

Rodney District Council (*PENLINK*) Penlink Toll Road) Empowering Bill

Local Bill

As reported from the Local Government and
Environment Committee

Commentary

Recommendation

The Local Government and Environment Committee has examined the Rodney District Council (PENLINK¹ Toll Road) Empowering Bill (the bill) and recommends, by majority, that it be passed with the amendments shown.

This is a local bill. We have determined that the Standing Orders have been complied with and that the bill as introduced affects the rights and prerogatives of the Crown because:

- clauses 10(4), 11 and 14(7) modify the application of the provisions of the Income Tax Act 1994
- clause 36 deals with the Crown Bank Account and the entitlement to money received from fines for offences
- clause 37 provides for regulations to be made by the Governor-General by Order in Council.

We have, however, proposed amendments that omit clauses 10(4), 14(7) and 36.

¹ We recommend that 'PENLINK' become 'Penlink'.

Summary

Our recommended amendments include:

- amending clause 5(5)(f) to specify that the concession period must not exceed 40 years
- removing clause 10(4) to retain the right of the Commissioner of Inland Revenue to determine whether the transfer of the road to the Rodney District Council (the Council) has occurred at market value
- deleting clause 14(7) to avoid setting a precedent for enabling depreciation to be claimed on intangible property, such as the 'right to toll'
- amending clause 13 to preclude the Council, in the event that it is the toll authority (the Penlink Authority), from charging tolls after the capital costs of the road and certain preliminary costs have been recovered
- inserting new clause 13A to specify that where the Council is the Penlink Authority, it is required to adopt a report for each financial year containing audited financial statements about the collection of tolls and the expenditure of toll revenue
- deleting clause 22(2)(b) and (f) to preclude the collection of personal information from users of the toll road for certain purposes
- deleting clause 22(1) and inserting new clause 22(2) to provide that the information privacy principles in section 6 of the Privacy Act 1993 apply to the Penlink Authority and its agents
- amending Part 5 of the bill to provide that the New Zealand Police (the police) enforce all offences, other than certain offences specified in the bill
- amending clause 26 to provide for the Commissioner of Police to appoint Council staff as enforcement officers
- inserting new clause 26A to specify the functions and powers of these enforcement officers, which will be much more limited than those of the police.

Introduction

The bill enables the Rodney District Council (the Council) to enter into a commercial agreement with a private company (the concessionaire) to design, finance, build, operate and maintain the Weiti Toll Road. The involvement of the concessionaire makes this road unique from other toll projects in New Zealand.

The Council has determined that additional roading capacity is required to alleviate traffic congestion and access problems on the Whangaparaoa Peninsula. According to the Council, these problems are worsening as the population in the area rapidly increases.

The total cost of the road is approximately \$47 million. The Council considers it is too expensive to finance the road through rates, as this would require an input from ratepayers of approximately \$22 million. Therefore, it has chosen to implement a user-pays system—tolling—to pay for the road.

Community support for the road is high, but not universal. A primary reason for opposition to the toll road is the adverse environmental effects it is expected to create. The Council has also been criticised for not giving adequate consideration to alternatives to the road. However, it considers the road represents the transport option that is most affordable and least disruptive to the community.

Committee consideration

We heard evidence on the bill on 12 December 2001 and began consideration on 13 February 2002. We were part way through consideration when, on 28 February, the Government announced its transport package. This included the announcement that the Government was preparing legislation to allow public private partnerships to build toll roads under certain circumstances. Among the stated criteria are that the project assists in achieving the objectives of the New Zealand Transport Strategy, and that ownership of the asset is not transferred to majority private ownership.

It is not clear that this bill fits those criteria. Also, while public authorities have built toll roads and bridges before, the Weiti Toll Road would be the first privately owned toll road in New Zealand and would thus set a precedent.

A majority of the committee thought it desirable to consider this bill in parallel with the Government's new transport legislation and so sought an extension to the reporting date so that this could occur. We

also wished to invite the Minister of Transport to attend the committee and advise us of the implications of the new transport strategy for this project, which he was not in a position to do previously.

As the committee was divided on this matter, an extension was not granted. We completed our consideration and have reported the bill back with amendments. It is now up to the House whether it wishes to progress the bill before the new policy framework legislation is in place.

Limit on length of concession period

Clause 5 of the bill enables the Council to enter into an agreement (the Penlink agreement) with the concessionaire to design, construct, operate and maintain the Weiti Toll Road in exchange for the right to charge tolls for a period specified in that agreement.

In its submission, the Council gives an indicative tolling period of 30 years. However, the precise tolling period will be subject to negotiation between the Council and the concessionaire. Allowing the tolling period to be detailed in the agreement, rather than in the bill, poses the risk that the concessionaire may continue to charge tolls beyond the point at which it has recovered its costs and a toll is no longer required. Under the bill as it is currently drafted, the onus is on the Council to negotiate an agreement with the concessionaire that does not, in effect, create a permanent toll road.

We acknowledge that specifying the tolling period in the bill could potentially affect the negotiations between the Council and the concessionaire. However, we consider that Parliament should know the period, or the maximum period, during which tolls may be levied.

We therefore recommend that clause 5(5)(f) be amended to specify that the concession period must not exceed 40 years. We consider that 40 years represents a balance between limiting the concession period and providing enough flexibility in the length of the concession period to avoid constraining negotiations between the Council and the concessionaire.

Provisions relating to the Income Tax Act 1994

Transfer value of assets

At the end of the concession period, the fixtures and improvements are transferred from the concessionaire to the Council. Clause 10(4) provides for the market value of certain fixtures and improvements

to be equal to the amount, for the purposes of section EG19 of the Income Tax Act 1994, paid by the Council to the concessionaire in respect of the transfer of those fixtures and improvements. The Council has indicated that the fixtures and improvements will be transferred to the Council at no cost. This means that the market value of the fixtures and improvements will be nil.

The reason for including this provision in the bill is to provide certainty for the concessionaire of the value of the road on transfer, and therefore the viability of the project.

The provision overrides the Income Tax Act by precluding the Commissioner of Inland Revenue from determining the transfer to occur at market value. The concessionaire may obtain a higher depreciation deduction than it would have if the transfer had occurred at market value—the additional depreciation being the difference between the book value of the road and the amount paid by the Council.

Allowing this clause to override the Income Tax Act may give the concessionaire preferential treatment relative to other taxpayers and set an unacceptable precedent for future developments. If the Council and the concessionaire require certainty, this could be achieved through warranties under contract.

We therefore recommend that clause 10(4) be deleted.

Right to toll declared to be the right to use land

Clause 14(7) declares that, for tax purposes, the 'right to charge tolls' is the 'right to use land'. Under the Income Tax Act the right to use land can be depreciated for tax purposes. Clause 14(7) has the effect of allowing the concessionaire to claim depreciation on the value of the right to toll. This would create an unacceptable precedent that might lead to other requests for intangible property, such as the right to toll, to be depreciated for tax purposes.

The Council considers there is a risk that the right to toll might not be regarded as the right to use land for the purposes of clause 4 of schedule 17 of the Income Tax Act.

The Inland Revenue Department has advised us that the right to use land and the right to toll are the same, as both require the ability to exclude others from a piece of land, such as persons who do not own the land or, in the case of a toll road, persons who do not pay the toll.

We consider that if the Council and the concessionaire require certainty, this could be achieved through warranties under contract. We therefore recommend that clause 14(7) be deleted.

Application of tolls

Toll revenue to be used to recover certain costs

We recommend that clause 13 be amended to preclude the Council, in the event that it is the Penlink Authority, from charging tolls after the capital costs of the road have been recovered. Clause 12, as it is currently drafted, allows the Council to use the tolls charged to pay certain costs, including maintenance costs. Given that maintenance costs are ongoing, we were concerned that this provision could have enabled the Council to collect maintenance costs beyond the period over which other costs are being collected. The proposed amendment limits the use of tolls to recover maintenance costs to the period during which capital costs and certain preliminary costs are also being recovered.

Council as toll authority required to report on spending of toll revenue

We also recommend that new clause 13A be inserted to specify that where the Council is the Penlink Authority, it is required to prepare an annual report containing audited financial statements that record:

- the rates of tolls payable to the Council
- the total amount of tolls collected by the Council, including for each type of vehicle
- any money other than tolls that is paid to the Council under this legislation or the Penlink agreement, and
- how the toll revenue has been applied during the financial year to meet certain costs.

The bill as it is currently drafted does not require the Council as the Penlink Authority to report to the community on how toll revenue is being spent. We consider that if the Council is the Penlink Authority, then accountability mechanisms should be applied to ensure that the public will be able to know what toll revenue is being collected and how it is being applied.

Protection of privacy

Anonymous method of paying toll

Clause 21 allows the Penlink Authority to stipulate the method for toll payment, and clause 22(1) requires the Penlink Authority to provide an anonymous payment method for all users.

We doubt whether there is any practicable method of making the payment of tolls completely anonymous. We recommend that clause 21 be amended to provide that at least one method of payment be a method that does not record personal information in relation to the person paying the toll, such as payment in cash, and that clause 22(1) be deleted.

Collection of personal information

Clause 22 as drafted also allows the Penlink Authority to collect personal information for the following purposes:

- managing and operating the Weiti Toll Road
- road safety
- collecting tolls
- enforcement of tolls
- proceedings in relation to offences against this bill once enacted
- managing and planning the future roading needs of the district.

