

AS TABLED IN THE HOUSE OF ASSEMBLY

A BILL

entitled

MUNICIPALITIES AMENDMENT (NO. 2) ACT 2014

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WHEREAS it is expedient to amend the Municipalities Act 1923 to make further provision for the ordinary municipal election to be held in May 2015 and any other municipal election held thereafter;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Citation

1 This Act, which amends the Municipalities Act 1923 ("the principal Act"), may be cited as the Municipalities Amendment (No. 2) Act 2014.

Amends section 1

2 Section 1(1) of the principal Act is amended—

- (a) notwithstanding section 2(2)(b) of the Municipalities Amendment Act 2013, by bringing the provisions inserted by section 3(c) of that Act into full operation on the day that this Act receives the Governor's assent;
- (b) by deleting "the" in the defined expression "the municipal area";

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- (c) by repealing the definitions of “business ratepayers’ election”, “business ratepayers’ register”, “mayoral election”, “municipal residents’ election” and “municipal residents’ register” (which were inserted by section 3(c) of the Municipalities Amendment Act 2013) and substituting the following definitions, each in its correct alphabetical place—

“ “business ratepayers’ election” means a municipal election to elect the business ratepayers’ Councillors of a Corporation;

“business ratepayers’ register” means the register, established and maintained by the Parliamentary Registrar pursuant to section 9C(1), of all the business ratepayers qualified to be registered for a municipal election of a Corporation;

“mayoral election” means a municipal election to elect the Mayor of a Corporation;

“municipal residents’ election” means a municipal election to elect the residents’ Councillors of a Corporation;

“municipal residents’ register” means the register, established and maintained by the Parliamentary Registrar pursuant to section 9BA, of all the municipal residents qualified to be registered for a municipal election of a Corporation;” and

- (d) by inserting the following definitions, each in its correct alphabetical place—

“ “business ratepayers’ Councillor” means a Councillor referred to in section 18A(1)(a), elected in a business ratepayers’ election;

“nominee” means an individual natural person appointed under section 9C to vote on behalf of a registered business ratepayer;

“residents’ Councillor” means a Councillor referred to in section 18A(1)(b), elected in a municipal residents’ election;

“subsidiary” in relation to a company, has the meaning given in section 86 of the Companies Act 1981;”.

Amends section 9

3 Section 9 of the principal Act is amended—

- (a) by repealing subsections (1B) to (1I);
- (b) in subsection (2), by deleting “an Alderman or Common Councillor” and substituting “a business ratepayers’ Councillor or residents’ Councillor”; and
- (c) in subsection (3), by deleting “(2011), the Secretary of a Corporation in consultation with the Parliamentary Registrar” and substituting “(2015),

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the Parliamentary Registrar in consultation with the Secretary of a Corporation”.

Amends section 9A

4 Section 9A of the principal Act is amended—

- (a) notwithstanding section 2(2)(b) of the Municipalities Amendment Act 2013, by bringing the provisions of section 7 of that Act (repealing and replacing section 9A of the principal Act) into full operation on the day that this Act receives the Governor’s assent; and
- (b) by deleting “entitled” wherever it appears in that section, and in each case substituting “qualified”.

Amends section 9B

5 Section 9B of the principal Act is amended, notwithstanding section 2(2)(b) of the Municipalities Amendment Act 2013, by bringing the provisions inserted by section 8 of that Act (section 9B(1A) of the principal Act) into full operation on the day that this Act receives the Governor’s assent.

Inserts section 9BA

6 The principal Act is amended by, after section 9B, inserting—

“Registration of municipal residents

9BA (1) The Parliamentary Registrar shall establish and maintain a register of all the municipal residents in the municipal area of that Corporation.

(2) A municipal residents’ register shall comprise all persons for the time being listed in the parliamentary register as ordinarily resident in the municipal area of that Corporation.”.

