

Mr. Millar.

DUNEDIN DISTRICT DRAINAGE AND SEWERAGE ACT
1900 AMENDMENT.

[LOCAL BILL.]

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A BILL INTITULED

AN ACT to amend "The Dunedin District Drainage and Sewerage Act, 1900." Title.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:--

1. The Short Title of this Act is "The Dunedin District Drainage and Sewerage Act 1900 Amendment Act, 1902." Short Title.

2. In this Act and the Act hereby amended, if not inconsistent with the context, the following words and expressions shall be deemed to have and to have had from the passing of the said Act the meanings hereby given thereto:-- Interpretation.

"The said Act" or "the principal Act" means "The Dunedin District Drainage and Sewerage Act, 1900," and all references herein and in any future amending Act to the said Act shall include a reference to this and all other amending Acts.

“Borough” shall include city.

“District” shall extend to and include all extensions which may be lawfully made of the district as defined in the said Act.

“Local authority,” where intended to refer to a local authority outside the district, shall include any Borough Council, County Council, Road Board, Town Board, and the Ocean Beach Public Domain Board, and the expression shall include any local body whose district or part of whose district has been added to the district by the said Act constituted. 5 10

“Public drain” does not include a street channel.

References in the said Act to “The Municipal Corporations Act, 1886,” or to any section of the said Act, shall be read as references to “The Municipal Corporations Act, 1900,” and its amendments. 15

Whenever any powers, duties, or functions conferred or imposed by “The Municipal Corporations Act, 1900,” which, prior to the passing of the principal Act hereby amended, were vested in Borough Councils, are by the said last-mentioned Act or this Act vested in the Board, the sections of “The Municipal Corporations Act, 1900,” or of any Schedule thereto creating the same shall be read as sections of the principal Act and this Act, and the word “Board” shall be deemed to be substituted for the word “Council” and the word “Corporation” where the same occur in any such section, and such sections shall be otherwise modified to suit the requirements of the principal Act and this Act. 20 25

ELECTION OF BOARD.

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Election of Board.

3. The ballot firstly mentioned in section three of the said Act shall not be held until the first meeting which the Board shall hold in the month of December, one thousand nine hundred and three, and the one-third of the members of the Board firstly mentioned in the said section shall not vacate their offices until the third Wednesday in the month of January, one thousand nine hundred and four, and the subsequent ballot and the subsequent retirements of the second and third sets of one-third of the members shall in each case be similarly postponed for two years, and thereafter the retirement of one-third of the members of the Board shall take place every second year in place of in each year. 35 40

Casual vacancy.

4. When a casual vacancy shall occur by reason of the death, resignation, or disqualification, incapacity, or ouster from office of any member, or from any other cause, the Board may fill up such vacancy by electing a successor to the member whose office has become vacant, and the member so elected shall hold office until the period at which the person whose successor he is would have ceased to be a member had such vacancy not occurred: Provided that, unless 45

Proviso,

the Board shall by resolution find some reason for not so doing, it shall give a preference to some person who at some previous election of members by the electors received the nearest number of votes to any person who was elected.

5 5. There shall be added to the proviso to subsection two of section thirteen of the Act the following words: namely, after the words "leasing of land from the Board," the words "or to the Board"; and after the words "by the holding of any debenture," the words "or by making advances to the Board under section
10 seventy of the said Act, or under any provision enabling the Board to borrow money."

Further provisions rendering persons ineligible for election.

15 6. In case any member shall, after the passing of this Act, fail or cease to have the qualification required by the said Act, or if he shall without the leave of the Board absent himself from four consecutive ordinary meetings, the Board may declare his office vacant, and such vacancy shall be deemed a casual vacancy: Provided that
any such person or any ten electors may by summons appeal to any Stipendiary Magistrate, who shall, after hearing such evidence as he shall think necessary, affirm or reverse the decision of the Board.

Forfeiture of membership.

Proviso.

20 COMMITTEES—DELEGATION OF POWERS.

7. The Board may form Committees of its own members, and may generally or in any particular matter confer upon and delegate to them such of its powers, duties, and functions as it shall from time to time think fit, and may associate with such Committees such of its
25 officers or other persons as it shall think fit, and may similarly define the powers, duties, and functions of such persons.

Committees—Delegation of powers.

CONTRACTS AND POWERS.

8. In addition to the powers conferred by section seventeen of the said Act, the Board shall have and as from the date of its first
30 election be deemed to have had full power to contract or agree with the Council of any borough or other local body in the district for the performance by such Council or its officers of any of the duties or the exercise of any of the powers and functions of the Board upon such terms as the Board may think fit.

