

**REPUBLIC OF SOUTH AFRICA
ELECTORAL COMMISSION BILL**

(As introduced)

(MINISTER OF HOME AFFAIRS)

[B 35-96]

REPUBLIEK VAN SUID-AFRIKA

WETSONTWERP OP DIE VERKIESINGSKOMMISSIE

(Soos ingedien)

(MINISTER VAN BINNELANDSE SAKE)

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BILL

To make provision for the establishment and composition of an Electoral Commission to manage elections for national, provincial and local legislative bodies and referenda; and to make provision for the establishment and composition and the powers, duties and functions of an Electoral Court; and to provide for matters in connection therewith.

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

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CHAPTER 1

INTERPRETATION AND APPLICATION OF ACT

Definitions

1. (1) In this Act, unless the context otherwise indicates-
- i. "**chairperson**" means the chairperson designated in terms of section 8(1); (x)
 - ii. "**chief electoral officer**" means the chief electoral officer appointed in terms of section 12(1); (iii)
 - iii. "**Commission**" means the Electoral Commission established by section 3(1); (iv)
 - iv. "**election**" means any election for a national, provincial or local legislative body in terms of any law; (viii)

- v. "**Electoral Court**" means the Electoral Court established by section 18; (ix)
- vi. "**party**" means any registered party, and includes any organisation or movement of a political nature which publicly supports or opposes the policy, candidates or cause of any registered party, or which propagates non-participation in any election; (v)
- vii. "**political office**" means any executive appointment or elected office, including any elected or nominated public representative of a party, whether involving remuneration or not, or any other paid office, in the service of a party; (vi)
- viii. "**prescribe**" means prescribe by regulation; (xi)
- ix. "**registered party**" means any party registered in terms of section 15; (i)
- x. "**regulation**" means a regulation made under section 23; (vii) and
- xi. "**this Act**" includes the regulations. (ii)

(2) For the purposes of this Act, unless clearly inconsistent with the context, any reference therein to an election, shall be construed as to include a referendum declared by the President under section 2(2).

Application of Act

2. (1) This Act applies in respect of any election for national, provincial and local legislative bodies, and any referendum referred to in subsection (2).

(2) Notwithstanding anything to the contrary in any other law contained, the President may, after consultation with the Commission, by proclamation in the Gazette-

- a. declare that a referendum shall be held in order to ascertain the views of voters on a matter specified in the proclamation;
- b. determine that the referendum shall be held in the Republic, or in a part of the Republic specified in the proclamation, on a day or consecutive days and, subject to this Act, during the hours so specified;
- c. determine who shall be entitled, in accordance with this Act, to vote at the referendum; and
- d. determine the form of a ballot paper for the purposes of the referendum and the particulars it shall contain.

CHAPTER 2

ELECTORAL COMMISSION

Establishment of Commission

3. (1) There is an Electoral Commission for the Republic, which is independent and subject only to the Constitution and the law.

(2) The Commission shall be impartial and shall exercise its powers and perform its functions without fear, favour or prejudice.

Objects of Commission

4. The objects of the Commission are to strengthen constitutional democracy and promote democratic electoral processes.

Powers, duties and functions of Commission

5. (1) The functions of the Commission include to-

- a. manage any election;
- b. ensure that any election is free and fair;
- c. promote conditions conducive to free and fair elections;
- d. promote knowledge of sound and democratic electoral processes;
- e. compile and maintain voters' rolls, or to cause them to be compiled and maintained;
- f. compile and maintain a register of parties;
- g. establish and maintain liaison and co-operation with parties;
- h. undertake and promote research into electoral matters;
- i. develop and promote the development of electoral expertise and technology in all spheres of government;
- j. continuously review electoral legislation and proposed electoral legislation, and to make recommendations in connection therewith;
- k. promote voter education; and
- l. promote co-operation with and between persons, institutions, governments and administrations for the achievement of its objects.

(2) The Commission shall, for the purposes of the achievement of its objects and the performance of its functions-

- a. acquire the necessary staff, whether by employment, secondment, appointment on contract or otherwise;
- b. establish and maintain the necessary facilities for collecting and disseminating information regarding electoral matters;
- c. co-operate with educational or other bodies or institutions with a view to the provision of instruction to or the training of persons in electoral and related matters; and
- d. generally, perform any act that is necessary for or conducive to that.

