

Local Government Amendment Act (No. 2) 1992

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Contents

		Page
	Title	2
1	Short Title and commencement	2
2	New Part XIa inserted	2
	“PART XIa “Regional Petrol Tax	
	“200a Interpretation	2
	“200b Application of this Part	3
	“200c Power of regional councils to levy regional petrol tax	3
	“200d Regional petrol tax to be notified	4
	“200e Restriction on collection of tax	4
	“200f Application of proceeds of tax	5
	“200g Returns by wholesale distributors	5
	“200h Assessment of tax	5
	“200i Assessment presumed to be correct	6
	“200j Appeal against assessment	6
	“200k Tax recoverable as a debt	6
	“200l Penalty for late payment of tax	6
	“200m Effect on agreements of imposition or alteration of tax	6
	“200n Accounting month	7
3	Local authority not to conduct passenger transport operations	7
4	Unitary authority not to have interest in passenger transport undertaking or operation after 30 June 1992	7
5	Repeal	7
6	Repayment of financial assistance	8

7	Auckland catchment land	8
8	Residual powers of Auckland Regional Council	8
9	Interpretation	8
10	New sections inserted	9
	“707qa Special provisions in relation to transfers of assets and liabilities to Watercare Services Limited and Regional Forests Limited	9
	“707qb Prohibition on sale or other disposition of water services assets and shares in Watercare Services Limited	10
11	Uses deemed to be permitted uses	10
12	Water services	10
13	Functions of Trust	12
14	Annual report to public concerning performance	13
15	Membership and constituencies of regional councils	13

An Act to amend the Local Government Act 1974

Be it enacted by the Parliament of New Zealand as follows:

1 Short Title and commencement

- (1) This Act may be cited as the Local Government Amendment Act (No. 2) 1992, and shall be read together with and deemed part of the Local Government Act 1974 (hereinafter referred to as the principal Act).
- (2) This Act shall come into force on the 1st day of July 1992.

2 New Part XIa inserted

The principal Act is hereby amended by inserting, after Part XI (as substituted by section 2 of the Local Government Amendment Act (No. 3) 1977), the following Part:

“PART XIa “Regional Petrol Tax

“200a Interpretation

In this Part of this Act, unless the context otherwise requires,—

“‘Accounting month’ means the monthly accounting period declared under section 200n of this Act by a wholesale distributor:

“‘Passenger service’ has the same meaning as it has in section 2(1) of the Transit New Zealand Act 1989:

“‘Petrol’—

“(a) Means a refined petroleum distillate, normally boiling within the limits of 30 degrees Celsius to 220 degrees Celsius, whether or not it contains

additives, intended for use as a fuel in spark-ignition internal combustion engines; but

“(b) Does not include—

“(i) Petrol supplied for use in the generation of electricity, or the manufacture of gas, for public use at any electric-power station or gas works; or

“(ii) Aviation fuel, being petrol supplied for use in aircraft; or

“(iii) Petrol used in the manufacture of petroleum at any refinery; or

“(iv) Diesel fuel; or

“(v) Kerosene:

“‘Tax area’ means the area or areas in respect of which a regional petrol tax is levied under this Part of this Act:

“‘Wholesale distributor’ means a person who, whether exclusively or not, engages in the sale of motor spirits by wholesale or who, whether exclusively or not, sells motor spirits to a retailer, or who, whether exclusively or not, manufactures or produces motor spirits within New Zealand; and also includes a wholesale distributor of any petroleum other than motor spirits.

“200b Application of this Part

“(1) Nothing in this Part of this Act applies in the Chatham Islands or Stewart Island, or to petrol sold, or agreed to be sold, or disposed of, for delivery within either of those areas or used in either of those areas by any wholesale distributor.

“(2) No regional petrol tax shall be levied or payable in respect of any transaction whereby—

“(a) Any petrol is sold or agreed to be sold or disposed of by a wholesale distributor to another wholesale distributor; or

“(b) Any petrol is exported by a wholesale distributor, or is sold or agreed to be sold or disposed of by the distributor for exportation, and is loaded upon the exporting ship or aircraft.