Amends section 9C

7 Section 9C of the principal Act is amended—

- (a) notwithstanding section 2(2)(b) of the Municipalities Amendment Act 2013, by bringing the provisions inserted by section 9 of that Act (section 9C of the principal Act) into full operation on the day that this Act receives the Governor’s assent;
- (b) in subsection (1), by deleting “Secretary of each Corporation shall, in consultation with the Parliamentary Registrar” and substituting “Parliamentary Registrar shall, in consultation with the Secretary of a Corporation”;
- (c) in subsection (3)(a), by deleting “entitled” and substituting “qualified”;
- (d) in subsection (4), by inserting “natural person” after “individual”;
- (e) by repealing subsection (6)(c) and substituting—

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- “(c) joint owners or joint occupiers of a valuation unit shall be—
- (i) one of the joint owners or one of the joint occupiers; or
 - (ii) where none of the joint owners, or none of the joint occupiers, is qualified to be a nominee under subsection (5), an individual natural person who is so qualified; and ”;
- (f) in subsection (8), by deleting “municipal elector or as municipal electors” and substituting “business ratepayer or as business ratepayers”;
- (g) in subsection (9), by deleting “municipal elector” and substituting “business ratepayer”;
- (h) by, after subsection (9), inserting—

“(9A) An individual natural person shall be disqualified for being appointed as a nominee to vote on behalf of a business ratepayer or, even if he is so appointed, for voting on behalf of a business ratepayer at a municipal election if he would be disqualified for registration as a business ratepayer by virtue of subsection (9)(b).

(9B) A person shall not be qualified to be registered in a business ratepayers’ register (whether in his own right or as a nominee) more than once at any one time.

(9C) If, notwithstanding subsection (9B), a person’s name is with his knowledge or consent entered in a business ratepayers’ register more than once, he shall be disqualified for voting (whether in his own right or as a nominee) in any municipal election that takes place while his name remains so entered.

(9D) No person shall vote more than once in the same business ratepayers’ election.

(9E) The provisions of this section shall have effect separately in relation to the Corporation of Hamilton and the Corporation of St. George’s, and accordingly nothing in these provisions shall prevent an individual or other person from being registered in relation to, or qualified to vote in, business ratepayers’ elections in relation to both Corporations at the same time, if he is otherwise qualified therefor.”; and

- (i) by repealing subsection (10).

Inserts sections 9D to 9I

8 The principal Act is amended by, after section 9C, inserting—

“Requirements for registration in the business ratepayers’ register

9D (1) The Parliamentary Registrar shall not register any person in a municipal register as a business ratepayer unless—

- (a) that person applies to the Parliamentary Registrar, under section 9E(1), to be registered;

- (b) where the person applying is required to appoint a nominee to vote on his behalf, the application is accompanied by evidence of an appointment in the form specified in subsection (2); and
- (c) the Parliamentary Registrar is satisfied that the person is qualified to be so registered and, where he has appointed a nominee to vote on his behalf, that such nominee is qualified to be so appointed.

(2) The evidence of the appointment of a nominee required for the purposes of subsection (1)(b) shall be an instrument in writing, in such form as the Registrar may determine, setting out the full title or description of the business ratepayer, the valuation unit owned or occupied by the business ratepayer and the full name of the person appointed, and shall be authenticated in such manner as the Registrar may determine.

(3) Where, apart from a question of the appointment of a nominee, the Parliamentary Registrar has doubts as to whether a person is qualified to be registered, the Parliamentary Registrar may require to be satisfied, by such evidence in writing as he thinks fit, as to whether that person qualifies to be registered.

Registration of persons in business ratepayers' register

9E (1) A business ratepayer (in this section referred to as an "applicant") may at any reasonable time apply to the Parliamentary Registrar to be registered in a municipal register as a business ratepayer.

(2) An application under subsection (1) shall be in such form as the Parliamentary Registrar may determine, and shall be accompanied by a lease agreement, or any other document, showing ownership or occupation of the valuation unit.

