

*This PUBLIC BILL originated in the HOUSE OF REPRESENTATIVES, and, having this day passed as now printed, is transmitted to the LEGISLATIVE COUNCIL for its concurrence.*

*House of Representatives,  
24th October, 1935.*

*Hon. Mr. Bitchener.*

## PUBLIC WORKS AMENDMENT.

### ANALYSIS.

<p>Title.</p> <p>1. Short Title.</p> <p style="text-align: center;"><i>Aerodromes.</i></p> <p>2. Authorizing the taking, &amp;c., under the principal Act of land required for an aerodrome.</p> <p>3. Term "local authority" to include recognized aviation authorities, if incorporated.</p> <p>4. Fixing maximum height of buildings and trees in vicinity of aerodromes for protection thereof.</p> <p>5. Removal of trees, buildings, &amp;c., rendering aerodromes unsafe for aviation purposes.</p> <p>6. Minister may direct local authority to serve a notice under either of last two preceding sections and in default may serve notice on its behalf.</p> <p style="text-align: center;"><i>Irrigation and Water-supply.</i></p> <p>7. Section 277 of principal Act amended. Consequential repeal.</p>	<p>8. Extending powers of Minister as to supply of water.</p> <p>9. Registration of charge against land and produce for moneys unpaid for supply of water where no irrigation agreement is registered.</p> <p style="text-align: center;"><i>Gates across Roads.</i></p> <p>10. Section 141 of principal Act (as to gates across roads) amended.</p> <p>11. Cattle-stops in conjunction with swing-gates on roads.</p> <p style="text-align: center;"><i>Miscellaneous.</i></p> <p>12. Prohibiting acquisition of rights by adverse user of land taken, &amp;c., for public work.</p> <p>13. Section 9 of principal Act (as to execution of contracts for Government works) amended.</p> <p>14. Section 35 of principal Act (as to sale of land not wanted) amended.</p> <p>15. Motor-lorry regulations may authorize deduction of cost of apportioning license fees.</p> <p>16. Certain matters not to invalidate regulations.</p>
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### A BILL INTITULED

AN ACT to amend the Public Works Act, 1928.

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

1. This Act may be cited as the Public Works Amendment Act, 1935, and shall be read together with and deemed part of the Public Works Act, 1928 (hereinafter referred to as the principal Act.)

Title.

Short Title.

See Reprint  
of Statutes,  
Vol. VII, p. 622

## Aerodromes.

Authorizing the taking, &c., under the principal Act of land required for an aerodrome.

See Reprint of Statutes, Vol. I, p. 431

Term "local authority" to include recognized aviation authorities, if incorporated. Ibid., p. 431

Fixing maximum height of buildings and trees in vicinity of aerodromes for protection thereof.

2. (1) The Governor-General or a local authority is hereby empowered to take or otherwise acquire under the provisions of the principal Act any area of land required for the purposes of an aerodrome.

(2) Where any aviation authority that is a body corporate and is recognized under section three of the Local Authorities Empowering (Aviation Encouragement) Act, 1929, requires to take any land for the purposes of an aerodrome, the Governor-General, on the application and at the proper cost and charges of the aviation authority, may take the land or any part thereof under the principal Act, as for a public work under that Act.

(3) All the provisions of the principal Act shall apply accordingly for the purposes of the *last preceding* subsection, but the effect of the Proclamation taking the land shall be to vest the land in the aviation authority instead of in His Majesty, and all proceedings after the issue of that Proclamation in respect of compensation and otherwise in respect of complying with the principal Act shall be against the aviation authority, and that authority shall be deemed to be the respondent, and shall be liable in respect of the taking in the same manner and to the same extent as His Majesty or the Minister would be liable in respect of the taking of the land for a Government work under the principal Act.

3. For the purposes of sections *four*, *five*, and *six* of this Act, the expression "local authority" includes an aviation authority that is a body corporate and is recognized under section three of the Local Authorities Empowering (Aviation Encouragement) Act, 1929.

4. (1) For the purpose of making any aerodrome safe for aviation purposes the Minister, or the local authority controlling the aerodrome, may, by notice gazetted and publicly notified,—

(a) Prohibit, either absolutely or beyond the height specified in the notice, the erection, placing, or extension, without the consent of the Minister, of any building, pole, mast, or other structure of any kind on the land described in the notice :

(b) Limit the height to which trees may be grown on the land described in the notice without the consent of the Minister.

5 (2) A copy of the notice shall be served on the owners and occupiers of the land described in the notice, and all other persons having any interest in the land so far as they can be ascertained.

