

# WATER AND SOIL CONSERVATION AMENDMENT BILL

## EXPLANATORY NOTE

*Clause 1* relates to the Short Title and commencement.

Part I is to commence on a date to be fixed by Order in Council.

Part II is to commence on the passing of the Bill.

## PART I

### UNDERGROUND WATER

The purpose of this Part of the Bill is to repeal the Underground Water Act 1953, and to abolish Underground Water Authorities and transfer their functions to Regional Water Boards. The Hutt Valley Underground Water Authority is not referred to in this Bill as its abolition is provided for in a local Act, the Wellington Regional Water Board Act 1972.

*Clause 2* states that Part I is not to apply to the Wellington Water Region or the Wellington Regional Water Board.

*Clause 3* defines the terms "bore" and "underground water".

The definition of underground water has been extended to include natural water under the bed of the sea or the bed of any lake, river, or stream, as well as under the ground.

*Clause 4* empowers Regional Water Boards to make bylaws relating to underground water. The clause largely reproduces section 8 of the Underground Water Act 1953.

*Clause 5* provides for a right of appeal to the Town and Country Planning Appeal Board against the decision of a Regional Water Board to refuse to grant a permit to make a bore or a dispensation from observance of any bylaw.

*Clause 6* applies certain provisions of the Municipal Corporations Act 1954 to bylaws made or to be made under *clause 4*.

The provisions applied relate to limitations affecting bylaws, procedure as to making bylaws, proof of bylaws, and provision of printed copies of bylaws.

*Clause 7* empowers the Minister to disallow, in whole or in part, any bylaw made under *clause 4* if in his opinion it is unreasonable or undesirable. The clause is based on a similar provision contained in section 150A of the Soil Conservation and Rivers Control Act 1941.

*Clause 8* relates to offences and penalties.

The maximum fine for an offence against bylaws made under *clause 4* is—

- (a) \$2,000 and \$100 a day for a continuing offence, if the offence involves the pollution of underground water;
- (b) \$100 and \$10 a day for a continuing offence, in any other case.

In addition, the Supreme Court is given power to restrain any breach or threatened breach of a bylaw by injunction.

*Clause 9* prohibits Boards from charging the owner or occupier of any land for water taken from a bore on the land.

*Clause 10* abolishes all underground Water Authorities. The 4 Authorities concerned are set out in the First Schedule.

*Clauses 11, 12, and 13* provide for the transfer of property from the abolished Authorities to the local authorities specified in the First Schedule.

Three of the specified local authorities are Regional Water Boards. The fourth local authority is to be specified by Order in Council.

*Clause 14* provides for bylaws made by the abolished Underground Water Authorities to continue in force until they are superseded by new bylaws made under *clause 4*.

*Clause 15* provides for repeals, amendments, revocations, and savings.

Every permit to make a bore, issued by the abolished Underground Water Authorities, is to continue in force.

## PART II

### AMENDMENTS TO PRINCIPAL ACT

*Clause 16* amends section 14 of the principal Act, which relates to the functions and powers of the National Water and Soil Conservation Authority.

The amendment empowers the Authority to make grants of money, in accordance with approved scales, for supplying water to rural areas for irrigation, fire-fighting, stock, and domestic purposes.

*Clause 17* repeals the provision in section 20 (5) (j) of the principal Act giving Regional Water Boards the powers, functions, and duties of an Underground Water Authority in areas where there is no such Authority. The provision will now be redundant.

*Clause 18* amends section 21 of the principal Act, relating to rights in respect of natural water.

*Subclause (1)* makes a Regional Water Board's authority to grant rights in respect of natural water subject to the consent of the National Water and Soil Conservation Authority under the new subsections (3c) and (3d) set out in *subclause (2)*.

*Subclause (2)* inserts in section 21 new subsections (3c) and (3d).

The new subsection (3c) requires a Board to obtain the consent of the National Water and Soil Conservation Authority before it grants a right in respect of water which has been declared to be of national importance under section 23 (7) of the principal Act.

The new subsection (3D) gives a right of appeal to the Town and Country Planning Appeal Board against the National Authority's decisions under subsection (3C).

*Clause 19* adds a new subsection (2) to section 24J of the principal Act, which deals with the effect of temporary permits. The new subsection gives a right of appeal to the Town and Country Planning Appeal Board to the holder of a temporary permit whose application for authority to continue to discharge waste after the temporary permit ceases has been refused, or whose application has been granted subject to conditions with which he is dissatisfied.

*Clause 20* amends section 26G of the principal Act, which relates to appeals to the Town and Country Planning Appeal Board, by providing that they shall be made in the manner prescribed by the Town and Country Planning Act 1953.