Further powers of contract.

35 9. Any contract made by the Board which if made between private persons—

Form of contract.

Firstly, must be by deed;

Secondly, must be in writing signed by the parties thereto or some agent thereunto lawfully authorised;

40 Thirdly, may be made verbally without writing when made by the Board.

In the first case shall be in writing under the seal of the Board; in the second case shall be signed by two members of the Board, some officer, agent, or delegate of the Board, on behalf and by direction of
45 the Board; in the third case may be made verbally by the Board or any Committee or two members thereof, or by the Drainage Engineer, on behalf and by direction of the Board; but, save in the case of evident emergency, no verbal contract shall be made for any sum exceeding twenty pounds.

No contract, agreement, receipt, or other instrument made or executed by or for the Board shall be liable to stamp duty.

Amendments of Act
of 1900.

10. Section eighteen of the said Act shall be read as if the word "sewage" had occurred in the place of the word "sewerage" where that word is used therein, and section nineteen of the said Act shall be read as if the words "all powers," in the fourth line thereof, were "all such powers." 5

EXTENSION OF DISTRICT.

Extension of dis-
trict.

11. The Governor shall have power, upon the requisition of the Board, by Proclamation to declare that any area described in such Proclamation not now included within the district shall form part thereof: Provided that no such Proclamation shall issue until the Governor is satisfied that the inclusion of such area within the district will prove beneficial to the inhabitants and the owners of property therein. 15

Whenever any area shall have been so included within the district the following consequences shall ensue:—

- (1.) All the powers of the Board shall apply to such area.
- (2.) The local authority having jurisdiction therein shall have power to make, levy, and collect, and shall make, levy, and collect, the rates therein under the powers contained in section fifty-four of the said Act, and for the purpose of exercising the aforesaid powers the said local authority shall be deemed to be a local authority having rating-powers within the county in which such area is situated within the meaning of section five of "The Rating Act, 1894"; and, similarly, when the Board shall determine to make, levy, and collect its own rates it shall be deemed to be such a local authority. 20 25
- (3.) The local authority having jurisdiction therein shall from time to time furnish to the Board a list or roll signed by its Chairman containing the names of all persons residing or having property within the said area who possess a qualification entitling them to vote for the election of members of the said local authority, and such list or roll shall form part of the district electoral roll. 30 35
- (4.) Any person whose name is on such list or roll shall, if not otherwise disqualified, be qualified to be elected as a member of the Board.

Special orders.

SPECIAL ORDERS.

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Amendment of
provisions in Act of
1900.

12. Section twenty-one of the said Act shall be amended as follows:—

- (1.) The confirmation of a special resolution intended to operate as a special order may be made at any meeting held not sooner than twenty-seven days after the passing of the said resolution. 45

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(2.) The public notice required by subsection three may be given on any four days in the period between the earliest and latest of the said meetings, provided that twenty days at least shall intervene between its earliest and latest appearances.

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POWERS OF BOARD.

13. Section twenty-six of the said Act shall apply, notwithstanding that any such private drain is wholly or partly laid in a street or private street.

Amendment of section 26 of Act of 1900.

10 14. For the purpose of requiring any local body to collect any sum payable under the provisions of section twenty-eight of the said Act no special order shall be necessary, but it shall be sufficient if the Board shall forward to such local body a request under the hand of the Drainage Engineer or the Board's Secretary requesting it to
15 collect the sums set forth in such request from the persons named therein.

Mode of collecting moneys payable by instalments.

15 15. The powers conferred by section thirty-four of the said Act, save in so far as they are powers exclusively vested in the Board by virtue of section nineteen of the said Act, as amended by this Act,
20 shall continue to be also exercisable by the Councils of the boroughs and other local bodies within the district in so far as they are within the powers conferred by law on such local bodies.

Further powers under section 34 of Act of 1900.

SPECIAL POWERS.

25 16. The Board shall have full power and authority, in addition to all other powers conferred by the said Act or this or any other Act, to construct and lay under the streets, roads, private streets, public places, gardens, parks, squares, recreation and other reserves in the district all such main and other drains and other works as it shall think fit, and to use and manage the same, and all drains and
30 works vested in or belonging to it.

Provision as to drains.