(3) It shall be the duty of the Secretary of a Corporation to provide to the Parliamentary Registrar such information as the Secretary has relating to whether a business ratepayer qualifies for registration.

(4) Where the Parliamentary Registrar is satisfied that an applicant is qualified to be so registered, then the Parliamentary Registrar shall register him by entering the following particulars in the business ratepayers' register—

- (a) the full name of the applicant;
- (b) where the applicant has appointed a nominee, the full name of the nominee; and
- (c) a concise description, sufficient to identify it, of the valuation unit in respect of which the applicant claims to be registered.

(5) The misnaming of any person in the business ratepayers' register, or the inaccurate description of any valuation unit in the register, shall not prejudice the person's registration if the person or unit is described in such a way as to be commonly recognized.

Maintenance of business ratepayers' register

9F (1) The Parliamentary Registrar shall maintain the business ratepayers' register by making such additions to and cancellations, substitutions and alterations in the register as may from time to time be required to maintain a true and complete record of the business ratepayers and the nominees of business ratepayers.

(2) Without prejudice to the generality of subsection (1), the Parliamentary Registrar shall make such alterations in the business ratepayers' register as may from time to time be required—

- (a) to remove from the register the name of any person who has died;
- (b) to remove from the register the name of any person who is not qualified or has become disqualified for being registered as a business ratepayer or a nominee, or for voting at a municipal election;
- (c) to alter any entry relating to the valuation unit in respect of which any person is registered;
- (d) to substitute for the name of any nominee appointed to vote on behalf of a business ratepayer any other such name,

and, for the avoidance of doubt, the provisions of section 20 (corrections to the parliamentary register) of the Parliamentary Election Act 1978 (as modified by the Municipalities (Election) Order 2015) shall apply in respect of any such alterations.

Objections to registration

9G (1) Any person may submit to the Parliamentary Registrar, in such form as the Parliamentary Registrar may determine, an objection—

- (a) to the registration in the business ratepayers' register of any other person (including a nominee);
- (b) to the particulars entered in the business ratepayers' register in respect of any other person, or in respect of himself.

(2) For the avoidance of doubt, the provisions of sections 17 (objections to registration), 18 (objections to omissions), 19 (hearing of objections) and 24 (appeals to the Supreme Court) of the Parliamentary Election Act 1978 (as modified by the Municipalities (Election) Order 2015) shall apply in respect of an objection under subsection (1).

Application of Parliamentary Election Rules 1979

9H The Parliamentary Election Rules 1979 shall mutatis mutandis apply to municipal elections and, in particular—

- (a) fees prescribed therein shall have effect as if references to a parliamentary register or a parliamentary election were references

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to a municipal register or a municipal election, as the case may be;
and

- (b) forms prescribed therein may be modified by the Parliamentary Registrar to meet the requirements of a municipal election.

False statements etc.

9I Any person who, whether orally or in writing and whether on oath or not, makes any statement, or furnishes any information, to the Parliamentary Registrar or to the Secretary of a Corporation, being a statement or information—

- (a) which is material to the registration or intended registration of himself or any other person in a municipal register; and
- (b) which he knows to be false in a material particular,

is guilty of an offence and is liable on summary conviction to imprisonment for a term of 12 months, or to a fine of \$500, or to both such fine and imprisonment.”.

Inserts section 18A

9 The principal Act is amended by, after section 18, inserting—

“Determination of proportion of business ratepayers’ Councillors to residents’ Councillors

18A (1) In an ordinary municipal election, as soon as practicable after the publication of the revised municipal registers under section 26A(5) of the Parliamentary Election Act 1978 (as modified by the Municipalities (Election) Order 2015), the Registrar shall calculate and determine the proportion of registered business ratepayers to registered municipal residents in respect of each Corporation in accordance with subsection (2), and then publish by notice in the Gazette—

- (a) the proportion of the eight Councillors who are to be business ratepayers’ Councillors (to be nominated and elected to the Corporation by business ratepayers only); and
- (b) the proportion of the eight Councillors who are to be residents’ Councillors (to be nominated and elected to the Corporation by municipal residents only).

