

HAWKE'S BAY REGIONAL COUNCIL (SURPLUS FUNDS DISTRIBUTION) EMPOWERING BILL

AS REPORTED FROM THE INTERNAL AFFAIRS AND LOCAL GOVERNMENT COMMITTEE

COMMENTARY

Recommendation

The Internal Affairs and Local Government Committee has examined the Hawke's Bay Regional Council (Surplus Funds Distribution) Empowering Bill and recommends that it be passed with the amendments shown in the bill.

The Hawke's Bay Regional Council (Surplus Funds Distribution) Empowering Bill is a local bill. We have determined that the Standing Orders have been complied with and that the rights and prerogatives of the Crown are not affected by the provisions of the bill.

Conduct of the examination

The Hawke's Bay Regional Council (Surplus Funds Distribution) Empowering Bill was referred to the Internal Affairs and Local Government Committee on 30 June 1999. The closing date for submissions was 13 August 1999. We received and considered three submissions from interested groups and individuals. We heard all three submissions orally. Hearing evidence took one hour and 23 minutes and consideration took two hours and 17 minutes.

We received advice from the Departments of Internal Affairs and Inland Revenue.

This commentary sets out the details of our consideration of the bill and the major issues we addressed.

Background

The Hawke's Bay Regional Council (HBRC) has passed a resolution to distribute approximately \$9.9 million of surplus funds. The surplus funds have primarily arisen from a special dividend as a consequence of the Port of Napier Limited restructuring its balance sheet. HBRC holds 92 percent of the shares of the Port. It

decided to commit additional expenditure to public good funding for animal pest control, sustainable land management, wetland protection and flood control. Funds were also tagged to fund forecast operating deficits in the period prior to balanced budgets being achieved. However, despite this additional expenditure, substantial surplus cash reserves remained. HBRC's plan to distribute the surplus \$9.9 million would see funds calculated in proportion to land value.

Local authorities cannot lawfully make distributions of wealth directly to ratepayers or other individuals. The bill aims to allow the HBRC to distribute \$9.9 million of surplus funds to:

- ratepayers
- "actual ratepayers" (a person who is not a ratepayer, but as determined by HBRC, has paid rates)
- territorial authorities, provided the money is tagged to specific projects.

The bill would also allow distributions to be made at any time in the future when the HBRC declares funds to be surplus.

Committee's consideration and recommended amendments

Distribution of surplus funds

Clause 5 provides that the distribution of surplus funds is not:

- a dutiable gift for the purposes of the Estate and Gift Duties Act 1968
- a supply of goods or services for the purposes of the Goods and Services Tax Act 1985
- gross income in the hand of a recipient for the purposes of the Income Tax Act 1994.

Following further consultation on this issue, it has been agreed that the goods and services tax and income tax treatment of the distribution can be determined under existing legislation. Accordingly, we recommend paragraphs (b) and (c) of clause 5 (1) be omitted. It has also been agreed that paragraph (a) applies only where the distributed funds do not exceed amounts received from fully imputed dividends. We recommend clause 5 be amended accordingly.

Accountability mechanism

The Assistant Auditor-General stated that any distribution of surplus funds should be required to be included in the HBRC's annual plan, to ensure public accountability. This concern can be addressed by inserting a provision requiring the special consultative procedure provided for in section 716A of the Local Government Act 1974. While we acknowledge the extensive consultation undertaken by HBRC on the draft plan to distribute the surplus funds, we consider that a basic level of accountability and transparency should be required for future distributions. We consider this amendment would be of value should the bill have effect beyond this distribution and recommend the bill be amended accordingly.

Manner of distribution

The classes of persons to whom distributions could be made are relatively narrow. We consider that judgements about the definitions of classes entitled to distributions is largely a political issue for which local authorities should be

responsible and accountable. However, we consider there are some minor drafting issues in relation to clause 4 which should be resolved.