35 17. In addition to the powers in that behalf conferred by section sixteen hereof, and to all other powers in that behalf vested in or conferred on it by the said Act or this Act or any other Act, the Board shall have power to construct and lay under all streets, roads, private streets, public places, gardens, parks, squares, recreation and other reserves beyond the district such main and other drains and other works as it shall deem necessary; provided that before exercising the powers conferred by the said section, or by this section, or by section thirty-four of the said Act, so far as the same relates to
40 acts in streets, or under any public or private street, public place, park, square, or recreation or other reserve, it shall give one month's notice to the local authority of the city, borough, county, road district, or other district having control of such road, street, place, or reserve, of its intention to construct or execute any such works; and
45 shall, after having constructed and executed the same, restore any such street, private street, road, place, or reserve to its former condition so far as is consistent with the existence or maintenance of such work, and shall during the progress of such works and of such restoration relieve and indemnify such local body from and against

Powers to Board in regard to laying drains.

any loss or cost it may suffer in consequence of the construction or execution of such works; and the Board shall in like manner have power to construct and execute such works through, under, and upon the foreshore of the sea, or any harbour or estuary, or any other Crown lands, or through or under any river, stream, or water: Provided that this section shall in no case entitle it to commit any offensive nuisance, and in exercising the aforesaid powers or any of the powers by the said Act or this Act conferred on it the Board shall have full power to take possession of any such road, street, private street, place, or reserve, or Crown land it shall deem necessary, and to open up the same, and to temporarily close the same, and to fence in such portion thereof as it shall deem necessary.

Crown property—
Notice to Minister
for Railways.

18. When any works authorised by the said Act or this or any other Act, and contemplated by the Board, interfere with or affect any railway or other work the property of His Majesty the King, the Board shall before commencing the same give notice of its intention so to do to the Minister for Railways, together with a plan and section showing the nature of such interference. Unless the Minister, within one month after the service of such notice, deliver to the Board a notice of any objections he may have to the proposed works, the said Minister shall be taken to have approved thereof. In the event of the Minister requiring a modification of such work the Board shall modify its plan in accordance with the suggestions of the said Minister.

Notice to be given
where existing
services interfered
with.

19. If the Board at any time deems it necessary for the purpose of its works, or to enable it properly to exercise its functions, to raise or lower or otherwise to alter the position of any gaspipes or gasworks, or of any water, hydraulic, or steam pipes, electric or telephone wires, works or appliances, or tubes, tunnels, or tramways laid in or under any street, road, place, or land, the Board may by notice in writing require the person, company, or corporation owning or having control thereof, or, in case of property belonging to His Majesty the King, the Minister for Public Works, to raise, lower, or otherwise alter the position of the same, at the cost of the Board, in the manner and within such reasonable time as is specified in such notice; and if such notice shall not be complied with the Board may make the alterations required without incurring any responsibility to such owner or person having the control thereof.

Ventilating
shafts, &c.

20. The Board shall have further power to carry any ventilating shaft, pipe, or tube up or upon any external wall of any building, whether private or public, and affix the same thereto, provided that the mouth of every such shaft, pipe, or tube shall be at least six feet higher than any window situated within a distance of thirty feet therefrom; and also to pierce and use as a ventilating shaft or tube the chimney of any public building or any factory or tramway, and in like manner may, during the construction of its works, use any private drain or watercourse within or without the district to carry water from such works.

Claim for
compensation.

21. Any person whose property is used or injuriously affected in or by the exercise of the powers conferred by the last preceding section shall have a claim for compensation in respect thereof under the provisions of "The Public Works Act, 1894."

22. The value of the works in any borough which are subject to the provisions of section forty-seven of the said Act may form the subject of an agreement between the Board and the Council of any such borough, and if no such agreement is arrived at the same shall be fixed in manner in the said section provided.

Borough works,
value of.

23. Whenever in the opinion of the Board it is desirable, in the interests of the residents and property-owners in any particular part of the district, to execute any particular work for the benefit of such residents and property-owners, it shall be lawful for the Board to determine that, for the purpose of meeting the interest on the whole or a part of the cost of such work, and any special expenses for the maintenance or management thereof, a differential rate shall be levied in respect of the area beneficially affected by such work, and thereupon the Board may by special order resolve to constitute a special area, and the following course shall be taken and the following consequences shall ensue:—

Differential rate.