Several submitters oppose the collection of personal information for future road planning needs. We agree, and consider aggregate information should suffice for this purpose.

Later in this report, we recommend that the police should continue to enforce road safety offences on the Weiti Toll Road. We consider this removes the requirement for the Penlink Authority to collect personal information for road safety purposes.

Accordingly, we recommend that clause 22(2)(b) and (f) be deleted.

Principles of Privacy Act 1993

Clause 22(3) enables the Penlink Authority to disclose personal information when the individual to whom the information relates consents in writing, or a search warrant or an order for discovery is issued.

This clause is more limited than the Information Privacy Principles 10 and 11 in section 6 of the Privacy Act 1993. These principles would, for example, allow disclosure to the individual concerned, or if the information were required for the conduct of proceedings before any court or tribunal.

We consider clause 22(3) is too restrictive as it requires written consent, a search warrant or an order for discovery to be made before the information can be disclosed.

We recommend that clause 22(3) be deleted and clause 22(2) be amended to provide that nothing in the bill once enacted limits the application of the information privacy principles in the Privacy Act to the Penlink Authority and its agents. This enables the use of information by the Penlink Authority to be governed by these principles.

Enforcement

Part 5 of the bill provides for the Penlink Authority to appoint authorised officers to carry out certain offence prosecution and law enforcement functions. These include the ability to enter and move a vehicle, direct vehicle users and pedestrians, and issue infringement notices. These functions are normally exercised by the police.

The objective of granting these powers to the concessionaire is to enable road safety and other issues on the Weiti Toll Road to be managed efficiently. However, the question is whether it is appropriate for road safety enforcement functions to be delegated to a private company, particularly in the absence of safeguards for the selection and training of enforcement officers, and given that the Penlink Authority will have the power to retain 90 percent of fine revenue.

Police to enforce all offences other than offences specified in the bill

We consider that there should be checks and balances on the selection and training of enforcement officers. We also consider there is a risk of delegating both enforcement and fine collection abilities to a private company, in that this may invite the misuse of enforcement powers to increase the collection of fines as a revenue-raising exercise.

Accordingly, we recommend that the police enforce all offences, other than certain offences that we recommend be enforced by the

Council. These offences include not paying a toll, attempting to evade payment of a toll, falsely claiming exemption from any toll, or giving false or misleading information in a sworn statement or statutory declaration.

We also recommend that clause 26 be amended to provide for the Commissioner of Police to appoint Council staff as enforcement officers and that new clause 26A be inserted to specify the functions and powers of these enforcement officers. These powers are limited to entering a vehicle that is causing an obstruction, moving such a vehicle or directing vehicle users, and directing pedestrians and persons riding animals. Other enforcement officers, such as members of the police, would have their usual enforcement powers.

This approach removes enforcement from the private sector, and introduces a requirement that the Commissioner of Police is satisfied that enforcement officers are qualified by knowledge or experience to undertake enforcement functions.

Appendix

Committee process

The Rodney District Council (PENLINK Toll Road) Empowering Bill was referred to the committee on 8 August 2001. We received 39 submissions and travelled to Auckland to hear nine submissions. Hearing of evidence took three hours and 17 minutes and consideration took six hours and 12 minutes.

We received advice from the Ministry of Transport, the Inland Revenue Department, the New Zealand Police, the Crown Law Office and the Parliamentary Counsel Office.

Committee membership

Jeanette Fitzsimons (Chairperson)

Martin Gallagher (Deputy Chairperson)

David Benson-Pope

Georgina Beyer

Gerrard Eckhoff

Ann Hartley

Hon Marie Hasler

Joe Hawke

Alec Neill

Eric Roy

Dr the Hon Lockwood Smith, Penny Webster, and Sue Bradford served as replacement members.

Key to symbols used in reprinted bill

As reported from a select committee

Struck out (unanimous)

[Subject to this Act, **]**

Text struck out unanimously

New (unanimous)

[Subject to this Act, **]**

Text inserted unanimously

(Subject to this Act,)

Words struck out unanimously

Subject to this Act,

Words inserted unanimously

Hon Dr Lockwood Smith

Rodney District Council ((*PENLINK*) Penlink Toll Road) Empowering Bill

Local Bill

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Schedule 1
Penlink project

Schedule 2
Land on which Weiti Toll Road is to
be constructed

The Parliament of New Zealand enacts as follows:

1 Title
This Act is the Rodney District Council (*PENLINK*) Penlink
Toll Road) Empowering Act **2001**.

New (unanimous)

Part 1
Preliminary provisions

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2 Commencement
This Act comes into force on the day after the date on which it
receives the Royal assent.

Struck out (unanimous)

Part 1
Preliminary provisions

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3 Interpretation
(1) In this Act, unless the context otherwise requires,—
ambulance has the same meaning as in section 2(1) of the
Land Transport Act 1998
approved vehicle surveillance equipment has the same
meaning as in section 2(1) of the Land Transport Act 1998

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Struck out (unanimous)

authorised officer means a person appointed by the PEN-
LINK Authority to collect and enforce tolls and to carry out
all or any of the functions and powers of an authorised officer
under this Act

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New (unanimous)

concession period means, in relation to a Penlink agreement, the period specified in the agreement as the period during which the concessionaire, in return for undertaking the obligations imposed on the concessionaire by the agreement, has the right to charge tolls in respect of the use of the Weiti Toll Road

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concessionaire means a person who has a (*PENLINK Agreement*) Penlink agreement with the Council

Struck out (unanimous)

concession period means the period specified in a PENLINK Agreement as the defined period during which the concessionaire, in return for undertaking the obligations imposed on the concessionaire by the PENLINK Agreement, has the right to levy and collect tolls

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Council means the Rodney District Council

New (unanimous)

enforcement officer means—

- (a) a person who is an enforcement officer for the purposes of the Land Transport Act 1998; or
- (b) a person who, by warrant under **section 26(1)**, is appointed to be an enforcement officer for the purposes of this Act and who holds office by virtue of this Act

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GST means the goods and services tax payable under section 8(1) of the Goods and Services Tax Act 1985

Struck out (unanimous)

infringement offence means an offence against **section 25(a)** or **section 25(b)**

land transport documents has the same meaning as in section 2(1) of the Land Transport Act 1998

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motor vehicle has the same meaning as in section 2(1) of the Land Transport Act 1998

network utility operator has the meaning set out in section 166 of the Resource Management Act 1991

(PENLINK) Penlink means the Rodney District Council project that— 5

(a) is made up of the Weiti Toll Road and the associated widening of a 1 km section of Whangaparaoa Road between Brightside Road and Arklow Lane; and

(b) is shown on the plan in **Schedule 1** 10

(PENLINK Agreement) Penlink agreement means an agreement under **section 5(2)**

(PENLINK) Penlink Authority means, subject to **section 8**,—

(a) the Council; or 15

(b) the concessionaire

personal information has the same meaning as in section 2(1) of the Privacy Act 1993

registered owner means, in relation to a motor vehicle, the person registered under the Transport (Vehicle and Driver Registration and Licensing) Act 1986 as the owner of that motor vehicle 20

schedule of tolls means the schedule of tolls referred to in **section 5**

toll payment point means the location or locations on the Weiti Toll Road where the **(PENLINK) Penlink Authority** requires that tolls be paid 25

Weiti Toll Road has the meaning given to it by **section 4(2)**.

(2) In this Act, unless the context otherwise requires, a reference to a toll means a toll payable under this Act for the use of the Weiti Toll Road by a motor vehicle. 30

4 Purpose

(1) The purpose of this Act is to facilitate the financing, planning, design, construction, management, maintenance, and operation of the Weiti Toll Road. 35

(2) **Weiti Toll Road** means the road and bridge link (approximately 7 kilometres in length) between Whangaparaoa Road and East Coast Road to be constructed on the land described

in **Schedule 2**; and includes all necessary links, buildings, erections, structures, and other works.

Part 2

(PENLINK Agreement)Penlink agreement

(PENLINK Agreement)Penlink agreement 5

5 **(PENLINK Agreement)Penlink agreement**

- (1) In this section, **person** means a company, partnership, firm, joint venture, association, trust, organisation, regulatory body or authority or entity, in each case, whether or not having a separate legal personality. 10
- (2) The Council may enter into a written agreement with any person under which that person is granted a concession so that, in return for undertaking the obligations with regard to the design, construction, maintenance, or operation of the Weiti Toll Road that are imposed on that person by the agreement, that person enjoys (the right to levy and collect tolls for the period stated in the PENLINK Agreement), for the period stated in the agreement, the right to charge tolls in respect of the use of the Weiti Toll Road. 15
- (3) An agreement entered into under **subsection (2)** is to be called a **(PENLINK Agreement)Penlink agreement**. 20
- (4) **Subsection (2)** has effect despite anything in the Local Government Act 1974.
- (5) Subject to **section 15**, a **(PENLINK Agreement) Penlink agreement** must include— 25
- (a) a schedule of tolls that details the rate or rates of tolls to be (levied) charged for the use of the Weiti Toll Road by motor vehicles; and
 - (b) an inflation index or inflation indices to be applied by the **(PENLINK) Penlink Authority** for the increase of the rate or rates of tolls specified in the schedule of tolls; and 30
 - (c) the criteria and procedures that apply in relation to any change in the schedule of tolls; and
 - (d) a statement of the circumstances in which any or all of the rates of tolls specified in the schedule of tolls may be changed; and 35

Struck out (unanimous)

- (d) a dispute resolution procedure; and
- (e) the agreed concession period.