(2) For the purposes of subsection (1), if the proportion of the Corporations’ registered municipal electors—

- (a) who are business ratepayers is—
 - (i) two-eighths or less, the number of business ratepayers’ Councillors who are to be elected in the business ratepayers’ election is two;

- (ii) more than two-eighths but not more than three-eighths, the number of business ratepayers' Councillors who are to be elected in the business ratepayers' election is three;
 - (iii) more than three-eighths but less than five-eighths, the number of business ratepayers' Councillors who are to be elected in the business ratepayers' election is four;
 - (iv) five-eighths or more but less than six-eighths, the number of business ratepayers' Councillors who are to be elected in the business ratepayers' election is five;
 - (v) six-eighths or more, the number of business ratepayers' Councillors who are to be elected in the business ratepayers' election is six; and
- (b) who are municipal residents is—
- (i) two-eighths or less, the number of residents' Councillors who are to be elected in the municipal residents' election is two;
 - (ii) more than two-eighths but not more than three-eighths, the number of residents' Councillors who are to be elected in the municipal residents' election is three;
 - (iii) more than three-eighths but less than five-eighths, the number of residents' Councillors who are to be elected in the municipal residents' election is four;
 - (iv) five-eighths or more but less than six-eighths, the number of residents' Councillors who are to be elected in the municipal residents' election is five;
 - (v) six-eighths or more, the number of residents' Councillors who are to be elected in the municipal residents' election is six.”.

Minister authorized to make Order in Schedule

10 Notwithstanding section 9B(2) of the principal Act and section 7 of the Statutory Instruments Act 1977 (affirmative resolution procedure), the Minister responsible for municipalities is hereby authorized to make the Municipalities (Election) Order 2015 contained in the Schedule.

Application

11 The provisions of this Act shall not have effect in respect of any municipal election that may be held before the ordinary municipal election in May 2015.

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SCHEDULE

(section 10)

BR / 2015

MUNICIPALITIES (ELECTION) ORDER 2015

The Minister responsible for municipalities, in exercise of the powers conferred by section 9B(1) and (1A) of the Municipalities Act 1923 and section 10 of the Municipalities Amendment (No. 2) Act 2014, makes the following Order:

Citation

1 This Order may be cited as the Municipalities (Election) Order 2015.

Application of Parliamentary Election Act 1978 to municipal elections

2 The Parliamentary Election Act 1978, read with the modifications to that Act set out in this Order, shall apply to municipal elections under section 9 of the Municipalities Act 1923.

Interpretation of Parliamentary Election Act 1978

3 (1) Section 1(1) of the Parliamentary Election Act 1978 is modified by inserting, each in its correct alphabetical place, the following definitions—

“business ratepayer” has the meaning assigned to it in the Municipalities Act 1923;

“business ratepayers’ Councillor” has the meaning assigned to it in the Municipalities Act 1923;

“business ratepayers’ register” has the meaning assigned to it in the Municipalities Act 1923;

“Corporation” means the Corporation of Hamilton or, as the case may be, the Corporation of St. George’s;

“Corporation of Hamilton” means the Mayor and Councillors (business ratepayers’ Councillors and residents’ Councillors) of the City of Hamilton;

“Corporation of St. George’s” means the Mayor and Councillors (business ratepayers’ Councillors and residents’ Councillors) of the Town of St. George;

“extraordinary municipal election” has the meaning assigned to it in the Municipalities Act 1923;

“municipal area” has the meaning assigned to it in the Municipalities Act 1923;

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“municipal election” has the meaning assigned to it in the Municipalities Act 1923;

“municipal resident” has the meaning assigned to it in the Municipalities Act 1923;

“ordinary municipal election” has the meaning assigned to it in the Municipalities Act 1923;

“residents’ Councillor” has the meaning assigned to it in the Municipalities Act 1923; ”.