“200c Power of regional councils to levy regional petrol tax

“(1) For the purpose of funding any passenger service in their respective regions (and only for that purpose), the Auckland Regional Council, the Waikato Regional Council, the Wellington Regional Council, the Canterbury Regional Council, and the Otago Regional Council are, subject to this section, each hereby authorised to levy a tax, to be called the regional petrol tax, on all leaded and unleaded petrol that, on or after the date on which the tax becomes effective, is—

“(a) Delivered within the tax area by or on behalf of any wholesale distributor pursuant to any sale, agreement to sell, or disposition made by the

wholesale distributor before or after the commencement of this Part of this Act, irrespective of where the sale, agreement to sell, or disposition was made; or

“(b) Used by any wholesale distributor within the tax area.

“(2) A regional council may levy a regional petrol tax—

“(a) At a single rate applying in respect of the whole of its region; or

“(b) At different rates applying in respect of different tax areas within its region.

“(3) Where different rates of regional petrol tax are levied within a region, the rate applying in respect of any tax area shall be a single rate.

“(4) A regional petrol tax shall not be levied at a rate exceeding 2 cents a litre of petrol delivered or used, which rate is exclusive of any goods and services tax under the Goods and Services Tax Act 1985.

“(5) A regional petrol tax may be levied from time to time in respect of any period or periods expiring not later than the close of the 30th day of June 1995.

“(6) No regional petrol tax shall be levied unless the Minister of Transport has approved in writing—

“(a) The rate or rates at which the tax is to be levied; and

“(b) The tax area.

“(7) The Minister of Transport may from time to time, by notice in the *Gazette*, issue guidelines for the purposes of this Part of this Act.

“200d Regional petrol tax to be notified

“(1) A regional council may levy a regional petrol tax for the first time on or after the 1st day of July 1992.

“(2) Where a regional council levies a regional petrol tax for the first time, the council shall, as soon as practicable after the tax has been levied, notify the tax by notice in the *Gazette*.

“(3) A regional council shall notify any alteration of the rate of a regional petrol tax, or of the tax area, by notice in the *Gazette* published not less than 28 days before the date on which the alteration becomes effective.

“200e Restriction on collection of tax

“(1) A wholesale distributor shall not collect from outside the tax area the whole or any part of a regional petrol tax payable in respect of that tax area under this Part of this Act.

“(2) Every wholesale distributor commits an offence and is liable on summary conviction to a fine not exceeding \$100,000 who acts in contravention of subsection (1) of this section.

“200f Application of proceeds of tax

All revenue raised by a regional council under this Part of this Act shall be credited to the Land Transport Disbursement Account established under section 18(1) of the Transit New Zealand Act 1989 and applied only for passenger transport; and the provisions of Part II of that Act shall apply to that revenue accordingly.

“200g Returns by wholesale distributors

“(1) Within 28 days after the end of each accounting month, every wholesale distributor shall send to the principal administrative officer of the regional council of every region in which a regional petrol tax is for the time being in force a return (hereafter referred to as the monthly return) in a form approved by the regional council setting forth—

“(a) The quantity of each class of petrol delivered within the tax area by or on behalf of the wholesale distributor pursuant to any sale, agreement to sell, or disposition to which this Part of this Act applies, or used by the wholesale distributor within the tax area, during that accounting month; and

“(b) The amount of regional petrol tax payable on each such quantity; and

“(c) Such other particulars (if any) as may be required by the regional council.

“(2) Every wholesale distributor who fails to send to any such principal administrative officer, as aforesaid, any monthly return required by this section commits an offence against this Act.

“200h Assessment of tax

“(1) The monthly returns under section 200g of this Act may be accepted by the principal administrative officer as sufficient proof of the matters set forth in them, and the regional petrol tax may be assessed by the principal administrative officer accordingly.

“(2) For the purposes of this Part of this Act, the Audit Office shall have, in respect of the records of wholesale distributors relating to petrol sold, agreed to be sold, disposed of, delivered, or used by them, the same powers to inspect and examine relevant books, accounts, receipts, documents, and papers, and to require their production, as it has in respect of the accounts of local authorities under the Public Finance Act 1977.

