**LOCAL GOVERNMENT ACT AMENDMENT BILL 1938**

**Legislative Assembly, 22 November 1938, pages 1928-31**

Second reading

**The Hon. M. McINTOSH (Albert—Min­ister of Local Government)—**This Bill makes a number of amendments to the Local Government Act, 1934-1938, most of which have been suggested by various local governing bodies and have been recommended by the Loeal Government Advisory Committee. The amendments mainly deal with administrative problems of councils, and as honourable members are aware, the law administered by councils is so extensive that frequent alterations of the law become necessary to meet changing conditions. I do not propose, at this stage, to explain fully all the clauses, but I will give an explanation of the more important clauses. If any member so desires, information upon any clause will be given during the Committee stage of the Bill. The clauses are of a disconnected nature and it would perhaps be more convenient if I referred to the clauses to be explained in the order in which they appear in the Bill rather than in the order of their importance.

Clause 4 deals with the liability of owners and occupiers to pay rates where a council assesses under annual values. It is provided by section 251 of the principal Act that, in such a ease, the occupier is primarily liable for the rates and the owner becomes liable in default of payment by the occupier or where there is no occupier. This position does not arise in the case of councils rating under land values where the owner only is liable for the rates. It follows, therefore, that under annual values a council should first seek to recover the rates from the occupier before attempting to recover them from the owner. However, the practice followed by many councils is to send rate notices to the owner and the owner pays the rates to the council. It is proposed by clause 4 to delete the provision in the Act providing that the occupier is to be primarily liable for the rates and to provide that both the owner and the occupier are to be liable for the payment of the rates. This is the procedure followed in the Waterworks and Sewerage Acts and other rating Acts. It will enable councils to follow the existing practice and, in effect, to elect to which of the owner and the occupier they will give notice for payment of the rates. It must be remembered that the liability to pay rates only arises after notice is given to the person concerned by the council and that other sections of the Act deal with the position where, under the contract between the owner and the occupier, one or other of them is obliged to pay the rates. Clause 4 amends section 251 of the principal Act, which deals with the respective liabilities of the owner and occupier and makes other consequential amendments to other sections of the principal Act.

Clause 7 deals with a matter which has caused considerable inconvenience to many councils. If rates are in arrear for five years or more a council may sell the land to recover the rates. If the land is subject to any Government charge it must be sold subject to that charge. In some cases, however, it is found impossible to sell land under these conditions. It frequently happens that the owners of land held in small parcels cannot be traced and the arrears of rates and Government charges on the land are considerably in excess of the value of the land. When a council endeavours to sell such land it finds that no person will make any offer for it. If. the land is sold the pur­chaser must take it subject to any Government charges, and in many cases the arrears of Government charges are in excess of the value of the land and nobody will bid for it. Clause 7, therefore, outlines two methods whereby this state of affairs may be brought to an end. It is provided that if any land is offered for sale at auction under the powers of sale given under the Act and no bid is received at the auction and the Commissioner of Crown Lands is satisfied that there is no reasonable prospect of selling the land within a reasonable time the council may, with the consent of the Commissioner, transfer the land to the Crown or it may transfer it to itself. In the latter case the Commissioner may require the council to pay the whole or any part of any Government charges on the land. In either case the transfer will wipe out all existing charges on the land. If transferred to the Crown the land will be regarded as Crown lands and allotted under the Crown Lands Act. No stamp duties or registration fees are to be payable on these transactions. This will provide a means whereby the present unsatisfactory con­ditions ,as regards this land can be brought to an end.

Clause 8 gives the council power to subscribe to any fund for the relief of or supply of comforts to members of the naval, military, or air forces. It will be remembered that during last session power was given to councils to subscribe to the returned soldiers’ relief fund. Various funds for patriotic purposes have been instituted since the commencement of the present war to which the councils at present have no power to subscribe; the clause will give those powers to councils.

Clause 11 is the result of a suggestion by the Renmark Irrigation Trust, and provides that a council may authorize owners or occupiers of land to plant trees or shrubs on the adjoining roads and, where necessary, to fence in the trees or shrubs. A council must not give this consent where the trees would unduly impede traffic and, in the case of a road maintained by the Commissioner of Highways, he must approve of the granting of the consent. A council may authorize the persons who plant the trees to take the whole or any part of the produce of the trees. This amendment is brought about by a proposal made at Renmark, where the trust considered that it would be advantageous to encourage landholders to plant such as almond and fruit trees on the roadside. In that particular area this would have the effect of beautifying the roadsides, providing windbreaks, and helping to mitigate drainage troubles. It is obvious that the idea is capable of extension and that it will provide an incentive to landholders to plant fruit and other trees to the beautification of country roadsides. In southern Europe in particular where good land is scare roadsides are planted in this way to the glorification of the countryside and profit to adjoining owners. There no one suggests that the produce should belong to anyone but the adjoining owner who tends the trees. I am sure this suggestion will meet with members’ approval. The trees will have a good effect on roads as they will assist in absorbing excess moisture. I am sure members can visualize the wonderful effect of an avenue of almond trees in bloom in the spring or an avenue of walnut in the summer.

