

A BILL

ENTITLED

AN ACT to validate and confirm as lawful all official acts done by Leon George Thomas, Deputy Mayor of the Municipality of Portmore in good faith, during the period commencing on the 8th day of July, 2014, and ending on the date of coming into operation of this Act in the purported exercise of the functions conferred upon him as Mayor of the Municipality of Portmore; to validate and confirm as lawful all decisions and other acts taken and done, in good faith, by the Portmore Municipal Council or any member or committee thereof, in the purported exercise of powers, duties and functions conferred on the Council or any such member or committee by the Municipalities Act, or by any other person by virtue of the purported exercise of such powers, duties or functions, during the period commencing on the 8th day of April, 2014 and ending on the date of the coming into operation of this Act; to indemnify Leon George

Thomas, the Portmore Municipal Council and other persons from liability in relation thereto; to amend the Municipalities Act; and for connected matters.

WHEREAS section 4(1) of the Municipalities Act provides that a Municipality shall be governed by a Municipal Council which shall be constituted by an elected Mayor, an appointed Deputy Mayor and councillors representing electoral divisions falling within the boundaries of the Municipality:

AND WHEREAS section 4 (8) of the Municipalities Act provides that in the absence or incapacity of the Mayor, the Deputy Mayor shall exercise the powers and duties of the Mayor for not more than six months of the casual vacancy having been entered on the Minutes of the Council:

AND WHEREAS on the 26th day of March, 2012, George Egbert Lee was elected Mayor of the Municipality of Portmore:

AND WHEREAS George Egbert Lee, Mayor of the Municipality of Portmore, died and the vacancy thereby created was entered in the Minutes of the Municipal Council of the Municipality of Portmore on the 8th day of January, 2014:

AND WHEREAS the six month maximum period prescribed for the Deputy Mayor to exercise the power and duties of the Mayor, in the absence or incapacity of the Mayor, has expired, and Leon George Thomas, Deputy Mayor, has purported to continue to exercise the powers and duties of the Mayor of the Municipality of Portmore, in excess of the six month period prescribed by section 4(8) the Municipalities Act:

AND WHEREAS section 4 (9) of the Municipalities Act provides, among other things, that, subject to section 4(8) of the Act, the provisions of section 8(3) of the *Parish Councils Act*, shall, where relevant apply with necessary modifications to supplying the casual vacancy of a Mayor:

AND WHEREAS section 8 (3) of the *Parish Councils Act* provides that a by-election be held on such day as the Chairman of the Parish Council shall, after consultation with the Chief Electoral Officer by order published in the *Gazette* direct, such day being within three

months of the vacancy having been entered on the minutes of the Council:

AND WHEREAS a by-election was not held as so required under section 8(3) of the *Parish Councils Act* as incorporated by section 4(9) of the *Municipalities Act*:

AND WHEREAS it is desirable to declare to have been validly, properly and lawfully done for all intents and purposes and with legal effect as if authorized pursuant to the *Municipalities Act*—

- (a) all acts done by Leon George Thomas, Deputy Mayor of the Municipality of Portmore, in good faith, during the period commencing on the 8th day of July, 2014, and ending on the date of coming into operation of this Act, in the purported exercise of the powers, duties and functions conferred upon him as the Mayor of the Municipality of Portmore;
- (b) the payment of all emoluments to and the receipt thereof by Leon George Thomas, the accrual of emoluments to him, and all other matters and things affected in consequence of the purported exercise by him of the powers, duties and functions of the Mayor of the Municipality of Portmore, all acts in good faith, during the period referred to in paragraph (a);
- (c) all decisions and other acts taken and done, in good faith, by the Portmore Municipal Council or any member or committee thereof, in the purported exercise of powers, duties and functions conferred on the Council or any such member or committee by the *Municipalities Act* or by any other person by virtue of the purported exercise of such powers, duties or functions, during the period after the expiry of the three month period prescribed under section 8(3) of the *Parish Councils Act* as incorporated by section 4(9) of the *Municipalities Act*, being the period commencing on the 8th day of April, 2014 and ending on the date of the coming into operation of this Act:

