



Supplementary Order Paper

Tuesday, 25 June 1996

LOCAL GOVERNMENT AMENDMENT BILL (NO. 5)

Proposed Amendments

RICHARD NORTHEY, in Committee, to move the following amendments:

Clause 3: New section 122c: To omit paragraph (f) of new section 122c (all the words in lines 21 to 32 on page 41), and substitute the following paragraph:

“(f) By recognising that, while rating mechanisms are an appropriate means of funding,—

“(i) Expenditure in respect of which it is not practicable or appropriate to identify the direct beneficiaries of that expenditure; or

“(ii) Expenditure that benefits the community generally,—

the appropriate use of rating mechanisms is not limited to the funding of such expenditure.”

New section 122d: To omit from subsection (2) the expression “1997” (page 42, line 28), and substitute the expression “1998”.

New section 122f: To add to subsection (1), after the words “the local authority shall” (page 42, line 37), the words “(in chronological order but not ranked in order of priority)”.

To insert in subsection (1) (a), after the word “Identify” (page 42, line 38), the words “, to the extent that it is appropriate and practicable,”.

To omit subparagraphs (i) and (ii) from subsection (1) (b) (page 43, lines 5 to 13), and substitute the following subparagraphs:

“(i) Any change in the allocation of costs identified under **paragraph (a)** of this subsection; or

“(ii) Any alternative allocation of costs—”.

To omit from subsection (2), the expression “1997” (page 43, line 21), and substitute the expression “1998”.

New section 122g: To omit paragraph (b) of new section 122g (all the words in lines 29 to 40 on page 43), and substitute the following paragraph:

“(b) The principle that, to the extent that any expenditure—

“(i) Is independent of the number of persons who benefit; or

“(ii) Generates benefits that do not accrue to identifiable persons or groups of persons; or

“(iii) Generates benefits to the community generally,—
the costs of that expenditure should be allocated throughout the community through the use of rating mechanisms under the Rating Powers Act 1988.”

New section 122H: To omit paragraph (d) (page 44, lines 25 to 30), and substitute the following paragraphs:

- “(d) Making provision for and implementing significant changes to the way in which the costs of functions are funded, over such periods as the local authority has reasonable grounds to do in the circumstances:
- “(e) The impact of any allocation of costs and the ability of any persons or categories of persons to pay for them:
- “(f) The opportunity to make provision for the funding of functions in aggregate to such extent as the local authority, in all the circumstances, considers appropriate.”

New section 122I: To insert, after the words “of this Act” (page 44, line 33) the words “(which matters are not ranked in order of priority)”.

To add the following new paragraphs:

- “(e) The impact a particular funding mechanism may have on persons, categories of persons or the community generally and their ability to pay for it:
- “(f) Such other matters as the local authority considers relevant in the exercise of its obligations to act fairly and in the interests of its residents and ratepayers.”

New section 122K: To omit from paragraph (a) the words “for the purpose of ensuring efficient and effective cash management” (page 46, lines 17 and 18).

To omit from paragraph (f) the expression “1999” (page 46, line 29), and substitute the expression “2001”.

New section 122L: To omit from subsection (5) the expression “1997” (page 47, line 8), and substitute the expression “1998”.

New section 122O: To omit from subsection (4) the expression “1997” (page 48, line 21), and substitute the expression “1998”.

New section 122Q: To omit from subsection (3) the expression “1997” (page 49, line 32), and substitute the expression “1998”.

New section 122S: To omit from subsection (3) the expression “1997” (page 50, line 21), and substitute the expression “1998”.

New section 122X: To omit this section, and substitute the following new section:

“122x. **Limitation on review**—(1) Subject to subsection (2) of this section, a challenge to any long-term financial strategy, funding policy, investment policy or borrowing management policy on the ground that any of the requirements of this Part of this Act have not been complied with, may be made only in a written submission to the local authority made in a special consultative procedure relating to that strategy or policy, or relating to an annual plan containing an outline for that strategy or policy.

“(2) A challenge on the grounds that any local authority has failed to prepare any long-term financial strategy, funding policy, investment policy or borrowing management policy at the time it is required by this Part of this Act to do so may be by way of judicial review.

“(3) Subject to the provisions of any other Act, no funding mechanism referred to in this Part of this Act adopted by any local authority shall be challenged by way of judicial review except on the grounds that—

- (a) The funding mechanism lacks statutory authority;
- (b) The local authority substantially failed to comply with any procedure prescribed in this Act or any other Act relating to the funding mechanism; or
- (c) The impact of the funding mechanism is so unreasonable that no reasonable local authority would have contemplated it.”

New section 122ZD: To omit this section, and substitute the following new section:

“122ZD. **Prohibition on borrowing in foreign currency**—No local authority shall borrow or enter into incidental arrangements, within or outside New Zealand in currency other than New Zealand currency except where—

- “(a) It has taken all reasonable steps to ensure that any resultant exposure to currency movements has been fully hedged against New Zealand currency; and
- “(b) The approval of the Auditor-General has been obtained for that currency to be utilised for borrowing by local authorities.”

New section 122ZF: To omit subsections (2) and (3).

New section 122ZG: To omit this section.

New section 122ZM: To insert in subsection (2), after the words “application of any” (page 64, line 28), the word “secured”.

New section 122ZN: To add the following new subsections:

“(4) Where a local authority has not made rates pledged, or has failed to make rates or charges sufficient to generate other revenue charged, the receivers may, subject to **subsection (2)** of this section make rates or charges as though the receiver were a local authority and the provisions of section 629Y (3) of this Act shall, with necessary modification, apply to the exercise of that power.

“(5) The power in **subsection (1)** of this section shall not be exercised to produce more revenue in any year than the amount payable under the loan in the absence of default in that year plus 10 percent.”

New section 122ZO: To omit subsection (3) (e) (page 69, lines 15 to 18).

Clause 15A: To omit this clause.

EXPLANATORY NOTE

This Supplementary Order Paper updates and replaces SOPs No. 174 and 178.

The amendments to the Bill provided in this SOP are designed to achieve the following objectives:

1. To eliminate the clear bias towards user payers in the criteria and processes to be applied in local government revenue and financial decisions. These amendments are in sections 122c, 122f, 122g, 122h, and 122i.
2. To defer the full application of the revenue provisions on local authorities for a further year. These amendments are in sections 122d, 122f, 122l, 122o, 122q, and 122s and are also included in the Minister's SOP.
3. To reduce the requirements in applying the criteria to cut unnecessary bureaucracy and costs on local authorities. These amendments are in sections 122f, 122h, and 122k. This SOP no longer contains amendments to new sections 122j, 122m and 122n.
4. To defer by two years the date by which local authorities are required fully to fund the depreciation of their assets. This amendment is in section 122k.
5. To reduce excessive and inappropriate opportunities for legal challenge to funding and rate setting decisions by local authorities. This amendment is the proposed new section 122x.
6. To permit local authority borrowing in foreign currencies. This amendment is to proposed section 122zd.
7. To ensure that receivers only be appointed on the application of a secured creditor and give any such receivers powers to raise revenue similar to those available to a local authority. These amendments are in sections 122zf, 122zg, 122zm, 122zn and 122zo.
8. To eliminate inappropriate restrictions on borrowing for Local Authority Trading enterprises. This amendment is to omit the proposed clause 15A. This would also lead to the elimination of the reference to the Energy Companies Act in the Schedule as proposed by the Minister in SOP No. 173.