Composition of Commission and appointment of commissioners

6. (1) The Commission shall consist of five members who shall be fit and proper persons, one of whom shall be a judge of the Supreme Court, appointed by the President after consultation with the panel referred to in subsection (3).

(2) No person shall be appointed as a member of the Commission unless he or she-

- a. is a South African citizen; and
- b. does not at that stage have a high party-political profile.

(3) The panel shall consist of-

- a. the President of the Constitutional Court, as chairperson;
- b. the Director-General: Home Affairs;
- c. the Director-General: Finance;
- d. two persons designated by the President, one of whom shall be a legal practitioner and the other a lecturer in law; and
- e. five members nominated by a committee of Parliament in terms of its rules and orders.

(4) The panel shall act in accordance with the principles of transparency and openness and make its recommendations with due regard to a person's suitability, qualifications and experience.

Terms of office, conditions of service, removal from office and suspension of commissioners

7. (1) The term of office of a member of the Commission is seven years unless he or she resigns or dies at an earlier date, or is removed from office in terms of subsection (3).

(2) The conditions of service, remuneration, allowances and other benefits of commissioners shall from time to time be determined by the President after consultation with the Commission on Remuneration of Representatives referred to in section 207 of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), and a distinction may be made between commissioners appointed in a full-time and part-time capacity.

(3) A commissioner may only be removed from office by the President on the grounds of misconduct, incapacity or incompetence determined by the Electoral Court acting upon an address from the National Assembly praying for such removal.

(4) The President may suspend a commissioner who is the subject of an address contemplated in subsection (3), pending a finding thereon by the Electoral Court.

Chairperson of Commission

8. (1) The President shall designate a chairperson and vice-chairperson from among the members of the Commission.

(2) In the absence of both the chairperson and vice-chairperson, the remaining members shall elect an acting chairperson from their number.

Conduct of commissioners

9. (1) Every member of the Commission shall-

- a. serve impartially and independently and perform his or her functions as such in good faith and without fear, favour or prejudice;
- b. if appointed in a full-time capacity, 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 authorised thereto by the President.

(2) No member of the Commission-

- a. shall during his or her term of office be eligible for appointment or nomination to any political office;
- b. may, whether directly or indirectly, in any manner give support to, or oppose, any party or candidate participating in an election, or any of the issues in contention between parties or candidates;
- c. may, by his or her membership, association, statement, conduct or in any other manner place in jeopardy his or her perceived independence, or in any other manner harm the credibility, impartiality, independence or integrity of the Commission;
- d. may make private use of or profit from any confidential information gained as a result of his or her appointment and functions as such member;
- e. may divulge any such information to any third party save in the course and scope of his or her official functions;
- f. shall during his or her term of office be eligible to serve as a member of Parliament, a provincial legislature or a local government body, and such ineligibility shall continue for a period of 18 months reckoned from the date upon which such term of office has terminated.

Disclosure of conflicting interests

10. (1) Subject to subsection (2), a member may not at any meeting of the Commission during the discussion of any matter before such meeting in respect of which he or she has any financial or other interest which might preclude him or her from performing his or her functions in a fair, impartial and proper manner-

- a. be present;
- b. cast a vote; or
- c. in any other manner participate in the proceedings thereof.

(2) If at any stage during the course of any proceedings before the Commission it appears that any member has or may have an interest which may cause such a conflict of interests to arise on his or her part-

- a. such member shall forthwith and fully disclose the nature of his or her interest and

- leave the meeting so as to enable the remaining members to discuss the matter and determine whether such member is precluded from participating in such meeting by reason of a conflict of interests; and
- b. such disclosure and the decision taken by the remaining members regarding such determination, shall be recorded in the minutes of the meeting.

(3) If any member fails to disclose any interest as required by subsection (2) or, subject to that subsection, is present at a meeting of the Commission or in any manner whatsoever participates in the proceedings of the Commission in relation to such matter, such proceedings may be reviewed and varied or set aside by the Commission.

Meetings of Commission

11. (1) The Commission may meet at any place in the Republic determined by the chairperson for the purpose of performing its functions.

(2) Meetings may be convened at any time by the chairperson at such intervals as circumstances may require and he or she shall convene a special meeting when requested to do so by any two other members of the Commission.

(3) A quorum for a meeting of the Commission is the majority of the total number of the members.

(4) A decision by the majority of the members present at a meeting of the Commission is a decision of the Commission.

(5) The Commission may determine its own procedures to be followed at its meetings.

