

AS TABLED IN THE SENTATE

A BILL

entitled

MUNICIPALITIES AMENDMENT (NO. 2) ACT 2015

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WHEREAS it is expedient to amend the Municipalities Act 1923 to provide for greater supervision of the Corporations;

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 2015.

Amends section 1

2 Section 1(1) of the principal Act is amended by inserting the following definition in its correct alphabetical place—

“Minister’s representative” has the meaning given in section 7AB(1);”.

Amends section 7

3 (1) Section 7 of the principal Act is amended—

(a) by inserting after subsection (10)—

“(10A) The Minister or, where so authorized, the Minister’s representative is entitled to—

- (a) attend;
- (b) be heard at; and
- (c) receive minutes of,

any meeting of the Corporation, but not to vote thereat.”;

- (b) in subsection (11) by, after “decided by”, inserting “resolution of”; and
- (c) inserting after subsection (11)—

“(11A) No resolution referred to in subsection (11), decided on or after 7 May 2015, shall have effect unless and until it is approved by the Minister.

(11B) The approval referred to in subsection (11A) shall be signified in writing—

- (a) by the Minister; or
- (b) where the Minister’s representative has been authorized to do so, by the Minister’s representative.”.

(2) Paragraphs (b) and (c) of subsection (1) shall be deemed to have come into operation on 7 May 2015, and any approval of a resolution given by the Minister before the coming into operation of this Act shall be deemed to be validly given under section 7(11A) of the principal Act (inserted by paragraph (c) of subsection (1)).

Inserts sections 7AA and 7AB

4 The principal Act is amended by inserting after section 7A—

“Minister may give directions to Corporation

7AA (1) The Minister may give written directions to a Corporation, whether of a general or of a specific character, if he considers it to be in the public interest for him to do so, and the Corporation shall carry out any such directions.

(2) Before the Minister gives directions to a Corporation under subsection (1), he shall consult the Corporation with respect to the content and effect of the directions.

(3) Without prejudice to the generality of subsection (1), the Minister may direct a Corporation—

- (a) to do anything that appears to the Minister necessary to secure that the Corporation’s functions are exercised and performed in the most efficient manner;
- (b) to give to the Minister, whether periodically or not, such information relating to the activities of the Corporation as the Minister may specify in the directions;
- (c) to discontinue or restrict any of its activities; or

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- (d) to give effect to anything required of the Corporation in pursuance of this Act,

and the Corporation shall give effect to any such directions.

(4) Forthwith after carrying out any directions, the Corporation shall inform the Minister in writing that the directions have been carried out.

Minister may delegate functions to public officer

7AB (1) The Minister may, either generally or for any particular occasion and subject to such conditions or restrictions as he thinks fit, by instrument in writing, delegate to a public officer (the “Minister’s representative”) any of his functions under this Act other than—

- (a) the power of delegation conferred by this section;
- (b) the power to give directions under section 7AA;
- (c) any function under section 7B (good governance), but he may delegate functions necessary to exercise his stewardship or control of a Corporation referred to in section 7B(6E);
- (d) any function under section 38 (Corporation Ordinances); or
- (e) the power to make or approve a statutory instrument.

(2) During any period that the Minister has stewardship or control of a Corporation referred to in section 7B(6E), he may, subject to such conditions or restrictions as he thinks fit, by instrument in writing, delegate to an officer or employee of the Corporation such functions as he believes necessary for the efficient execution of its day to day affairs.

(3) In exercising any functions delegated under this section, the person shall act in accordance with any general or specific directions issued by the Minister and shall be deemed to be the Minister, but, notwithstanding the foregoing, the Minister shall remain responsible for the manner in which the person exercises any such function.

(4) No delegation made under this section shall preclude the Minister from exercising or performing at any time any of the functions so delegated.

(5) An instrument made under this section is not subject to the Statutory Instruments Act 1977.”.

Amends section 7B

5 Section 7B of the principal Act is amended by inserting after subsection (6)—

“(6A) Where the Minister believes—

- (a) that a Corporation’s finances are being mismanaged, or that the Corporation’s financial governance is otherwise in a poor state; and

- (b) that it is in the public interest for the Government to temporarily assume control of the Corporation's financial governance,

the Minister may, with the approval of Cabinet, assume control of the Corporation's financial governance until he is satisfied that such control is no longer necessary.

(6B) Where the Minister believes—

- (a) that a Corporation is being mismanaged, or that the governance of the Corporation is otherwise in a poor state; and
- (b) that it is in the public interest for the Government to temporarily assume control of the Corporation and its governance,

the Minister may, with the approval of Cabinet, assume control of the Corporation and its governance until he is satisfied that such control is no longer necessary.

(6C) The Minister, on giving written notice to a Corporation of his assumption of stewardship or control under subsection (6), (6A) or (6B) (as the case may be), shall assume such stewardship or control.

