



ANGUILLA

A BILL FOR

ELECTIONS (AMENDMENT) ACT, 2020

Published by Authority

ELECTIONS (AMENDMENT) ACT, 2020

TABLE OF CONTENTS

SECTION

1. Interpretation
2. Amendment of section 1
3. Insertion of new section 21A
4. Amendment of section 32
5. Deletion of section 34
6. Amendment of section 44
7. Insertion of new section 44A
8. Amendment of section 45
9. Amendment of section 47
10. Amendment of section 51
11. Amendment of section 52
12. Amendment of section 53
13. Insertion of new section 53A
14. Amendment of section 56
15. Insertion of new section 56A
16. Amendment of section 60
17. Amendment of section 61
18. Insertion of new section 61A
19. Amendment of section 63
20. Insertion of new section 63A
21. Amendment of section 64
22. Insertion of new section 64A
23. Amendment of section 65
24. Amendment of section 66
25. Amendment of section 69
26. Amendment of section 76
27. Amendment of section 95
28. Citation

I Assent

Timothy J. Foy, OBE
Governor

Date

ANGUILLA

A BILL FOR

ELECTIONS (AMENDMENT) ACT, 2020

[Gazette Dated: _____, 2020] [Commencement: Assent under section 57 of the Constitution]

An Act to amend the Elections Act, 2019 (Act No.18/2019).

ENACTED by the Legislature of Anguilla

Interpretation

1. In this Act the “Principal Act” means the Elections Act, 2019 (Act No. 18/2019).

Amendment of Section 1

2. Section 1 of the Principal Act is amended by—

- (a) deleting the definition of “electronic tabulating system”;
- (b) deleting the definition of “rejected ballot paper (electronic tabulating system)” and substituting it with the following—

““rejected ballot paper (manual casting of votes and electronic tabulating machine)” means a ballot paper which at the close of the poll has been found in the ballot box—

- (a) unmarked or so improperly marked—
 - (i) that it cannot be read by the electronic tabulating machine and,
 - (ii) that in the opinion of the returning officer, it cannot be counted;
 - (b) but was not supplied by the returning officer; or
 - (c) displays writing or marks by which the voter could be identified;”;
- (c) deleting “rejected ballot paper (manual counting system)” and substituting it with the following—

““rejected ballot paper (manual voting system)” means a ballot paper which at the close of the poll has been found in the ballot box—

- (a) unmarked or so improperly marked that, in the opinion of the returning officer, it cannot be counted;
 - (b) but was not supplied by the returning officer; or
 - (c) displays writing or marks by which the voter could be identified;”;
- (d) inserting the following new definitions in the appropriate alphabetical order—

“electronic tabulating machine” means the mechanical equipment used for the electronic voting system;

“electronic voting system” means voting using electronic means to cast and count votes;

“manual voting system” means casting and counting votes by non-electronic means;”.

Insertion of new section 21A

3. The Principal Act is amended by inserting the following new section directly after section 21—

“No registration after issuance of writ for election

21A. Where the Governor issues a writ of election pursuant to section 36, no new applications for registration shall be allowed until after that election.”.

Amendment of section 32

4. The Principal Act is amended in section 32 by deleting subsection (8).

Deletion of section 34

5. The Principal Act is amended by deleting section 34.

Amendment of section 44

6. Section 44 of the Principal Act is amended by—

- (a) inserting the following immediately before the word “the” where it first occurs—
“Where the manual voting system is used”;
- (b) deleting subsection (3).

Insertion of new section 44A

7. The Principal Act is amended by inserting the following new section immediately after section 44—

“Electronic tabulating machines

44A. (1) The Supervisor of Elections shall supply to each returning officer an appropriate number of electronic tabulating machines for the polling stations in his electoral district.

(2) A ballot box shall be attached to each electronic tabulating machine.

(3) Every tabulating machine shall have a slit or narrow opening on the top through which ballot papers may be inserted into the machine.

(4) Every tabulating machine shall be so constructed that—

(a) the contents of the attached ballot box cannot be removed without detaching the ballot box from the machine.

(b) a seal can be used to seal the opening preventing any person inserting any ballot papers into the ballot box following the close of poll.”.

Amendment of section 45

8. Section 45 of the Principal Act is amended by—

(a) inserting the following phrase directly before the word “the” where it first occurs—

“Where the manual voting system is used,”;

(b) inserting the following new subsection directly after subsection (1)—

“(1a) Where the electronic voting system is used, the returning officer shall provide each presiding officer or group of presiding officers with an electronic tabulating machine and such number of ballot papers as in the opinion of the returning office may be necessary.”.