Clauses 13 and 14 deal with the powers of councils to raise overdrafts. Under section 449 a council has power to raise an overdraft for its temporary accommodation. This overdraft in the case of a municipal council, must not exceed one-fourth of its previous year’s income and, in the case of a district council, one half of its previous year’s income, and “income” is defined by subsection (4) to mean various heads of revenue. It appears that a number of councils have misunderstood the powers given under the section and have borrowed amounts on overdraft in some cases considerably in excess of the amounts authorized to be borrowed. The result is, of course, that the amount so borrowed has been borrowed illegally, although it has been borrowed without any improper motive on the part of either the council or the bank in question. It is provided by clause 13, therefore, that an overdraft is not to be raised in future unless a certificate is given to the bank, signed by the clerk and the auditor, and approved by a resolution of the council, showing the purposes for which the overdraft is to be advanced and the amount which may be advanced under the section. Any advance made on such a certificate is to be deemed to be in accordance with the section. In order to deal with the cases mentioned, where councils have exceeded their powers, it is provided that all these transactions are to be validated.

A few councils have exceeded the overdraft limit by an amount which would preclude them from borrowing on overdraft for some time if they were limited to the amount fixed by the section, and it is obvious that some special provision must be made for these eases. It is provided, therefore, that in such circumstances the Minister may for a period of five years authorize the council to borrow on overdraft in excess of the amount fixed by the section, or may authorize a council to borrow by means of debentures for the purpose of paying off the whole or part of the overdraft. The Minister may, if he thinks fit, authorize both of these methods to be adopted. In one case a council borrowed £2,500 on general rates and £2,000 for the purpose of an electrical undertaking. Its total borrowings amounted to £4,500. The Act gives it authority to include revenue from the sale of electric light. A genuine mistake was made in not reading the Act correctly and the council cannot raise debentures to pay off the amount. Actually the advance was illegally obtained by the council. I am advised that the bank could not recover from the council, but probably from the individual councillors. The Minister can allow the council to refund the excess it has already borrowed provided it does not increase its debentures above the maximum allowed. The overdraft can be extended for five years.

Mr. Riches—Is an alteration being made to the scale of repayments of loans borrowed on the security of rates?

The Hon. M. McINTOSH—No. We are only validating what has already occurred and giving councils up to five years to repay the excess amounts.

Clause 14 is similar to Victorian legislation and authorizes a council to borrow on overdraft against fixed deposits of the council. This borrowing power is to be additional to that given by section 449.

Clause 15 deals with a matter which has caused some concern to councils which operate their own electric supply undertakings. Councils have assumed that they have had power to supply and install fittings and, in many cases, have acted accordingly. The Act, however, gives no such power. Clause 15 is similar to English legislation and provides that a council which conducts an electric supply undertaking may sell or hire electrical fittings to its consumers. The clause provides that the council is not to manufacture these fittings and must confine its dealings to its consumers. In order to validate the proceedings of councils which have dealt, in these fittings in the past, the operation of this clause is made retrospective to the date of the passing of the Local Government Act.

The necessity for some such provision as that made by clause 24 was made apparent during the recent floods in the River Murray. In certain instances the floods affected some roads to an extent that it was unsafe to permit heavy traffic on the road, or so that it would cause serious damage to the road if used by heavy traffic, although the road was fit to be used by lighter traffic. It also sometimes occurs that by reason of floods, bridges become unsafe. No powers are given under the Act whereby a council can act speedily in these matters. The council can. make a by-law to regulate the weight of traffic on any road or bridge, but this, of course, takes many months to take effect, and in the cases mentioned it is obvious that any action to be taken must be taken speedily. Clause 24 therefore provides that where a council is satisfied that by reason of floods or other similar cause a bridge or road should be used by traffic generally or by any particular kind of traffic, it may display a notice on the bridge or road setting out that traffic is forbidden, or that traffic of only a certain class is permitted, and it is made an offence for any person to use the road contrary to the notice. Clause 19 provides that section 667 of the principal Act is amended by striking out "abutting on or within 12ft. of any street, road, or footway.” The marginal note is “Advertising hoardings.” Under the existing Act a council can only regulate hoardings within 12ft. of a footpath. If the amendment is carried that prohibition will be eliminated and councils will also have control over hoardings situated beyond 12ft. from a footpath. The prohibition does not apply to the trade signs of businesses. The amendment was asked for by the Burnside Corporation, and after much investigation the Government thought it desirable to include it. The underlying objective is not to block properly erected hoardings. The councils receive fees from this source and the Government is not desirous of harassing them. Councils contended that it was anomalous that they should be able to control hoardings within 12ft. of a footpath but had no control over those which happened to be, say, 12ft. lin. back. The distance of 12ft. previously fixed was the maximum which Parliament was pre­pared at the time to accept. The councils only want power to regulate them and make them reasonably sightly.

Mr. Illingworth—Does this amendment over ride the Control of Advertisements Act?

The Hon. M. McINTOSH—Yes. It will give councils power to regulate, control, or prohibit advertisement hoardings more than 12ft. from any street, roadway, or footpath, as well as within that distance. It cannot affect any trade advertisement on business premises, but affects only hoardings. The other provisions of the Bill deal with less important matters and are substantially machinery amendments.

The Hon. E. S. RICHARDS secured the adjournment of the debate.