**LOCAL GOVERNMENT BILL 1934**

**House of Assembly, 30 August 1934, pages 864-70**

Second reading

**The Hon. M. McINTOSH (Albert - Commissioner of Crown Lands):—**

It is my duty to present a very voluminous report and I hope ultimately, a beneficial Bill. I am that when Mr. Montagu Norman, Governor the Bank of England, returned from a visit from America he was asked what he thought of the financial position of the United State and what was the likely outcome of the world’s whirl in regard to monetary policies. He replied that he approached the problem in humility and ignorance. I am approaching the problem of dealing with this measure in all humility and ask for the assistance and co-operation of members. The degree of ignorance is, I hope, no greater than is inseparable from trying to master such a huge Bill. If, therefore, the House will accept this as one of those measures that is very difficult and contains considerable controversial matter, but which is a sincere attempt by the Government to remedy the existing chaos in regard to municipal legislation, I am hopeful that some good will result. This Bill is undoubtedly one of the most important measures dealing with local government which has been considered by the South Australian Parliament, and one which, if passed, will materially assist local government authorities in the exercise of their important functions. Local government in this State was inaugurated in the earliest days of the colony, and among the ordinances passed in 1840, less than three after the foundation of South Australia, was an enactment providing for the establishment - and regulation of local government for the city of Adelaide. This early attempt would appear to have been premature, and the first experiment in local government in the colony Iasted only until 1846. In 1849, however, local government was reestablished in Adelaide, and in 1861 general legislation for the establishment of municipal corporations was passed. The constitution of district councils was first authorised by legislation enacted in 1852. Very many Acts have since been passed dealing with local government, and two codes of law have grown up side by side. There is a number of Acts dealing with municipal corporations which is law applicable to the more closely settled parts of the State. Statutes also exist relating to district councils, which deal with the law applicable to broad acres and country towns. In addition, there are many other Acts which are administered by both classes of council.

This Bill is an attempt, as far as possible, to include all the local government law dealing with both classes of council within the purview of one statute, as is now the case in several of the Australian States and, to some extent, in England. The law dealing with both municipal and district councils to a large extent is uniform, and in many cases is identical. To have this law comprised in two different sets of enactments leads to small variations in procedure which are apt to be confusing in administration, without, in many cases, there being any reason for any distinction in the law applicable to the two classes of council. The Bill therefore provides that, in the proper case, the law for both corporations and districts shall be the same. Where distinctions are necessary, and are now provided by the existing law, they are preserved.

The Bill constitutes a record in this State for volume. When it is considered that over 50 Acts are proposed to be repealed, and that the existing law now contained in all these Acts is encompassed within one enactment, it is apparent that the Bill must of necessity be of large dimensions. It is an accomplishment to be able to include 50 Acts in one measure. An examination of the Statute Books of the other States will disclose that the Local Government Acts are the largest Acts in the respective States. Local government authorities deal with such varied topics, and there are so many specific enactments defining their powers, that it is equally impossible in this State, as elsewhere, to enact the law in other than voluminous s form. It is of interest to note that, during last year, the Imperial Parliament passed a consolidating and amending Local Government Act which dealt with a very large number of Statutes, ranging from the time of Henry VIII. to 1933. The South Australian Bill was drafted at the same time as the Imperial Bill was being prepared, and a noteworthy fact is that both measures dealt with similar problems in a somewhat similar manner, as in both cases there were councils of different classes having separate enactments relating to them, and in both cases the desired objective was to secure uniformity of law so far as possible. The Imperial Act, it is almost needless to say, is also of considerable proportions.