New (unanimous)

- (e) a dispute resolution procedure; and
- (f) the agreed concession period (which must not exceed 40 years).

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6 Exercise of functions and provision of services by concessionaire

- (1) The concessionaire must, both in exercising functions under the (*PENLINK Agreement*) Penlink agreement and in providing services under the (*PENLINK Agreement*)Penlink agreement, act in accordance with the (*PENLINK Agreement*) Penlink agreement and this Act. 10
- (2) The concessionaire, in exercising any function under the (*PENLINK Agreement*) Penlink agreement or in providing any service under the (*PENLINK Agreement*)Penlink agreement, is not to be regarded for any purpose as acting as the agent or delegate of the Council. 15
- (3) The concessionaire may enter into and carry into effect agreements with any person for any purpose connected with the concessionaire's obligations under the (*PENLINK Agreement*) Penlink agreement (including obligations in relation to the performance of functions or the provision of services). 20

7 Respective responsibilities

A (*PENLINK Agreement*) Penlink agreement must clearly state the responsibilities of both— 25

- (a) the Council; and
- (b) the concessionaire (including, in particular, any responsibilities (*being responsibilities*) of the Council or the (*PENLINK*) Penlink Authority under any enactment that become, by virtue of (*that*) the agreement, responsibilities that are to be discharged by the concessionaire). 30

8 (PENLINK) Penlink Authority

- (1) In relation to any period during which a ((PENLINK Agreement)) Penlink agreement is in force, the concessionaire under that ((PENLINK Agreement))Penlink agreement, and not the Council, is the ((PENLINK)) Penlink Authority. 5
- (2) In relation to any period during which a ((PENLINK Agreement)) Penlink agreement is not in force, the Council is the ((PENLINK)) Penlink Authority and **Parts 3, 4, 5, and 6** apply with all necessary modifications.

Right to use land 10

9 Power to grant right to use land for Weiti Toll Road activities

- (1) The Council may, for the purpose of enabling a concessionaire to discharge any responsibilities under a ((PENLINK Agreement)) Penlink agreement or this Act, grant to the concessionaire, by the ((PENLINK Agreement)) Penlink agreement or by a lease, licence, deed, or other agreement, the right to use land in the discharge of those responsibilities. 15
- (2) The powers conferred on the Council by **subsection (1)** include the power to grant to the concessionaire the right to carry out activities— 20
- (a) affecting the subsoil or any part of the subsoil beneath the surface of the land to be used for the Weiti Toll Road; or
- (b) affecting the airspace or any part of the airspace above the surface of the land to be used for the Weiti Toll Road; or 25
- (c) affecting the surface or any part of the surface of the land to be used for the Weiti Toll Road.
- (3) A grant under **subsection (1)** may be for the whole or any part of any period or periods within the concession period and on *(any)* terms or conditions as the Council thinks fit. 30
- (4) The powers conferred on the Council by **subsection (1)** are in addition to its powers under other enactments (including its powers under section 341 of the Local Government Act 1974). 35
- (5) The grant, under **subsection (1)**, of a lease, licence, or other right to use land *(under this section)*for a period or periods within the concession period—

- (a) is not a subdivision of land for the purposes of section 218 of the Resource Management Act 1991; and
- (b) is not subject to sections 40 to 42 of the Public Works Act 1981.

Ownership

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10 Ownership by concessionaire

- (1) In this section, **land** means the land specified in **Schedule 2**.
- (2) Despite any other enactment or rule of law, the (*PENLINK Agreement*) Penlink agreement may include a provision stating that, for any period (being the whole or part of the concession period) during which the right to use and occupy the whole or part of the land is granted to the concessionaire by the Council, the concessionaire is to own the fixtures on, and the improvements to, the land to which the lease, licence, deed, or other agreement relates, including the roadway and the bridge. 10 15
- (3) Every provision of the kind described in **subsection (1)** is to have effect according to its tenor.

Struck out (unanimous)

- (4) For the purposes of section EG 19 of the Income Tax Act 1994, the market value of any fixtures on, or improvements to, the land to which any lease granted under **section 9** relates (being fixtures or improvements owned by the concessionaire in accordance with this section) is, on the transfer by the concessionaire to the Council at the end of the term of the lease, equal to the amount, if any, paid by the Council to the concessionaire in respect of the transfer of those fixtures or improvements. 20 25

11 Ownership of fixtures and improvements

For the avoidance of doubt, it is declared that, if the Council owns any or all of the fixtures on, or improvements to, any land leased by the Council to the concessionaire for the whole or part of the concession period, section EG 1A of the Income Tax Act 1994 does not, for the term of the lease, apply to the concessionaire in relation to any such fixtures or improvements (including the roadway and the bridge). 30 35

Part 3
Council as (*PENLINK*) Penlink Authority

12 Application of tolls

In the event that the Council is the (*PENLINK*) Penlink Authority under **section 8**, the Council may use the tolls (*levied and collected*) charged under this Act only for the purposes of paying costs, charges, and expenses incurred by the Council—

- (a) in constructing, operating, and maintaining the Weiti Toll Road; and 10
- (b) in constructing, operating, and maintaining toll facilities that are located on the Weiti Toll Road and relate to the (*levying and collection of the tolls*) charging of tolls for the use of the Weiti Toll Road; and
- (c) (*from the purchase of*) in purchasing the land described in **Schedule 2**. 15

Struck out (unanimous)

13 Levying and collection of tolls by Council

In the event that the Council is the PENLINK Authority under **section 8**, the Council may levy and collect tolls only until such time as— 20

- (a) the Council enters into a PENLINK Agreement; or
- (b) the costs, charges, and expenses incurred in a manner listed in **section 12** are paid.

New (unanimous)

13 Charging of tolls

(1) In the event that the Council is the Penlink Authority under **section 8**, the Council may charge tolls for the use of the Weiti Toll Road only until such time as— 25

- (a) the Council enters into a Penlink agreement; or
- (b) the costs, charges, and expenses described in **section 12** are paid. 30

(2) Despite **subsection (1)**, the Council may not enter into a Penlink agreement or charge tolls in respect of the use of the Weiti

New (unanimous)

Toll Road after the amount collected by way of tolls is sufficient to liquidate—

- (a) the costs, charges, and expenses of constructing both the Weiti Toll Road and the toll facilities that are located on the road and relate to the charging of tolls; and 5
- (b) the costs, charges, and expenses of purchasing the land described in **Schedule 2**; and
- (c) the costs, charges, and expenses of conducting and completing the statutory processes under the Resource Management Act 1991 and the Public Works Act 1981 in relation to the Weiti Toll Road and the toll facilities that are commenced before the construction of the Weiti Toll Road begins; and 10
- (d) the costs, charges, and expenses incurred by the Council in preparing and promoting this Act; and 15
- (e) the costs, charges, and expenses incurred by the Council in entering into a Penlink agreement; and
- (f) the costs, charges, and expenses of operating and maintaining, during the period of toll collection that is required to liquidate the costs, charges, and expenses referred to in **paragraphs (a) to (e)**, both the Weiti Toll Road and the toll facilities; and 20
- (g) the costs, charges, and expenses of servicing, during the period referred to in **paragraph (f)**, any debt incurred by the Council for the purposes of meeting any of the costs, charges, and expenses referred to in **paragraphs (a) to (e)**. 25

13A Annual report about tolls

- (1) If the Council, in its capacity as the Penlink Authority, charges tolls for the use of the Weiti Toll Road, it must, for each financial year in which tolls are charged, prepare and adopt a report containing the following audited financial statements: 30
 - (a) a statement of the rates of tolls payable to the Council at any time in the financial year: 35

New (unanimous)

- | | | |
|-------|--|----|
| (b) | a statement of the total amount collected by the Council by way of tolls in the financial year, which statement must include the total amount collected in the financial year in respect of each type of vehicle for which a toll was payable: | 5 |
| (c) | a statement of any money (other than tolls) paid to the Council under this Act or a Penlink agreement in the financial year: | |
| (d) | a statement of the way in which the amount collected by the Council by way of tolls in the financial year has been applied, which statement must specify, for the financial year,— | 10 |
| (i) | the amount used in meeting the costs, charges, and expenses of constructing the Weiti Toll Road: | 15 |
| (ii) | the amount used in meeting the costs, charges, and expenses of maintaining the Weiti Toll Road: | |
| (iii) | the amount used in meeting the costs, charges, and expenses of constructing the toll facilities that are located on the Weiti Toll Road and relate to the charging of tolls: | 20 |
| (iv) | the amount used in meeting the costs, charges, and expenses of maintaining the toll facilities that are located on the Weiti Toll Road and relate to the charging of tolls: | 25 |
| (v) | the amount used in meeting the costs, charges, and expenses of operating the toll facilities that are located on the Weiti Toll Road and relate to the charging of tolls: | |
| (vi) | the amount used in meeting the costs, charges, and expenses of purchasing the land described in Schedule 2 : | 30 |
| (vii) | the amount used in meeting the costs, charges, and expenses of conducting and completing the statutory processes under the Resource Management Act 1991 and the Public Works Act 1981 in | 35 |