“(3) After any such inspection or examination, as aforesaid, the Audit Office may require the principal administrative officer of the regional council of any region in which a regional petrol tax is in force to make any assessment or amended assessment for the purpose of this Part of this Act, and it shall be the duty of the principal administrative officer to comply with that requirement.

“200i Assessment presumed to be correct

Every assessment made by the principal administrative officer under this Part of this Act shall be taken to be correct, and the tax shall be payable accordingly, unless, on an appeal under section 200j of this Act or in proceedings taken under this Act in a Court of competent jurisdiction, a different amount is proved to be the tax payable on the petrol, or it is proved that no tax is payable, as the case may be.

“200j Appeal against assessment

- “(1) Within 14 days after a demand for the tax is made by the principal administrative officer in accordance with his or her assessment, the wholesale distributor may appeal to a District Court against the assessment.
- “(2) On the hearing of the appeal, the Court, whose decision shall be final, may confirm or amend the assessment made by the principal administrative officer.

“200k Tax recoverable as a debt

- “(1) Any regional petrol tax payable on any petrol shall, immediately on the delivery of the petrol within the tax area, or on its use in the tax area by the wholesale distributor, constitute a debt owing by the wholesale distributor to the regional council that levied the tax, and shall be recoverable accordingly.
- “(2) Subject to this Part of this Act, any such debt in respect of any regional petrol tax for any accounting month shall become payable by the wholesale distributor on the 20th day of the calendar month following that in which the monthly return for the accounting month is required by section 200g of this Act to be sent to the principal administrative officer, whether or not the return is so sent.
- “(3) The right to recover any tax as a debt under this section shall not be affected by the fact that no proper assessment of the tax has been made in due course under this Part of this Act, or that a deficient assessment of the tax has been made.

“200l Penalty for late payment of tax

Notwithstanding the provisions of this Part of this Act, if any regional petrol tax that has become payable remains unpaid after the date on which it became payable under section 200k of this Act, 10 percent of the amount of the tax unpaid shall be added to it by way of additional tax, and shall be payable accordingly.

“200m Effect on agreements of imposition or alteration of tax

For the purposes of this Act, section 159 of the Customs Act 1966, so far as it is applicable and with all necessary modifications, shall apply to agreements for the sale of petrol as if the regional petrol tax were duty within the meaning of that Act, and as if the imposition or alteration of the tax were an alteration to which that section applies.

“200n Accounting month

Every wholesale distributor shall forward to the relevant regional councils a declaration declaring, for the purposes of this Part of this Act, the monthly day with which the distributor’s accounting month ends.”

3 Local authority not to conduct passenger transport operations

- (1) Section 594zr(1) of the principal Act (as inserted by section 2 of the Local Government Amendment Act (No. 4) 1989) is hereby amended by inserting, after the word “Act,”, the words “but subject to subsections (3) and (4) of this section,”.
- (2) Section 594zr of the principal Act (as so inserted) is hereby amended by adding the following subsections:

“(3) Regional councils may own such assets as may be necessary to enable them to carry out their functions under the Transport Services Licensing Act 1989 and the Transit New Zealand Act 1989.

“(4) A territorial authority shall not be in breach of subsection (1) of this section by reason only of its owning or constructing any—

“(a) Passenger transport stop; or

“(b) Passenger transport sign; or

“(c) Section of roadway used exclusively by passenger transport operators; or

“(d) Passenger transport shelter,—

so long as section 594zzi of this Act is complied with in each case.

“(5) A territorial authority may, in respect of any asset referred to in subsection (4) of this section, apply for and be paid amounts from the Land Transport Fund established under the Transit New Zealand Act 1989.”

4 Unitary authority not to have interest in passenger transport undertaking or operation after 30 June 1992

The principal Act is hereby amended by inserting, after section 594zu (as substituted by section 2 of the Local Government Amendment Act (No. 2) 1991), the following section:

“594zua

Notwithstanding section 594h of this Act, no territorial authority that has the functions, duties, and powers of both a regional council and a territorial authority under this Act shall, after the 30th day of June 1992, hold any equity securities or debt securities in any passenger transport company or passenger transport operation or passenger transport undertaking.”