CHAPTER 3

ADMINISTRATION, STAFF AND ACCOUNTABILITY OF COMMISSION

Administration and staff of Commission

12. (1) As soon as possible after the composition of the Commission and whenever necessary thereafter, the Commission shall appoint a suitably qualified and experienced person as chief electoral officer.

(2) The chief electoral officer-

- a. shall be the head of the administration of the Commission;
- b. shall be the accounting officer of the Commission for the purposes of the Exchequer Act, 1975 (Act No. 66 of 1975), and shall cause the necessary accounting and other related records to be kept; and

- c. may exercise all such powers and shall perform all such duties and functions as may be entrusted or assigned to him or her by the Commission or this Act or any other law.

(3) Whenever the chief electoral officer is for any reason absent or unable to perform his or her functions, or whenever a vacancy in the office of chief electoral officer occurs, the Commission may designate a member of its staff to act in that capacity until the chief electoral officer resumes his or her functions, or a chief electoral officer is appointed in terms of subsection (1), and that member has, while so acting, such powers and shall perform such functions of the chief electoral officer as may be delegated or assigned to him or her by the Commission.

(4) The chief electoral officer shall in consultation with the Commission appoint such officers and employees of the Commission as he or she may consider necessary to enable the Commission to exercise its powers and to perform its duties and functions effectively.

(5) The conditions of service, remuneration, allowances, subsidies and other benefits of the chief electoral officer, an acting chief electoral officer and the other administrative staff of the Commission shall be prescribed by the Commission.

(6) Notwithstanding the Government Service Pension Act, 1973 (Act No. 57 of 1973)-

- a. any person appointed in terms of this section who, immediately before the date of such appointment was a member of the Government Service Pension Fund established by section 3 of that Act, shall remain such member notwithstanding such appointment; and
- b. any person so appointed who is not a member of the said fund shall become a member of that fund as from the date of such appointment and shall contribute thereto.

Finances and auditing

13. (1) The expenditure in connection with the exercise of the Commission's powers and the performance of its duties and functions shall be defrayed out of money appropriated by Parliament for that purpose or received by the Commission from any other source.

(2) The Commission shall budget for the necessary resources or additional resources to enable it to exercise its powers and perform its duties and functions effectively.

(3) The records referred to in section 12(2)(b) shall be audited by the Auditor-General in terms of the Auditor-General Act, 1995 (Act No. 12 of 1995).

Reports by Commission

14. (1) The Commission shall annually, as soon as possible after the end of each financial year, submit to the National Assembly a report in regard to the functions, activities and affairs of the Commission in respect of such financial year.
 - (2) The Commission shall furnish the President with such information and particulars as he or she may from time to time in writing require in connection with the activities of the Commission.
 - (3) The Commission shall as soon as possible after the end of an election publish a report thereon.
 - (4) The Commission may, if it deems it necessary, publish a report on the likelihood or otherwise that it will be able to ensure that any pending election will be free and fair.
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CHAPTER 4

REGISTRATION OF PARTIES

Registration of parties

15. (1) The chief electoral officer shall, upon application by a party in the prescribed form, register such party in accordance with this Chapter.
- (2) The form shall, inter alia, make provision for the following:
 - a. The name of the party;
 - b. the distinguishing mark or symbol of the party in colour;
 - c. the abbreviation, if any, of the name of the party consisting of not more than eight letters; and
 - d. the constitution of the party.
- (3) No party not represented in Parliament, a provincial legislature or a local government body may be so registered unless the application is accompanied by-
 - a. that party's deed of foundation which has been adopted at a meeting of, and has been signed by, the prescribed number of persons who are qualified voters;
 - b. the prescribed amount, if any; and
 - c. proof of publication in the Gazette of the prescribed notice of the application.
- (4) The party's deed of foundation shall contain the prescribed particulars.
- (5) After a party has been registered the chief electoral officer shall issue that party with a registration certificate in the prescribed form and publish the prescribed particulars of such registration in the Gazette.

(6) Every registered party shall annually renew its registration in the prescribed manner and at the prescribed time.

Prohibition on registration of party under certain circumstances

16. (1) The chief electoral officer may not register a party in terms of section 15, if-

- a. a proposed name, abbreviated name, distinguishing mark or symbol mentioned in the application-
 - i. resembles the name, abbreviated name, distinguishing mark or symbol, as the case may be, of any other registered party to such extent that it may deceive or confuse voters ; or
 - ii. contains anything which portrays the propagation or incitement of violence or hatred or which may cause serious offence to any section of the population on the grounds of race, gender, sex, ethnic origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture or language.

