**SOUTH-EASTERN DRAINAGE ACT AMENDMENT BILL 1980**

**Legislative Council, 4 June 1980, pages 2198-2201**

Second reading

Received from the House of Assembly and read a first time.

**The Hon. C. M. HILL (Minister of Local Government):** I move: That this Bill be now read a second time.

Its principal object is to abolish drainage rates in respect of the South-East, the Millicent council district and the Eight Mile Creek area. The Government considers that the whole of the South-East area of the State has received some form of benefit from the drainage systems that have been constructed in the various districts over the past 100 years, and that it is difficult to determine the degree of benefit that drainage has bestowed on any particular rural or business activity in the area.

As the State is receiving a return from the revenue generated by the increased productivity made possible by drainage, the Government considers that the maintenance and administration of the system should be financed from State revenue. Consequently, the Government has decided to abolish drainage rating in the South-East, effective from the commencement of the 1980 rating year, as it is a selective tax burden levied on a minority group of landholders in the area.

There are currently three separate drainage schemes in the whole area of the South-East, namely:

(1) the South-Eastern Drainage Board scheme—administered by the board under the South-Eastern Drainage Act, 1931-1977;

(2) the Eight Mile Creek scheme—administered by the Engineering and Water Supply Department under the Eight Mile Creek Settlement (Drainage Maintenance) Act, 1959-1979; and

(3) the District Council of Millicent drainage scheme—administered by the District Council of Millicent pursuant to section 5 of the SouthEastern Drainage Act, 1931-1977.

The Bill seeks to rationalise these three schemes by bringing them all in under the South-Eastern Drainage Act, so that all the separate drainage authorities have the same powers and duties with respect to the drainage system in their areas. The Government considers that drainage administration is now entering a second phase where the drainage scheme should be manipulated to meet changing community needs. There is a growing community concern that conservation and utilisation programmes should be undertaken, where possible, in the drainage system. The Government is responsive to this community concern, and therefore this Bill further provides for the South-Eastern Drainage Board and the Minister to participate in water conservation programmes in the areas under their control.

In summary, this Bill seeks—

(1) to give effect to the Government’s policy of abolishing drainage rates in the whole of the South-East;

(2) to rationalise all drainage administration, construction and maintenance functions under one Act and to clarify and simplify administrative procedure; and (3) to enable the South-Eastern Drainage Board and the Minister to participate in water conservation and utilisation programmes in the board’s area and the Eight Mile Creek area.

The Eight Mile Creek Settlement (Drainage Maintenance) Act will be repealed by a separate measure. I seek leave to have the explanation of the clauses inserted in Hansard without my reading it. Leave granted.

Explanation of Clauses

Clause 1 is formal. Clause 2 provides for the Act to come into operation upon proclamation. Clause 3 amends the long title to the Act by providing that the Act will now cover the Eight Mile Creek area and the Millicent council district, as well as the area currently under the jurisdiction of the South-Eastern Drainage Board. The board’s area is referred to throughout the Act as the “South-East” .

Clause 4 repeals a section of the Act that gave the board the right to acquire land; this power appears again later in the Act, and so section 2 is superfluous. A transitional provision is inserted, relating to the repeal of the Eight Mile Creek Settlement (Drainage Maintenance) Act. Clause 5 amends the arrangement of the Act. Clause 6 repeals a transitional provision. This section preserved the powers of councils in earlier repealed Acts in relation to their drainage systems. Millicent council is the only council to which this section has any application. The section is no longer necessary as Millicent is being brought into the Act as an authority referred to in all the provisions of the Act.

Clause 7 provides a definition of the area for each of the three authorities, namely, the South-Eastern Drainage Board, the Minister and the Millicent council. A definition of “authority” is provided. The board is the authority for the defined area of the South-East. The Minister is the authority for the Eight Mile Creek area. The Millicent council is the authority for its council district. The definitions of “drain” and “drainage works” are given a clearer, simplified form. The definition of the “Eight Mile Creek area” is the same as that appearing in the Eight Mile Creek Settlement (Drainage Maintenance) Act. The definition of “petition drains” is unnecessary and so is repealed. The definitions of “private drains” and “private drainage works” are re-enacted with consequential amendments. Town drains are excluded from the Act, so a definition is provided. A definition of “water conservation works” is provided.

Clause 8 re-enacts section 7 in an amplified form, thus empowering the Governor to proclaim natural watercourses, private drains, etc., as a drain or drainage works vested in the authority of the relevant area. Drainage works may be declared to be obsolete—the section as it now stands does not provide for this situation. Clause 9 repeals a now obsolete transitional provision relating to the South-Eastern Drainage Act Amendment Act, 1971. Clause 10 inserts a heading.