AND WHEREAS it is desirable to indemnify—

- (a) Leon George Thomas and every other person who may be liable (directly or indirectly) to be legally proceeded against on the grounds that the purported exercise by Leon George Thomas of the powers, duties and functions of the Mayor of the Municipality of Portmore or any other act, matter or thing affected referred to in paragraphs (a) and (b) of the preceding recital, was unauthorized, unlawfully done, or otherwise illegal or improper, and to declare that Leon George Thomas and every such other person are hereby freed, acquitted, discharged and indemnified as well against The Queen’s Most Excellent Majesty, Her Heirs and Successors, as against all other persons, from such liability;
- (b) the Municipal Council, any member or committee thereof and every other person who may be liable (directly or indirectly) to be legally proceeded against on the ground that a by-election was not held as required under section 8(3) of the *Parish Councils Act* as incorporated by section 4(9) of the Municipalities Act, and to declare that the Portmore Municipal Council, every such member or committee thereof and every such other person are hereby freed, acquitted, discharged and indemnified as well against The Queen’s Most Excellent Majesty, Her Heirs and Successors, as against all other persons, from such liability:

[]

NOW THEREFORE, BE IT ENACTED by The Queen’s Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

Short title
and
construction.

1. This Act may be cited as the Municipalities (Validation and Amendment) Act, 2014, and shall be read and construed as one with the Municipalities Act (hereinafter referred to as the “principal Act”).

Interpreta-
tion.

2. In this Act—

“emoluments” includes salary, allowances and any other perquisite of office;

“law” includes any instrument having the force of law and any unwritten rule of law or equity;

“applicable period” means the period after the expiry of the six month period prescribed by section 4(8) the Municipalities Act, during which the Deputy Mayor of the Municipality of Portmore, Leon George Thomas, has purported to exercise the power and duties of the Mayor of the Municipality of Portmore in the absence or incapacity of the Mayor, being the period commencing on the 8th day of July, 2014, and ending on the date of the coming into operation of this Act;

“relevant period” means the period after the expiry of the three month period prescribed under section 8(3) of the *Parish Councils Act* as incorporated by section 4(9) of the Municipalities Act, during which a by-election was not held as required under section 8(3) of the *Parish Councils Act* as incorporated by section 4(9) of the Municipalities Act, to supply a casual vacancy of Mayor of the Municipality of Portmore, being the period commencing on the 8th day of April, 2014, and ending on the date of the coming into operation of this Act.

Validation and Indemnification

3.—(1) Notwithstanding section 4(8) of the Municipalities Act and any provision to the contrary in any other law—

- (a) all acts done by Leon George Thomas, Deputy Mayor of the Municipality of Portmore, in good faith, during the applicable period, in the purported exercise of the powers, duties and functions conferred upon him as the Mayor of the Municipality of Portmore;
- (b) the payment of all emoluments to and the receipt thereof by Leon George Thomas, the accrual of emoluments to him, and all other matters and things affected in consequence of the purported exercise by him of the powers, duties and

Validation of acts by and indemnification of the Deputy Mayor.

functions of the Mayor of the Municipality of Portmore, in good faith, during the applicable period,

are declared to have been validly, properly and lawfully done, paid and received, for all intents and purposes and with legal effect as if authorized pursuant to the *Municipalities Act*.

(2) Leon George Thomas and every other person who may be liable (directly or indirectly) to be legally proceeded against on the grounds that the exercise by Leon George Thomas of the powers, duties and functions of the Mayor of the Municipality of Portmore or any other act, matter or thing affected referred to in subsection (1) was unauthorized, unlawfully done, or otherwise illegal or improper, are hereby freed, acquitted, discharged and indemnified as well against The Queen's Most Excellent Majesty, Her Heirs and Successors, as against all other persons, from such liability.

Validation of acts by and indemnification of the Portmore Municipal Council, the members and committees thereof.

4.—(1) Notwithstanding section 8(3) of the *Parish Councils Act* as incorporated by section 4(9) of the *Municipalities Act* and any provision to the contrary in any other law, all decisions and other acts taken and done, in good faith, by the Portmore Municipal Council or any member or committee thereof, in the purported exercise of powers, duties and functions conferred on the Council or any such member or committee thereof by the *Municipalities Act* or by any other person by virtue of the purported exercise of such powers, duties or functions, during the relevant period are declared to have been validly, properly and lawfully done, paid and received, for all intents and purposes and with legal effect as if authorized pursuant to the *Municipalities Act*.

(2) The Municipal Council, any member or committee thereof and every other person who may be liable (directly or indirectly) to be legally proceeded against on the ground that a by-election was not held or in connection with a by-election not having been held as required under section 8(3) of the *Parish Councils Act* as incorporated by section 4(9) of the *Municipalities Act*, are hereby freed, acquitted, discharged and indemnified as well against The Queen's Most Excellent Majesty, Her Heirs and Successors, as against all other persons, from such liability.

Amendment to principal Act

5. Section 2 of the principal Act is amended by inserting, in the correct alphabetic sequence, the following definitions—

Amendment of section 2 of principal Act.