(2) Any party which is aggrieved by a decision of the chief electoral officer to register or not to register a party, may within 30 days after the party has been notified of the decision, appeal against the decision to the Commission in the prescribed manner.

(3) The Commission shall in the case of such an appeal enquire into or consider the matter and may, subject to subsection (4), confirm or set aside the decision of the chief electoral officer.

(4) In considering such an appeal against the refusal to register a party in terms of subsection (1)(a)(i) the Commission-

- a. shall take into account the fact that the party which is associated with the name, abbreviated name, distinguishing mark or symbol, as the case may be, for the longest period, should prima facie be entitled thereto;
- b. may, for the purposes of paragraph (a)-
 - i. afford the parties concerned an opportunity to offer such proof, including oral evidence or sworn or affirmed statements by any person which, in the opinion of the Commission, could be of assistance in the expeditious determination of the matter; and
 - ii. administer an oath or affirmation to any person appearing to testify orally before it.

Cancellation of registration of party

17. The Commission may direct the chief electoral officer to cancel the registration of a party if-

- a. the Commission, after due notice in writing to that party and an inquiry into the matter, is satisfied that the party no longer functions or has no intention to participate in an election; or
 - b. the Commission is notified by that party in the prescribed manner that the party has dissolved or is intending to dissolve on a specified date.
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CHAPTER 5

ELECTORAL COURT

Establishment of Electoral Court

18. There is an Electoral Court for the Republic, with the powers, duties and functions referred to in section 20.

Composition of Electoral Court

19. The Electoral Court shall consist of the following members appointed by the President upon the recommendation of the Chief Justice:

- a. (a) A chairperson, who is a judge of the Appellate Division of the Supreme Court, and two other judges of the Supreme Court; and
- b. (b) two other members who are South African citizens.

(3) The terms of office of the members of the Electoral Court, their conditions of service, remuneration, leave and other benefits, shall be determined by the President.

Powers, duties and functions of Electoral Court

20. (1)

- a. The Electoral Court may review any decision of the Commission relating to an electoral matter.
- b. Any such review shall be conducted on an urgent basis and be disposed of as expeditiously as possible.

(2)

- a. The Electoral Court may hear and determine an appeal against any decision of the Commission only in so far as such decision relates to the interpretation of any law or any other matter for which an appeal is provided by law.
- b. No such appeal may be heard save with the prior leave of the chairperson of the Electoral Court granted on application within the period and in the manner determined by that Court.

- c. Such an appeal shall be heard, considered and summarily determined upon written submissions submitted within three days after leave to appeal was granted in terms of paragraph (b).
- (3) The Electoral Court shall consider a prayer for the removal of a member of the Commission from office as contemplated in section 7(3) and make a finding thereon.
- (4) The Electoral Court may determine its own practice and procedures and make its own rules.
- (5) The Electoral Court shall-
- a. make rules in terms of which electoral disputes and complaints about infringements of the Electoral Code of Conduct as defined in section 1 of the Electoral Act, 1993 (Act No. 202 of 1993), may be brought before courts of law; and
 - b. determine which courts of law shall have jurisdiction to hear particular disputes and complaints about infringements, and appeals against decisions arising from such hearings.
- (6) The Electoral Court may hear and determine any matter that relates to the interpretation of any law referred to it by the Commission.
- (7) The Director-General: Justice shall provide the necessary accommodation, administration and financial support for the Electoral Court.

CHAPTER 6

GENERAL PROVISIONS

Offences and penalties

21. (1) Any person commits an offence who-
- a. (a) wilfully hinders or obstructs the Commission, the chief electoral officer or a member of the staff of the Commission in the exercise of its or his or her powers or in the performance of its or his or her duties or functions;
 - b. (b) wilfully interrupts the proceedings of a meeting of the Commission or a sitting of the Electoral Court or misbehaves in any other manner in the place where such meeting or sitting is held;
 - c. (c) does anything calculated improperly to influence the Commission or that Court in respect of any matter being or to be considered by the Commission or that Court in connection with any decision or order.

(2) Any person convicted of any offence referred to in subsection (1), may be sentenced to a fine or to imprisonment for a period not exceeding five years.