Clause 11 makes it clear that the board not only has the power to acquire, hold and dispose of real or personal property, but also the power to deal with (e.g. lease) any such property. Clauses 12 and 13 amend the provisions of the Act that deal with elections of members of the board. The basis of eligibility for voting is currently based on whether or not a landholder is a ratepayer. With the abolition of rating, eligibility will be determined on whether a landholder’s land is benefited by the drainage system of his area. The Minister will cause lists of such landholders to be kept, thus establishing an electoral roll.

Clause 14 effects a consequential amendment. Clause 15 provides for the appointment of deputies to members of the board. It is also provided that whoever presides at any meeting of the board has a casting vote. Clause 16 provides that a quorum is constituted by two members, one being an elected member and one being an appointed member. Clause 17 makes the board subject to the general control and direction of the Minister, instead of being merely responsible to the Minister. As this provision is provided later in the Bill in respect of the Millicent council, it is thought that both provisions should be the same.

Clause 18 repeals the section relating to the vesting of drains in the board. This provision is re-enacted in a later part of the Bill. Clause 19 repeals four sections. Three of those sections relate to the power of the board to hold inquiries and, for that purpose, to summons witnesses, etc. This power appears never to have been exercised, and is seen in any event as inappropriate. There is no need for the board to conduct semi-judicial inquiries, and the powers of the board relating to determining whether or not to construct drains or drainage works are very clearly set out elsewhere in the Act. Section 22 is repealed as the powers referred to in this section are to be incorporated in a later provision.

Clause 20 provides that the board may enter into contracts where the consideration does not exceed $10 000 without having to get the approval of the Minister. The current limit of $4 000 is far too low in view of the inflation that has occurred since the Act was passed in 1926. Clause 21 re-enacts a heading. New section 27 vests in the board all drains and drainage works delineated on a plan that is to be lodged with the Minister. It is obvious that, over the 100 years or so since the drainage system was first established in the South-East, drains and drainage works have been constructed in circumstances that are now obscure, and so the board wishes to clarify the situation so that, upon the commencement of the amending Act, there will be a master plan that decides quite clearly what is, or is not, under the control of the board. All drains and drainage works constructed by the board in its area after the commencement of the amending Act are of course vested in the board.

Power is given to the board to correct any error in the plan. In relation to water conservation works undertaken by the board, it is envisaged that in some cases the works will be under the control and management of the Government authority for whose benefit the works are constructed (e.g. a pond in a national park would be under the control of the body responsible for that park). New section 27a vests all drains and drainage works in the Eight Mile Creek area in the Minister, subject to any direction to the contrary in respect of any particular water conservation works. New section 27b provides for the vesting in the council of all drains and drainage works delineated on a plan lodged with the Minister, or constructed by the council after the commencement of the amending Act.

Clauses 22 and 23 amend two headings. Clause 24 repeals and re-enacts two sections relating to petition drains. All petitions, whether made to the board, the Minister or the council, are to be dealt with initially by the board, as the expert body in all matters relating to the drainage system generally. All the provisions relating to petition drains are widened so as to include petitions for drainage works. Clauses 25 and 26 effect consequential amendments.

Clause 27 provides that the method for determining the value of the lands to be benefited by the petition drain or drainage works is to be determined under the regulations, so that whatever is the current method for valuing land for rating purposes generally may be reflected in this Act. Clause 28 provides that once the board has determined that a petition drain ought to be constructed, then the relevant authority for the area in which it is to be constructed must proceed to draw up plans and call for tenders. If the petitioners decide not to go ahead with the drain or drainage work at this stage, the costs of those plans and other incidental costs may be recovered from the petitioners. If the petitioners do not veto the drain or drainage works, construction by the authority must then go ahead at the cost of the authority.

Clause 29 provides the Minister with a discretion as to the recovery of the cost of a petition drain or drainage works from the landholders benefited by the drain or drainage works. He may direct that the whole of the cost must be borne by the authority, or that the whole or part of it may be recovered from the landholders. Clause 30 effects consequential amendments. Clause 31 provides that the Minister may direct that the authority shall not proceed with an apportionment of the costs of a petition drain or works.

Clause 32 provides that objections to a preliminary apportionment of costs may be made to the authority concerned, but that all objections will be forwarded to the board for determination by the board, again as the expert in the field. Clauses 33, 34, 35, 36, 37, 38 and 39 effect consequential amendments. Clause 37 also increases the amount of costs the authority can order in settling disputes between landholders and their lessees as to the payment by the lessee of a proportion of the costs of the petition drain or drainage works. The maximum amount of costs that may be ordered is increased from $10 to $100.

Clause 40 provides that an authority may, at its own discretion but subject in the case of the board and the council to the approval of the Minister, remit the whole or any part of any amount due to the authority by a landholder for a petition drain or drainage works. At present, section 46 of the Act only provides for remission in respect of the drain known as the Symon petition drain. Clause 41 amends a heading. Clause 42 provides that each authority must maintain its drains and drainage works. The council is to be permitted to discharge township stormwater into its rural drainage system, provided that the council bears the costs entailed in such a discharge out of its general funds.