*Clause 21* amends section 34 of the principal Act, which relates to offences, by providing that the penalties for offending against the Act as set out in section 34 apply only where no penalty is provided elsewhere in the Act. The need for this arises because of the different penalties set out in *clause 6* of this Bill for a breach of bylaws.

*Clause 22* makes a consequential amendment to section 39 of the principal Act following the dissolution of the Water Allocation Council by the Water and Soil Conservation Amendment Act (No. 2) 1971.

*Clause 23* provides for metric conversions.

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*Hon. Mr Allen*

## WATER AND SOIL CONSERVATION AMENDMENT

### ANALYSIS

Title	13. Provisions in respect of transfer of property
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	15. Repeals, amendments, revocations, and savings
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<b>UNDERGROUND WATER</b>	<b>AMENDMENTS TO PRINCIPAL ACT</b>
2. Application of this Part	16. Functions, powers, etc., of Authority
3. Interpretation	17. Functions, powers, etc., of Regional Water Boards
4. Bylaws	18. Rights in respect of natural water
5. Appeal against refusal to grant permit or dispensation	19. Extension of effect of temporary permits
6. Making of bylaws	20. Appeals
7. Disallowance of bylaws	21. Offences
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9. Charges for water	23. Metric conversions
10. Abolition of Underground Water Authorities	Schedules
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### A BILL INTITULED

#### **An Act to amend the Water and Soil Conservation Act 1967**

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

1. **Short Title and commencement**—(1) This Act may be cited as the Water and Soil Conservation Amendment Act 1972, and shall be read together with and deemed part of the Water and Soil Conservation Act 1967\* (hereinafter referred to as the principal Act).

\*1967, No. 135

Amendments: 1968, No. 117; 1969, No. 114; 1971, No. 24; 1971, No. 154

(2) Part I of this Act shall come into force on a date to be fixed by the Governor-General by Order in Council.

(3) Subject to section 20 of this Act, Part II of this Act shall come into force on the passing of this Act.

PART I

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UNDERGROUND WATER

**2. Application of this Part**—Nothing in this Part of this Act shall apply in respect of the Wellington Water Region or the Wellington Regional Water Board.

**3. Interpretation**—In this Act, unless the context otherwise requires,—

“Bore” means every device for, or means of, tapping underground water; but does not include a natural spring or natural watercourse unless something has been done to it by any person which increases the amount of underground water tapped by it: 15

“Underground water” means natural water which is below the surface of the ground, the bed of the sea, or the bed of any lake or river or stream, whether the water is flowing or not and, if it is flowing, whether it is in a defined channel or not; and includes all natural water which has been, by means of a bore, brought above the surface from below the surface of the ground, the bed of the sea, or the bed of any lake or river or stream. 25

**4. Bylaws**—(1) Any Regional Water Board may from time to time make bylaws for all or any of the following purposes:

- (a) Controlling, regulating, or limiting the locations, dimensions, and depths of bores; or prohibiting the making of bores within the whole or any specified part or parts of the region: 30
- (b) Requiring the lining, sealing, capping, filling, restriction, or control of bores:
- (c) Controlling, regulating, limiting, or prohibiting in the whole or any specified part or parts of the region any boring, drilling, pile driving, dredging, or digging which would or might affect underground water which is within the region: 35
- (d) Providing for the inspection, cleaning, and repairing of bores: 40

- (e) Prescribing circumstances in which a permit is required before any bore may be made or altered:
- (f) Prescribing the form of any permit or dispensation which may be issued or granted and all or any of the terms and conditions thereof:
- 5 (g) Requiring any person claiming to hold a permit or dispensation to produce it for inspection:
- (h) Prohibiting or preventing uneconomic, inefficient, or wasteful methods of extraction and of utilisation of
- 10 underground water which is within the region:
- (i) Requiring persons who make or maintain bores to keep records and provide information in relation to those bores that would or might be of value to the Board in the proper performance of its functions:
- 15 (j) Requiring persons to permit free access to any records kept in accordance with any such requirement, or to any bore, by a person duly authorised by the Board for the purpose of—
  - 20 (i) Inspecting and taking copies of or extracts from the records:
  - (ii) Inspecting the bore and the material excavated therefrom:
  - (iii) Taking any specimen of any such material or of the water from the bore:
- 25 (k) Specifying in respect of any purpose for which underground water is required the source of supply and limits of depth from which the water may be taken:
- (l) Protecting the purity of underground water within the region for domestic, farming, and industrial use:
- 30 (m) Providing for any dispensation from observance of any bylaw to be granted by the Board or by the holder for the time being of any specified office or by any specified person:
- (n) Controlling, regulating, limiting, or prohibiting, on
- 35 land anywhere within the region or within any specified part or parts thereof, the placing or discharge on, onto, or into the ground of anything which is liable to affect detrimentally the purity of underground water in the region either directly or
- 40 indirectly.
- (2) Any such bylaw may apply within the whole of the region or within such part or parts thereof as may be specified in the bylaw.