Amendment of section 47

9. The Principal Act is amended in section 47 by deleting subsection (1) and substituting it with the following—

“47 (1) The poll shall be taken in each electoral district by secret ballot in accordance with the provisions of sections 53, 53A, 54 and 56A.”.

Amendment of section 51

10. The Principal Act is amended by deleting section 51 and substituting it with the following—

“Use of manual and electronic voting system

51. For the purposes of this Act the manual voting system or the electronic voting system may be used for general elections or in any other election or referendum in Anguilla.”.

Amendment of section 52

11. The Principal Act is amended by deleting section 52 and substituting it with the following—

“Testing of electronic tabulating machines

52. (1) Where the electronic voting system is to be used for general elections, on any day not more than 10 days prior to the election day, the Supervisor of Elections shall conduct the testing of the electronic tabulating machines to ascertain that the equipment will be without error.

(2) A public notice of the time and place for the testing of the electronic tabulating machines under subsection (1) shall be provided by the Supervisor of Elections at least 40 hours prior to such testing, by publication or announcement in designated media service of general circulation in Anguilla.

(3) Upon testing of the electronic tabulating machines the Supervisor of Elections shall certify the accuracy of the tests and such tests shall be open to representatives of political parties, independent candidates, members of the press and the general public.

(4) Where any errors are detected upon the testing of the electronic tabulating machines, the cause for such errors shall be ascertained and corrected, and an errorless count shall be made on each machine before each electronic machine is approved for use in the election.

(5) For the purpose of this section the electronic tabulating machines shall be tested with or without the use of electricity.”.

Amendment of section 53

12. The Principal Act is amended by deleting the marginal note and substituting it with the following—

“Proceeding at poll (manual voting system)”.

Insertion of new section 53A

13. The Principal Act is amended by inserting the following new section immediately after section 53—

“Proceeding at poll (electronic voting system)

53A. (1) At the hour fixed for opening the poll the presiding officer and the poll clerk shall, in the view of the candidates, their agents and voters that are present unlock the equipment to confirm that there are no ballot papers or other papers inside the ballot box attached to the electronic tabulating machine.

(2) The presiding officer shall, in the view of the candidates, their agents, and voters that are present—

- (a) lock the machine referred to in subsection (1) and the locked machine shall remain locked and in full view of those present until the close of poll;
- (b) record the unique serial number of the machine referred to in subsection (1) on a form supplied by the Supervisor of Elections and said form shall be dated and initialled by the presiding officer and the agents present;
- (c) verify that the public count is zero on each electronic tabulating machine;
- (d) verify the accuracy of the date and time on the electronic tabulating machine;
- (e) confirm that each electronic tabulating machine is in counting mode;
- (f) correctly insert the media stick into the machine;
- (g) record the unique serial number of the media stick referred to in paragraph (f) on the form supplied by the Supervisor of Elections in paragraph (b) and said form shall be dated and initialled by the presiding officer and the agents present;
- (h) at minimum, cause each electronic tabulating system to generate a report for written confirmation that the public count on each electronic tabulating machine is zero and the presiding officer, poll clerk and candidates or agents present shall sign the report; and
- (i) insert the report into a designated pouch and store in a secure location to be returned with elections materials.

(3) Notwithstanding subsections (1) and (2) where any electronic tabulating machine was used for the conduct of an advance poll, the presiding officer shall, at the hour fixed for opening the poll and in the view of the candidates, their agents and voters that are present—

- (a) run the tape of each electronic tabulating machine used to conduct the advance poll to generate a report for written confirmation that the count on each report matches the count on each report generated at the end of the advance poll in accordance with section 61A and the presiding officer, poll clerk and candidates or agents present shall sign and date the report;
- (b) use the form referred to in 61A(1)(d)(e) to ensure the same media stick used for each tabulating machine at the advance poll is re-inserted into the same machine;
- (c) insert the media stick referred to in paragraph (b) in the correct machine;

- (d) verify the accuracy of the date and time on the electronic tabulating machine;
- (e) confirm that each electronic tabulating machine is in counting mode;
- (f) insert the report referred to in subsection (3) (a) into a designated pouch and store in a secure location to be returned with elections materials.

(4) The presiding officer shall secure the admittance of every voter in the polling station and shall see that they are not impeded from voting.