Whatever may be the merits or demerits *of* this Bill, it is not open to the criticism that it has been hastily drafted or insufficiently considered. At the outset it was realised that the opportunity presented for the revision of the law should not be overlooked. The principle laid down in the drafting instructions was that, so far as possible, there should be no departure from the present law, but it *was* quite apparent that in very many ways the law should be revised, and drafting and other anomalies corrected. At an early stage the Government therefore appointed an expert committee to assist the draftsman in considering matters arising out of the drafting of the Bill. In this appointment the Government enlisted the aid of local governing bodies, and invited various associations connected with local government to nominate members to the committee. The committee so appointed was a well-balanced one, whose members are extremely well qualified to deal with the matters entrusted to them. This committee consisted of Mr. W. S. Hanson, the Mayor of Norwood, who was nominated by the Municipal Association; Mr. F. C. Lloyd, Secretary of the Local Government Association, who was nominated by that association, Mr.G. A. M. Ralph, Town Clerk of Woodville, who was nominated by the Local Government Officers*’* Association; Mr. H. P. Beaver, Town Clerk of Adelaide; Mr. R. A. Gibbins, Secretary of the Highways and Local Government Department; and Mr. J. P. Cartledge, Assistant Parliamentary Draftsman, who was Chairman of the committee and the draftsman of the Bill. The members of the committee comprised gentlemen with long experience in local govern­ment affairs and wide knowledge of local government law.

The committee held very many meetings. I understand that over 30 meetings were held during its deliberations, and that very many clauses of the Bill were considered in detail. This work required a considerable amount of application and labour on the part of the members of the committee who, it is apparent, devoted much time and effort to the consideration of the Bill. In accord with the fine tradition which applies to local government work throughout the whole State, the members of the committee gave their services entirely in an honorary capacity, and considerable credit is due to them for the work performed. At a recent meeting of the committee the following resolutions were passed:—

The Local Government Bill as now completed is submitted to the Hon. the Minister of Local Government as a desirable re-enactment of local government law with a minimum departure from existing legislation and practice: it includes many necessary amendments; and, except in such matters as are matters of Government policy, no amendments involving any departure from existing law or practice are included therein which have not had the unanimous support of this Committee. The Committee is further of the opinion that the Bill in its present form, providing as far as applicable a common code for municipal and district councils, will considerably simplify the law and lead to increased efficiency in local government affairs. The Committee urges that the Bill be given a speedy passage through Parliament.

In addition to being considered by the Committee the Bill was also closely examined by two members of the legal profession who are experts in local government law. It was suggested to the Local Government Association and the Municipal Association that they might care to instruct their solicitors to examine and advise on the draft Bill. The two associations accordingly instructed their solicitors, Messrs. W. A. Norman and F. E. Piper respectively, to consult with the draftsman on matters in which their experience showed that the present law needed revision or correction. The two associations concerned deserve great credit for their action in making available the services of their solicitors in this matter. As an outcome, many valuable suggestions have been made and incorporated in the Bill.

In order further to secure that the proposals in the the Bill should be exhaustively canvassed by councils and those concerned in the administration of local government law, the Government, during the last year, forwarded a copy of the Bill to every municipal and district council within the State, inviting comment and suggestions. A large number of councils replied signifying their approval of the Bill and in no case did any council object to the general policy of the Bill. Some made suggestions for alterations, which have all been carefully considered and, in many cases, incorported in the Bill. It may confidently said that the councils of South Australia are in favour of the Bill, and will welcome its passing. Resolutions have been passed by the Municipal Association, the Local Government Association, the Eyre Peninsula Local Government Association, the Northern District Councils’ and Corporations' Association, and the Local Government Officers' Association, approving of the Bill, and in some cases requesting the Government to press for its early passage. It is, therefore, abundantly clear that great care has been exercised in the preparation of the Bill, that it has been closely considered by the people concerned in its administration, and that the concensus of opinion of those interested is that the Bill will make for greater efficiency in local government administration.

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Iwish to stress the point that the great bulk of the Bill makes no alteration in the law. The greater part of such alterations as are made does not affect policy, but consists of alterations which experience has shown necessary to clear up doubtful and ambiguous provisions, and to reconcile differences between the existing municipal law and district law. As already indicated in the resolutions of the committee previously quoted, the alterations that are included have been, with some exceptions, unanimously indorsed by the committee, and to these no objection has been made by councils generally. The committee, however, is not responsible for certain matters in the Bill which are matters of Government policy and upon which the committee did not deliberate or express an opinion. I refer particularly to the provisions relating to Government grants, to which I shall refer later.