Clause 4 (2) (b) allows a distribution to be set off against any debt to any party. We consider that debts to third parties should not be able to be set off against distributions. We recommend the provision be limited to rates owed to HBRC. Clause 4 (2) (c) suggests HBRC could create some legal obligation between the ratepayers designated to receive a distribution and other ratepayers in respect of a property. We consider that any distribution should belong wholly to the person to whom it is made and that HBRC should resolve any issues regarding multiple ratepayers before making a distribution. We recommend the provision be amended accordingly.

Power to distribute wealth to territorial authorities

The lists of persons to whom the surplus funds may be allocated by HBRC includes territorial authorities, with the proviso that HBRC specifies the purposes to which the funds are applied and the territorial authority agrees to apply the funds to those purposes.

The Department of Internal Affairs (the department) is concerned at the provisions in the bill allowing a regional council to distribute wealth to a territorial authority. Its concerns are the low level of accountability and the increased risk of poor value spending. It claims that allowing a regional council to distribute wealth to a territorial authority may also involve it in territorial authority functions which it has no mandate to deal with. We note that the concerns raised are related to the precedent that the bill may set.

We considered three options. They were:

1. We do not recommend an amendment to the bill in relation to the distribution of funds to territorial authorities; or
2. We recommend the bill be amended to remove the provisions allowing distribution of surplus funds to territorial authorities; or
3. We consider that provisions should be included which enable HBRC to distribute certain surplus funds to territorial authorities. The funds available for such a distribution would be limited to those HBRC resolved to be surplus funds prior to 3 June 1999, the date the bill was introduced. This would enable HBRC to make an one-off payment to one or more territorial authorities. We recommend the bill be amended accordingly.

After considerable discussion we decided to support the recommendation contained in option one.

We accept that there were some arguments supporting the practice of distribution of surplus funds to district councils. The majority of us believe that because such councils are well-placed to identify, address and meet the needs of their communities, their functions often complement those of regional councils, and by controlling the level of rates, they have an ability to pass on surpluses to the benefit of individual ratepayers and the wider community in the ensuing years. The majority of us consider that distribution directly to individuals contains inherent injustices and denies district councils resources required to act collectively to meet community needs.

Accordingly, we do not recommend an amendment to the bill in relation to the distribution of funds to territorial authorities. However, we consider that this is an issue which should be debated by the whole House in its consideration of the bill.

Issues raised in submissions

Wairoa District Council opposes the bill. It argues there should not be a distribution because necessary capital works have not been carried out. It states that if funds were to be distributed, they should be given to territorial authorities, as representatives of the communities in the region.

We consider that the appropriate forum for debate about the works the HBRC should carry out is within the frameworks for the accountability of that local authority. Our consideration of the proposal to distribute surplus funds to territorial authorities is discussed above.

Central Hawke's Bay District Council supports the intent of the bill. However, it stated that distributions should not be made to territorial authorities except as agents of the regional council. We consider it very unlikely that receiving councils would act as passive agents in the distribution of funds. The receiving councils are likely to attempt to have a much more active role in decisions about how funds are tagged to their projects.

Conclusion

We support the intent of the bill to allow HBRC to distribute surplus funds. We consider the issue of surplus wealth to be a significant one. Local authorities can accumulate considerable wealth when assets such as energy companies and port companies are moved from public to private ownership. We note that a power for all local authorities to return wealth and the development of principles on the appropriate use of investment income is likely to arise from the proposals for the Local Authority Funding Powers Review, currently being undertaken by the department.

KEY TO SYMBOLS USED IN REPRINTED BILL

AS REPORTED FROM A SELECT COMMITTEE

Struck Out (Unanimous)

Subject to this Act,

Text struck out unanimously

New (Unanimous)

Subject to this Act,

Text inserted unanimously

(Subject to this Act,)

Words struck out unanimously

Subject to this Act,

Words inserted unanimously

Rick Barker

**HAWKE'S BAY REGIONAL COUNCIL (SURPLUS
FUNDS DISTRIBUTION) EMPOWERING**

[LOCAL]

ANALYSIS

Title
1. Short Title and commencement
2. Interpretation

3. Power to distribute surplus funds
4. Manner of distribution
5. Distribution not a duty or gift

A BILL INTITULED

**An Act to authorise the Hawke's Bay Regional Council to
distribute surplus funds to its ratepayers and territorial
authorities within its region**

5 BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be
cited as the Hawke's Bay Regional Council (Surplus Funds
Distribution) Empowering Act 1999.