(5) Every voter, upon entering the polling station, shall declare his name, address, date of birth and occupation, or present his voter registration card if any has been issued to him. The poll clerk shall then ascertain if the name of the voter appears on the official list of voters used at the polling station. When it has been confirmed that the person is qualified to vote at the polling station, his name, address and occupation shall be entered in the poll book to be kept by the poll clerk in accordance with the Regulations, a number corresponding to the number allotted to the voter on the official list of voters shall be prefixed to the voter's name in the appropriate column of the poll book, and the voter shall be immediately allowed to vote, unless an election officer or any agent of a candidate present at the polling station desires that he be first sworn.

(6) The poll clerk shall—

- (a) make such entries in the poll book opposite the name of each voter as the presiding officer directs in accordance with this Act;
- (b) enter in the poll book opposite the name of each voter the word “voted” immediately after the voter's ballot paper has been deposited in the ballot box;
- (c) enter in the poll book the word “Sworn” or “Affirmed” opposite the name of each voter, to whom any oath or affirmation has been administered indicating the nature of the oath or affirmation; and
- (d) enter in the poll book the words “Refused to be sworn” or “Refused to affirm” or “Refused to answer” opposite the name of each voter who has refused to take an oath or affirmation, when he has been legally required to do so, or has refused to answer questions which he has been legally required to answer.”.

Amendment of section 56

14. The Principal Act is amended in section 56 by deleting the marginal note and substituting it with the following—

“General mode of taking ballot (manual voting system)”.

Insertion of new section 56A

15. The Principal Act is amended by inserting the following new section immediately after section 56—

“General mode of taking ballot (electronic voting system)

56A. (1) Each voter, after identifying himself, shall receive from the presiding officer a ballot paper on which such officer has previously placed his initials as directed in accordance with the Regulations, and on the counterfoil of which he has placed a number corresponding to the consecutive number on the official list of voters and entered in the poll book opposite the name of the voter.

(2) The presiding officer shall—

- (a) instruct the voter how to make his selection, which shall be a cross (“X”) or shading the designated oval sign, by referring him to a specimen ballot paper posted in a conspicuous place at the polling station;
- (b) remove the counterfoil from the ballot paper and insert the ballot paper into a protective folder before handing the folder with the ballot paper to the voter; and
- (c) provide the voter with a pen to mark his ballot.

(3) Immediately after complying with the subsections (1) and (2), the presiding officer shall direct the voter to—

- (a) remove the ballot paper from the protective folder;
- (b) mark the ballot paper to make his selection; and
- (c) insert the marked ballot paper directly into the slit or narrow opening of the electronic tabulating machine.

(4) Where the voter is unable to vote in the manner prescribed by this Act due to age, illiteracy, or physical incapacity the presiding officer may assist the voter in marking the ballot paper.

(5) Notwithstanding subsection (4) the presiding officer shall not seek to influence the voter with regard to who the latter intends to vote for.

(6) The voter, on receiving the ballot paper shall immediately enter one of the polling compartments in the polling station and mark a cross (“X”) or shade the designated oval sign, on his ballot paper using the pen provided.

(7) The cross (“X”) and shading referred to in subsection (6) shall be marked within the oval opposite the name of the candidate for whom the voter intends to vote in the single-member electoral district and, in the case of the single island wide electoral district where there is more than one seat to be filled, the voter shall mark the cross (“X”) within the designated oval sign or shade the designated oval sign opposite the names of the candidates for whom he intends to vote.

(8) The voter shall insert the marked ballot paper directly into the slit or narrow opening of the electronic tabulating machine and return the empty protective folder to the presiding officer.

(9) A voter who has made an error on the ballot paper given to him shall return that ballot paper to the presiding officer and the presiding officer shall cancel it by writing the word “spoiled” across the back of the same and shall give another ballot paper to that voter in accordance with subsection (2)(b).

(10) Once the voter inserts the marked ballot paper directly into the into the slit or narrow opening of the electronic tabulating machine, the machine will scan, count and record the number of votes given to each candidate

(11) Where a voter inserts a marked ballot paper into the electronic tabulating machine and the machine does not detect an error, the machine will accept the ballot.

(12) Where a voter inserts a marked ballot paper into the electronic tabulating machine and the machine detects an error, the machine will alert the voter by displaying on the screen one of the following messages—

(a) over-voted; or

(b) under-voted.

(13) The screen of the electronic tabulating machine will display the message over-voted where—

(a) the voter has selected more than one candidate on the ballot paper in the single-member electoral district; or

(b) the voter has selected more candidates on the ballot paper than the number to be returned in the election for the single island wide electoral district.