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(3) Unless the Governor-General, by Order in Council, in any case otherwise provides, and subject to such conditions as he may impose, no bylaw made under this section shall affect—

- (a) Any mining privilege under the Mining Act 1971: 5
- (b) Any coal mining right under the Coal Mines Act 1925:
- (c) Any licence under the Petroleum Act 1937:
- (d) Any coal mine within the meaning of the Coal Mines Act 1925 or any quarry within the meaning of the Quarries Act 1944: 10
- (e) Any bore sunk in the mining of or search for coal within the meaning of the Coal Mines Act 1925:
- (f) Any bore sunk in the mining of or search for minerals within the meaning of the Mining Act 1971 or iron-sands within the meaning of the Iron and Steel Industry Act 1959: 15
- (g) Any bore sunk in the search for or recovery of petroleum products:
- (h) Any bore sunk under the Geothermal Energy Act 1953:
- (i) Any bore sunk by the Mines Department or the New Zealand Geological Survey or any other bore which is for the time being in use and which has been sunk only for the purpose of obtaining geological, geophysical, or geochemical information: 20
- (j) Any right which any person may have under any other Act or any rule of law to restrict or prevent, or obtain damages in respect of, the taking, use, or pollution of underground water. 25

(4) Notwithstanding the provisions of subsection (1) of section 21 of the principal Act, any bylaw made under this section may apply to any bore used for tapping underground water for domestic needs or the needs of animals or for or in connection with fire-fighting purposes. 30

**5. Appeal against refusal to grant permit or dispensation—**  
The provisions of section 25 of the principal Act shall apply to every decision of a Board to refuse to grant a permit or a dispensation from observance of any bylaw, under this Part of this Act, as if it were a decision of the Board under section 24 of the principal Act. 35

**6. Making of bylaws—**The provisions of sections 391, 392, 395, and 396 of the Municipal Corporations Act 1954 shall, with the necessary modifications, apply in respect of bylaws made or to be made by the Board under section 4 of this Act. 40

7. **Disallowance of bylaws**—(1) The Minister may at any time, by notice in the *Gazette*, disallow, in whole or in part, any bylaw made under section 4 of this Act if in his opinion the bylaw is unreasonable or undesirable.

5 (2) On any such disallowance the bylaw shall, to the extent to which it is so disallowed, become wholly void as if it had been revoked.

(3) Any such disallowance shall take effect as aforesaid either on the day of the publication of the notice of disallowance in the *Gazette* or on such later date as may be specified in that behalf in the notice.

(4) Any such disallowance shall not affect the validity of anything done, before the disallowance took effect, under the bylaw or part of the bylaw disallowed.

15 8. **Breach of bylaws**—(1) Every person who acts in contravention of or fails to comply with any provision of any bylaw made under section 4 of this Act commits an offence and shall be liable on summary conviction—

20 (a) If the bylaw was made under paragraph (1) or paragraph (n) of subsection (1) of the said section 4, to a fine not exceeding \$2,000 and, if the offence is a continuing one, to a further fine not exceeding \$100 for every day or part of a day during which the offence has continued:

25 (b) In any other case, to a fine not exceeding \$100 and, if the offence is a continuing one, to a further fine not exceeding \$10 for every day or part of a day during which the offence has continued.

(2) For the purposes of this section, the continued existence of anything in a state contrary to any provision of any such bylaw shall be deemed to be a continuing offence.

(3) Without limiting the liability of any person to be convicted of an offence under subsection (1) of this section, the Supreme Court shall have jurisdiction to restrain any breach or threatened breach of any bylaw made under section 4 of this Act by injunction at the instance of the Board, and to make such order in the matter as to costs and otherwise as it thinks fit.

40 9. **Charges for water**—Nothing in any bylaw made under section 4 of this Act shall authorise any Board to make a charge against or levy upon the owner or occupier of any land in respect of any natural water taken on the land or from any bore on the land.



**10. Abolition of Underground Water Authorities**—Every Underground Water Authority constituted under the Underground Water Act 1953 is hereby abolished.