5 Repeal

Section 594zy of the principal Act (as inserted by section 2 of the Local Government Amendment Act (No. 4) 1989) is hereby repealed.

6 Repayment of financial assistance

Section 594zzh of the principal Act (as inserted by section 2 of the Local Government Amendment Act (No. 4) 1989) is hereby amended by adding the following subsection:

“(3) In this section, ‘regional council’ includes a territorial authority that has the functions, duties, and powers of both a regional council and a territorial authority under this Act.”

7 Auckland catchment land

Section 619a(3)(b) of the principal Act (as enacted by section 61 of the Local Government Amendment Act 1992) is hereby amended by inserting, after the words “licences to use”, the words “or easements over”.

8 Residual powers of Auckland Regional Council

Section 707aa of the principal Act (as enacted by section 67(1) of the Local Government Amendment Act 1992) is hereby amended by repealing subsections (1) and (2), and substituting the following subsections:

“(1) Notwithstanding section 50 of the Local Government Amendment Act 1992, but subject to subsection (2) of this section, it is hereby declared that the Auckland Regional Council shall retain the same powers—

“(a) To dispose of refuse; and

“(b) To require and maintain designations for the purposes of and in relation to refuse disposal; and

“(c) To dispose of leachate, gas, and other noxious or harmful substances which emanate from time to time from refuse or waste deposited at sites designated by it,—

as it had both before the commencement of section 50 of the Local Government Amendment Act 1992 and before the transfer of its refuse disposal undertaking to Northern Disposal Systems Limited on the 1st day of November 1991.

“(2) Notwithstanding subsection (1) of this section, but without limiting the powers of the Auckland Regional Council under paragraphs (b) and (c) of that subsection, it is hereby declared that the Auckland Regional Council may exercise from time to time its power under paragraph (a) of that subsection (being the power to dispose of refuse) only if, in its opinion, the business of refuse disposal in the Auckland Region has failed or is likely to fail.”

9 Interpretation

(1) Section 707n of the principal Act (as enacted by section 68(1) of the Local Government Amendment Act 1992) is hereby amended by inserting in the definition of the term “non-core assets”, after the words “real or personal, held or used by the Auckland Regional Council”, the words “(as at the date on

which the plan prepared under section 707q of this Act is approved pursuant to subsection (11) of that section)".

- (2) Section 707n of the principal Act (as so enacted) is hereby further amended by repealing paragraph (a) of the definition of the term "specified assets", and substituting the following paragraph:

"(a) All the shares owned by the Auckland Regional Council in the specified companies as at the date on which the plan prepared under section 707q of this Act is approved pursuant to subsection (11) of that section:'.

10 New sections inserted

The principal Act is hereby amended by inserting, after section 707q (as enacted by section 68(1) of the Local Government Amendment Act 1992), the following sections:

"707qa Special provisions in relation to transfers of assets and liabilities to Watercare Services Limited and Regional Forests Limited

Notwithstanding anything in section 707q of this Act, it is hereby declared, for the avoidance of doubt, that—

- "(a) Where the water services assets and the specified liabilities that relate to the water services assets, or any of those assets or liabilities, have, before the date on which the plan is approved pursuant to section 707q(11) of this Act, been transferred to Watercare Services Limited pursuant to Part XXXIVa of this Act, provision for the transfer of those assets and liabilities, or such of them as have been so transferred, as the case may require, shall not be included in the plan pursuant to section 707q(2)(a)(i) of this Act:
- "(b) Where any of the specified assets or any of the specified liabilities that relate to the business intended for Regional Forests Limited have, before the date on which the plan is approved pursuant to section 707q(11) of this Act, been transferred to Regional Forests Limited pursuant to Part XXXIVa of this Act, provision for the transfer of such of those assets and liabilities as have been so transferred shall not be included in the plan pursuant to section 707q(2)(a)(ii) of this Act:
- "(c) The transfers of assets and liabilities to Watercare Services Limited and Regional Forests Limited that are contemplated by Part XXXIVa of this Act (and by the establishment plans referred to in paragraph (f) of the definition of the term 'non-core assets' in section 707n of this Act) may proceed and be pursued before the date on which the plan is approved pursuant to section 707q(11) of this Act, but if those transfers have not occurred or have not been completed, before that date, section 707q of this Act shall apply, to the exclusion of Part XXXIVa of this Act, with respect to those transfers.