10 (3) Within *twenty-eight* days after the public notification of the notice, any owner or occupier of any land described in the notice, or any other person having any interest in the land, may, by complaint under the Justices of the Peace Act, 1927 (the provisions whereof shall, with the necessary modifications, apply), require the Minister or the local authority, as the case may be, 15 to show cause before a Magistrate why the notice should not be set aside. On the hearing of the complaint the Magistrate, whose decision shall be final, shall decide whether the notice should or should not be set aside, and in the former case the notice shall be deemed to be 20 void.

(4) Any notice under subsection *one* of this section may at any time in like manner be revoked or varied, and in the latter case the provisions of subsections *two* and *three* hereof shall apply to the notice as varied.

25 (5) If any notice as aforesaid is not set aside under subsection *three* hereof, a copy of the *Gazette* containing the notice shall be transmitted to the District Land Registrar or the Registrar of Deeds, as the case may require, who shall, without fee, deposit the copy in his 30 office and register against the title to all land affected thereby a memorial that the land is subject to restrictions imposed by a notice under this section as specified in the deposited *Gazette* (which shall be identified by its date and also by the deposit number, if any).

35 (6) In the case of a notice which is registered as aforesaid, if any building, pole, mast, or other structure is erected, placed, or extended, or if any such work is commenced or continued, or if any tree is allowed to grow, in breach of the notice, the person for whom the work 40 is done or who allows the tree to grow shall be liable to a fine of *twenty* pounds for every day during which the breach continues, and the Minister or the local authority, as the case may be, may cause the land to be entered upon and the breach remedied, and the cost of so doing 45 may be recovered from that person as a debt due to the Crown or the local authority, as the case may be.

See Reprint  
of Statutes,  
Vol. II, p. 351

(7) The Minister may in any case, in his discretion, withhold his consent under subsection *one* of this section or give it unconditionally or subject to such conditions as he thinks fit.

(8) Any person having any interest in any land injuriously affected by the withholding of any such consent, or by the giving of consent subject to conditions, shall be entitled to compensation from the Minister where he served the notice or from the local authority where it served the notice, and if the compensation is not agreed upon it shall be determined as provided in the principal Act.

(9) No claim for compensation in respect of any decision of the Minister under subsection *seven* of this section shall be made after the expiration of twelve months from the date of the decision.

Removal of trees, buildings, &c., rendering aerodromes unsafe for aviation purposes.

5. (1) In any case where any tree, building, pole, mast, or other structure on any land interferes in any way with the use by aircraft of any aerodrome, the Minister, or the local authority controlling the aerodrome, may by notice in writing served on the owner and the occupier of the land and on all other persons having any interest in the land, or in the building, pole, mast, or other structure, so far as they can be ascertained, require the removal, lowering, or trimming of the tree, or the removal or lowering of the building, pole, mast, or other structure, to the satisfaction of the Minister or the local authority, as the case may be, within *two months* after service of the notice.

See Reprint of Statutes, Vol. II, p. 351

(2) Within *twenty-eight* days after the service of the notice any owner or occupier of the land, or any other person having any interest in the land, or in the building, pole, mast, or other structure, may by complaint under the Justices of the Peace Act, 1927 (the provisions whereof shall, with the necessary modifications, apply), require the Minister, or the local authority, as the case may be, to show cause before a Magistrate why the notice should not be set aside. On the hearing of the complaint the Magistrate, whose decision shall be final, shall decide whether the notice should or should not be set aside, and in the former case the notice shall be deemed to be void.

(3) In the case of a notice which is not set aside as aforesaid, if the notice is not duly complied with within *two months* after the service thereof, or within *two months* after the Magistrate's decision, whichever period is the later to expire, the Minister or the local authority, as the case may be, may cause the land to be entered upon and the work to be done.

(4) The Minister, where he served the notice, or the local authority, where it served the notice, shall be liable to pay compensation for any damage, expense, or loss occasioned by the exercise of any of the powers conferred by this section, and if the compensation is not agreed upon it shall be determined as provided in the principal Act.

(5) No claim for compensation under this section shall be made after the expiration of twelve months from the doing of the work required by the notice.

6. (1) In any case where, in the opinion of the Minister, a notice under either of the last *two preceding* sections should be served by the local authority having the control of any aerodrome, the Minister may direct the local authority to serve a notice under and to exercise the powers conferred by the section concerned, and if it fails to serve the notice within two months after being so directed, the Minister may serve the notice and exercise the powers on behalf of the local authority, and may recover all costs, charges, and expenses incurred in so doing from the local authority in any Court of competent jurisdiction as a debt due to His Majesty.

(2) For the purposes of compensation, every notice served by the Minister under this section shall, if it contains a statement to that effect, but not otherwise, be deemed to have been served by the local authority specified in the notice.

#### *Irrigation and Water-supply.*

7. (1) Section two hundred and seventy-seven of the principal Act is hereby amended as follows:—

(a) By repealing subsections one and two thereof, and substituting the following subsection:—

Minister may direct local authority to serve a notice under either of last two preceding sections and in default may serve notice on its behalf.