(14) The screen of the electronic tabulating machine will display the message under-voted where—

(a) the voter has not selected a candidate on the ballot paper in the single-member electoral district;

(b) the voter has selected a number of candidates on the ballot paper that is less than the number to be returned in the election for the single island wide electoral district; or

(c) the voter has not selected a candidate at all.

(15) Where the machine alerts the voter to an error and displays a message referred to in (12)(a) or (b) the machine will display two options to the voter—

(a) cast; or

(b) return.

(16) Where the voter selects the cast option the electronic tabulating machine will accept the ballot.

(17) Where the voter selects the return option, the ballot will be returned to the voter and—

- (a) where the voter under-voted he may correct the ballot and re-insert the corrected ballot into the electronic tabulating machine; or
- (b) where the over has over-voted he shall return that ballot paper to the presiding officer and the presiding officer shall cancel it by writing the word “spoiled” across the back of the same and shall give a new ballot paper to that voter in accordance with subsection (2)(b).

(18) Every voter shall vote without undue delay and shall leave the polling station as soon as his ballot paper has been inserted into the electronic tabulating machine.

(19) If at the hour of the closing of polls in accordance with section 41(3), there are any voters who—

- (a) are qualified to vote, but have not been able to do so since their arrival at the polling station; and
- (b) are in the line of waiting voters;

the poll shall be kept open to enable such persons to vote in accordance with the directions of the presiding officer.

(20) Where there are any matters or issues to be determined with respect to the circumstances referred to in subsection (19), the presiding officer shall make a decision and the decision of the presiding officer shall be final.”.

Amendment of section 60

16. The Principal Act is amended in section 60 by deleting paragraph (a)(i) in subsection (1) and substituting it with the following—

- “(i) a police officer, customs officer, immigration officer, doctor, emergency medical technician,”.

Amendment of section 61

17. The Principal Act is amended in section 61 by deleting the marginal note and substituting it with the following—

“**Conduct of advance polls (manual voting system)**”.

Insertion of new section 61A

18. The Principal Act is amended by inserting the following new section directly after section 61—

“Conduct of advance polls (electronic voting system)

61A. (1) At an advance poll an electronic tabulating machine shall be provided for each polling division of each electoral district and at the close of such poll the officer conducting the poll shall—

- (a) record on a form supplied by the Supervisor of Elections the serial number of the electronic tabulating machine used at his poll along with the serial number of the media stick used in said machine and cause the presiding officer to place his initials and date on the form;
- (b) count and record the number of counterfoils;
- (c) seal the slit or narrow opening of the electronic tabulating machine with the seal provided by the Supervisor of Elections and cause the presiding officer to place his initials and date on the seal;
- (d) select “close poll” on the electronic tabulating machine and run the paper tape to generate the report of the votes cast;
- (e) initial and date the report referred to in paragraph (d);
- (f) remove the media stick placing it in the designated pouch with the form referred to in paragraph (a) and the printed and signed report referred to in paragraph (e);
- (g) secure the designated pouch with a security tag and record on a form supplied by the Supervisor of Elections, the serial number of the security tag used to secure each pouch;

(2) The officer conducting the poll shall, after complying with subsection (1), complete the prescribed form in accordance with the provisions of section 63(1)(j) and the Regulations.

(3) The presiding officer and the agents present shall—

- (a) examine the security tag used to secure the designated pouch to ascertain that the serial number on the security tag matches the serial number recorded by the officer conducting the poll pursuant to subsection (1)(f); and
- (b) place their initials and the date on the form referred to in subsection (1)(f).

(4) The electronic tabulating machine used at an advance poll along with all the relevant forms and the designated pouch shall be immediately given to the Supervisor of Elections by the officer conducting the poll and said electronic tabulating machine forms and pouches shall be kept intact, in a vault in the office of the Supervisor of Elections, until delivery by him on polling day in the election to the presiding officer at the polling station identified for the casting of votes within the electoral district to which the pouch relates.

(5) The presiding officer shall examine the seal of each tabulating machine and pouch referred to in subsection (4) immediately before the commencement of the poll at an election in the presence of any persons who are authorised under this Act to be present at that time to ensure the seal on the machine and the security tag on the pouch was not broken and that it displays the initials of the presiding officer in subsection (1)(b); and

(6) For the avoidance of doubt, it is hereby declared that the provisions of this Act applying to voters, proceedings at poll, the voting procedure and to elections shall apply so far as is convenient to the taking of an advance poll as they apply to the taking of a poll at an election.”.