**11. Vesting of property**—(1) All land, interests in land, and personal property, rights, or privileges vested in or held on behalf of every Underground Water Authority specified in the first column of the First Schedule to this Act are hereby vested in the local authority specified, opposite the name of the Authority, in the second column of the said First Schedule. 5

(2) The District Land Registrar within whose district any land so vested is situated, on written request by the local authority, under the seal of the local authority, shall without fee make such entries in his registers and on any outstanding documents of title and generally do all such things as may be necessary to give effect to the provisions of subsection (1) of this section, in respect of land and interests in land specified in the request. The receipt by the District Land Registrar of a written request under this subsection shall be sufficient evidence that the land described in it is land to which subsection (1) of this section applies, in the absence of proof to the contrary. 10 15 20

**12. Exemption from stamp duty**—Notwithstanding anything in section 10 of the Stamp and Cheque Duties Act 1971, no stamp duty shall be payable in respect of the vesting of any property in a local authority under section 11 of this Act. 25

**13. Provisions in respect of transfer of property**—(1) On the commencement of this Part of this Act, the following provisions shall apply:

(a) All debts, loan charges, liabilities, and obligations, whether present or contingent, incurred in the name of or on behalf of any Underground Water Authority in respect of any land or property vested in a local authority under subsection (1) of section 11 of this Act shall become debts, liabilities, and obligations of the local authority: 30 35

(b) All money payable to any such Underground Water Authority in respect of any such land or property shall become payable to the local authority:

- (c) The benefit of any contract entered into by or on behalf of any such Underground Water Authority in respect of any such land or property shall be deemed to be assigned to the local authority:
- 5 (d) All proceedings pending by or against any such Underground Water Authority in respect of any such land or property shall be carried on by or against the local authority.
- (2) Every reference to any Underground Water Authority  
10 specified in the first column of the First Schedule to this Act in any Act, agreement, deed, instrument, notice, or other document whatsoever shall hereafter be read as a reference to the local authority specified, opposite the name of the Authority, in the second column of the said First Schedule.
- 15 **14. Saving of existing bylaws**—Every bylaw made by any Underground Water Authority specified in the first column of the First Schedule to this Act that is in force immediately before the commencement of this Part of this Act shall, so far  
20 as it is not inconsistent with this Act, for all purposes be deemed to have been made by the local authority specified, opposite the name of the Authority, in the second column of the said First Schedule, acting in the capacity of a Regional Water Board, and shall continue in force within those parts of  
25 the Regional Water Board's region to which it related when made until it is superseded by a bylaw made by the Regional Water Board.
- 15. Repeals, amendments, revocations, and savings**—
- (1) The enactments specified in the Second Schedule to this Act are hereby repealed.
- 30 (2) Section 4 of the principal Act is hereby amended by omitting from paragraph (f) of subsection (4) the words "Underground Water Authorities,".
- (3) The Underground Water Committee Regulations 1957 are hereby revoked.
- 35 (4) The Orders in Council specified in the Third Schedule to this Act are hereby revoked.
- (5) Notwithstanding the repeal of the Underground Water Act 1953, every permit issued by an Underground Water Authority pursuant to bylaws made under that Act shall  
40 continue in force as if it had been issued pursuant to bylaws made under section 4 of this Act.

**PART II**  
**AMENDMENTS TO PRINCIPAL ACT**

**16. Functions, powers, etc., of Authority**—Section 14 of the principal Act is hereby amended by adding the following subsection: 5

“(5) The Authority may make grants of money to any person or body, in accordance with a scale from time to time approved by the Minister, for the purpose of supplying water to rural areas for irrigation (including preparation in accordance with normal irrigation practice of the surface of land to be irrigated), fire-fighting, stock, and domestic purposes, or for any 1 or more of such purposes: 10

“Provided that no such grant shall be made unless the consent of the Authority to the work or operation in respect of which the grant is sought has been obtained before the work or operation is commenced.” 15

**17. Functions, powers, etc., of Regional Water Boards**—Section 20 of the principal Act is hereby amended by repealing paragraph (j) of subsection (5).

**18. Rights in respect of natural water**—(1) Section 21 of the principal Act is hereby amended by omitting from subsection (3) the words “Any Regional”, and substituting the words “Subject to subsections (3c) and (3d) of this section, any Regional”. 20

(2) The said section 21 is hereby further amended by inserting, after subsection (3B) (as inserted by section 12 (2) of the Water and Soil Conservation Amendment Act (No. 2) 1971), the following subsections: 25

“(3c) If any natural water has been declared to be of national importance under subsection (7) of section 23 of this Act, a Regional Water Board shall not grant any right to— 30

“(a) Dam any river or stream which forms all or part of such natural water or which flows into such natural water; or

“(b) Divert, take, or use such natural water or divert, take, or use natural water from any river or stream flowing into such natural water; or 35

“(c) Discharge natural water or waste into such natural water or into any river or stream flowing into such natural water— 40

without the prior consent of the Authority and, if such consent is given, without making the right subject to such conditions as the Authority may specify.