- (a.) The Board shall in and by such special order define and name the special area.
- (b.) It shall in such order describe in general terms the particular work whereby such area is intended to be specially beneficially affected.
- (c.) It shall similarly fix the proportion of the cost of such work, or a sum representing the whole or a proportion of the approximate estimated cost of such work.
- (d.) It shall make and levy a differential rate not exceeding sixpence in the pound on the rateable annual value of all rateable property in the said special area in respect of the interest on such cost or proportion of cost, and any special annual expense which may be expected to arise out of the execution, maintenance, and management of such work.
- (e.) Such rate shall be additional to the rates levied in the said special area as part of the district, and when made shall be an annually recurring rate without further order or resolution.
- (f.) The same shall be made, levied, and collected in the same manner in which the other rates made and levied by the Board are made, levied, and collected.
- (g.) The amount of such rate shall only be capable of being reduced by special order.
- (h.) For the purpose of making, levying, and collecting such rate, the Board may require the Council of the borough in which such special area or any part thereof is situated to make such an addendum to its rate-book as shall be necessary to show the properties in respect of which such rate may be made.
- (i.) So far as the rate-book of any borough as amended by such addendum is applicable, the Board shall base the differential rate upon the same.

24. The Board shall have authority for the purpose of obtaining power for pumping-works and other works connected with or inci-

Electrical and
pumping works.

Provisions of Public Works Act of 1894 to apply.

dental to its operations, and for lighting premises used by it, to generate and use electricity, and for that purpose purchase or take under the provisions of "The Public Works Act, 1894," all such lands, streams, waters, easements, and other rights as it shall think requisite, and to erect, construct, and use such dams, weirs, build- 5
ings, and appliances for generating the same as it shall think fit, and to conduct the same across or through all roads, streets, places, and lands within and without the district, and for that purpose to erect and maintain such posts, conductors, and appliances as it may find necessary: Provided that for all such things as it may do in or over 10
private lands, and for all injury it may cause to such lands, streams, waters, easements, and other rights, it shall be liable to compensate the owners and all persons having any estate or interest therein in manner provided by the said last-mentioned Act. And for the afore- 15
said purposes it shall also have power to contract with any person, company, or local body for the supply of electricity.

Provisions where interest of Board and any borough affected.

25. As between the Board and any borough or local body in the district, the following arrangement is instituted:—

- (a.) The Board is responsible for the state of the sewers and public drains vested in it, and will cleanse, repair, and 20
manage them.
- (b.) The local body is responsible for the streets, including the channels, and will cleanse, repair, and manage them.
- (c.) The Board shall have power by by-law to regulate the management and use of inlet-appliances giving access to 25
the sewers and public drains, including grids, and to prevent the putting of anything into the sewers or public drains, or allowing anything to enter such sewers or public drains by means of such appliances, save such matter as may be carried in with water entering in 30
the course of the legitimate use of such appliances.
- (d.) This section shall not be deemed to impose on the Board or any local body any greater liability than otherwise arises under the principal Act or "The Municipal Corporations Act, 1900," respectively. 35

RATING-POWERS—FINANCIAL YEAR.

Amendment of section 49 of Act of 1900.

26. Section forty-nine of the said Act is amended by the substitution of the words "one shilling" for the word "eightpence" in subsection one thereof, and the word "eightpence" for the word "fourpence" in the second subsection thereof, and the word "four- 40
pence" for the word "twopence" in the third subsection thereof.

Special order for rate need not be repeated.

27. After a rate shall have been made or ordered to be made by special order, it shall not be necessary in subsequent years to repeat such special order, but a resolution of the Board shall suffice, save when it is intended to increase the rate or rates for the year or 45
to levy a further rate in any year.

Financial year of Board.

28. Unless the Board shall otherwise determine, the financial year of the Board shall commence on the first day of April and end on the thirty-first day of March in every year.

AGGREGATE FUND—FINANCE.

29. Subject to the opinion and decision of the Auditor-General, Finance.
the Board shall determine what items or proportion of its expenditure are or is properly payable out of loan-moneys, and what items
5 or proportions are or is properly chargeable against annual revenue :
Provided that it shall be entitled to pay out of loan-moneys all the
cost of drainage or sewerage works and other permanent works, and
of the purchase of land, and all preliminary and other expenditure
10 incident to the construction of such works, including the cost of
experiments ; such part of the salaries of officers and servants as it
shall consider applicable to such works, and such legal and other ex-
penses as are incurred in connection therewith, or with matters inci-
dental thereto, including legislation ; such rents and other expenses
15 connected with land as relate to the temporary occupation thereof
for the purpose of such works, and also the first year's interest on
the cost of all works, together with such further interest as the
Auditor-General shall in his discretion on the representation of the
Board allow to be so charged. And the Board shall pay out of annual
20 revenue all expenditure on account of the annual work of the Board,
and operations, and its officers, including repairs and maintenance of
works and interest not chargeable against loan-money :

Provided that this section shall be deemed to have been in force
as from the commencement of the Board's operations, and it may
revise its past expenditure in accordance herewith.