New (unanimous)

	relation to the Weiti Toll Road and the toll facilities that are commenced before the construction of the Weiti Toll Road begins:	
(viii)	the amount used in meeting the costs, charges, and expenses incurred by the Council in preparing and promoting this Act:	5
(ix)	the amount used in meeting the costs, charges, and expenses incurred by the Council in entering into a Penlink agreement:	
(x)	the amount used in meeting the costs, charges, and expenses of servicing any debt incurred by the Council for the purposes of meeting any of the costs, charges, and expenses referred to in section 13(2)(a) to (e) :	10
(xi)	particulars of the manner in which the balance of the total amount has been applied, which particulars must include, if any part of the balance has been paid into an account, the name of that account and the amount paid into it in that financial year:	15 20
(xii)	any amounts, being tolls collected by the Council in any earlier financial years or amounts derived from tolls collected in earlier financial years, that have been used in the financial year to meet the costs, charges, and expenses of the kind listed in subparagraphs (i) to (x) .	25
(2)	The report prepared and adopted under subsection (1) (which must be prepared and adopted by the Council at the same time it prepares and adopts its annual report under section 223E of the Local Government Act 1974) must be separate from the annual report.	30
(3)	The report adopted under subsection (1) must be adopted before the end of the fifth month after the close of the financial year to which the report relates.	
(4)	If the Council adopts a report under this section, it—	35
(a)	must make the report available at its offices and libraries; and	

New (unanimous)

- (b) must, as soon as practicable after its adoption, publish the report in at least 2 newspapers, including—
 - (i) a newspaper circulating in the Rodney District; and
 - (ii) a newspaper circulating in the Auckland region; 5
- (c) must make copies of the report available to the public—
 - (i) free of charge; or
 - (ii) at a reasonable charge; and
- (d) must, within 20 working days after its adoption, send 10 copies of the report to—
 - (i) the Secretary (within the meaning of the Land Transport Act 1998); and
 - (ii) the Controller and Auditor-General; and
 - (iii) the Parliamentary Library. 15
- (5) Nothing in this section—
 - (a) limits the Council's obligations in respect of its annual report; or
 - (b) prevents the Council from including, both in its annual report and in the separate report required by **subsection (1)**, the audited statements referred to in **subsection (1)**. 20

Compare: 2000 No 1 (L) s 7

Part 4
Tolls

- 14 (Levying and collection) Charging of tolls 25**
- (1) Subject to **Part 3**, the ((PENLINK) Penlink Authority may, in accordance with this Act, (*levy and collect*) charge tolls for the use of the Weiti Toll Road by motor vehicles.
- (2) The concessionaire must, in (*levying and collecting*) charging tolls for the use of the Weiti Toll Road by motor vehicles, 30 observe not only the provisions of this Act but also the provisions of the ((PENLINK Agreement) Penlink agreement.
- (3) Tolls may be (*levied and collected*) charged in respect of 1 or both directions of travel.

- (4) The power to *(levy)* charge tolls commences on the day on which the Weiti Toll Road is first opened for public use by motor vehicles.
- (5) Subject to **section 13**, the power to *(levy and collect)* charge tolls will cease at the end of the tolling period. 5
- (6) For the purposes of **(subsection (4)) subsection (5)**, the **tolling period** means the maximum possible term of the concession period as agreed in the first **(PENLINK Agreement) Penlink agreement** that is entered into under **section 5(2)**, taking into account all contingencies and provisos. 10

Struck out (unanimous)

- (7) For the avoidance of doubt, it is declared that, for the purposes of the Income Tax Act 1994, the right under **subsection (1)** to levy and collect tolls is, within the meaning of clause 4 of Schedule 17 of that Act, a right to use land.

15 Rates of tolls 15

- (1) The tolls payable under this Act are (subject to **section 16**) payable at the rate or rates as may be specified in the schedule of tolls, if any, and published under **section 17**.
- (2) The rate or rates published under **section 17** must include the amount (if any) payable by way of GST. 20
- (3) In the event that the Council is the PENLINK Authority, tolls payable under this Act are payable at the rate or rates published under **section 17** and—
 - (a) as may be specified in the schedule of tolls plus GST, if any; or 25
 - (b) as are prescribed by bylaws made by the Council under this Act.
- (4) Different provisions may be made in the schedule of tolls or in any bylaw prescribed under **subsection (3)** for—
 - (a) different classes of motor vehicle; or 30
 - (b) particular motor vehicles; or
 - (c) different times of the day or for different days or for different days of the year; or
 - (d) any other differential basis.

New (unanimous)

15 Rates of tolls

- (1) If the concessionaire is the Penlink Authority, the tolls payable under this Act are, subject to **section 16**, payable at the rate or rates that are specified in the schedule of tolls and published under **section 17**. 5
- (2) If the Council is the Penlink Authority, the Council may make bylaws prescribing the rates of the tolls that are payable under this Act.
- (3) If the Council is the Penlink Authority, the tolls payable under this Act are, subject to **subsection (4)**, payable at the rate or rates that are prescribed by bylaws made by the Council under **subsection (2)**. 10
- (4) If, before the Council becomes the Penlink Authority, tolls under this Act were being paid to a concessionaire, the tolls payable under this Act are, until the rate or rates of those tolls are prescribed by bylaws made under **subsection (2)**, to be paid to the Council (in its capacity as the Penlink Authority) at the rate or rates at which they were payable to the concessionaire. 15
- (5) The rate or rates included in the schedule of tolls and published under **section 17** and the rate or rates included in any bylaws made under **subsection (2)** must include the amount (if any) payable by way of GST. 20
- (6) Different provisions may be made in the schedule of tolls or in any bylaws made under **subsection (2)** for— 25
 - (a) different classes of motor vehicle; or
 - (b) particular motor vehicles; or
 - (c) different times of the day or different days or different days of the year; or
 - (d) any other differential basis.
- (7) If the schedule of tolls differentiates between classes of motor vehicle, each class must be clearly described. 30

16 Amendments to schedule of tolls

- (1) Subject to **subsection (2)**, the (*PENLINK*) Penlink Authority may, in accordance with this Act, amend or replace the schedule of tolls. 35

- (2) The (*PENLINK*) Penlink Authority may, in accordance with the agreed inflation index or inflation indices contained in the (*PENLINK Agreement*)Penlink agreement, increase the rate or rates of tolls in the schedule of tolls once in every period of 12 months. 5

New (unanimous)

- (2A) Despite **subsection (2)** and the Penlink agreement, the Penlink Authority—
- (a) is not obliged to increase the rate or rates of tolls in accordance with **subsection (2)**; and
 - (b) may, on any occasion on which the rate or rates could be increased in accordance with **subsection (2)**,—
 - (i) decline to effect any increase in accordance with **subsection (2)**; or
 - (ii) increase the rate, or all or any of the rates, of tolls by an amount that is less than that permitted by **subsection (2)**. 15
- (2B) The Penlink agreement—
- (a) must set out the circumstances, criteria, and procedures that apply in relation to—
 - (i) any increase in the rate or rates of tolls payable under this Act; and 20
 - (ii) any amendment to, or replacement of, the schedule of tolls; and
 - (b) may set out the circumstances, criteria, and procedures that apply in relation to any reduction in the rate or rates of tolls payable under this Act. 25
- (3) The concessionaire may apply to the Council, in accordance with the agreed circumstances, criteria and procedures contained in the (*PENLINK Agreement*)Penlink agreement for an amendment to, or replacement of, the schedule of tolls, including an increase in any or all of the rates of tolls specified in the schedule of tolls. 30
- (4) To avoid any doubt, it is declared that the (*PENLINK*)Penlink Authority may, at any time, decrease, to such an extent as it thinks fit, any or all of the rates or rates of tolls specified in the schedule of tolls. 35

17 Publication of tolls and method of payment of tolls

- (1) The (*PENLINK*) Penlink Authority must publish—
- (a) the schedule of tolls and, after each amendment to the schedule of tolls, the schedule of tolls (as amended); and 5
 - (b) the total amount payable (inclusive of GST, if any) in respect of each toll; and
 - (c) any increase or decrease in the rate or rates of the tolls; and, in the case of any increase in any rate or rates, the inflation index or inflation indices that have been applied; and 10
 - (d) any amendment to the schedule of tolls; and
 - (e) an explanation of the method or methods by which tolls must be paid; and
 - (f) an explanation of any change in the method or methods by which tolls must be paid. 15
- (2) Publication under this section must take place at least 28 days before the date on which the schedule of tolls or the schedule of tolls (as amended) or the amendment to the schedule of tolls or the replacement of the schedule of tolls or the change in the method of methods of toll payment takes effect. 20
- (3) The (*PENLINK*) Penlink Authority must publish all information required under **subsection (1)** in at least 2 newspapers, including—
- (a) a newspaper circulating in the Rodney District; and 25
 - (b) a newspaper circulating in the Auckland region.
- (4) The information published under **subsection (1)** must, as the case may require, state the date on which the schedule of tolls or the schedule of tolls (as amended) or the amendment to the schedule of tolls or the schedule of tolls (as replaced) or the change in the method or methods of toll payment takes effect. 30

18 Display of rates of tolls

- (1) The (*PENLINK*) Penlink Authority must, in accordance with this section, display the rates of tolls for the time being in force under this Act. 35
- (2) Those rates must be clearly displayed in a conspicuous place—
- (a) at or near each toll payment point on the Weiti Toll Road; and

(b) at each entry point to the Weiti Toll Road.