“(3d) If the Authority refuses to give its consent under subsection (3c) of this section or gives its consent and specifies conditions with which the applicant for the right is dissatisfied, the applicant shall have a right of appeal in accordance with section 25 of this Act as if the decision of the Authority were a decision of a Board under section 24 of this Act.”

19. **Extension of effect of temporary permits**—Section 24J of the principal Act (as inserted by section 15 of the Water and Soil Conservation Amendment Act (No. 2) 1971) is hereby amended by adding the following subsection:

“(2) The holder of any such temporary permit whose application for such a continuation has been refused by a Regional Water Board, or who is dissatisfied with the period of continuation or the conditions to which it is subject, shall have a right of appeal in accordance with section 25 of this Act as if the decision of the Board in respect of those matters were a decision of the Board under section 24 of this Act.”

20. **Appeals**—(1) Section 26G of the principal Act (as inserted by section 17 of the Water and Soil Conservation Amendment Act (No. 2) 1971) is hereby amended by inserting in subsection (2), after the words “section shall be”, the words “made and”.

(2) This section shall be deemed to have come into force on the 1st day of April 1972.

21. **Offences**—Section 34 of the principal Act is hereby amended by inserting in subsection (2), after the word “Act”, the words “for which no penalty is provided elsewhere than in this section”.

22. **Consequential amendment**—Section 39 of the principal Act is hereby amended by repealing paragraph (b).

23. **Metric conversions**—Subsection (1) of section 15 of the Water and Soil Conservation Amendment Act 1971 is hereby amended—

- (a) By omitting from paragraph (a) the words “three chains”, and substituting the words “60 metres”;
- (b) By omitting from paragraph (a) the words “one cubic foot”, and substituting the words “30 litres”.

## SCHEDULES

Sections 11 (1), 13 (2), 14 FIRST SCHEDULEUNDERGROUND WATER AUTHORITIES ABOLISHED AND LOCAL  
AUTHORITIES TO WHICH PROPERTY TRANSFERRED

Underground Water Authorities Abolished	Local Authorities to Which Property Transferred
Franklin Underground Water Authority	Waikato Valley Authority
Heretaunga Plains Underground Water Authority	Hawke's Bay Catchment Board
Rotorua Borough Underground, Water Authority	Bay of Plenty Catchment Com- mission
Onehunga Underground Water Authority	Such local authority as may be specified by the Govern- General in the Order in Council fixing the date of commencement of Part I of this Act.

Section 15 (1)

## SECOND SCHEDULE

## ENACTMENTS REPEALED

- 1953, No. 56—The Underground Water Act 1953. (1957 Reprint, Vol. 16, p. 295.)
- 1959, No. 98—The Public Bodies Contracts Act 1959: So much of Part I of the First Schedule as relates to Underground Water Authorities.
- 1962, No. 113—The Public Bodies Meetings Act 1962: So much of Part I of the Schedule as relates to Underground Water Authorities.
- 1963, No. 65—The Local Authorities (Employment Protection) Act 1963: So much of Part I of the First Schedule as relates to Underground Water Authorities.
- 1967, No. 134—The Local Government Commission Act 1967: So much of Part I of the First Schedule as relates to Underground Water Authorities.
- 1968, No. 147—The Local Authorities (Members' Interests) Act 1968: So much of Part I of the First Schedule as relates to Underground Water Authorities.
- 1971, No. 25—The Mining Act 1971: So much of the First Schedule as relates to the Underground Water Act 1953.

THIRD SCHEDULE Section 15 (4)

ORDERS IN COUNCIL REVOKED

Title	Reference
Constituting an Underground Water Area and an Underground Water Authority in the Borough of Onehunga	<i>Gazette</i> , 1955, Vol. II, p. 805
Constituting an Underground Water Area and an Underground Water Authority in Franklin County	<i>Gazette</i> , 1957, Vol. II, p. 1375
Constituting an Underground Water Area and an Underground Water Authority in Part of the Provincial District of Hawke's Bay	<i>Gazette</i> , 1957, Vol. II, p. 1375
Constituting an Underground Water Area and an Underground Water Authority in the Borough of Rotorua	<i>Gazette</i> , 1962, Vol. I, p. 4