of candidates for election in the female and male category.

(3) An unsuccessful candidate in the recent general election shall not be considered for nomination.

(4) Every candidate for election shall be proposed by a member and seconded by another member.

(5) Every nomination shall be made to the returning officer and shall be on the approved Form S.E.1., in this Act referred to as a "nomination paper".

(6) In making a proposal for candidacy, a member shall write the name of the candidate which that member proposes in the nomination paper placed at the seat of that member and that member shall also write his or her name as proposer and thereafter sign the nomination paper.

(7) A nomination paper shall contain the name of only one candidate, and no member shall sign more than one nomination paper as a proposer.

(8) 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.

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

(10) 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 the proposed candidate shall be declared nominated.

(11) 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.

(12) The Returning Officer shall thereafter notify the Speaker who shall inform the members about the names of proposed candidate who have been duly nominated.

(13) 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.

(14) Subject to subsection (15), every proposer, seconder and candidate, shall sign the nomination paper in the presence of the Returning Officer, the Assistant Returning Officer or the Clerk to the House, who shall also sign the nomination paper as witness and state on the nomination paper their office and the date of signing.

(15) Notwithstanding sub-section (14), 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.

(16) Before witnessing any signature in terms of sub-section (14), the Returning Officer, the Assistance Returning Officer or the Clerk to the House shall satisfy oneself as to the identity of the signatory and draw the attention of the signatory to the provisions of this section.

Adjournment of sitting and consideration of nominations.

6. (1) When every member present and desiring to nominate a candidate has done so, the Speaker may adjourn the sitting in terms of section 11 (2).

(2) The returning officer shall consider all nominations received by the returning officer and shall openly reject all nomination papers not made in accordance with this Act.

Where number of nominated candidates is less than number of vacancies.

7. If the number of candidates duly nominated is less than the number of vacancies to be filled, the returning officer shall notify the Speaker, who shall so inform the members and call for further nominations to be made at that sitting.

Where number of nominated candidates after further nominations is less than number of vacancies.

8. (1) If, after further nominations have been called for as provided in section 7, the number of candidates duly nominated is still less than the number of vacancies to be filled, the returning officer shall declare the candidates so nominated to be duly elected and shall immediately notify the Speaker of the names of the persons declared duly elected.

(2) Upon being notified in terms of subsection (1), of the names of the persons declared to be duly elected, the Speaker shall inform the members accordingly, and cause a notice containing the full names of the persons declared elected and the date on which they were declared elected to be published in the Gazette.

(3) The remaining vacancies shall be filled as provided in Part IV.

Where number of candidates nominated is equal to number of vacancies.

9. (1) If the number of candidates duly nominated is equal to the number of vacancies to be filled, the returning officer shall declare the candidates so nominated to be duly elected, and shall immediately notify the Speaker of the names of the persons declared duly elected.

(2) Upon being notified in terms of subsection (1) of the names of persons declared duly elected, the Speaker shall, in the case of by-election, inform the President at the next sitting of Senate of the names of the persons declared duly elected, and cause a notice containing the full names of the persons declared elected and the date on which they were declared elected to be published in the Gazette.

Death of nominated candidate before election.

10. If a duly nominated candidate dies before the commencement of the sitting at which the election is to proceed, as provided in section 11(2), the Speaker shall, upon being satisfied of the fact of death, inform the members of that death at the commencement of the sitting and call for further nominations to be made at that sitting.

Where number of valid nominations exceeds number of vacancies.

11. (1) If the number of valid nominations received exceeds the number of vacancies to be filled, the returning officer shall make a return to the Speaker showing the names, addresses and occupations of the candidates who have been duly nominated, together with the names of the members who have nominated them.

(2) The Speaker shall announce the names of the candidates duly nominated and shall adjourn the sitting for not less than four hours and, on resumption of the sitting, the election shall proceed in the manner prescribed in this Part.

Voting to be in person.

12. Each member present shall vote in person and no member shall be allowed to vote by proxy.

Voting.

13. (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 S.E.2., 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 14 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.

One vote for every member.

14. (1) Every member shall have one vote only.

(2) A member in giving the vote of the member—

(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.

15. 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 recognisable;
- (b) which 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.

Names of elected persons, etc.

16. (1) When the result of the election has been ascertained in the manner prescribed in Part III, the returning officer shall furnish the Speaker with the names of the persons declared elected in the order of their election, and the date on which they were declared elected, and the returning officer shall also transmit to the Speaker a complete return, signed by the returning officer showing the various steps as well as the result of the election.

(2) The returning officer shall transmit to the Speaker separate sealed packets containing the nomination papers, the used ballot papers, and the counterfoils which shall be retained for a year and then be destroyed.

(3) The packets of used ballot papers and counterfoils shall not be opened except under an order of the High Court.

Notice of names of persons declared elected.

17. When the names of the persons declared duly elected have been received by the Speaker, the Speaker shall inform the members, and in the case of a by-election, the President, accordingly and shall cause a notice containing the full names of the persons declared elected and the date on which they were declared elected to be published in the Gazette.

PART III
COUNTING OF VOTES

Value of ballot paper.

18. (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.

19. 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.

Where one person only has to be elected.

20. (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 the first preferences recorded for each candidate.

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

(3) If any candidate obtains an absolute majority of votes that candidate shall be declared elected.

(4) If no candidate obtains an absolute majority, the returning officer shall exclude from the poll the candidate with the smallest value of votes, by examining the papers of that candidate and transferring to other candidates the unexhausted papers according to the next preference recorded on them; the returning officer shall in each case add the value of the votes so transferred to the total value of the votes of the candidate to whom the transfer is made.

(5) Until some candidate obtains an absolute majority, the returning officer shall in the same manner as directed by subsection (4) exclude from the poll the candidates not previously excluded, one after another, the candidate with the smallest value of votes, original or transferred, being always first excluded.

(6) A candidate who, as a result of any operations prescribed by the preceding subsections, obtains an absolute majority, shall be declared elected.

(7) If at any time two or more candidates, one of whom ought to be excluded, have an equal value of votes, the returning officer shall decide, according to the terms of section 27, which of them shall first be excluded.

Where more than one person has to be elected.

21. (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 22.

Surplus.

22. (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.

23. (1) If, after all surpluses have been transferred, as provided in section 22, 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 24.

Completion of transfer proceedings.

24. If, as a result of a transfer of papers under section 23, 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.

25. (1) If, after the completion of any transfer under section 24, 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 23(1) before the exclusion of any other candidate.

Continuing candidates declared elected.

26. (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.

27. (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.

**PART IV
BY-ELECTIONS**

By-elections.

28. (1) When a vacancy occurs, the President shall, upon being notified of that vacancy, publish a notice in the Gazette declaring that vacancy within a reasonable time.

(2) The Speaker shall, upon the publication of the vacancy under sub-section (1), fix a date, time and place at which a sitting of members will be held for the purpose of electing a person to fill the vacancy, and the like proceedings shall take place for the filling of that vacancy as prescribed in Part II in regard to an election.

**PART V
REPEAL AND SAVINGS**

Repeal.

29. The Senate Elections Act, No. 48 of 1967 is hereby repealed.

Savings.

30. Notwithstanding the repeal under section 29, Senators elected under the repealed Act shall be deemed to have been validly elected and shall continue in office until the next dissolution of Parliament after the commencement of this Act.