19 Facilities for collection of tolls

For the purpose of collecting tolls or enforcing the payment of tolls or both, the (*PENLINK*) Penlink Authority may, as it considers necessary,— 5

- (a) construct on the Weiti Toll Road toll barriers, toll houses, and other works; and
- (b) install on the Weiti Toll Road equipment, cameras, and toll collection systems.

20 Liability to pay toll 10

- (1) Subject to **subsections (2) and (3)**, the person who is in charge or control of any motor vehicle when the motor vehicle reaches the toll payment point is liable for the payment of the toll to the (*PENLINK*) Penlink Authority.
- (2) If a person who is liable to pay a toll under **subsection (1)** fails to pay the toll, the registered owner of the motor vehicle in respect of which the toll is payable is liable for the payment of the toll to the (*PENLINK*) Penlink Authority. 15
- (3) The registered owner of a motor vehicle is not liable under **subsection (2)** to pay a toll if, within 28 days after being notified of the non-payment of the toll, the registered owner supplies to the (*PENLINK*) Penlink Authority, in a sworn statement in writing or a statutory declaration,— 20
 - (a) the name and address of the driver of the motor vehicle or such other particulars within the knowledge of the registered owner as may lead to the identification of the person who was in charge or control of the motor vehicle at the relevant time; or 25
 - (b) a statement that the motor vehicle was a stolen vehicle at the relevant time. 30

21 Payment of toll

- (1) A toll must be paid by the method or methods required by the (*PENLINK*) Penlink Authority at the time the toll is due for payment.

New (unanimous)

- (1A) At least one of the methods of payment must be a method, such as payment in cash, that does not record personal information in relation to the person paying the toll.
- (2) The ((PENLINK)) Penlink Authority must provide casual road users with a convenient method of paying for their use of the Weiti Toll Road. 5
- (3) This section is subject to **section 22**.

Struck out (unanimous)

22 Protection of privacy

- (1) The PENLINK Authority must offer users of the Weiti Toll Road an anonymous method of paying tolls. 10
- (2) Personal information collected under this Act by the PENLINK Authority and its agents may be collected and used only in accordance with the PENLINK Agreement and for the purposes of— 15
- (a) managing and operating the Weiti Toll Road; or
 - (b) road safety on the Weiti Toll Road; or
 - (c) collecting tolls for the use of the Weiti Toll Road; or
 - (d) enforcement of tolls for the use of the Weiti Toll Road; or
 - (e) proceedings in relation to offences against this Act; or 20
 - (f) management and planning by the Council of the future needs of the Rodney District roading network.
- (3) Except as provided in **subsection (2)**, personal information collected under this Act or by the PENLINK Authority may be disclosed only on production of— 25
- (a) written consent by the individual to whom the information relates; or
 - (b) an appropriate search warrant issued by any District Court Judge or Justice of the Peace or Community Magistrate or any Registrar (not being a constable); or 30
 - (c) an order for discovery issued by a High Court Judge, Master of the High Court, or District Court Judge.

New (unanimous)

22 Protection of privacy

- (1) Personal information must not be collected by the Penlink Authority or its agents unless—
- (a) the information is collected for a lawful purpose connected with 1 or more of the following functions and activities:
 - (i) the management and operation of the Weiti Toll Road: 5
 - (ii) the collection of tolls for the use of the Weiti Toll Road: 10
 - (iii) the enforcement of tolls for the use of the Weiti Toll Road:
 - (iv) the prevention, detection, investigation, prosecution, and punishment of offences against this Act; and 15
 - (b) the collection of the information is necessary for a lawful purpose of the kind described in **paragraph (a)**.
- (2) Subject to **subsection (1)**, nothing in this Act limits the application to the Penlink Authority and its agents of the information privacy principles set out in section 6 of the Privacy Act 1993. 20

23 Powers in respect of non-payment

If a toll remains unpaid after it has become due for payment, the (*PENLINK*) Penlink Authority may—

- (a) refuse to allow the motor vehicle in respect of which the toll is payable to proceed along the Weiti Toll Road; or 25

Struck out (unanimous)

- (b) either—
 - (i) recover as a debt from the person liable to pay the toll under **section 20** the amount of the toll together with all expenses involved in the collection of the toll; or 30
 - (ii) proceed against the person under the infringement provisions in **Part 5**.

New (unanimous)

- (b) recover as a debt from the person liable to pay the toll under **section 20** the amount of the toll together with all expenses involved in the collection of the toll.

24 Exemption from payment of tolls

- (1) No toll is payable under this Act for any motor vehicle engaged in carrying— 5

- (a) a member of the police in the course of his or her duty:
(b) a member of any armed forces of Her Majesty when on duty or going to or returning from duty in (*the*) uniform (*of that member's corps*): 10

New (unanimous)

- (ba) a registered medical practitioner who is on urgent medical service and who is using a motor vehicle equipped with a flashing or revolving green lamp that is on top of the motor vehicle and is visible from the front or from all directions: 15

- (c) a person, or a member of a class of persons, exempted by regulations made under **section 37**.

- (2) No toll under this Act is payable in respect of the following motor vehicles:

- (a) fire appliances and vehicles used for extinguishing fires: 20
(b) ambulances:

New (unanimous)

- (ba) a vehicle being used in the performance of emergency services under the authority of an enactment:

- (c) any motor vehicle or class of motor vehicles exempted by regulations made under **section 37**. 25

Part 5 Offences and enforcement

Offences

25 Offences

- (1) A person commits an offence and is liable on summary conviction to a fine not exceeding \$500 who,— 5
- (a) without (*lawful*) reasonable excuse, refuses or fails to pay a toll payable by that person; or
- (b) (*evades the*) attempts to evade payment of any toll payable by that person; or 10

Struck out (unanimous)

- (c) unlawfully resists or obstructs any authorised officer in the execution of his or her duty; or

- (d) falsely claims exemption from any toll; or

New (unanimous)

- (e) for the purposes of **section 20(3)** or **section 35(3)(c)**, gives a sworn statement in writing or a statutory declaration and in that statement or declaration gives information that the person knows to be false or misleading. 15
- (2) Nothing in **subsection (1)(e)** limits section 111 of the Crimes Act 1961.

Struck out (unanimous)

Authorised officers

20

26 Appointment of authorised officers

- (1) The PENLINK Authority may appoint any person as an authorised officer to carry out all or any of the functions and powers of an authorised officer under this Act.
- (2) The PENLINK Authority must supply to each authorised officer a warrant of appointment containing— 25
- (a) a reference to this section; and
- (b) the name of the authorised officer; and

Struck out (unanimous)

- (c) a statement that the person to whom the warrant is supplied is an authorised officer under this Act; and
- (d) a statement of the functions and powers that the authorised officer is authorised to exercise and carry out under this Act. 5
- (3) Every authorised officer who exercises or purports to exercise any power conferred on the officer by or under this Act must have with him or her, and must produce if required to do so, his or her warrant and evidence of his or her identity.
- (4) Every authorised officer who holds a warrant issued under this section must, on the termination of his or her appointment or employment as such, surrender the warrant to the PENLINK Authority. 10
- (5) An authorised officer may exercise the functions and duties conferred or imposed on him or her by or under this Act only in respect of the Weiti Toll Road. 15
- (6) The PENLINK Authority, if it appoints any person under this section, is liable for the actions of that person as an authorised officer in all respects as if—
- (a) that person were an officer or employee of the PENLINK Authority (whether or not that is the case); and 20
- (b) any directions given or control exercised by any other person over the authorised officer in that capacity were directions given or control exercised by the PENLINK Authority. 25
- (7) Every person commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$2,000 or to both, who—
- (a) personates the person named in a warrant supplied under **subsection (2)**; or 30
- (b) falsely pretends to be an authorised officer.

