

Report 01.07

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Report to the Policy & Finance Committee
from Lloyd Bezett, Policy Analyst, Council Secretariat

Local Electoral Bill - Submission

1. Purpose

To consider making a submission on the Local Electoral Bill, introduced to Parliament in December 2000.

To consider the appointment of a Supervising Returning Officer for the 2001 Local Body Elections, subject to the enactment of the Local Electoral Bill.

2. Background

The development of the Local Electoral Bill started with a discussion document, *The Electoral Way Forward*, by Local Government New Zealand and the input of a joint working party with SOLGM. This working party analysed submissions from the sector and produced a draft Bill which was presented to the Minister of Local Government at the last Local Government New Zealand Conference. Council staff have contributed to each stage of the development of the Local Electoral Bill and have provided a regional council perspective on the working party.

The purpose of the Bill is to modernise the provision for the conduct of local elections and polls, and to provide sufficient legislative flexibility to accommodate new technologies and processes as they are developed through the use of regulations to prescribe matters of details that will be subject to future change. The Bill provides a basic framework for the conduct of electoral matters, while allowing for local discretion in the choice of electoral system (ie. First Past the Post, Single Transferable Vote) or voting method (ie. postal voting, booth voting, kiosks, the Internet etc).

The Local Electoral Bill also includes the following principles:

- Fair and effective representation,
- A reasonable opportunity for all to cast an informed vote, nominate candidates or be a candidate,

- Public understanding and confidence in a regular election cycle, independently managed elections, freedom of choice and secrecy of vote, transparent systems and impartial dispute resolution mechanisms.

Attachment 1 to this report is the Explanatory Note to the Bill, which summarises the effect of each clause. (This was previously circulated to councillors in the Information Bulletin 2000/55). While most of the Bill is expected to be enacted in time for the elections in October 2001, the ability to choose a new electoral system will apply to from 2004 elections. The Bill has been referred to the Justice and Electoral Select Committee. Submissions close on 26 February.

Council will note that much of the detail of how each voting system operates, the approved voting methods, forms, declarations and duties of Electoral Officers will be prescribed by Regulations. These regulations will be augmented by a Code of Good Practice issued by the local government sector.

A seminar was hosted by Local Government New Zealand and SOLGM on 8 February to discuss the implications of the Bill and ascertain a sector-wide view as the basis of a submission. The consideration of this report was held over to this meeting of the Council to allow and further issues identified at the seminar to be incorporated in a submission.

This report will also form the basis of the Council's input to the draft Local Government New Zealand submission on the Bill (**Attachment 2**).

3. **Comment**

With the approval of the Council a submission will be prepared commenting on the Local Electoral Bill on a clause by clause basis. The following comments relate to the issues on which the Council may wish to submit.

3.1 *Electoral System an Option*

The Local Electoral Bill allows a council to adopt one of three electoral systems:

- First Past the Post (FPP),
- Single Transferable Vote (STV), or
- Any other electoral system determined by regulations.

The change of an electoral system is by resolution of the Council and must take place before 15 November in the year following an election.

Recent changes to health legislation provide that elections to District Health Boards (DHBs) from 2004 will be conducted by local authorities using STV (but FPP will be used for the Elections in 2001).

While supportive of the concept of "local choice", in previous submissions the WRC raised a number of serious concerns about the difficulty created by territorial authority and regional Council boundaries overlapping. (Indeed, in the past some have suggested

that best electoral system should be determined by Central Government and applied throughout local government.)

It is therefore inevitable that the electors will receive two sets of voting papers requiring different methods of voting. This would almost certainly create considerable confusion for electors and lead to a high number of informal votes, or discourage voting altogether. The confusion will only be exacerbated when a territorial authorities and regional councils are able to adopt different system. The fact that the country uses a different system for Parliamentary elections (MMP) will only add to the confusion.

The logistical problems created for territorial authorities, not only in printing and distributing two sets of voting papers, but also counting the votes under two completely different voting procedures, would be substantial due to the need for extra staff and the duplication of computer systems.