(2) The following expressions in the Parliamentary Election Act 1978 are to be construed, in relation to a municipal election, as follows—

- (a) “bye-election” is to be read as a reference to an extraordinary municipal election;
- (b) “constituency” is to be read as a reference to the municipal area of a Corporation;
- (c) “member” is to be read as a reference to the Mayor or a Councillor (a business ratepayers’ Councillor or a residents’ Councillor, as the case may be) of a Corporation;
- (d) “parliamentary election” is to be read as a reference to a municipal election;
- (e) “parliamentary elector” or “elector” is to be read as a reference to a municipal elector (a business ratepayer or a municipal resident, as the case may be, who is registered to vote in a municipal election); and
- (f) “parliamentary register” is to be read as a reference to a business ratepayers’ register or a municipal residents’ register, as the case may be.

Modifies section 3 of Parliamentary Election Act 1978

4 Section 3 of the Parliamentary Election Act 1978 (qualifications and disqualifications for registration) is modified by inserting, after subsection (4), the following—

“(5) All persons for the time being listed in the parliamentary register as ordinarily resident in a municipal area are qualified to be registered in the municipal residents’ register for that Corporation.

(6) A person is qualified for registration in the business ratepayers’ register for a municipal area if he is so qualified under the Municipalities Act 1923.”.

Modifies section 4

5 Section 4 of the Parliamentary Election Act 1978 (entitlement to vote) is modified by deleting subsection (2)(c).

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Modifies section 5

6 Section 5 of the Parliamentary Election Act 1978 (qualification for election) is modified—

- (a) in subsection (1)—
 - (i) by replacing the words “the House of Assembly for a constituency” with the words “a Corporation”;
 - (ii) by replacing paragraph (a) with the following—
 - “(a) he is qualified for nomination as a candidate under section 18(1) of the Municipalities Act 1923 and is not disqualified under section 18(2) of that Act; and”;
- (b) by replacing subsection (2) with the following—
 - “(2) A person is disqualified from being a member of a Corporation if—
 - (a) he is disqualified from being elected as such a member under section 71 of this Act; or
 - (b) he is, at the same time, a member of the Legislature or a member of the other Corporation.”.

Modifies section 7

7 Section 7 of the Parliamentary Election Act 1978 (parliamentary register) is modified—

- (a) by inserting, after subsection (1), the following—
 - “(1A) The Registrar shall establish a register of municipal residents in the municipal area of each Corporation, and shall thereafter revise and maintain such registers.”;
- (b) in subsection (2) by, after the word “constituency”, inserting the words “and for each municipal area”; and
- (c) by inserting, after subsection (6), the following—
 - “(7) The Registrar shall, in accordance with the Municipalities Act 1923, establish and maintain a register of the business ratepayers in the municipal area of each Corporation, and shall thereafter revise and maintain such registers.”.

Modifies section 10

8 Section 10 of the Parliamentary Election Act 1978 (application for registration) is modified in subsection (4) by replacing the word “Governor” with the word “Registrar”.

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Modifies section 14

9 Section 14 of the Parliamentary Election Act 1978 (scrutineers) is modified in subsection (1) by, after the word “Legislature”, inserting the words “, members of a Corporation”.

Modifies section 26A

10 Section 26A of the Parliamentary Election Act 1978 (publication of revised parliamentary register at an election) is modified in subsection (1) by replacing the word “Governor” with the word “Registrar”.