Legal proceedings against Commission

22. (1) The State Liability Act, 1957 (Act No. 20 of 1957), applies with the necessary changes in respect of the Commission.

(2) In such application a reference to a Minister of a department shall be construed as a reference to the chairperson of the Commission.

Regulations

23. (1) The Commission may make regulations regarding-

- a. the time limits within and manner in which appeals may be noted or decisions may be brought under review by the Commission in terms of this Act;
- b. the compiling and maintaining of voters' rolls;
- c. the registration of parties in terms of this Act;
- d. the regulation of the conduct of all persons, parties and candidates in so far as such conduct may promote or inhibit the conduct of a free and fair election;
- e. any matter required or permitted to be prescribed in terms of this Act;
- f. the holding of a referendum declared under section 2; and
- g. generally, all matters which are necessary or expedient to be prescribed in order to achieve the objects of this Act.

(2) A regulation may prescribe penalties for any contravention thereof, or any failure to comply therewith, of a fine or imprisonment for a period not exceeding two years.

(3) Any regulation which affects state expenditure, shall be made with the concurrence of the Minister of Finance.

Repeal of laws, legal succession and transitional provision

24. (1) The laws mentioned in the Schedule are hereby repealed.

(2) The Commission is the successor in title to the Independent Electoral Commission established by section 4 of the Independent Electoral Commission Act, 1993 (Act No. 150 of 1993), and is empowered to control all electoral equipment and material held by any organ of state in any sphere of government.

(3) The Special Electoral Court established by section 32 of the Independent Electoral Commission Act, 1993, shall, notwithstanding the repeal of that Act by subsection (1), dispose of any matter pending before it as if this Act had not been passed.

Short title and commencement

25. This Act shall be called the Electoral Commission Act, 1996, and shall come into operation on a date fixed by the President by proclamation in the Gazette.

SCHEDULE

LAWS REPEALED

Act 150 of 1993

Independent Electoral Commission Act, 1993

Act 193 of 1993

Independent Electoral Commission Amendment Act, 1993

Act 5 of 1994

Independent Electoral Commission Amendment Act, 1994

Proclamation 46 of 1994

Independent Electoral Commission Amendment Proclamation, 1994

MEMORANDUM ON THE OBJECTS OF THE ELECTORAL COMMISSION BILL, 1996

1. BACKGROUND

The Cabinet established a Ministers' Committee on election structures to investigate various options regarding electoral management systems and to make recommendations in that regard, taking due notice of the present constitutional thinking on the subject internationally.

The Ministers' Committee, with the assistance of a Technical Committee, assembled information on the electoral systems of about 150 countries.

The information revealed, amongst other things, that-

- a. with the exception of a few countries such as India, Canada and Australia, it is general practice in established democracies for elections to be administered by departments of state; and
- b. emerging democracies and countries with heterogeneous populations have, almost without exception, opted for elections to be administered independently from the government of the day.

It was also established that the United Nations, the Commonwealth and other intergovernmental organisations such as the International Institute for Democracy and Electoral Assistance (International IDEA) have actively campaigned for the conducting of elections by an autonomous body especially in countries where similar circumstances exist as in the Republic.

The overwhelming weight of the evidence led to the conclusion that electoral administration in South Africa should be independent from the government of the day.

2. OBJECTS OF BILL

With the view to promoting a democratic electoral process the Bill proposes to establish a permanent, autonomous body, called the Electoral Commission, who will manage elections for legislative bodies in all three spheres of government.

The Bill aims at ensuring that the proposed Electoral Commission shall be manifestly impartial yet accountable.

The proposed Commission bears little resemblance to the Independent Electoral Commission established by the Independent Electoral Commission Act, 1993 (Act No. 150 of 1993), which created an ad hoc body with special powers, duties and functions to conduct the April 1994 elections.

Provision is also made in the Bill for the proposed establishment and composition and the powers, duties and functions of the Electoral Court.

3. PERSONS/BODIES CONSULTED

Apart from gathering information on an universal basis, in depth analysis discussions also took place with representatives of various countries representing different approaches to electoral management, e.g. Kenya, Tanzania, Zambia, Zimbabwe, Mexico, Chile, Argentina, France, Germany, Hungary, Poland, the Russian Federation, India, Australia, Japan, Hong Kong and Singapore.

The chairperson of the Independent Electoral Commission and the co-chairpersons of the Task Group for Local Government Elections were also consulted.