3.2 *Voting Method*

The current Local Elections and Polls Act contains a presumption that booth voting will be used but gives councils the option of adopting postal voting. The Bill will enable councils to resolve to use methods other than postal voting (eg. Booths, electronic kiosks, the Internet). Territorial authorities will decide the voting method after consultation with the regional council. This means that a regional council election may be conducted under several voting methods.

As regional councillors are elected on a constituency basis the use of different voting methods should not compromise the integrity of the electoral system. However, a poll is region-wide and the choice of voting method can have a significant impact on turn-out. It is therefore suggested that if regional councils are required to hold polls, the regional council should decide the voting method in consultation with territorial authorities.

3.3 *Electoral Petition*

Clause 27 provides that electors may raise a petition, with a 5% threshold, to force a poll on whether or not to adopt a specified electoral system. Where a local authority changes its electoral system as the result of a petition, it is bound to use that system for the two electoral cycles.

This Council has previously given evidence before Select Committees that such a poll would have to be conducted by the territorial authorities and carry a substantial cost for regional councils. At present the cost of an election is met by all the local bodies involved (territorial authorities, the WRC, licensing trusts and now district health boards) according to an agreed formula. The Local Authorities Loans Act (now repealed) recognised the impracticality of imposing poll provisions on regional councils and exempted them from the loan poll provisions.

If the provisions requiring councils to hold a poll are retained, then raising the threshold to 10% of eligible electors would be better reflection of the will of the local community. The same threshold is required to initiate a reorganisation proposal.

3.4 *Supervising Electoral Officer*

The Local Electoral Bill provides for regional councils to appoint a Supervising Electoral Officer (SEO) to oversee aspects of the elections. While the precise duties of the SEO will be specified in Regulations, it is anticipated that these duties will be the same as the existing role of Supervising Returning Officer. These duties are:

- the issuing of public notices declaring the election period, the opening of nominations, and the results of the elections.
- the acceptance of nomination forms and candidates' profiles.
- supplying district and city council Electoral Officers with the list of candidates.

Whereas a Supervising Returning Officer must be the Chief Executive of a regional council or the Returning Officer of a territorial authority, the Bill requires that the post only be filled by the Chief Executive in exceptional circumstances.

Whereas last year the Council deferred the appointment of a Supervising Returning Officer for the 2001 elections, it would be appropriate for the Council to consider the appointment of a SEO, subject to the enactment of the Local Electoral Bill. Work related to the next election has already started.

3.5 *Prohibition on Dual Candidacy and Membership*

The Local Electoral Bill would continue to prohibit candidates from standing and councillors from serving on a regional council and a territorial authority or community board at the same time.

This Council has supported a change in the legislation to permit persons to stand for both a territorial authority and a regional council but not serve in both. This is consistent with the principle in the Bill that "all qualified persons have a reasonable and equal opportunity to accept nomination as a candidate". However, it is recognised that the workload of a regional councillor and a territorial authority councillor, and the possibility of conflicts of interest, suggest that an elected member could not do justice to both positions.

For these reasons the Council's position has been to support dual candidacy but require candidates to declare to the Electoral Officer which position they would accept if elected to both. This is very similar to what happens in Parliamentary elections where a candidate stands for both a constituency seat and on the list. MPs who are elected to a constituency are dropped off the list.

3.6 *Candidate Profiles*

The Bill includes new provisions that allow the Electoral Officer to issue profiles of each candidate with the voting papers to assist the voters in making an informed choice.

The profile, which is to be no longer than 150 words and does not include a photograph, will be prepared by the candidate and will include information only about the candidate and his/her policies and intention if elected. A profile may be sent back to the candidate for revision if it does not comply. Resubmitted profiles which fail to meet the

requirements will be rejected. It should be noted that the Electoral Officer will only police compliance with the requirements of the legislation. It is not for the Electoral Officer to make a judgement about the accuracy of statements contained in the candidates' profiles. Should a candidate dispute the decision of the Electoral Officer, this would disrupt the election. The Bill should make it clear that a decision of the Electoral Officer will be final and not subject to appeal.

Currently the Bill does not provide for candidates' photos to accompany the profile statement. The Council should consider whether the inclusion of a photo would add to the voters' level of understanding.