Modifies section 27

11 Section 27 of the Parliamentary Election Act 1978 (issue of writs of election) is modified—

- (a) in subsection (1) by replacing the words “Governor of a writ of election under the Public Seal of Bermuda” with the words “Registrar of a writ of election”; and
- (b) by replacing subsection (5) with the following—

“(5) The polling day appointed for a municipal election shall not be an excepted day and shall, subject to section 27A—

- (a) in the case of an ordinary municipal election, be the day appointed for the holding of the election by notice of the Registrar pursuant to section 9(3) of the Municipalities Act 1923;
- (b) in the case of an extraordinary municipal election, be a day not earlier than 28 days after the issue of the writ nor later than two months after the occurrence of the vacancy which occasioned the issue of the writ.”.

Modifies section 27A

12 Section 27A of the Parliamentary Election Act 1978 (power to postpone elections) is modified—

- (a) by replacing the word “Governor”, wherever it appears in the section, with the word “Registrar”;
- (b) by replacing the word “proclamation”, wherever it appears in the section, with the word “notice”; and
- (c) by deleting, in subsection (1), the words “(but subject in any event to the limits set forth in section 51(1) and (2) of the Constitution)”.

Modifies section 30

13 Section 30 of the Parliamentary Election Act 1978 (notice of election) is modified by deleting the words “the Deputy Governor shall notify the Registrar and”.

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Modifies section 32

14 Section 32 of the Parliamentary Election Act 1978 (nomination of candidates) is modified—

(a) in subsection (2) by replacing paragraph (e) with the following—

“(e) the intended candidate is not, at the same time—

- (i) nominated as a candidate for any other vacancy in the Corporation;
- (ii) in the case of an extraordinary municipal election, a member of the Corporation;
- (iii) nominated as a candidate for the other Corporation, the House of Assembly or the Senate; or
- (iv) a member of the other Corporation, the House of Assembly or the Senate;”;

(b) by deleting subsections (3) and (4).

Modifies section 33

15 Section 33 of the Parliamentary Election Act 1978 (uncontested election) is modified by replacing it with the following—

“Uncontested election

33 Where at the close of the period for the acceptance of the nomination of candidates at a municipal election the number of persons duly nominated as candidates for Mayor, business ratepayers’ Councillor or residents’ Councillor does not exceed the number of vacancies to be filled at that election, then the Returning Officer shall forthwith declare such duly nominated person or persons to be elected and shall return their name or names, as the case may be, to the office of the Registrar with the writ of election duly completed and signed by him.

Extraordinary municipal election to fill unfilled vacancy

34 (1) Where the number, if any, of persons returned uncontested as members in accordance with section 33 is less than the number of vacancies to be filled at the municipal election concerned, then an extraordinary municipal election shall ensue within the next succeeding period of two months to fill any vacancy not duly filled at such municipal election.

(2) The Returning Officer shall forthwith report to the Registrar the circumstances giving rise to an extraordinary municipal election under subsection (1).”.

Modifies section 36

16 Section 36 of the Parliamentary Election Act 1978 (taking a poll in contested election) is modified by replacing subsection (1) with the following—

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“(1) Subject to section 38, where at the close of the period for the acceptance of nomination of candidates at a municipal election the number of persons duly nominated as candidates for Mayor, business ratepayers’ Councillor or residents’ Councillor exceeds the number of vacancies to be filled at that election, then a poll shall be taken at the election room on the polling day therefor.”.

Modifies section 37

17 Section 37 of the Parliamentary Election Act 1978 (withdrawal of candidate) is modified in subsection (3) by deleting the words “Deputy Governor” and substituting “Registrar”.

Modifies section 38

18 Section 38 of the Parliamentary Election Act 1978 (death of candidate) is modified in subsection (2) by deleting the words “the Deputy Governor and”.

Modifies section 46

19 Section 46 of the Parliamentary Election Act 1978 (ballot papers) is modified—

(a) by replacing subsection (1) with the following—

“(1) The ballot of each voter at a municipal election (hereinafter called a “ballot paper”) shall consist of, as necessary, a page listing in alphabetical order the full names of all the nominated candidates for mayor, a page listing in alphabetical order the full names of all the nominated candidates for business ratepayers’ Councillor, and a page listing in alphabetical order the full names of all the nominated candidates for residents’ Councillor, in a form that is as close as practicable to that prescribed for parliamentary elections, each page impressed with the official mark in accordance with subsection (3).”;

(b) in subsection (2), by deleting paragraph (c); and

(c) in subsection (3) by, after the words “back of”, inserting the words “each page of”.