Amendment of section 63

19. The Principal Act is amended by deleting the marginal note and substituting it with the following—

“Proceeding at the close of poll (manual voting system)”.

Insertion of new section 63A

20. The Principal Act is amended by inserting the following new section immediately after section 63—

“Proceedings at the close of poll (electronic voting system)

63A. (1) Immediately upon the close of the poll for an election the presiding officer shall, in the order given, perform the following acts—

- (a) announce the close of poll;
- (b) record in the poll book, in the manner specified in paragraph (g), the hour at which the poll was closed;
- (c) seal the slit or narrow opening of the electronic tabulating machine with the seal provided by the Supervisor of Elections and place his initials on the seal;
- (d) select “close poll ” on the electronic tabulating system and run the paper tape to generate the report of the votes cast;
- (e) record the total number of voters who voted as shown by the report generated in paragraph (d);
- (f) sign and initial the report referred to in paragraph (d);
- (g) verify the number of voters whose names appear in the electronic poll book as having voted matches the number shown on the report generated by the electronic tabulating system;
- (h) make an entry in the electronic poll book in the space immediately below the name of the voter who voted last and the entry shall include the following information—

- (i) the name of the polling station,
 - (ii) the number (written in words) of voters who voted at this election in the named polling station,
 - (iii) the hour at which the polling station was closed, and
 - (iv) the signature of the presiding officer;
- (i) remove the media stick referred to in 53A(1)(b), placing it with the printed report and insert it into a designated pouch along with the report generated at the opening of the poll in 53A(1)(a);
 - (j) seal the designated pouch and on a form provided by the supervisor of elections record the serial number on the seal and said form shall be dated and initialled by the presiding officer and the agents;
 - (k) place the designated pouch along with other election materials into the designated carrying case;
 - (l) lock and secure the electronic tabulating machine and election materials ensuring they are secure from unauthorised physical interference;
 - (m) count the counterfoils of all used ballot papers and place them in the special envelopes supplied for that purpose and indicate on the envelopes in words the number of counterfoils counted and seal the envelopes and initial them;
 - (n) where there are spoiled ballot papers, count and place them in the special envelopes supplied for that purpose and indicate on the envelopes in words the number of spoiled ballot papers counted and seal the envelopes and initial them;
 - (o) count the unused ballot papers, place them in the special envelopes supplied for that purpose and indicate on the envelopes in words the number of such unused ballot papers, and seal the envelopes and initial them;
 - (p) check the number of ballot papers supplied by the returning officer against the number of spoiled ballot papers, if any, the number of unused ballot papers and the number of voters whose names appear in the poll book as having voted in order to ascertain that all ballot papers are accounted for; and
 - (q) record the number of electronic tabulating machines in his possession, the number of ballot papers issued to voters, the number of unused ballot papers, the number of spoiled ballot papers and all other information required in accordance with Form 24 and attach his signature to the document containing the aforementioned information.

(2) The electronic tabulating machines, electronic poll book, envelopes containing the counterfoils of the used ballot papers, spoiled and unused ballot papers, official list of voters, and other documents used at a polling station for the election shall be transmitted to the returning officer who shall transmit the aforementioned materials to the place identified for the counting of votes.

(3) The presiding officer shall, with the electronic tabulating machines and aforementioned papers, transmit to the returning officer for the appropriate district, in the envelope provided for that purpose, the keys of such ballot boxes.

(4) The returning officer for each single-member electoral district may specially appoint one or more persons for the purpose of collecting the electronic tabulating machines and papers aforementioned from specified polling stations, and such persons shall, on delivering the ballot boxes and papers to the returning officer, take the oath in Form 25.

(5) The House of Assembly or a polling station in a single-member electoral district may be designated as the place to conduct the counting of votes for both the single-member electoral districts and the single island wide electoral district.

(6) No electronic tabulating machine shall be moved from the place identified for the counting of votes until all ballots for that district have been counted and the provisions of section 64 have been fulfilled.

(7) When the ballots in an electoral district have been counted for both the single-member electoral district and the island wide district, the electronic tabulating machine and papers shall be transported to such other place identified by the Supervisor of Elections.

(8) Subject to subsection (9), the candidates or their agents are entitled to accompany the electronic tabulating machine and documents referred to in subsection (2), to the place identified for the counting of votes and subsequently to such other place identified by the Supervisor of Elections.