“707qb Prohibition on sale or other disposition of water services assets and shares in Watercare Services Limited

Except as provided in section 707q of this Act or by way of a transfer of the kind described in section 707qa(c) of this Act, the Auckland Regional Council shall not sell, dispose of, or otherwise alienate, in any way, any of the water services assets or any shares in Watercare Services Limited.”

11 Uses deemed to be permitted uses

The principal Act is hereby amended by repealing section 707y (as enacted by section 68(1) of the Local Government Amendment Act 1992), and substituting the following section:

“707y

Where any land or interest in land, being part of the specified assets, is, pursuant to this Act, transferred to a specified company or to the Trust, the use of that land or interest in land which is established at the date of the transfer shall be deemed to be a permitted activity under the Resource Management Act 1991 until the completion of the review of the district plan, or appropriate part of the district plan, next undertaken following the transfer, and thereafter the status of that use shall be as provided from time to time in or under the district plan.”

12 Water services

The principal Act is hereby amended by repealing section 707zf (as enacted by section 68(1) of the Local Government Amendment Act 1992), and substituting the following section:

“707zf

- “(1) Notwithstanding anything in this Act or any other Act, Watercare Services Limited and any other company undertaking the functions and business of the Auckland Regional Council in relation to waterworks, bulk water-supply, sewerage, and the collection, treatment, and disposal of sewage and trade wastes—
- “(a) Shall manage the water services assets and the associated liabilities efficiently with a view to ensuring minimum prices for services consistent with maintaining the long-term integrity of the water services assets:
 - “(b) Shall calculate its prices and charges (excluding prices and charges for the treatment and disposal of trade wastes and for the ancillary functions described in paragraph (f) of this subsection) so as to recover only operating costs, which,—
 - “(i) For the avoidance of doubt, shall include interest; and
 - “(ii) In respect of infrastructural assets, but subject to paragraph (c) of this section, shall include in lieu of depreciation, provision for planned maintenance and renewals:

- “(c) May fund capital requirements (including significant renewals in respect of infrastructural assets) and the principal element of loan repayments by having customer territorial authorities subscribe for such non-voting equity shares in itself as may be agreed between its owner and those territorial authorities, but, to the extent that customer territorial authorities decline to subscribe for such non-voting equity shares, may fund such capital requirements and loan repayments by borrowing, or by prices and charges negotiated in terms of any relevant contract, or by both:
- “(d) Subject to subsection (2) of this section, shall not pay any dividend or distribute any surplus in any way, directly or indirectly, to its owner or any shareholder:
- “(e) Subject to subsection (2) of this section, shall decide promptly in respect of any year in which a surplus arises, whether or not to return that surplus to its customers and, if it is to do so, to determine and implement the method by which that surplus may be returned, whether by way of rebate, discount, price adjustment calculated by reference to prior or future charges to those customers, or otherwise:
- “(f) Shall be limited to the performance of functions, and the conduct of business, in relation to waterworks, bulk water-supply, sewerage, and the treatment and disposal of sewage and trade wastes, but shall have authority to exercise—
- “(i) Such powers ancillary to those functions as were, immediately before the commencement of section 68 of the Local Government Amendment Act 1992, being exercised by the Auckland Regional Council in relation to the water services assets; and
- “(ii) Such powers as it agrees, with all territorial authorities in the Auckland Region, to perform for those territorial authorities or in conjunction with them:
- “(g) Shall—
- “(i) Until the close of the 30th day of June 1993, but not later, be entitled to apply the provisions of the Auckland Regional Council Trade Waste Bylaw 1991; and
- “(ii) Until the close of the 30th day of June 1994, but not later, be entitled to exercise the powers under the Auckland Metropolitan Drainage Act 1960 that relate directly to the water services assets, as if it were and always had been the Auckland Regional Council:
- “(h) Shall not be required to comply with section 594t(f) of this Act but shall instead specify the means by which any residual surplus is to be returned to its customers:
- “(i) Shall not be required to comply with section 594z(5)(b) of this Act:
- “(j) Shall in its financial statements, identify clearly and separately—