New (unanimous)

Enforcement officers

- 26 Appointment of enforcement officers**
- (1) The Commissioner of Police may, by warrant, appoint an employee of the Council to be an enforcement officer for the purposes of this Act. 5
- (2) The only persons who may be appointed under **subsection (1)** are persons who, in the opinion of the Commissioner of Police, are qualified by knowledge or experience—
- (a) to have, in relation to the Weiti Toll Road, the functions specified in **section 26A(1)(a)**; and 10
- (b) to exercise, in relation to the Weiti Toll Road, the powers specified in **section 26A(1)(b)**.
- (3) A person appointed under **subsection (1)** must be supplied by the Commissioner of Police with a warrant that specifies, as the functions and powers of that person, the functions and powers specified in **section 26A(1)**. 15
- (4) The Commissioner of Police may, in the warrant, impose conditions on the carrying out or exercise by the enforcement officer of any of the functions and powers specified in **section 26A(1)**. 20
- (5) The Commissioner of Police may at any time revoke an appointment made under **subsection (1)**.
- (6) A person who holds a warrant issued under **subsection (1)** must, on the revocation of his or her appointment or on ceasing to be an employee of the Council, surrender the warrant to the Commissioner of Police. 25
- 26A Functions and powers of enforcement officer appointed under section 26(1)**
- (1) An enforcement officer who holds a warrant issued under **section 26(1)**— 30
- (a) has the functions of—
- (i) enforcing **section 25(1)**; and
- (ii) directing traffic on the Weiti Toll Road; and
- (b) may, in carrying out any of his or her functions in relation to the Weiti Toll Road exercise,— 35

New (unanimous)

- (i) the powers conferred by section 113(2)(a), (c), (d) and (3) of the Land Transport Act 1998; and
 - (ii) the powers conferred on an enforcement officer by **sections 29 and 32(3)**.
 - (2) Where an enforcement officer who holds a warrant issued under **section 26(1)** carries out or exercises, or purports to carry out or exercise, any function or power conferred on the officer by this Act, the enforcement officer—
 - (a) must have with him or her, and must produce if required to do so, his or her warrant and evidence of his or her identity; and
 - (b) must observe any conditions imposed under **section 26(4)** by the Commissioner of Police.
- 26B Functions and powers of other enforcement officers**
- (1) This section applies in relation to enforcement officers other than enforcement officers who hold warrants issued under **section 26(1)**.
 - (2) Where an enforcement officer to whom this section applies is in uniform or in possession of a warrant or other evidence of his or her authority as an enforcement officer, he or she may, in relation to the Weiti Toll Road, enforce—
 - (a) the provisions of this Act, the Transport Act 1962, the Land Transport Act 1998, the Local Government Act 1974, the Road User Charges Act 1977, the Transport (Vehicle and Driver Registration and Licensing) Act 1986, the Transport Services Licensing Act 1989, and the Transit New Zealand Act 1989; and
 - (b) the provisions of any regulations, rules, or bylaws in force under any of the Acts referred to in **paragraph (a)**.
- 26C Status of enforcement officers**
- (1) Subject to **subsections (2) to (4)**, in their application to the Weiti Toll Road and to any person, vehicle, or animal on the Weiti Toll Road, the provisions of—
 - (a) the Acts referred to in **section 26B(2)(a)**; and
 - (b) the Summary Proceedings Act 1957; and

New (unanimous)

- (c) the regulations, rules, and bylaws referred to in **section 26B(2)(b)** and the regulations in force under the Summary Proceedings Act 1957,—
apply, with all necessary modifications, in relation to an enforcement officer within the meaning of this Act as if he or she were an enforcement officer within the meaning of the Land Transport Act 1998. 5
- (2) Section 52(1)(c) of the Land Transport Act 1998, as applied by **subsection (1)**, has effect as if any lawful requirement, direction, notice, request, or prohibition given to or imposed on any person under this Act by an enforcement officer within the meaning of this Act had been given to or imposed on that person under the Land Transport Act 1998 by an enforcement officer within the meaning of that Act. 10
- (3) Section 53 of the Land Transport Act 1998, as applied by **subsection (1)**, has effect as if the functions and powers of an enforcement officer under this Act were functions and powers of an enforcement officer under the Land Transport Act 1998. 15
- (4) **Subsections (1) to (3)** have effect, in relation to an enforcement officer who holds a warrant issued under **section 26(1)**, only in relation to the carrying out or exercise by the enforcement officer of any functions and powers specified in **section 26A(1)**. 20

Struck out (unanimous)**27 Powers of authorised officers**

- (1) Any authorised officer in possession of any warrant of appointment supplied under **section 26** may— 25
- (a) direct any person on the Weiti Toll Road, and any person in charge of or in any vehicle on the Weiti Toll Road, to provide the person's name and address and give any other particulars required as to the person's identity, and give such information as is within the person's knowledge and as may lead to the identification of the driver or person in charge of any vehicle: 30

Struck out (unanimous)

- (b) if the authorised officer believes on reasonable grounds that a vehicle on the Weiti Toll Road causes an obstruction on the Weiti Toll Road, or that the removal of the vehicle is desirable in the interests of road safety or for the convenience or in the interests of the public, the authorised officer may— 5
 - (i) enter, or authorise another person to enter, the vehicle for the purpose of moving it or preparing it for movement; and
 - (ii) move, or authorise another person to move, the vehicle to any place where it does not constitute a traffic hazard: 10
- (c) direct a person using a vehicle or riding or driving an animal on the Weiti Toll Road to stop the vehicle or animal, as the case may be, or to cause it to proceed or keep it to a particular line of traffic or direction: 15
- (d) direct a pedestrian not to proceed across the Weiti Toll Road where the authorised officer believes on reasonable grounds that the crossing of the Weiti Toll Road would create a hazard: 20
- (e) direct a pedestrian to remove himself or herself from the Weiti Toll Road or any specified part of the Weiti Toll Road if the authorised officer has reasonable grounds to believe that the removal of that person is desirable in the interests of road safety or for the convenience or in the interests of the public: 25
- (f) direct the driver or person in charge of any vehicle or animal on the Weiti Toll Road to remove the vehicle or animal from the Weiti Toll Road or any specified part of the Weiti Toll Road if the authorised officer believes on reasonable grounds that the vehicle or animal causes an obstruction on the Weiti Toll Road, or that its removal is desirable in the interests of road safety or for the convenience or in the interests of the public: 30
- (g) direct any person operating a heavy motor vehicle or combination of vehicles on the Weiti Toll Road to remove the heavy motor vehicle or combination of vehicles from the Weiti Toll Road if the authorised officer has reasonable grounds to believe that the person 35

Struck out (unanimous)

- is operating the heavy motor vehicle or combination of vehicles in breach of—
- (i) the applicable gross weight limits that are prescribed under the Land Transport Act 1998 in respect of motor vehicles; or 5
 - (ii) the applicable maximum weight limits that are prescribed under the Land Transport Act 1998 for axles or groups of axles of motor vehicles.
- (2) Every person to whom any direction is given under the authority of this section must comply with that direction, and no person may do any act that is for the time being forbidden by any such direction. 10
- (3) Any person who is authorised by an authorised officer—
- (a) to enter a vehicle for the purpose of moving it or preparing it for movement; or 15
 - (b) to move a vehicle or animal to a place where it does not constitute a traffic hazard—
- may do so, but must do everything reasonably necessary to ensure that the vehicle is not damaged.
- (4) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 who— 20
- (a) has possession of a vehicle as a result of its being moved under this section; and
 - (b) when requested at any reasonable time to do so by a person who produces satisfactory evidence to the effect that the person was lawfully entitled to possession of the vehicle immediately before it was moved, fails to deliver possession of the vehicle to that person without delay. 25
- 28 Offences in respect of authorised officers** 30
- Every person commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 who—
- (a) fails to comply with any direction that an authorised officer gives under the provisions of this Act; or
 - (b) gives, in response to a direction of the kind referred to in **paragraph (a)**, any information that the person knows to be false. 35

Enforcement

Struck out (unanimous)

- 29 Power to lay information**
To avoid any doubt, it is declared that an authorised officer (or a person acting in the course of his or her official duties as an officer or employee of the PENLINK Authority) may,— 5
- (a) under section 13 of the Summary Proceedings Act 1957, lay an information for an offence against this Act; and
- (b) under section 20A(2) of the Summary Proceedings Act 1957, file a notice in respect of any offence against this Act that is a minor offence within the meaning of section 20A(12) of that Act. 10
- 30 Power to conduct proceedings**
If an authorised officer (or a person acting in the course of his or her official duties as an officer or employee of the PENLINK Authority) has laid an information for an offence against this Act, any officer or employee of the PENLINK Authority may appear and conduct the proceedings on the informant's behalf. 15
- 31 Evidence of approved vehicle surveillance equipment** 20
- (1) In proceedings for an offence against this Act, an image produced by means of an exposure taken by approved vehicle surveillance equipment and showing or recording a motor vehicle on a road, the location of the motor vehicle or the colour or form of a traffic control device and the date and time when the image was taken, or showing or recording any of those things is, in the absence of proof to the contrary, sufficient evidence of that fact or event. 25
- (2) The production in proceedings for an offence against this Act of an image purporting to be an image referred to in **subsection (1)** is, in the absence of proof to the contrary, sufficient evidence that the image was produced by means of an exposure taken by approved vehicle surveillance equipment. 30

Compare: 1998 No 110 s 145

New (unanimous)**31 Evidence of approved vehicle surveillance equipment**

- (1) In proceedings for an offence against **section 25(1)(a), (b), or (d)**, an image produced by means of an exposure taken by approved vehicle surveillance equipment and either—
- (a) showing or recording—
 - (i) a motor vehicle on the Weiti Toll Road; and
 - (ii) the location of the motor vehicle; and
 - (iii) the date and time when the image was taken; and
 - (iv) the fact that a toll has not been paid in respect of the motor vehicle; or
 - (b) showing or recording any of the things specified in **paragraph (a)**,—
- is, in the absence of evidence to the contrary, sufficient evidence of that fact or event.
- (2) The production in proceedings for an offence against **section 25(1)(a), (b), or (d)** of an image purporting to be an image referred to in **subsection (1)** is, in the absence of evidence to the contrary, sufficient evidence that the image was produced by means of an exposure taken by approved surveillance equipment.