(9) Where the conveyance carrying the electronic tabulating machines cannot comfortably accommodate more than one polling agent or candidate, a polling clerk and a police officer shall accompany the electronic tabulating machines. The polling agent or agents and candidates shall, if they so desire, be allowed to follow the conveyance carrying the electronic tabulating machines in a separate conveyance in convoy.”.

Amendment of section 64

21. The Principal Act is amended by deleting the marginal note and substituting it with the following—

“Counting of votes (manual voting system)”.

Insertion of new section 64A

22. The Principal Act is amended by inserting the following new section directly after section 64—

“Counting of votes (electronic voting system)

64A. (1) Where the electronic voting system is used, the returning officer, subject to subsection (2), shall perform the duties outlined in subsection (3), after the designated pouches from every polling station within a single-member electoral district have been received.

- (2) The returning officer shall perform the duties outlined in subsection (3)—
 - (a) in the presence of the candidates or their agents; or
 - (b) where a candidate is absent or unrepresented, in the presence of the other candidates or agents and in the presence of persons authorised to be present at the counting of the votes where the candidates or his agents are absent; or
 - (c) where none of the candidates is represented, in the presence of at least two voters.
- (3) The duties referred to in subsection (1) are as follows—
 - (a) examine the designated pouches and the envelopes received from each polling station one at a time, ensuring that the seals on the pouches and the envelopes are securely affixed;
 - (b) examine the serial number on the security tag of each designated pouch from each polling station to ensure it matches the serial number recorded by the presiding officer at each polling station;
 - (c) count and record the number of designated pouches and envelopes received from each polling station, ensuring that all designated pouches and envelopes are accounted for in accordance with this Act;
 - (d) distribute tally sheets to not less than two poll clerks and two agents or witnesses upon which they shall record the total votes cast for each candidate in in the single member electoral district and the single island wide electoral district;
 - (e) open each pouch, one at a time, and cause an IT technician to insert each media stick, one at a time, into a laptop to access the result of the poll for each electoral district..
 - (f) cause the overhead display screen linked to the laptop referred to in paragraph (e) to display the results of the poll for each electoral district simultaneously;
 - (g) total the votes for each candidate in the single member electoral district and the single island wide electoral district.

(4) Where the tabulation of the number of votes pursuant to this section results in a margin of one percent but not less than one half percent of the total votes cast between—

- (a) the two leading candidates in a single-member electoral district; or
- (b) the fourth and fifth leading candidates in the single island wide electoral district after the votes from all polling stations are tabulated;

there shall be an automatic electronic re-tabulation of the votes.

(5) Where the margin of victory in subsection (4) is less than one half percent of a percent of the total votes cast or there is an equality of votes, there shall be a manual recount of the votes.

(6) Notwithstanding an automatic recount referred to in subsections (4) and (5), a candidate or his counting agent present at the count may, by completing Form 27, demand a recount.

(7) Unless the returning officer considers the demand under subsection (6) to be unreasonable having regard to the result of the first count, he shall proceed to initiate an electronic recount of the votes to ascertain the result of the poll.

(8) The recount referred to in subsections (4), (5), (6) and (7) shall only be initiated after the first count is completed for each of the single member electoral districts and the recount shall be conducted in accordance with 65(3).

(9) The returning officer shall, after the count or recount of the votes as the case may be—

- (a) subject to the final declaration made by the Supervisor of Elections under subsection (17)—
 - (i) in the case of a single-member electoral district, declare the candidate who is found to have the largest number of votes to be elected as the member for the electoral district,
 - (ii) in the case of the single island wide electoral district, declare the number of votes received by each candidate;
- (b) place the media sticks from each polling station back into their designated pouch and reseal pouch;
- (c) detach the ballot box from each electronic tabulating machine, one at a time, and remove the ballot papers from the ballot box and place in to separate envelopes the ballot papers cast and place these along with all other papers, lists, documents and records of the result of the count conducted for that district into packets and indicate on the packet in words the district from which those ballot papers, other papers, lists documents and records came and shall seal and initial the packet. Where the agents or the witnesses present desire, the returning officer may allow them to seal the packets or initial the packets in addition to or instead of the returning officer and the returning officer shall place the packets in a ballot box or boxes and seal the said box or boxes;
- (d) complete Form 26; and

- (e) cause to be delivered to the Supervisor of Elections at the place identified pursuant to section 63(5) the following items—
 - (i) all ballot boxes containing the initialled and sealed packets,
 - (ii) envelope containing the security tags used to secure each ballot box, and
 - (iii) a statement showing the total number of votes polled for each candidate within that district in accordance with Form 25.