Modifies section 51

20 Section 51 of the Parliamentary Election Act 1978 (marking the ballot paper) is modified by replacing subsection (2) with the following—

“(2) A person voting at a municipal election shall not be entitled to vote on a ballot paper for more of the candidates than there are vacancies (for Mayor, business ratepayers’ Councillor or residents’ Councillor respectively) to be filled at that municipal election.”.

Modifies section 54

21 Section 54 of the Parliamentary Election Act 1978 (void ballot papers) is modified in subsection (1) by replacing paragraph (b) with the following—

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“(b) on which votes are given for more candidates than there are vacancies (for Mayor, business ratepayers’ Councillor or residents’ Councillor respectively) to be filled at the municipal election concerned;”.

Modifies section 57

22 Section 57 of the Parliamentary Election Act 1978 (procedure in the event of a tie) is modified—

- (a) in subsection (1) by deleting “Deputy Governor” and substituting “Registrar”.
- (b) in subsection (2) by, after the word “void”, inserting the words “in respect of the vacancy for which the report has been made”.

Modifies section 58

23 Section 58 of the Parliamentary Election Act 1978 (return of writ of election) is modified by deleting “Deputy Governor” and substituting “Registrar”.

Modifies section 71

24 Section 71 of the Parliamentary Election Act 1978 (disqualifications) is modified by, after the words “House of Assembly”, inserting the words “, or of a Corporation,”.

Modifies the Schedule

25 The Schedule to the Parliamentary Election Act 1978 is to be read as if every candidate at a municipal election were an “independent” candidate.

Revokes Municipalities (Election) Order 2011

- 26 (1) Subject to paragraph (2), the Municipalities (Election) Order 2011 is revoked.
- (2) The Municipalities (Election) Order 2011 shall continue to have effect (and this Order shall not have effect) in respect of any municipal election that may be held before the ordinary municipal election in May 2015.

Made this day of 2015

Minister of Home Affairs

MUNICIPALITIES AMENDMENT (NO. 2) BILL 2014

EXPLANATORY MEMORANDUM

This Bill would amend the Municipalities Act 1923 (“the principal Act”) to make further provision for the ordinary municipal election to be held in May 2015, and any other municipal election held thereafter. For that purpose, this Bill also authorizes the Minister responsible for municipalities to make the Municipalities (Election) Order 2015 contained in the Schedule. The Order modifies the Parliamentary Election Act 1978 in its application to municipal elections.

Clause 1 is self-explanatory.

Clause 2 amends section 1(1) of the principal Act, and brings certain provisions inserted by the Municipalities Amendment Act 2013 into full operation when this Bill comes into operation (which is when it receives the Governor’s assent). For consistency, minor amendments are made to certain definitions. The definition of “business ratepayers’ election” is amended to reflect the amendments that make the Parliamentary Registrar responsible for the compilation and maintenance of the business ratepayers’ register. New definitions (of “business ratepayers’ Councillor”, “residents’ Councillor”, “nominee” and “subsidiary”) are inserted.

Clause 3 amends section 9 of the principal Act. Certain provisions of the section are repealed because they differ from the ordinary election procedure prescribed by the Parliamentary Election Act 1978. (The repealed provisions were meant to facilitate a system in which the Secretary of a Corporation compiled and maintained the register, and forwarded it to the Parliamentary Registrar only when the final register, for the holding of an election, was to be prepared.)