““elector” has the meaning assigned to it by section 2 of the *Representation of the People Act*;

“polling division” has the meaning assigned to it by section 2 of the *Representation of the People Act*.”.

6. The principal Act is amended by deleting the heading appearing immediately before section 4 and substituting therefor the following as the heading—

Insertion of new heading before section 4 of principal Act.

“Constitution, Objects and Functions of Municipality”.

7. Section 4 of the principal Act is amended—

Amendment of section 4 of principal Act.

(a) by deleting the marginal note and substituting therefor the following as the marginal note—

“Constitution,
objects and
functions of
Municipality.”;

(b) in subsection (1), by deleting paragraphs (b) and (c), and substituting therefor the following—

“(b) a Deputy Mayor who shall be appointed in accordance with the procedure specified in the Charter;

(c) the councillors who represent electoral divisions that fall entirely within the boundaries of the Municipality; and

(d) each councillor who represents an electoral division that, although not falling entirely within the boundaries of the Municipality, contains polling divisions entirely within the boundaries of the Municipality, the electors for which polling divisions constitute more than fifty per cent of the electors for that electoral division.”

- (c) by deleting subsection (7) and substituting therefor the following—

“(7) The Mayor is the official head of the Municipality for all ceremonial purposes.”

- (c) by deleting subsections (8) and (9); and
 (d) by re-numbering subsections (10) and (11) as subsections (8) and (9), respectively.

Insertion of
 new sections
 4A and 4B in
 principal Act.

8. The principal Act is amended by inserting next after section 4 the following as sections 4A and 4B—

“Casual
 vacancy of
 Mayor.

4A.—(1) Where a person, having been elected Mayor of a Municipality is, within fifteen months thereafter, not capable of performing the functions of Mayor, by reason of his—

- (a) incapacity under section 4(2);
 (b) disqualification under section 4(3);
 (c) resignation;
 (d) ill health;
 (e) absence from three consecutive ordinary meetings of the Municipal Council without the leave of the Council;
 (f) death; or
 (g) being otherwise incapable of performing the powers and duties of Mayor,

that person shall cease to be the Mayor and the Deputy Mayor of the Municipality shall exercise the powers and duties of the Mayor until a Mayor is next elected under subsection (2).

(2) The provisions of section 8(3) of the *Parish Councils Act* and section 14(3) of the *Kingston and Saint Andrew Corporation Act* shall,

where relevant, apply with necessary modifications to the supplying of the casual vacancy of a Mayor under subsection (2).

(3) Where a person having been elected Mayor of a Municipality is at any time after fifteen months of his election not capable of performing the functions of Mayor for the reasons specified in subsection (1), that person shall cease to be the Mayor and the Deputy Mayor shall assume and exercise the powers and duties of the Mayor until a Mayor is next elected under section 4 (11), which election shall take place on the day or days on which the next general election of councillors is to be held under the provisions of section 8(1) of the *Parish Councils Act* or section 14(1) of the *Kingston and Saint Andrew Corporation Act*, as the case may require.

(4) A Deputy Mayor shall during any period while exercising the powers and duties of Mayor under this section be styled as the "Acting Mayor".

(5) During any period in which a Deputy Mayor assumes and exercises the powers and duties of the Mayor pursuant to this section, the councillors on the Municipal Council for the Municipality shall appoint one of their number to assume the powers and duties of the Deputy Mayor for the duration of that period, including (without limiting the generality of the foregoing) the power to assume and exercise the powers and duties of the Mayor until a Mayor is next elected in accordance with this section, in the event that, prior to such election, the Deputy Mayor who has assumed those powers and duties in accordance with this section becomes incapable of performing the functions of Mayor for the reasons specified in subsection (1).

(6) A councillor shall, while exercising the powers and duties of the Deputy Mayor under subsection (5), be styled as the “Acting Deputy Mayor”.

Who shall
preside at
Council
meetings;
original and
casting vote
of person
presiding.

4B.—(1) The Mayor of the Municipality shall preside at the meetings of the Municipal Council.

(2) In the absence of the Mayor of the Municipality, the Deputy Mayor shall preside at the meetings of the Municipal Council, and in the absence of both the Mayor and the Deputy Mayor, the councillors present at any meeting shall elect one of their number to preside at the meetings of the Council.

(3) The person presiding at the meetings of the Council shall have at any meeting an original and a casting vote.”