Clauses 43 and 44 repeal all those sections of the Act that relate to drainage rates. Clause 45 amends a heading. Clause 46 provides a general power for the construction of new drains and drainage works by each authority. The council must seek specific approval from the Minister before it proceeds with any new work. The board in relation to its area, and the Minister in relation to the Eight Mile Creek area, are empowered to carry out water conservation works.

Clause 47 includes in this section that deals generally with the powers relating to the construction and maintenance of drains and drainage works the powers relating to entry on land, the carrying out of surveys, etc, that presently are set out in section 22 of the Act. Clauses 48, 49 and 50 effect consequential amendments. Clause 51 repeals three sections. The section dealing with the diversion of water by landholders from the drains or drainage works of the board is repealed and re-enacted, with a requirement that a landholder must obtain a licence from the appropriate authority before he may divert water on to his land and that he must comply with any conditions of the licence. The present section only requires that the consent of the board be obtained, and there is no clear provision for attaching conditions. Section 74, which deals with fees for the diversion of water, is repealed as a new provision dealing generally with fees is to be inserted in the Act. Section 75, which provides that a landholder must pay the full cost of any fence erected on his land by the board, is repealed. It is considered that the question of fencing ought to be subject to the Fences Act, so that the landholder should be in the same position in respect of a fence erected by an authority as he would be in with respect to any other fence bordering his property.

Clause 52 increases the penalty for obstructing any drain, or discharging foul or poisonous matter into a drain without consent from $40 to $1 000, and from $4 to $100 for each day an offence continues. It is provided that consents under this section may not be granted unless the Minister for Water Resources has first given his approval. Clause 53 increases the penalty for damaging a drain or drainage works, or tampering with anything appertaining thereto without consent from $100 to $1 000. Consequential amendments are also effected.

Clause 54 effects consequential amendments and increases the penalty for removing any material from any drain, drainage works or drainage reserve without consent from $40 to $1 000. The minimum penalty of $4 is deleted. Clause 55 effects consequential amendments and increases the penalty for cutting drains through roads without a licence from $40 to $1 000. The minimum penalty is deleted.

Clause 56 effects consequential amendments and increases the penalty for building bridges without a licence from $100 to $1 000. Clause 57 effects consequential amendments and increases the penalty for constructing a drain or drainage works without a licence, or contrary to the conditions of a licence, from $100 to $1 000. The penalty for discharging water from a private or drainage works into the drains or drainage works of an authority without a licence is increased from $4 a day to $100 a day. Clauses 58, 59, 60, 61 and 62 effect consequential amendments. Clause 63 effects a consequential amendment and increases the penalty for hindering authorised persons from carrying out their functions under the Act from $40 to $500. Clause 64 effects consequential amendments. Clause 65 effects consequential amendments and increases the penalty for failing to maintain any private drain or drainage works in a proper manner from $100 to $1 000.

Clause 66 inserts three new sections in the Act. New section 89 provides that any consent or licence granted under this Division of the Act may be subject to conditions. Breach of any conditions attracts a penalty of $1 000. New section 90 provides that an authority may fix fees for the granting of any consent or licence. The board and the council must comply with any direction the Minister gives in relation to fixing fees. An authority may recover any fees due to it in the same manner as a debt may be recovered. New section 91 provides for the funding of drains or drainage works constructed by an authority out of moneys appropriated by Parliament for the purpose. Clause 67 repeals Part IVA of the Act which provided for the construction of extra drains by the board in the South-East. These provisions are no longer needed in view of new section 68a of the Act.

Clause 68 inserts five new sections in the miscellaneous provisions part of the Act. New section 105a places the council under the general control and direction of the Minister in respect of its functions under this Act. New section 105b requires the council to establish a separate fund for the moneys it receives under this Act. These moneys must be expended by the council on performing its functions under this Act. The usual requirements relating to the keeping and auditing of accounts is provided in respect of the council by new section 105c. New section 105d provides that each authority must prepare and maintain a plan of its area, showing all the drains and drainage works of the authority. These plans are to be available for public inspection. New section 105e provides that both the Minister and the council may delegate any of their powers under this Act in respect of their areas to the board. The board currently is the delegate of the Minister in respect of the Eight Mile Creek area.

Clause 69 effects consequential amendments to the regulation-making power. Further matters in respect of which regulations may be made are included, so that all matters dealt with under the Eight Mile Creek Settlement (Drainage Maintenance) Act regulations may be dealt with under these regulations. The penalty that may be fixed for breaches of regulation is increased from $100 to $500. Clause 70 repeals section 107 of the Act, which is a transitional provision related to the South-Eastern Drainage Act Amendment Act, 1971. This section is now redundant. Clauses 71 and 72 effect consequential amendments. Clause 73 repeals those schedules to the Act that contain forms relating to petitioning for drains or drainage works. These forms will in future be simply as approved by the Minister.

The Hon. J. R. CORNWALL secured the adjournment of the debate.