- “(i) The financial position of its waterworks and bulk water-supply activities; and
- “(ii) The financial position of its activities in relation to sewerage and the collection, treatment, and disposal of sewage and trade wastes:
- “(k) Shall ensure that its water and drainage services are costed and priced separately:
- “(l) Shall be required to deliver to the Trust, the Auckland Regional Council, and each of the territorial authorities within the Auckland Region a copy of its draft statement of corporate intent at the same time as it is obliged to provide its draft statement of corporate intent to its shareholders under section 594s of this Act:
- “(m) Shall be required to consider any comments on the draft statement of corporate intent that are made to it by any of the Trust, the Auckland Regional Council, and the territorial authorities within the Auckland Region within 2 months after the commencement of the financial year:
- “(n) Shall give written notice to all territorial authorities within the Auckland Region of any proposed modifications of its then current statement of corporate intent and consider comments on the proposed modifications made by any of them.
- “(2) Nothing in subsection (1)(d) or (e) of this section limits the right of any person who is both a customer and a shareholder to participate in any surplus returned to customers pursuant to subsection (1)(e) of this section.
- “(3) On or before the Order in Council referred to in section 707r(1) of this Act takes effect, the Auckland Regional Council shall take all actions necessary to amend the articles of association and memorandum of association of Watercare Services Limited to ensure that the powers of Watercare Services Limited and of its management are sufficiently limited to ensure that it complies with paragraphs (a) to (f) of subsection (1) of this section.
- “(4) Notwithstanding section 594zp of this Act, a local authority may give a guarantee, indemnity, or security in respect of the performance of any obligation by Watercare Services Limited or any other company undertaking the functions and business of the Auckland Regional Council in relation to water works, bulk water-supply, sewerage, and the collection, treatment, and disposal of sewage and trade wastes.”

13 Functions of Trust

- (1) Section 707zj(1) of the principal Act (as enacted by section 68(1) of the Local Government Amendment Act 1992) is hereby amended by inserting, after paragraph (d), the following paragraph:
 - “(da) To ensure that Watercare Services Limited does not dispose of its undertaking or any material part or parts thereof which is or are necessary to the conduct of its business:”.

(2) Section 707zj(1) of the principal Act (as so enacted) is hereby further amended by repealing paragraph (f), and substituting the following paragraph:

“(f) To manage the assets referred to in paragraphs (b) to (e) of the definition of the term ‘non-core assets’ in section 707n of this Act in accordance with sound business practice but with a view to selling, in the short to medium term, the assets referred to in those paragraphs:”.

(3) Section 707zj(1) of the principal Act (as so enacted) is hereby further amended by inserting in paragraph (i), after the words “local reticulation of water”, the words “and local sanitary drainage”.

14 Annual report to public concerning performance

Section 25(2) of the Local Government Amendment Act 1992 is hereby amended by omitting the expression “subsection (5)(b)”, and substituting the expression “subsection (5)(a)”.

15 Membership and constituencies of regional councils

(1) The part of the Seventh Schedule to the Local Government Amendment Act 1992 that relates to the Waikato Regional Council is hereby amended by omitting the provisions denning the Waipa-Waitomo Constituency, and substituting the following provisions:

“	Waipa- Waitomo	Otorohanga Waitomo (pt)	Waitomo Te Kuiti Aria Mangaoke wa (pt) Paemako Tainui Te Anga	2
		Waipa		”.

(2) The part of the Seventh Schedule to the Local Government Amendment Act 1992 that relates to the Bay of Plenty Regional Council is hereby amended by inserting, after the words “Western Bay of Plenty” where it appears in the column headed “Names of Constituencies”, the figure “4”.

(3) The Seventh Schedule to the Local Government Amendment Act 1992 is hereby amended by inserting, after Note 3, the following note:

“Note 4: The Western Bay of Plenty Constituency includes Mayor Island and Motiti Island.”

This Act is administered in the Department of Internal Affairs.