Section 277 of principal Act amended.

“ (1) Either before or after any Order in Council is issued authorizing the Minister to construct any water-race or water-supply works the Minister, for and on behalf of His Majesty the King, may enter into contracts with the owner or occupier of any land or the holder of any mining privilege for the supply of water from the works on such terms and conditions and for such consideration as the Minister thinks fit ” : 5 10

(b) By omitting from subsection three thereof the words “ In such case ” :

(c) By omitting from the said subsection three the words “ such contract ”, and substituting the words “ a contract to take such quantity of water, on such terms and conditions, and for such consideration, as the Governor-General thinks reasonable ”. 15

Consequential repeal.

(2) Subsection eleven of section two hundred and seventy-eight of the principal Act is hereby repealed. 20

Extending powers of Minister as to supply of water.

8. (1) In addition to the powers conferred on him by the principal Act, the Minister may, for and on behalf of His Majesty the King, supply water from any water-race, water-supply works, or irrigation works, constructed, maintained, or controlled by the Minister, whether under the authority of the principal Act or otherwise, to any person on such terms and conditions and for such consideration as the Minister thinks fit. 25

(2) The provisions of the principal Act shall apply with respect to every agreement made in writing for the supply of water under this section as if it were an irrigation agreement made under section two hundred and seventy-seven of that Act. 30

Registration of charge against land and produce for moneys unpaid for supply of water where no irrigation agreement is registered.  
Cf. 1933, No. 41, s. 36

9. (1) If at any time any moneys are due to the Crown and unpaid in respect of water supplied by or on behalf of His Majesty to or for the benefit of any land in respect of which no irrigation agreement is registered, the District Engineer of the Public Works Department for the district in which the land is situated may, without fee, deposit with the District Land Registrar or the Registrar of Deeds, as the case may be, in the land registration district in which the land is situated 35 40

a certificate under his hand describing the land and specifying the amount due and unpaid in respect thereof, and the Registrar shall thereupon register the certificate in respect of that land. While the certificate is so  
5 registered no transfer, conveyance, mortgage, lease, or other instrument affecting the land, or any estate or interest therein, or any part thereof, shall be registered without the prior consent of the Minister.

(2) The moneys specified in a certificate registered  
10 under this section in respect of any land shall, until payment thereof, be a charge on the land, and on the stock for the time being depastured on the land, and on the produce of that land and stock, and on the proceeds of the sale of that stock or produce or any part thereof.  
15 The charge shall be deemed to have been created at the time of the registration of the certificate, and that registration shall be deemed to be registration of the charge for the purposes of the Statutory Land Charges Registration Act, 1928.

(3) In the case of land held under a lease or license a charge under this section shall extend to the interest (if any) of the lessee or licensee in any improvements to the land, or in any moneys that may be payable by the lessor or licensor or by an incoming tenant or otherwise  
20 for any such improvements, whether during the term of the lease or license or thereafter.

(4) Every charge created by virtue of this section shall, save as hereinafter provided, have priority over all existing or subsequent mortgages, instruments by way of  
30 security, charges, assignments, or encumbrances howsoever created. Notwithstanding anything to the contrary in any other Act, if any land or other property subject to a charge created by this section is also subject to a charge created by that other Act, the charges shall rank  
35 equally with each other unless by virtue of that other Act the charge created thereby would be deferred to the charge created by this section.

(5) If, at any time while any moneys specified in a certificate registered under this section in respect of any  
40 land are unpaid, any person who is not otherwise liable to pay those moneys receives the whole or any portion of the stock for the time being depastured on the land, or of the produce of that land or stock, or of the proceeds of the sale of that stock or produce or any part thereof,

See Reprint  
of Statutes,  
Vol. VII, p. 1280

he shall be liable to pay to the Crown as a debt due by him the moneys so due and unpaid, or the value of the stock and produce and the amount of proceeds so received by him, whichever is the less.

(6) In addition to all other powers and remedies conferred on him by any Act, agreement, or instrument, His Majesty the King shall, for the recovery of the moneys specified in any certificate registered under this section in respect of any land, have the same powers and remedies under the Land Transfer Act, 1915, or under the Property Law Act, 1908, as the case may be, as if the certificate were a mortgage of that land in favour of His Majesty.

(7) Upon payment to the Crown of the full amount in respect of which a certificate has been registered under this section, the District Engineer shall forthwith cause a withdrawal of the certificate to be registered, and the District Land Registrar or the Registrar of Deeds, as the case may be, shall, without fee, register the withdrawal.