The principle upon which . the draftsman has worked has been to examine closely the Municipal Corporations Act and the District Councils Act, and where similar provisions deal with the same topic, to incorporate in the Bill that which appeared most suitable for the purposes of all councils. On such questions as conduct of elections, methods of assessment, recovery of rates, and a large number of other topics, it is dear that the law for both councils should be the same, and in many eases the law at present is identical. On other matters divergences are necessary. The rating powers of the two classes of council are different, and speaking generally, municipal law should be framed with reference to closely settled areas and district council law with reference to broad acres, but with sufficient power for the control of townships. This distinction has been preserved throughout the Bill, and the scheme of the Bill will, on examination, be seen as follows:—Where a common rule is applicable to both classes of council, that part of the Bill applies generally. Where a differentiation is necessary, it is made by applying certain divisions or parts of the Bill to a specified class of council. Throughout the Bill the marginal notes indicate the derivation of the various clauses, and an examination will show that most of the clauses are derived from both the Municipal Corporations Act and the District Councils Act. Where a clause is new, that fact is shown in the marginal note.

One of the prime objectives is, of course, to secure uniformity of law where uniformity is possible and desirable. At the very outset, therefore, the question of a common financial year had to be considered. Under the present Acts, the district year ends on June 30, and the municipal year on November 30; district elections are held in July, municipal elections in December. Obviously, a change had to be made in the case of one or the other, and the Government had no hesitation in accepting the recommendation of the committee that the present district year is more suitable for all councils than the present municipal year. The financial year ofthe State ends on June 30, and this is the most common period adopted generally for the end ofa financial year. Furthermore, the end ofthe financial year for councils must, of necessity, coincide with the time for elections, and owing to harvesting operations, it is obvious that December is altogether unsuitable as a time for holding elections in district council districts. It followed, therefore, that the change had to be made in the municipal year. I realise that there will be a transitional period during which some inconvenience will be caused to municipal councils, but once that period is over, there can be no doubt that a common financial year for all councils will be of benefit generally. Of all the municipal councils in the State, only four have declared themselves opposed to the change in the financial year

As a necessary consequence of altering the municipal year, it follows that there will be a gap of seven months between the end of the old municipal year and the beginning of the first financial year as proposed to be altered. If the financial year is adopted as ending June 30, elections will, of course, be held in municipal councils in July, as is now the case in district councils. There will consequently be a gap of seven months between the time when municipal elections would ordinarily take place under the present law, and the time proposed for elections under the Bill. In order to meet these difficulties, the last part of the Bill provides that there will be a rating period of seven months from December 1, 1934, to June 30, 1935, and that mayors, aldermen, and councillors of municipalities now holding office, will not retire as in the ordinary course of events, in December, but will continue in office until the following July. The effect of this provision is that the municipal elections which would normally take place in December, 1934, will be postponed until July, 1935, and that no term of office of any member in any municipal council now in office will be shortened, but on the contrary, will be extended for seven months, in order to meet the circumstances due to the change in the municipal year.

No general change in the term of office of district councillors is proposed, as the provisions under the Bill relating to the financial year and election of members, will be able to operate without any dislocation of the existing conditions. There is, however, one change proposed which has been desired for some time by many district councils. Animportant factor in local government representation is the provision for continuity of representation, and in order to effect this purpose, only one half of the members of any council is called upon to retire at an ordinary annual election. In districts which are divided into wards, no provision is now made, so that if a ward is represented by two or more members, one half the representatives of that ward are to retire annually. As, under the present law, one half of the total members of the council must retire annually, it may therefore occur it both or all of the members representing particular ward will be included in the members to retire at the same election. Obviously, in such a case the law should provide that one half only of the representatives of any ward should retire. The Bill consequently enacts that at the first elections after the passing of the Bill, these matters will be adjusted so that where, at the next ordinary annual elections, all the councillors for a ward are due to retire at the same time, half only will retire. This will not affect many councils, as I understand that in the past many councillors have so adjusted matters to provide for retirement in the manner provided by the Bill. Once the provision in question is in operation, the alteration will undoubtedly be an improvement on the existing system.