Transitional. 9. As at the date of the coming into operation of this Act, the tenure of Leon George Thomas acting as the Mayor of the Municipality of Portmore shall be regarded as having arisen pursuant to section 4A (3) of the principal Act, and accordingly he shall, subject to section 4A (5) of the principal Act, continue to exercise the powers and duties of the Mayor until a Mayor is next elected under section 4(11) of the principal Act.

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to validate and confirm as lawful all official acts done by Mr. Leon George Thomas, in good faith, during the period commencing on the 8th day of July, 2014 and ending on the date of coming into operation of this Act, in the purported exercise of the powers, duties and functions conferred upon him as the Mayor of Municipality of Portmore arising from the fact of his continuing to act as Mayor after the expiry of the six months prescribed under the Municipalities Act.

The Bill further proposes to indemnify Mr. Leon George Thomas and all other persons from any liability on the grounds that the service by him of the powers, duties and functions of the Mayor of the Municipality of Portmore was unauthorized or unlawfully done.

This Bill also seeks to validate and confirm as lawful all decisions and other acts taken and done, in good faith, by the Portmore Municipal Council, any member or committee thereof, in the purported exercise of powers and duties conferred on the Council, any such member or committee by the Municipalities Act during the period commencing on the 8th day of April, 2014 and ending on the date of coming into operation of this Act, arising from the fact that a by-election was not held within the three months prescribed under the Municipalities Act.

This Bill also proposes to indemnify the Municipal Council, any member or committee thereof and every other person who may be liable (directly or indirectly) to be legally proceeded against on the grounds of or in connection with a by-election not being so held.

This Bill further seeks to amend the Municipalities Act to provide for—

- (a) representation on the Council of each councillor who represents an electoral division that, although not falling entirely within the boundaries of the Municipality, contains polling divisions entirely within the boundaries of the Municipality, the electors for which polling divisions constitute more than fifty per cent of the electors for that electoral division;
- (b) in the event of the vacancy of a Mayor occurring—
 - (i) within fifteen months of the Mayor's election, the exercise by the Deputy Mayor of the powers and duties of the Mayor until the next by-election of a Mayor; or
 - (ii) after fifteen months of the Mayor's election, the exercise by the Deputy Mayor of the powers and duties of the Mayor until the next general election of a Mayor;

- (iii) the appointment by the councillors of one of their number to exercise the powers and duties of the Deputy Mayor during the period while the Deputy Mayor is exercising the powers and duties of the Mayor as stated above;
- (c) a person presiding over a meeting of a Municipal Council to exercise both an original and a casting vote.

NOEL ARSCOTT, M.P.
Minister of Local Government and
Community Development.

A BILL

ENTITLED

AN ACT to validate and confirm as lawful all official acts done by Leon George Thomas, Deputy Mayor of the Municipality of Portmore in good faith, during the period commencing on the 8th day of July, 2014, and ending on the date of coming into operation of this Act in the purported exercise of the functions conferred upon him as Mayor of the Municipality of Portmore; to validate and confirm as lawful all decisions and other acts taken and done, in good faith, by the Portmore Municipal Council or any member or committee thereof, in the purported exercise of powers, duties and functions conferred on the Council or any such member or committee by the Municipalities Act, or by any other person

by virtue of the purported exercise of such powers, duties or functions, during the period commencing on the 8th day of April, 2014 and ending on the date of the coming into operation of this Act; to indemnify Leon George Thomas, the Portmore Municipal Council and other persons from liability in relation thereto; to amend the Municipalities Act; and for connected matters.

As introduced by the Honourable Minister of Local Government and Community Development.

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**SECTION 4 OF THE PRINCIPAL ACT
WHICH IT IS PROPOSED TO AMEND**

Objects and Functions of Municipality

4.—(1) A Municipality shall be governed by a Municipal Council which shall be constituted as follows—

(7) The Mayor shall preside at meetings of the Council and is the official head of the Municipality for all ceremonial purposes.

(8) In the absence or incapacity of the Mayor, the Deputy Mayor shall exercise the powers and duties of the Mayor for not more than six months of the casual vacancy having been entered on the minutes of the Council.

(9) Subject to subsection (8), the provisions of section 8(3) of the Parish Councils Act and section 14 of the Kingston and St. Andrew Corporation Act shall, where relevant, apply with necessary modifications to supplying the casual vacancy of a Mayor.

(10) For the purposes of subsection (1)(a) eligible voters are inhabitants of the Municipality whose names appear on the voters list for the electoral divisions in that Municipality.

(11) The provisions of the Parish Councils Act and the Kingston and St. Andrew Corporation Act, for the election of councillors shall, where relevant, apply with necessary modifications to the election of the Mayor under this Act.