(8) Notwithstanding anything to the contrary in the Land Transfer Act, 1915, a certificate or a withdrawal of a certificate under this section may be registered in respect of any land that is protected by a caveat in the Form L in the Second Schedule to that Act.

(9) The foregoing provisions of this section, with the substitution of references to the Mining Registrar for references to the District Land Registrar or the Registrar of Deeds, as the case may be, and with all other necessary modifications, shall apply with respect to moneys due for the supply of water to mining privileges, as if a mining privilege were land to which the Property Law Act, 1908, applied.

#### *Gates across Roads.*

10. Section one hundred and forty-one of the principal Act is hereby amended by inserting, after the words "sparsely populated district", the words "or of any road that in the opinion of the Minister or the local authority is difficult to fence may erect or".

11. (1) In any case where, pursuant to section one hundred and forty-one or to section one hundred and forty-two or to section one hundred and forty-four of the principal Act, a swing-gate has been erected across a road, or the erection of such a gate is authorized (in either case whether before or after the passing of this

See Reprint  
of Statutes,  
Vol. VII, pp.  
1161, 1077

Ibid., p. 1244

Section 141 of  
principal Act  
(as to gates  
across roads)  
amended.

Cattle-stops in  
conjunction  
with swing-gates  
on roads.



Act), the Minister or the local authority having control of the road may erect, or may by writing permit any person to erect, a cattle-stop across the road in conjunction with the gate.

5 (2) Subject to the provisions of this section, sections one hundred and forty-one, one hundred and forty-two, and one hundred and forty-four to one hundred and forty-six of the principal Act shall apply with respect to every such cattle-stop as if it were a part of the gate in  
10 conjunction with which it is erected or is proposed to be erected.

(3) Permission to erect a cattle-stop across any road shall not be granted unless and until notice of any application in that behalf has been given at least once  
15 in each of two consecutive weeks in some newspaper circulating in the district, and the cost of the notices shall be defrayed by the person applying for permission.

(4) The erection of any gate and cattle-stop, or of any cattle-stop in conjunction with an existing gate,  
20 shall not be commenced unless and until plans of the gate and cattle-stop have been submitted to and approved by the Minister. The Minister may make such alterations in or additions to the plans as he thinks fit, and may require the erection of such protective and warning  
25 devices as he deems necessary; and the cattle-stop and gate shall be erected in accordance with such plans and requirements, and in such position as the Minister directs.

(5) Neither the Minister nor the local authority shall  
30 be liable for damages in respect of any accident arising out of the existence of a cattle-stop on any road.

(6) All such cattle-stops as aforesaid erected before the passing of this Act shall be deemed to have been lawfully erected.

*Miscellaneous.*

35 **12.** (1) Notwithstanding any statute of limitation, no title to any land held, taken, purchased, acquired, or set apart for any public work, and no right, privilege,  
40 or easement in, upon, or over any such land, shall be acquired by possession or user adversely to or in derogation of the title of His Majesty or of any local authority in which the land is vested.

Prohibiting acquisition of rights by adverse user of land taken, &c., for public work.

(2) The foregoing provisions of this section shall be in addition to and not in restriction of the provisions of section sixty of the Land Transfer Act, 1915.

See Reprint of Statutes, Vol. VII, p. 1184

Section 9 of principal Act (as to execution of contracts for Government works) amended.

Section 35 of principal Act (as to sale of land not wanted) amended.

Motor-lorry regulations may authorize deduction of cost of apportioning license fees.

Certain matters not to invalidate regulations.

13. Section nine of the principal Act is hereby amended by omitting the words "by the Governor-General on his behalf", and substituting the words "on his behalf by the Governor-General, or by the Minister, or by any person authorized by the Minister in that behalf, either generally or in respect of any specified contract or of any specified class or classes of contracts".

14. Section thirty-five of the principal Act is hereby amended by repealing paragraph (b), and substituting the following paragraph:—

"(b) The Minister or the local authority, as the case may be, shall cause the land to be sold either by private contract to the owner of any adjacent lands, at a price fixed by a competent valuer, or by public auction or by public tender. Public notice shall be given of every auction or invitation for tenders under this section, and, in addition, written notice thereof shall be served on every owner of land adjacent to the land proposed to be sold, so far as they can be ascertained, not later than *ten* days before the date fixed for the auction or for the closing of the tenders, as the case may be: "

15. Section one hundred and sixty-six of the principal Act is hereby amended by adding to paragraph (e) of subsection two the following words: "and for the deduction from the license fees and payment to the Minister or to a local authority of such amounts or proportions as the Minister determines in respect of the cost of making the apportionment or of collecting and distributing the license fees".

16. No regulation under this Act or under the principal Act shall be deemed invalid because it delegates to or confers upon the Governor-General or upon any other person or body any discretionary authority, whether judicial, administrative, or otherwise.