3.7 *Candidates' Expenses*

Councillors will recall that after the 1998 elections there was much debate about introducing maximum amounts that candidates could spend on election campaigns. This was the result of concern that high spending campaigns for the mayoralty in Auckland and Wellington. In her speech introducing the Bill, Hon Sandra Lee (Minister of Local Government) stated that the intention of this measure is to provide equal opportunities to participate in local elections by reducing the barriers that potential candidates with limited resources may face when seeking election.

The Bill has now introduced a comprehensive regime governing the maximum all candidates can spend on advertising and other promotional activities that take place within the election period. Expenditure limits are determined by the population of the local government area (eg. ward or constituency) being contested. All candidates will be required to file returns detailing campaign expenditure.

The impact or the Bill would be as follows:

Constituency	Max Candidates Expenses
Kapiti	\$20,000
Porirua	\$20,000
Wellington (Single Constituency)	\$50,000
Wellington (Three Constituencies)	
North Western	\$25,000
South Eastern	\$25,000
Lambton	\$15,000
Wellington (Two Constituencies)	
North Western	\$25,000
SE/Lambton	\$30,000
Lower Hutt	\$30,000
Upper Hutt	\$15,000
Wairarapa	\$15,000

The election period is defined as between the close of nominations and the close of voting. All expenditure related to campaign activities during the election period are to be counted; this includes activities paid for outside that period. The name and address of all persons donating over \$1,000 must also be declared. However any expenditure relating to campaigning before the election period and advertising that is not solely

related to a person's candidacy does not have to be declared.

Excessive spending by candidates in local authority elections is not a national issue, rather it is concentrated in major metropolitan city councils, particularly for the office of mayor. While the cost of advertising and running a local authority election campaign has increased over the years, officers are unaware of any evidence demonstrating that potential candidates with limited resources are currently discouraged from contesting local authority elections due to the excessive spending by rivals. Expenditure limits may place new candidates at a disadvantage, as incumbents tend to be better known in the community and therefore don't have to advertise as much.

Many voters may receive most of their information about candidates from the Candidates' profiles issued with the voting paper. The use of Candidates' profiles will therefore reduce the effectiveness of expensive publicity campaigns and will level the playing field.

The tiered limits based on population may create an incentive to create larger wards and constituencies to permit higher campaign expenditure. This is particularly the case in territorial authorities which have the option of elections at large. At this stage it is not proposed that an amendment be made to the Local Government Act to permit regional councils to hold elections at large.

3.8 *Chairman Vacates Office*

A further change that made in the Bill is the point at which the Chairman of a regional council ceases to hold office. At present the Chairman, regardless of whether he/she is re-elected, continues in office until a successor is elected by the Councillors at the first meeting of the new Council. The Local Electoral Bill changes this so that all councillors lose office on the day on which the successor to his constituency seat comes into office. This means that the General Manager will preside over the first meeting of the Council until such time as a new Chairman is elected.

3.9 *Triennial Review of Membership and Basis of Elections*

The Government has decided that provisions related to the triennial review of membership and basis of election will, at this stage, remain in the Local Government Act. It is presumed that this is due to their association with the powers of the Local Government Commission.

During the development of new local authority election legislation the WRC expressed a desire to see all aspects of the electoral process brought together in a single, comprehensive piece of legislation. As the triennial constituency review establishes the number of councillors and electoral boundaries it seems there is a certain logic to these provisions being in electoral legislation rather than the Local Government Act, which deals with the function and powers of local authorities. This change could be included in a future Local Government Amendment Bill.

It is suggested that the Council seek to be heard in support of its submission.

4. Recommendation

- (1) *That a submission to the Justice and Electoral Select Committee on the Local Electoral Bill, as outlined in Report 01.07, be approved.*
- (2) *That a submission, as outlined in Report 01.07, be made to Local Government New Zealand.*

Report prepared by:

Approved by:

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TED MAGUIRE
Council Secretary

5. Chairman's Recommendation

That, subject to the enactment of the Local Electoral Bill 2000, Mr Ted Maguire be appointed Supervising Electoral Officer for the 2001 Local Body Elections.

STUART MACASKILL
Chairman