Compare: 1998 No 110 s 145

Struck out (unanimous)**32 Infringement offences**

If a person is alleged to have committed an infringement offence, that person may either—

- (a) be proceeded against summarily for the offence; or
- (b) be served with an infringement notice as provided in **section 33**.

New (unanimous)**32 Infringement offences**

- (1) An offence against **section 25(1)(a)** is an infringement offence for the purposes of the Land Transport Act 1998.

New (unanimous)

- (2) The infringement fee payable in respect of an offence against **section 25(1)(a)** is \$150 and section 141 of the Land Transport Act 1998 applies as if the infringement fee were prescribed by or under that Act.
- (3) If an enforcement officer has reasonable cause to believe that an offence against **section 25(1)(a)** is being or has been committed by a person, the enforcement officer may, under section 139 of the Land Transport Act 1998, issue an infringement notice to the person for the offence. 5
- (4) For the purposes of the Land Transport Act 1998, the enforcement authority, in relation to an offence against **section 25(1)(a)**, is— 10
- (a) the New Zealand Police, if the alleged offence is detected by an enforcement officer other than an enforcement officer who holds office by virtue of an appointment under **section 26(1)**: 15
- (b) the Council, if the alleged offence is detected by an enforcement officer who holds office by virtue of an appointment under **section 26(1)**.

Struck out (unanimous)

- 33 Infringement notices** 20
- (1) If an authorised officer has reasonable cause to believe that a person has committed an infringement offence, an infringement notice may be issued to that person by the authorised officer.
- (2) An infringement notice may be served— 25
- (a) by attaching it, or a copy of it, to the vehicle to which the notice relates; or
- (b) by delivering it, or a copy of it, personally to the person who appears to have committed the infringement offence; or 30
- (c) by sending it, or a copy of it, by post, addressed to the person who appears to have committed the infringement offence at that person's last known place of residence or business or postal address; or

Struck out (unanimous)

- (d) if the person who appears to have committed the infringement offence is a holder of a land transport document, by serving the notice, or a copy of it, by post on that person at his or her last address for service provided for the purposes of that document. 5
- (3) For the purposes of the Summary Proceedings Act 1957,—
- (a) an infringement notice attached to a vehicle under **subsection (2)(a)** is to be treated as having been served when it is attached to the vehicle:
- (b) an infringement notice sent to a person by post under **subsection (2)(c) or subsection (2)(d)** is to be treated as having been served on the person when it would have been delivered in the ordinary course of post. 10
- (4) An infringement notice must be in the prescribed form and must contain the following particulars: 15
- (a) sufficient details of the alleged infringement offence to fairly inform a person of the time, place, and nature of the alleged offence; and
- (b) the amount of the infringement fee, which amount is \$50; and 20
- (c) the address or addresses at which the infringement fee may be paid; and
- (d) the time within which the infringement fee must be paid; and
- (e) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957; and 25
- (f) a statement of the right of the person served with the notice to request a hearing; and
- (g) a statement of the consequences if the person served with the notice does not pay the fee and does not request a hearing; and 30
- (h) such other particulars as are prescribed.
- (5) If an infringement notice has been issued under this section, proceedings in respect of the offence to which the notice relates may be commenced in accordance with section 21 of the Summary Proceedings Act 1957, and in that case the provisions of that section apply with the necessary modifications. 35

Struck out (unanimous)

34 Payment of infringement fees

- (1) All infringement fees are payable to the PENLINK Authority.
- (2) The PENLINK Authority must pay into the Crown Bank Account a sum equal to 10% of all infringement fees received by it under this Act.

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35 Owner liability for non-payment or evasion of toll

- (1) Proceedings for an offence against **section 25(1)(a)** or (**section 25(b)**) may be taken against any 1 or more of the following persons:

- (a) the person who was in charge or control of the motor vehicle at the time of the alleged offence: 10
- (b) a person who, at the time of the alleged offence, was the registered owner, or one of the registered owners, of the motor vehicle involved in the offence.

- (2) It is a defence to proceedings against a person for an offence against **section 25(1)(a)** or (**section 25(b)**) if another person has, by virtue of an order under the Summary Proceedings Act 1957, become liable to pay a fine or costs, or both, in respect of the offence. 15

- (3) It is a defence to proceedings against the registered owner under **subsection (1)(b)** if,— 20

- (a) at the time the alleged offence was committed,—
 - (i) the driver was not lawfully entitled to possession of the motor vehicle (either jointly with any other person or severally); or 25
 - (ii) a person other than the registered owner was driving the motor vehicle; and

- (b) immediately after becoming aware of the alleged offence, the registered owner advised the (*PENLINK Authority*) Council in writing that, at the time the offence was committed, the driver was not lawfully entitled to possession of the motor vehicle or another person was driving the motor vehicle (as the case may be); and 30

- (c) the registered owner has given the (*PENLINK Authority*) Council in a sworn statement in writing or a statutory declaration— 35

- (i) the name and address of the driver or such other particulars within the knowledge of the registered owner as may lead to the identification of the person who was in charge or control of the motor vehicle at the relevant time; or 5
- (ii) a statement that the motor vehicle was a stolen vehicle at the relevant time.
- (4) In proceedings for an offence against **section 25(1)(a) or (section 25)(b)** a sworn statement in writing or a statutory declaration given under **subsection (3)** is, in the absence of proof to the contrary, sufficient evidence of the matters stated in the sworn statement or statutory declaration; and it is admissible for all purposes of any proceedings under this section. 10

Struck out (unanimous)

36 Entitlement to fines

- (1) Subject to **subsection (2)**, where an authorised officer prosecutes a person for an offence against this Act and the prosecution results in the imposition of a fine, the amount of the fine recovered must be paid to the PENLINK Authority . 15
- (2) There must be deducted from every amount payable to the PENLINK Authority under **subsection (1)** a sum equal to 10% of it, and that sum must be credited to the Crown Bank Account. 20
- (3) Despite anything in **subsection (2)**, where any money awarded by a court in respect of any loss or damage is recovered as a fine, no deduction under that subsection may be made in respect of that money. 25

37 Regulations

- (1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes: 30
- (a) exempting persons or motor vehicles or classes of persons or motor vehicles from payment of tolls (*levied*) charged under this Act:

Struck out (unanimous)

- (b) prescribing the forms of infringement notices and other documents required under this Act;
 - (c) providing for such other matters as are contemplated by or necessary for giving full effect to this Act and for its due administration.
- (2) Regulations under **subsection (1)(a)** may be made only with the concurrence of the (*PENLINK*) Penlink Authority.

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Part 6
Miscellaneous provisions

38 Weiti Toll Road to be road for certain purposes 10

Struck out (unanimous)

- (1) To avoid any doubt, it is declared that, despite anything to the contrary in the Local Government Act 1974, when the construction of the Weiti Toll Road is completed, the Weiti Toll Road is a road (as defined in section 315 of the Local Government Act 1974) for the purposes of—
- (a) this Act; and
 - (b) the Local Government Act 1974; and
 - (c) the Transit New Zealand Act 1989.

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New (unanimous)

- (1) To avoid any doubt, it is declared that despite anything to the contrary in the Local Government Act 1974, the Transit New Zealand Act 1989, the Transport (Vehicle and Driver Registration and Licensing) Act 1986, the Transport Services Licensing Act 1989, the Road User Charges Act 1977, the Land Transport Act 1998, or the Transport Act 1962, when the construction of the Weiti Toll Road is completed, it is—
- (a) a road (as defined in section 315 of the Local Government Act 1974) for the purposes of—
 - (i) this Act; and
 - (ii) the Local Government Act 1974; and
 - (iii) the Transit New Zealand Act 1989; and

20

25

30

New (unanimous)

- (b) a road for the purposes of—
- (i) the Land Transport Act 1998 and the Transport Act 1962; and
 - (ii) the Road User Charges Act 1977; and
 - (iii) the Transport (Vehicle and Driver Registration and Licensing) Act 1986; and
 - (iv) the Transport Services Licensing Act 1989; and
 - (v) any regulations, rules, and bylaws in force under any of the Acts referred to in **paragraph (a)** or **sub-paragraphs (i) to (iv)**.

- (2) **Subsection (1)** is subject to **section 39**.

Struck out (unanimous)**39 PENLINK Authority to be road controlling authority and controlling authority**

To avoid any doubt, it is declared that for the purposes of the Land Transport Act 1998, the Transport Act 1962 and the Traffic Regulations 1976, the PENLINK Authority is, in relation to the Weiti Toll Road, a road controlling authority within the meaning of section 2(1) of the Land Transport Act 1998, and a controlling authority within the meaning of section 2 of the Transport Act 1962 and regulation 2 of the Traffic Regulations 1976; and all the provisions of the Land Transport Act 1998, the Transport Act 1962, and the Traffic Regulations 1976 relating to the enforcement of safe road user behaviour, vehicle safety, road safety, and land transport apply accordingly.