An important change included by amendment when the Bill was before another place relates to the election of mayors. At present mayors are elected by ratepayers while district council chairmen are elected by the councils. The Bill now provides that both mayors and chairmen will be elected in the same way, that is, by the councils. This provision is in accord with the practice in the other States Australia and in England. It is suggested that, in the usual course of events, a mayor elected by the council would probably be a more experienced man than one elected by the ratepayers and that, if a mayor elected to reside over a council has not the confidence of a majority of his fellow members, there will friction in the conduct of the council’s business. As a result of this amendment all municipal councils will be decreased in number by a member. Mayors, like chairmen at the present time, will have both deliberative and casting votes. Members will possibly be interested to know that the expert committee to which I referred had more than 30 meetings. They were unanimously of the opinion that it was very desirable in the interests of the smooth working of local government that the mayor or chairman should be elected by members of the council. They pointed out that members of the council, having to work under a person, should be able to nominate that person.

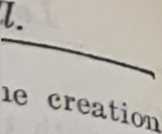
Mr. Lacey—Does it not lead to the creation of cliques ?

The Hon. M. McINTOSH—It has always been a practice of district councils to elect their chairman, and it is the practice in every other State of the Commonwealth, as well as in England for mayors to be elected by the councils over which they are to preside. The proposed change in this State was strongly recommended by the committee.

Mr. Perry—The present method of electing mayors is not unsatisfactory here, is it?

The Hon. M. McINTOSH—If you want uniformity you must have uniformity on some basis, and it would be necessary either to alter the system which now operates in regard to district councils or bring the election of mayors of corporations into line with what operates uniformly elsewhere.

Mr. Rudall—Can you get uniformity when there is such a vast difference in the area of the district councils?

The Hon. M. McINTOSH—I do not think that area affects the position very much. Would not we, in this House, be somewhat resentful if we were required to allow someone else to select our Speaker or Chairman? The Government desired that so far as possible existing conditions should not be altered. Although the original suggestion which we had from the committee was to the effect that there should be uniformity, and that municipal councils should elect their mayors from amongst themselves in the same way as district councils in the case of their chairmen, the Government did not include such a provision in the Bill and sent it back to the committee, but that body, comprising impartial men of wide experience, was still of the same opinion. To those who would argue that the method of electing mayors now proposed is undemocratic, I reply that the members of municipal corporations have themselves in the first place been elected by the ratepayers, and surely can be entrusted to elect from amongst their own members their mayor.

Another change included by way of amendment provides for postal voting at elections and polls. The method proposed is similar to that now obtaining at State and Commonwealth elections and will be available to. ratepayers who are absent from the area or who by reason of illness are unable to attend at a polling booth. Postal voting is authorised under the Local Government Acts in Victoria and New South Wales.

Another change proposed is in the method of conducting appeals from assessments. At the present time appeals are taken to the full council. It is proposed under. the Bill to, follow the English practice and to require a council to appoint an assessment revision committee. The committee must consist of at least five members, and may consist of any greater number of members. It consequently follows that if a council desires all of its members to hear appeals, it can appoint all the members to the committee. I understand that in the country many of the councils desire these appeals to be heard by a full council,. and the Bill makes provision accordingly. In the larger councils, however, the provision for a committee will be readily welcomed, and will enable councils to appoint small committees consisting of the members who are best fitted to undertake the work to be dealt with, and will thus expedite the hearing of appeals.

The law relating to rates is unchanged, except in one particular. Under the present law, councils rating under annual values may strike a rate of Is. in the £ under section 25 of the Health Act, 1898. In the case of councils rating under land values, this amount has been included in their general rating powers, and they have no power to rate under section 25. For more convenient and efficient administration it is desirable that councils should levy their rates by means of one rate instead of two separate rates, one a general rate and another under the Health Act. Section 25 of the Health Act will therefore be repealed, and the general rating power of councils rating under annual values increased by Is. It must be emphasised, however, that this does not amount to an increase in rating power. The alteration merely incorporates the two rating powers into one.

One important change dealing with the recovery of rates is proposed. Under the present law a council’s power to sell land for the recovery of arrears of rates is, in general, limited to a sale by order of the Supreme Court. This is an extremely protracted and expensive method of procedure, and it is proposed entirely to delete these provisions from the law. In their place the existing power of councils to sell land when rates are in arrear and the land is vacant will be extended. This is a cheap and expeditious method of sale, and was originally adapted from Victorian legislation. There are numerous safeguards provided to secure that a council does not abuse this power, and it is now proposed in the Bill that a council may sell land for arrears of rates which have been owing for five years.