10 (2) This Act comes into force on the day after the date on
which it receives the Royal assent.

2. Interpretation—(1) In this Act, unless the context
otherwise requires,—

“Actual payer” means a person—

15 (a) Who is not a ratepayer; and
(b) Who, as determined by the Council, has paid
rates made by the Council:

“Council” means the Hawke's Bay Regional Council:

“Ratepayer” means—

20 (a) A person whose name appears in the
“occupiers” column of the rate records of the
Council; or

(b) Where a territorial authority has agreed to
collect rates for the Council under section 127 of the

Hawke’s Bay Regional Council (Surplus Funds Distribution) Empowering

Rating Powers Act 1988, a person whose name appears in the “occupiers” column of the rate records of the territorial authority:

“Territorial authority” means a territorial authority the district of which is wholly or partly in the Council’s region. 5

(2) Unless the context otherwise requires, terms used in this Act have the same meaning as in the Local Government Act 1974.

3. Power to distribute surplus funds—(1) The Council may, from time to time, resolve that funds of the Council are surplus funds and may be distributed under this Act. 10

(2) A resolution under **subsection (1)** must identify the surplus funds.

New (Unanimous) 15

(3) Before distributing, under **section 4**, the surplus funds that the resolution relates to, the Council must comply with the special consultative procedure in section 716A of the Local Government Act 1974.

(4) **Subsection (3)** is complied with if— 20

(a) The Council undertook consultation before this Act comes into force; and

(b) The consultation would have complied with **subsection (3)**, had it been undertaken after this Act comes into force. 25

4. Manner of distribution—(1) Some or all of the funds resolved to be surplus funds under **section 3 (1)** may be distributed by the Council to the persons specified in *(one)* 1 or more of the following paragraphs:

(a) All ratepayers: 30

(b) A group of ratepayers selected in such manner as the Council determines:

(c) One or more actual payers selected in such manner as the Council determines:

(d) One or more territorial authorities. 35

(2) For the purposes of **subsection (1)** the Council may—

(a) Determine the basis for allocating a distribution of surplus funds, including (without limitation) allocating surplus

funds in proportion to the rateable value of properties:

- 5 (b) Determine the manner of a distribution of surplus funds, including (without limitation) in satisfaction or part satisfaction of (*amounts*) rates owing by ratepayers:

Struck Out (Unanimous)

- 10 (c) Determine, in relation to a rateable property with more than one ratepayer, which ratepayer is to receive a distribution of surplus funds for all ratepayers in respect of the property:

New (Unanimous)

- 15 (c) Determine, in relation to a rateable property with more than 1 ratepayer, which ratepayer or ratepayers are to receive the distribution of surplus funds in respect of the property.

- (d) Specify a date for determining the persons to whom a distribution of funds is to be made under this Act.
- (3) Funds must not be distributed under this Act to a territorial authority unless—
- 20 (a) The Council specifies the purposes to which the funds are to be applied; and
- (b) The territorial authority agrees to apply the funds to those purposes.

25 **5. Distribution not a duty or gift**—(1) A distribution of funds under this Act is not—

- (a) A dutiable gift for the purposes of the Estate and Gift Duties Act 1968:

Struck Out (Unanimous)

- 30 (b) A supply of goods or services for the purposes of the Goods and Services Tax Act 1985;
- (c) Gross income in the hands of a recipient for the purposes of the Income Tax Act 1994.

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Funds Distribution) Empowering*

New (Unanimous)

(2) **Subsection (1)** applies only to the extent that the distribution of funds does not exceed amounts received by the Council from dividends with imputation credits attached of the maximum amount that may be attached under section ME 8 of the Income Tax Act 1994. 5