New (unanimous)**39 Penlink Authority to be road controlling authority and controlling authority**

- (1) To avoid any doubt, it is declared that the Penlink Authority is, in relation to the Weiti Toll Road,—
- (a) a road controlling authority within the meaning of section 2(1) of the Land Transport Act 1998; and

New (unanimous)

- (b) a controlling authority within the meaning of section 2 of the Transport Act 1962.
- (2) If a concessionaire is the Penlink Authority, the Penlink Authority may, with the consent of the Council, exercise in relation to the Weiti Toll Road, the powers of the Council under the following provisions of the Local Government Act 1974:
- (a) section 319(a), (c) to (g), (k) and (l):
 - (b) sections 331 to 334A:
 - (c) section 339:
 - (d) sections 346B and 346F:
 - (e) sections 353 to 357.
- (3) **Subsection (2)(b)** does not authorise a concessionaire to make, in its capacity as the Penlink Authority, bylaws under section 332 of the Local Government Act 1974.

- 40 Agreement to prevail**
Despite section 60 of the Transit New Zealand Act 1989 and section 317 of the Local Government Act 1974, a (*PENLINK Agreement*) Penlink agreement is not invalidated or discharged—
- (a) by a declaration under section 60 of the Transit New Zealand Act 1989; or
 - (b) by a (*body*) person other than the Council becoming the owner of the land described in **Schedule 2**.
- 41 Act not to affect Resource Management Act 1991 or Building Act 1991**
Subject to **section 9**, nothing in this Act affects the application of the Resource Management Act 1991 or the Building Act 1991 to any work proposed to be carried out or any activities proposed to be conducted in relation to the Weiti Toll Road.

Struck out (unanimous)**42 Weiti Toll Road not to be treated as rateable land under Rating Powers Act 1988**

Neither the Weiti Toll Road nor any interest in land granted under **section 9** is to be treated as rateable land for the purposes of the Rating Powers Act 1988.

5

New (unanimous)**42 Weiti Toll Road not to be treated as rateable**

(1) Neither the Weiti Toll Road nor any interest in land granted under **section 9** is to be treated—

- (a) as rateable property for the purposes of the Rating Powers Act 1988; or
- (b) as rateable land for the purposes of the Local Government (Rating) Act **2002**.

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(2) **Subsection (1)** does not apply in relation to land that is used for administrative or other ancillary purposes.

43 Restrictions on poles, wires, cables, etc, on Weiti Toll Road

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(1) Except for the ((PENLINK) Penlink Authority, no Crown entity, local authority, network utility operator, or any other person may place any wire, cable, pipe, tower, pole, or other structure or thing on, over, or under the Weiti Toll Road without prior written consent from the Council.

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(2) Written consent under **subsection (1)** may be granted on *(any condition or)* such terms and conditions as the Council thinks fit.

New (unanimous)**43A Application of Fair Trading Act 1986**

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To avoid any doubt, it is declared that, for the purposes of the Fair Trading Act 1986, the Penlink Authority, in operating the Weiti Toll Road and charging tolls, is supplying services to those by whom the tolls are payable and is accordingly in trade.

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New (unanimous)

43B Amendment to Privacy Act 1993

The part of the Fifth Schedule of the Privacy Act 1993 that appears under the heading *Ministry of Transport Records* is amended by adding to the third column of the part relating to the motor vehicles register the following item:

5

“Penlink Authority within the meaning of the Rodney District Council (Penlink Toll Road) Empowering Act 2002 (access is limited to obtaining information for the purposes of the collection of tolls, and the enforcement of tolls, for the use of the Weiti Toll Road)”.

10

Struck out (unanimous)

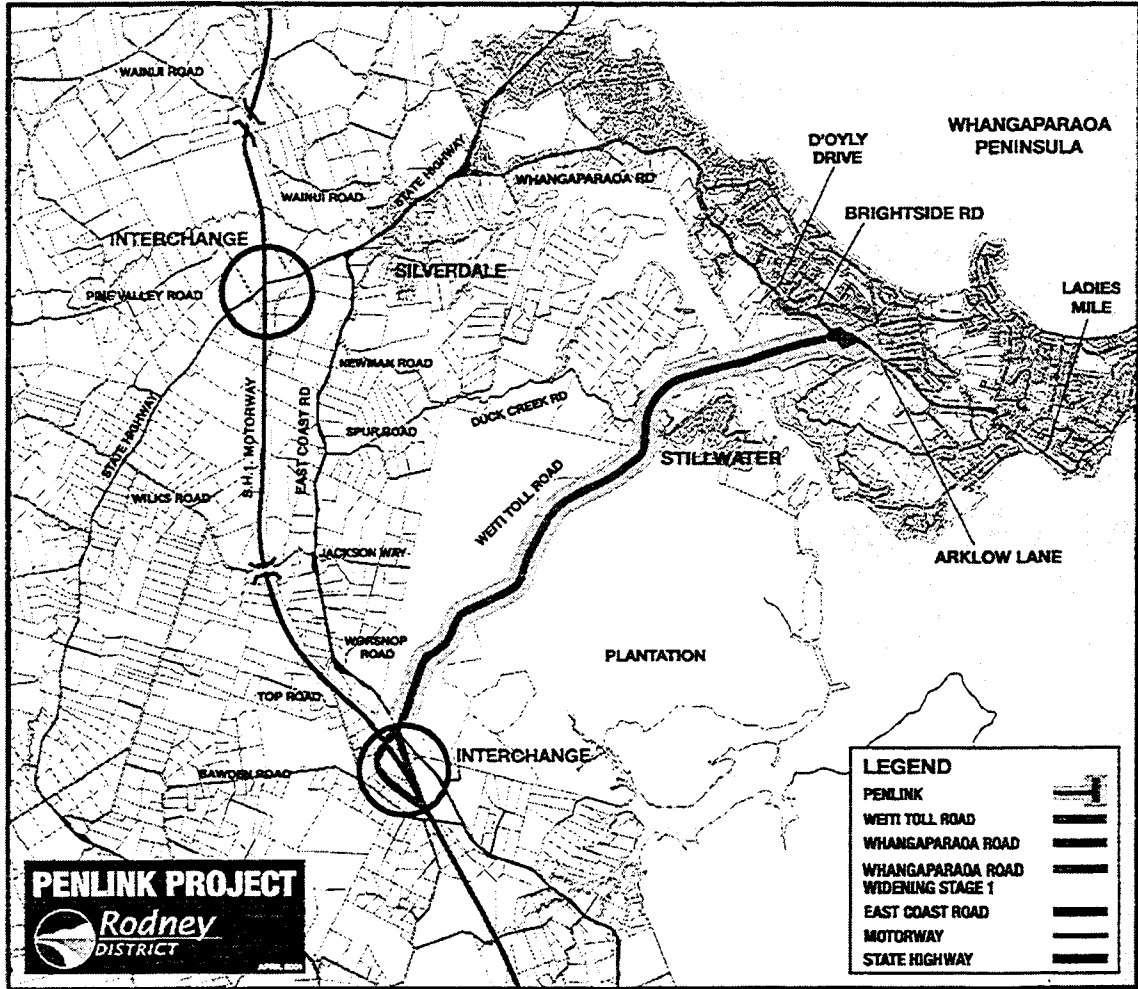
44 Amendment to Summary Proceedings Act 1957

Section 2(1) of the Summary Proceedings Act 1957 is amended by inserting, in the definition of the term **infringement notice**, after paragraph (fa), the following paragraph:

“(fb) **section 33** of the Rodney District Council (PENLINK Toll Road) Empowering Act **2001**:”.

15

Schedule 1
(*PENLINK Project*)Penlink project



s 4

Schedule 2
Land on which Weiti Toll Road is to be constructed

All those pieces of land situated in the Rodney District and being:

Lot No	Plan No	Title	Area (ha)	
Part Lot 3	DP 26549	682/218	9.4506	5
Lot 4 & Allot 230	DP 26549 Psh of Okura	681/106	4.3025	
Lot 2	DP 29403	1020/274	9.2065	
Lot 3	DP 29403	850/228	2.0107	
Lot 6 & Part Lot 7	DP 44059	1382/9	24.5763	10
Lot 2	DP 51692	1D/983	4.2373	
Lot 1	DP 60949	16C/1432	4.0620	
Lot 2 Lot 1	DP 81388 DP 81653	37D/1172 37D/1172 & 37D/1173	1.0802 0.1179	15
Lot 3 Lot 1	DP 81388 DP 81653	37D/1173 37D/1172 & 37D/1173	1.0029 0.1179	
Lot 4	DP 81388	37D/1174	0.4614	
Lot 3	DP 95982	52A/373	311.1300	20
Part Lot 67	DP 40314	1000/277	1.4793	
Part Lot 1	DP 95984	80D/150	888.3613	
Lot 1	DP 100141	54C/756	78.7354	
Lot 1	DP 116105	66A/372	2.9633	
Lot 2	DP 116105	66A/373	1.0837	25
Lot 2	DP 117373	66D/215	3.0360	
Lot 3	DP 179955	110D/934	1.1631	
Lot 2	DP 182168	113B/679	2.0002	
Lot 1	DP 182168	113B/678	2.1862	
Lot 1	DP 184859	112A/892	3.9551	30
Lot 5	DP 200901	129B/274	14.7070	
Lot 1	DP 29403	784/134	12.7981	

**Rodney District Council (*PENLINK*)
Penlink Toll Road) Empowering**

Legislative history

8 August 2001

Introduction, first reading and referral to Local
Government and Environment Committee
(Bill 150-1)