(10) Subject to subsection (11), as soon as is practicable after he receives all media sticks, envelopes, statements and packets, the Supervisor of Elections shall ascertain the total votes cast in favour of each candidate by checking the votes polled for each candidate recorded on the statement submitted by the returning officers of each district and thereafter make a declaration in accordance with subsection (17).

(11) Where a media stick has been destroyed or is missing, the Supervisor of Elections shall ascertain the cause of the destruction or loss and shall complete the validation of the results from the statement of the votes recorded by the returning officer for that district.

(12) If at any time before the counting of votes is completed in accordance with this section, any media stick used at any polling station is destroyed, lost, damaged or tampered with, to such an extent that the result of the poll at that polling station cannot be ascertained, the returning officer for the particular district from which that media stick came, shall immediately report the matter to the Supervisor of Elections.

(13) After taking all the material circumstances into account, the Governor shall, in consultation with the Supervisor of Elections—

- (a) declare by proclamation the poll at the polling station referred to under subsection (12) to be void and issue such directions as he thinks fit for the resumption and completion of the counting of votes and of the election; and
- (b) issue a writ under the Public Seal of Anguilla addressed to the relevant returning officer, appointing a day, and fixing the hours for the taking of a new poll at that polling station.

(14) The poll under subsection (13)(b) shall be held at the appropriate polling station or stations in accordance with the provisions of this Act as if it is the original poll.

(15) The Supervisor of Elections shall adjourn the declaration of results pursuant to subsection (17) until the taking of the new poll in accordance with subsection (13)(b) has been completed.

(16) For the avoidance of doubt, it is declared that all provisions relating to proceedings at the close of poll, transporting of electronic tabulating machines with their ballot boxes, statements etc., to counting and recounting of votes and to elections shall

be complied with as regards all other polling stations to which subsection (12) does not apply.

(17) On the completion of the count or recount, as the case may be, in an election—

- (a) in a single-member electoral district to return one member to the House, the candidate with the largest number of votes shall be declared by the Supervisor of Elections to be elected as a member for the single-member electoral district;
- (b) in the single island wide electoral district to return more than one member to the House, the number of candidates equal to the members to be returned with the largest number of votes shall be declared by the Supervisor of Elections to be elected as members for the single island wide electoral district.

(18) Whenever after the count of votes (including any recount) is completed, an equality of votes is found to exist between any candidates and the addition of one vote would entitle any of those candidates to be elected—

- (a) in the case of a single-member electoral district, a new writ shall be issued in respect of that electoral district and all proceedings for an election of a member for that electoral district shall commence afresh;
- (b) in the case of the single island wide electoral district, the single returning officer shall declare elected any candidate or candidates who received a larger number of votes than the number so found equal and a new writ shall be issued and all proceedings shall be commenced afresh for the election of a member or members to fill the remaining vacancy or vacancies.

(19) The proceedings for an election commenced by the new writ issued in subsections 18(a) and (b) shall be between those candidates where an equality of votes is found to exist.”.

Amendment of section 65

23. The Principal Act is amended in section 65 by—

- (a) deleting the marginal note and substituting it with the following—

“Counting of votes (manual voting system and electronic tabulating machines)”;

- (b) deleting subsection (1) and substituting it with the following—

“65. (1) “Where the manual voting system is used to cast votes and the electronic tabulating machine is used to count said votes, the returning officer, subject to subsection (2), shall perform the duties outlined in subsection (3), after the ballot boxes from every polling station within a single-member electoral district have been received.”.

Amendment of section 66

24. The Principal Act is amended by deleting section 66 and substituting it with the following—

“Mechanical failure of electronic tabulating machines

66. (1) Where the electronic voting system is used to cast and count votes at a polling station and the equipment develops a mechanical failure on Election Day or day of referendum, the presiding officer shall immediately report the matter to the Supervisor of Elections.

(2) Upon reporting of the mechanical failure by the presiding officer to the Supervisor of Elections under subsection (1), the Supervisor of Elections shall take all material circumstances into account and if satisfied that the mechanical failure of the equipment is material the Supervisor of Elections shall direct that the manual voting system and procedure for the manual voting system under this Act, be used for the affected polling station the remainder of the election day.

(3) Where the electronic tabulating machine is used to count votes at the place designated for counting of votes pursuant to section 63(5) and the equipment develops a mechanical failure on Election Day or day of referendum, the returning officer shall immediately report the matter to the Supervisor of Elections.