Mr. Rudall—Five years is a long time.

The Hon. M. McINTOSH—There was no discussion on that point in the Legislative Council.

Mr. Rudall—There will be here.

The Hon. M. McINTOSH—Inasmuch as the Council did not ask for the shorter period I do not think we should press it. The power will apply both to vacant and occupied land. The law regarding public streets and roads has been carefully considered. At the present time the law is defective inasmuch as there is no way open for an owner of property to secure a declaration that any land is a public street or road, without under­taking expensive litigation. The Bill provides that these persons shall have power to apply to, a council for a declaration that any street or road is a public street or road, and, in the event of an adverse decision, to appeal to the local court. The vexatious word “dedicated”, has been omitted from the Bill. This word has been productive of much expensive litigation, and the draftsman has consequently been at much pains .to make clear what shall be deemed to be a public street, or road, without the use of this word. A public user for 10 years will constitute a road a public road. This is the general principle, but provisions of the existing law, laying down definitions of public streets and roads, are also incorporated in the Bill, and it is made plain what streets are to be deemed to be public streets.

The provisions included in the Bill dealing with Government grants continue the existing policy as laid down in the Local Government, Grants Act, 1930. The general principle is that Parliament will annually vote an amount for Government grants to councils. This amount will be divided among councils by the Governor, on the recommendation of the Director of the Highways and Local Government Department. The principles of distribution are as follows:—Three-quarters of the amount must be divided among country councils, and the remaining quarter among metropolitan councils. In making his recommendation the Director will take into consideration the peculiar circumstances of every council, and the grant will be divided among councils according to their needs.

There is a number of provisions in the Bill which are now contained in various Acts, dealing with matters such as slaughter-houses, ferries, manufacturing districts, destruction of sparrows, noisy trades, gas works and electric supply works, cemeteries, &c. Councils are now required to consult a large number of Acts in order to ascertain the law on these matters, which are administered by them within their areas. All these matters have been included in the Bill without any material change. Consequent upon the changes made, and in order to carry out the principle aimed at by the Bill, that so far as possible the law relating to local governing authorities should be contained in one statute, various amendments, contained in Part XLVI., are made to a number of other Acts. These amendments make no changes in general policy, but only amend the various Acts in such a fashion as to secure that the law may be contained in the most appropriate statute.

The Bill is of such proportions that I cannot discuss the clauses separately, and, as before stated, many drafting and similar alterations have been made to which it is impossible to refer in the course of a second reading speech, but again I must emphasise the fact that the number of alterations of the law is relatively small. Changes of language and arrangement have been made with a view to clarifying the law, but relatively very few alterations in general policy are proposed. In Committee any information or explanation desired by members will be given on any clause, and every facility will be given to any member who desires information on any matter relating to the Bill. It is important that this Bill should have a speedy passage, and be passed in good time before the period for holding elections in municipal corporations in December next, which, as before indicated, are proposed to be postponed by the Bill.

It will be noticed that in the numbering of the clauses there is a blank at the place where clause 106 would appear and that other clauses are numbered with a letter. This is the result of amendments made to the Bill. To renumber the clauses at this stage would involve considerable work and expense in printing and consequently it has been delayed until the Bill is finally passed by both Houses.

It has been for many years apparent that an enactment such as this should be placed on our Statute Book, and the passage of this Bill will undoubtedly be of great assistance to those concerned with the administration of local government law. The Bill, if passed, will not only be of assistance in local government affairs, but will be of no inconsiderable contribution to the Statute law reform of this State. Fifty-four Acts, the greater number of are constantly administered by councils are repealed by the Bill, and their provisions incorporated in its clauses. These Acts date from 1840 to 1932, in some cases being framed in archaic language and set out in obsolete form, and the time has long been overdue for a consolidation of these enactments. The local government authorities of South Australia have, in the past, rendered inestimable service to the State, and it behoves Parliament to reduce the laws under which they operate to as concise and simple a form as the legislative subject matter permits. This objective will, I am sure, be achieved by the Bill. I therefore commend this Bill, confident that its passage will be a forward step in the history of local government in this State, and that it will materially assist local government authorities in the performance of their important functions.

Mr. LACEY secured the adjournment of the debate.