

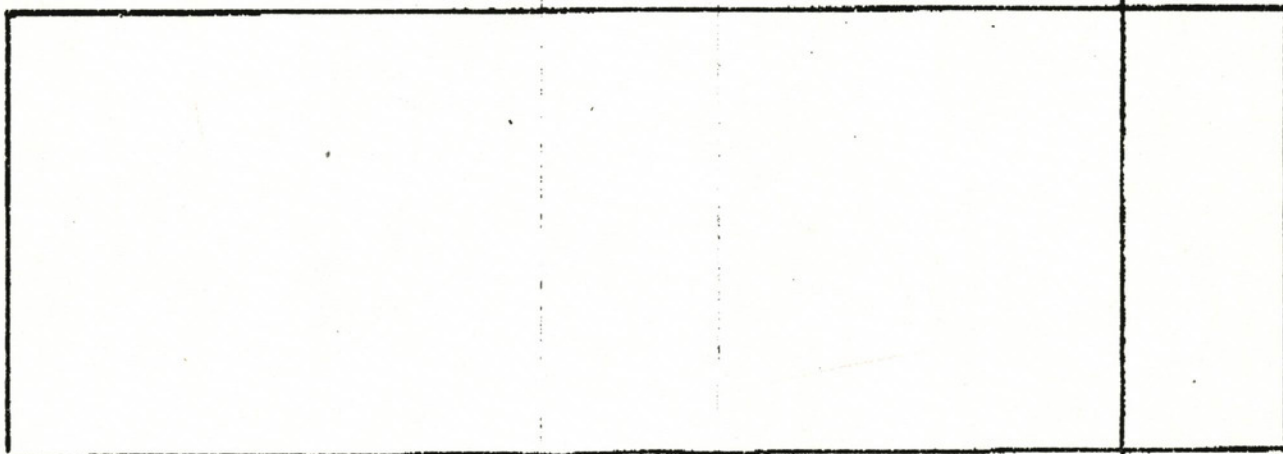
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Attention: *MELODY EMMET*.....

From : *LISA THORNTON*.....



To: Melody Emmet
From: Lisa Thornton
Re: Draft Electoral Bill (Second Version)
Date: 25 October 1993

The following is an analysis of the Electoral Bill regarding potential problems with subsequent interpretation. Please present the document to the technical committee if you believe it would be useful to them in their re-drafting of the bill.

The Electoral Bill - Second Version

I. Chapter I-Interpretation and Application of the Act - The definition of "regulations" should not be limited to Section 58. It should read "'regulations' means the regulations made under this Act." Perhaps it also should include "or under the Commission Act."

II. Chapter II-Administration

A. Sections 5 and 6 state that the Committees shall be established, but do not indicate by whom. Presumably they would be established by the Commission, but it should be made clear.

B. To whom are Presiding Officers subject?

C. As written, Section 11(1)(b) would allow a Presiding Officer to keep out the Chief Director of the Monitoring Directorate and Election Agents. Is this intended?

D. The current draft of Section 14(1) provides that if a party is not contesting the National Election, it does not appoint a Chief Election Agent. Therefore, that party will not be represented on the Party Liaison Committee (except the regional committee - if established). Is this what was intended?

E. Section 14(4) states that "each such notice shall be submitted," but does not indicate by whom. It should be clear.

F. Section 14(5) states "in the manner prescribed," but does not indicate by whom. Presumably it would be by the Commission, but it should be made clear.

G. In Section 15 "officer" and "agent" are not defined terms and therefore it is not clear whom the terms include. For example, does officer include staff, the Commissioners, etc.? The terms should be defined or the section should list all of the parties to which it is referring.

III. Chapter IV-Registration of Parties - Section 21(d) should stop after the word inspection in the second line. This section refers to publication of the registered parties after the fact. Section 20(6) and 20(10) refer to publication of the applications for registration. The remaining of the clause appears to give interested parties a second opportunity to object to the registration of a party after the fact, even though such a section was moved between the first and second version of the bill.