(4) Upon reporting of the mechanical failure by the returning officer to the Supervisor of Elections under subsection (3), the Supervisor of Elections shall take all material circumstances into account and if satisfied that the mechanical failure of the equipment is material the Supervisor of Elections may direct that another electronic tabulating machine be used or that the manual counting system be used to count the votes for the affected polling station.”.

Amendment of section 69

25. The Principal Act is amended in section 69 by deleting the marginal note and substituting it with the following—

“Election Return (manual and electronic voting system)”.**Amendment of section 76**

26. The Principal Act is amended in section 76—

(a) in subsection (4) by deleting “, subject to the right of appeal to the Court of Appeal.”; and

(b) by deleting subsection (5)(b).

Amendment of section 95

27. The Principal Act is amended by deleting section 95 and substituting it with the following—

“Computation of time

95. (1) In computing time for the purposes of this Act, any public holiday under the Public Holidays Act shall be excluded.

(2) Where anything required to be done under this Act must be completed on any day excluded under subsection (1), or on a Saturday or Sunday, that thing may be done on the next working day.”.

Citation

28. This Act may be cited as the Elections (Amendment) Act, 2020.

Terry T. C. Harrigan
Speaker

Passed by the House of Assembly this day of , 2020

Lenox J. Proctor
Clerk of the House of Assembly

OBJECTS AND REASONS

(The objects and reasons do not form part of the Bill)

This Bill seeks to amend the Elections Act, 2019 (Act No. 18/2019) to allow for the electronic casting of votes. The existing Act currently provides for the manual counting of votes cast manually as well as the electronic tabulation of votes cast manually.

Clause 1 is the interpretation section of the Bill.

Clause 2 refines existing definitions and includes new definitions to differentiate between the manual and electronic voting system.

Clause 3 provides that once a writ of election is issued for an election no new application for registration will be allowed until after that election.

Clause 4 deletes a subsection that was superfluous.

Clause 5 deletes provisions regarding the fixed date for elections which is already addressed in the Constitution.

Clause 6 makes it explicit that the provisions outlined in section 44 apply where the manual voting system is used.

Clause 7 specifies that the provisions outlined in section 45 apply where the electronic voting system is used.

Clause 8 addresses the supply of election materials when using the manual and electronic voting system.

Clause 9 amends section 47 to ensure it captures the added provisions for proceedings at poll with regard to the electronic voting system.

Clause 10 maintains the substances of the existing provision while replacing the reference to electronic tabulating system with electronic voting system.

Clause 11 replaces multiple references to electronic tabulating system with references to electronic tabulating machines.

Clause 12 seeks to maintain clarity by amending the marginal note to specify that the provisions addressing the proceedings at poll in section 53 are with regards to the manual voting system.

Clause 13 inserts new provisions addressing the proceedings at poll using the electronic voting system.

Clause 14 seeks to maintain clarity by amending the marginal note to specify that the provisions addressing the general mode of taking the ballot are with regard to the manual voting system.

Clause 15 inserts new provisions addressing the general mode of taking the ballot using the electronic voting system.

Clause 16 includes immigration and customs officers to the list of voters allowed to vote at an advance poll on account of the nature of their employment.

Clause 17 aims to maintain clarity by amending the marginal note to specify that the provisions addressing the conduct of advance poll are with regard to the manual voting system.

Clause 18 inserts new provisions addressing the conduct of advance polls using the electronic voting system.

Clause 19 amends the marginal note to specify that the provisions addressing the proceedings at the close of poll are with regard to the manual voting system

Clause 20 inserts new provisions addressing the proceedings at the close of poll using the electronic voting system.

Clause 21 seeks to maintain clarity by amending the marginal note to specify that the provisions addressing the counting of votes are with regard to the manual voting system

Clause 22 inserts new provisions addressing the counting of votes using the electronic voting system.

Clause 23 amends the marginal note to specify that the provisions of the section addresses the scenario where the voter uses the manual voting system to cast his vote but the electronic tabulating machines are used by the returning officer to count the votes casted manually.

Clause 24 addresses the steps to be taken where there is a mechanical failure of one or more of the electronic tabulating machines.

Clause 25 changes the reference in the marginal note of section 69 from electronic tabulating system to electronic voting system.

Clause 26 makes it clear that any determination by a High Court Judge with regard to an election petition is final and not subject to the appeal which is line with the Constitution.

Clause 27 reverts to the previous position in the computation of time in which weekends are included. This is necessary so that actions to be taken in accordance with the timelines set out in the Bill can be completed within each quarter as intended.

Clause 28 provides the citation for the Bill.