25 30. It shall be lawful for the Board to obtain in anticipation
the opinion of the Auditor-General on any question as to the inci-
dence of any expenditure, and to act on such opinion. Opinion of
Auditor-General to
be obtained.

MISCELLANEOUS.

31. A writ or process shall not be issued against or served on
30 the Board or any member thereof, or any officer or servant or work-
man thereof, or any person acting under its or his directions or in
its or his aid, for anything done or intended to be done or omitted to
be done after the passing of this Act, under the provisions of the said
Act or this or any other Act, or of any by-law or regulation made or
35 in force thereunder or hereunder, until one month after notice in
writing has been served on the Board, or such member, officer, or
person, clearly stating the cause of action, or ground, or proceeding,
and the name and address of the intended plaintiff or prosecutor,
and his solicitor or agent in the action or proceeding ; and on the
40 trial or hearing of any such action or proceeding the plaintiff shall
not be permitted to go into any cause of action or ground of proceed-
ing which is not stated in the notice so served, and unless such
notice is proved there shall be judgment for the defendant. Notice of action.

32. Every such action or proceeding shall be commenced within
45 six months next after the accruing of the cause of action or proceed-
ing, and not afterwards, and shall be tried in the district, and not
elsewhere. In any such action or proceeding the defendant may
plead generally that the act or thing complained of was done or
omitted under the authority or in the execution or intended execution
50 or in pursuance of the said Act or this Act, or of any by-law or regu-
lation made or in force thereunder or hereunder, and may give all
special matter in evidence. Commencement of
action.

Any person to whom such notice of action is given as aforesaid
may tender amends to the plaintiff, his solicitor, or agent at any time
55 within one month after service of such notice, and in case the same

be not accepted may plead such tender in bar; and in case amends shall not have been tendered, or in case the amends tendered are insufficient, the defendant may within the time allowed for filing a statement of defence or thereafter at any time before trial, by leave of the Court, pay into Court in accordance with the practice of the Court in which the action is pending, and in the case of an action in a Court in which no defence need be filed at any such time as may be allowed by the practice of such Court, such sums of money as it or he may think proper, whereupon such consequences shall ensue as, under the practice of the Court in which the action is brought, ensue in an ordinary action. 5 10

In any case of injury to the person, the person injured shall permit himself to be examined by any medical practitioner appointed by the Board; and in any case arising out of injury to property, the property injured, and in all cases the accounts and vouchers in respect of the injury, whether to person or property, may be examined by any person appointed by the Board, and all proceedings shall be stayed until any order for such examination has been complied with. 15

The last foregoing provision shall apply to proceedings under "The Workers' Compensation for Accidents Act, 1900." 20

Enforcement of provisions of Act.

33. The provisions of the said Act and of this Act, and of all by-laws made by the Board, shall be enforced by the Board or its officers: Provided that the District Health Officer may, if he shall think fit, enforce such provisions, or may direct the Board to enforce them. 25

Board property not liable to be rated.

34. No property of the Board owned or used by it for the purposes for which it is incorporated shall be liable to be rated by any local body.

Dispute may be referred to a Stipendiary Magistrate.

35. Any dispute which may from time to time arise between the Board and any borough or local authority within or without the district, with respect to carrying into effect the provisions of the said Act or this Act, or incidental thereto, may at the instance of either party be referred to a Stipendiary Magistrate, who shall hear and determine such dispute, and whose decision shall be final and conclusive. 30 35

Penalty.

36. Any person doing anything contrary to the provisions of the said Act or of this Act, or any by-law or regulation made thereunder or hereunder, or omitting or failing to perform any duty imposed on him by or arising under the said Act or this Act, or any such by-law or regulation, shall be guilty of an offence, and in cases where no other penalty is provided shall be liable to a penalty not exceeding *twenty* pounds, and whenever such act or omission is of a continuous nature a further offence shall be deemed to be committed on each day on which it is continued; and whenever power is given by any Act, by-law, or regulation to order anything to be done or omitted an offence shall be deemed to be committed on each day on which any person disobeys or fails to comply with any such order; and in all cases in which property is damaged, destroyed, or lost, or pecuniary loss is suffered by reason of an offence, the Court may add to the penalty compensation for any loss the Board may have sustained: Provided that such compensation, unless awarded at the express request of the Board, shall not, excepting to the amount thereof, relieve such person of any civil liability in respect of his Act or omission. 40 45 50