(6D) The notice of assumption by the Minister of stewardship or control shall, as soon as practicable after it is given under section (6C), be published in the Gazette.

(6E) Where the Minister has—

- (a) stewardship of a Corporation's infrastructure, function or service under subsection (6);
- (b) control of the Corporation's financial governance under subsection (6A); or
- (c) control of the Corporation and its governance under subsection (6B),

he shall act in the place of the Corporation and any such acts shall be deemed to be the acts of the Corporation and, without prejudice to the generality of the foregoing, the Minister may do anything that appears to him necessary to secure that the Corporation's functions are exercised and performed in an efficient manner, or to discontinue or restrict any of its activities.

(6F) Where the Minister has stewardship or control referred to in subsection (6E), he may relinquish such stewardship or control by written notice given to the Corporation.

(6G) The notice of relinquishment under subsection (6F) shall, as soon as practicable after it is given by the Minister to the Corporation, be published in the Gazette.

(6H) A notice that is required to be given by the Minister to a Corporation under this section shall be taken to be properly given if it is given to the secretary of that Corporation.

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(6I) For the avoidance of doubt, a notice by the Minister under this section is not a statutory instrument for the purposes of the Statutory Instruments Act 1977.”.

Amends section 23

6 Section 23(6) of the principal Act is amended by deleting all the words after “apply to a rating Ordinance”.

Amends section 38

7 Section 38(3)(b) of the principal Act is amended by after “review” inserting “and approval”.

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EXPLANATORY MEMORANDUM

This Bill would amend the Municipalities Act 1923 (“the principal Act”) to provide for greater supervision of the Corporations.

Clause 1 gives the citation of the Bill and is self-explanatory.

Clause 2 amends section 1(1) of the principal Act to insert a new definition, “Minister’s representative”, being a public officer to whom the Minister responsible for municipalities has delegated certain of his functions under the new section 7AB. (See clause 4.)

Clause 3 amends section 7 of the principal Act to require the approval of the Minister for any resolution passed by a Corporation on or after 7 May 2015, such approval to be signified in writing either by the Minister or the Minister’s representative where authorized to do so. The provisions requiring such approval are deemed to have come into operation on 7 May 2015, and any approval of such resolution given by the Minister before the coming into operation of the Bill is deemed to be validly given.

Clause 4 inserts two new sections into the principal Act. The new section 7AA allows the Minister to issue binding Ministerial directions to a Corporation. This section is very similar to provisions governing the West End Development Corporation and the Bermuda Land Development Company Limited, permitting binding general and specific directions to be given to them by their respective Ministers. (See section 6 of the West End Development Corporation Act 1982 and section 12 of the Base Lands Development Act 1996.) The new section 7AB would allow the Minister to appoint a public officer as his delegated representative to, among other things, attend meetings of a Corporation. The appointment would facilitate communications between the Corporations and the Ministry. The section would also allow the Minister to delegate functions to any employee or officer of a Corporation which is under the Minister’s stewardship or control in order to oversee the efficient execution of its day to day affairs.

Clause 5 amends section 7B of the principal Act to insert a number of subsections dealing with the assumption of stewardship or control of a Corporation by the Minister. The new subsection (6A) explicitly sets out the Minister’s authority to temporarily take over the financial governance of a Corporation where he believes that: (a) the Corporation’s finances are being mismanaged, or that its financial governance is otherwise in a poor state, and (b) that it is in the public interest for the Government to temporarily assume control of the Corporation’s financial governance. Cabinet’s approval would first be required. The new subsection (6B) explicitly sets out the Minister’s authority to temporarily assume full control of a Corporation where he believes that: (a) the Corporation is being mismanaged, or that its governance is otherwise in a poor state, and (b) that it is in the public interest for the Government to temporarily assume control of the governance of the Corporation. Cabinet’s approval would first be required. The new subsection (6E) deems the Minister to act in a Corporation’s place where stewardship or control is temporarily assumed, and any such acts shall be deemed to be the acts of the Corporation. For the avoidance of doubt, the Minister would be authorized: (a) to do anything that appears to him necessary to secure

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that the Corporation's functions are exercised and performed in an efficient manner, or (b) to discontinue or restrict any of the Corporation's activities. The remaining provisions deal with the manner in which stewardship or control is to be assumed and relinquished by the Minister.

Clause 6 makes an amendment which is related to the amendment in clause 7. Certain ratings Ordinances must presently be confirmed by the Minister. As the amendment in clause 7 would require all Ordinances to be approved by the Minister, the reference to confirmation by the Minister would be redundant.

Clause 7 amends section 38(3)(b) of the principal Act. That provision presently requires proposed municipal Ordinances to be submitted in draft to the Minister and the Attorney General for their review. This would be amended to also require their approval.