IV. Chapter V-Announcement of Election and Submission of Lists of Candidates

A. In Section 23(4) "twenty one" should be changed to "fourteen."

B. In order to cater for objections raised in the negotiating council, the words "unless good cause is shown why such name shall not be deleted" could be added at the end of Section 23(6).

C. Similarly, the words "unless good cause is shown why such right shall not lapse" could be added at the end of Section 23(7).

D. Section 24(1) should read "The Chief Director shall within five days after the expiration of time to submit lists in respect of Section 23, publish . . ."

V. Chapter VI-Preparation for Voting

A. The words "if any" should be inserted after "abbreviated name" in Section 30(1).

B. Section 30(3) should include a statement that a corresponding serial number shall be printed on the ballot papers if that is the intention. If it is not, then what is the purpose of the serial numbers on the counterfoils?

VI. Chapter VII-Voting at Voting Stations

A. Section 36(1) should read, "The voting at all voting stations . . ."

B. The words "and that the person is eligible to vote" should be added at the end of Section 36(2)(a).

C. Section 36(2)(b) states that the presiding or voting officer shall ascertain . . . Section 36(3) states that the voter shall satisfy the presiding officer. Like Section 36(2)(b), it should also include reference to the voting officers.

D. Section 36(3)(b) should state that the voting agent shall have the right to examine a voter to determine whether she has an identification mark, not "examine the identification mark."

E. By implication, does the granting of the affirmative right for the voting agent to look for an identification mark preclude the voting agent from looking at identification, or does it preclude observers from looking for an identification mark?

F. In Section 36(4) "subsection 3(a)" should be replaced with "subsections 2 and 3."

G. Section 36(4)(b) should, like Section 36(3)(c), provide for the Commission to promulgate regulations prescribing alternative arrangements.

H. Should Section 36(5) also include reference to the voting officers?

I. In Section 36(6) "subsection (4)" should be replaced with "subsections 2, 3, and 4."

J. Between Sections 36(7)(b) and 36(7)(c), should there also not be an instruction to fold the ballot paper?

K. Perhaps instead of providing a pen or pencil or crayon, the Commission could provide a stamp with an X on it in order to mark the ballot papers. This would avoid the argument over which mark or marks to accept.

L. Section 37(2) by implication requires at least two party agents to be at all voting stations at all times. Should it not provide for some other manner of observation if such is not the case. For example, international observers or observers could be used if voting agents from two separate parties are not present.

M. Sections 39(4-5) should be reconciled with Section 39(6). As written they are contradictory.

N. It should be clear in Section 40 that the openings of the ballot boxes should be sealed.

O. Section 40(1)(b) should include "and tendered ballot papers."

P. Should Section 40(1)(c) refer to the tendered ballot paper box referred to in Section 39(6)?

Q. Are voting agents, monitors, observers, and international observers permitted to observe the "special voting" referred to in Sections 41 and 42?

R. The words "paragraph (a) of" in Section 41(5) should be deleted.

S. Should not the procedure described in Section 42 follow that in Section 36 except where impractical? In order for ease of interpretation of the Act, the language should be the same.

T. Section 42(6) appears to permit a District Electoral Officer also to be a Presiding Officer. Is this intended?

VII. Chapter VIII-Determination of Results of Poll

A. It is not certain what purpose is referred to in Section 44(2) in the phrase "and shall for that purpose open"

B. In counting the votes, can a ballot paper be disputed by an observer? By negative implication because an affirmative right is given to voting agents, it could not.

C. Section 46(1) should be reconciled with Sections 46(2-5). Section 46(1) is unclear.

D. What happens when a party does not have a voting agent at the counting and therefore does not sign the tally in respect to Section 46(3)? Is the party nevertheless not able to appeal?

E. Does Section 47(3) mean that the Commission can count some, but not all, of the tendered ballots?

VIII. Chapter X-General Provisions - Is it intended that the prohibition in Section 56 be extended through the voting day or days? If so, then it should be made clear.