The amendment to section 9(2) is meant to make it clear that an extraordinary election necessitated by a vacancy of a member who is a business ratepayers’ Councillor would require a business ratepayers’ election to fill the vacancy and, similarly, a vacancy of a member who is a residents’ Councillor would require a municipal residents’ election to fill the vacancy.

The amendment to section 9(3) makes the Parliamentary Registrar, in consultation with the Secretary of a Corporation, responsible for appointing the polling day for a municipal election. It thereby enables the Parliamentary Registrar to determine the election timetable for a municipal election. As the Parliamentary Registrar is responsible for administering the election, it is appropriate that she should be able to determine the election timetable for any particular election.

Clause 4 brings the new section 9A into full operation when this Bill comes into operation. (Section 9A was inserted by section 7 of the Municipalities Amendment Act 2013 and sets out who is qualified, not “entitled”, to vote in a municipal election.)

Clause 5 brings the new section 9B(1A) into full operation when this Bill comes into operation. (Section 9B(1A) provides for making different provision for a business ratepayers’

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election, a municipal residents' election and a mayoral election in an Order applying the Parliamentary Election Act 1978 to municipal elections.)

Clause 6 insets section 9BA in the principal Act. It provides for the registration by the Parliamentary Registrar of municipal residents. All persons who are listed in the parliamentary register as ordinarily resident in the municipal area of the Corporation are automatically registered in the municipal residents' register.

Clause 7 brings the new section 9C (which provides for the registration of business ratepayers) into full operation when this Bill comes into operation. It also amends section 9C to make the Parliamentary Registrar, in consultation with the Secretary of a Corporation, responsible for compiling and maintaining the business ratepayers' register for the municipal area of that Corporation. It provides for restrictions on being registered, or voting, more than once in the same business ratepayers' election. The clause also repeals the Regulation-making powers under section 9C because the matters for which these powers were required are to be set out in the principal Act (as amended by this Bill).

Clause 8 inserts the following sections in the principal Act: 9D (requirements for registration in the business ratepayers' register), 9E (registration of persons in a business ratepayers' register), 9F (maintenance of the business ratepayers' register), 9G (objections to registration), 9H (the application of the Parliamentary Election Rules 1979 to municipal elections), and 9I (punishment for giving false statements or information relating to registration in a municipal register).

Clause 9 inserts section 18A in the principal Act. This section sets out the formula for calculating how many of the eight Councillors who are to be elected to each Corporation are to be business ratepayers' Councillors (to be nominated and elected to the Corporation by business ratepayers only), and how many are to be residents' Councillors (to be nominated and elected to the Corporation by municipal residents only).

Clause 10 authorizes the Minister responsible for municipalities to make the Municipalities (Elections) Order 2015 which is contained in the Schedule to this Bill, notwithstanding section 9B(2) of the principal Act (which would otherwise make such Order subject to the affirmative resolution procedure) and section 7 of the Statutory Instruments Act 1977 (which provides that, where the affirmative resolution procedure applies, a statutory instrument shall not be made unless a draft of the statutory instrument has been laid before both Houses of the Legislature and a resolution approving the draft has been passed by each House and communicated to the Governor by message).

Clause 11 provides that this Bill shall not have effect in respect of any municipal election that may be held before the ordinary municipal election in May 2015. In other words, this Bill shall have effect only in respect of the ordinary municipal election to be held in May 2015, and any municipal election (whether ordinary or extraordinary) held thereafter.

The Schedule contains the Municipalities (Election) Order 2015 ("the 2015 Order") which the Minister responsible for municipalities is authorized to make (see clause 10). The Parliamentary Election Act 1978 shall apply to municipal elections with the modifications that are set out in the 2015 Order. The 2015 Order replaces the Municipalities (Election) Order 2011 ("the 2011 Order") because it is now necessary to make different provision for

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a business ratepayers' election, a municipal residents' election and a mayoral election. However, the 2011 Order shall continue to have effect (and the 2015 Order shall not have effect) in respect of any municipal election that may be held before the ordinary municipal election in May 2015.