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Monday 5 December 2005

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Lundi 5 décembre 2005

Standing committee on general government

Comité permanent des affaires gouvernementales

Ontario Municipal Employees Retirement System Act, 2005

Loi de 2005 sur le régime de retraite des employés municipaux de l'Ontario

Chair: Linda Jeffrey
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

COMITÉ PERMANENT DES AFFAIRES GOUVERNEMENTALES

Monday 5 December 2005

Lundi 5 décembre 2005

The committee met at 1553 in committee room 1.

ONTARIO MUNICIPAL EMPLOYEES RETIREMENT SYSTEM ACT, 2005

LOI DE 2005 SUR LE RÉGIME DE RETRAITE DES EMPLOYÉS MUNICIPAUX DE L'ONTARIO

Consideration of Bill 206, An Act to revise the Ontario Municipal Employees Retirement System Act / Projet de loi 206, Loi révisant la Loi sur le régime de retraite des employés municipaux de l'Ontario.

The Vice-Chair (Mr. Vic Dhillon): Good afternoon, everybody. The standing committee on general government is called to order. Today we meet to resume clause-by-clause consideration of Bill 206, An Act to revise the Ontario Municipal Employees Retirement System Act.

I believe we were on section 23 of the bill and the NDP amendment on page 29.

Ms. Andrea Horwath (Hamilton East): I move that subsection 23(4) of the bill be struck out and the following substituted:

"Term of office

"(4) Each member of the sponsors corporation shall hold office for a term of three years and may hold office as a member for successive terms."

The Vice-Chair: Any debate?

Mr. Brad Duguid (Scarborough Centre): We won't be supporting this amendment for the reason that we think the sponsors corporation should have the ability, once the initial transition period is done, to determine their own preferred approach to terms of office and the number of subsequent terms. Our view is that we should leave that up to the sponsors corporation.

Mr. Tim Hudak (Erie–Lincoln): I appreciate the motion of my colleague and the parliamentary assistant's response to the motion. To the parliamentary assistant or to the staff: Does that disqualify the sponsors committee from changing the bylaw about the length of term of office? What's wrong with having this from the outset?

Ms. Janet Hope: I'm Janet Hope, director of municipal finance branch, Ministry of Municipal Affairs. The motion would establish the three-year term of office in the permanent part of the bill as opposed to the transitional section of the bill, so if this motion were to pass, it would be a permanent feature of the term of office.

Mr. Hudak: Just for clarification: So there's no way via bylaw that the sponsors corp down the road could change the length of term?

Ms Hope: Correct.

Ms. Horwath: That's good information to have. I think the parliamentary assistant suggested that it could be changed by bylaw once the transition period is over, and apparently that's not the case. So let me just put for the record the reason why this motion is before us. It is there because the concern was that the groups that are going to be appointing people to the sponsors corporation over time are going to be putting some investment into those people who are going to be appointed. There will be a significant amount of training involved; there will be a need to be quite up to speed on the issues that the sponsors corporation will be dealing with over time. It will be significant that the people appointed to the sponsors corporation have an opportunity to develop a full understanding that comes with time on the job, that comes with the history of the decisions that are being made as time moves on. To have a requirement that every six years, in effect, sponsors corporation members be switched by the sponsoring organizations seems a bit inappropriate. It's a very difficult area, as anybody knows who sits on this committee and has been walking through this bill, just through the clause-by-clause, and who sat through the discussion that came with the public hearings portion of the committee. You'll know that it's not an easy area; it's a difficult area to get a full comprehension of.

New Democrats believe that it's probably appropriate, then, to allow for successive terms beyond two three-year terms so that that experience, that investment in the appointees to the sponsors corporation, can be realized over time and not cut off at the knees after six years on the sponsors corporation. I would urge members to consider this amendment, because it's one that I think is not partisan at all, but provides for some kind of recognition that it cannot be changed in bylaws, that once we've passed it this way, it's there forever, that the sponsors corporation appointees are going to have a serious job ahead of them and that we need to take that seriously and recognize that the learning process, that learning curve, if you want to call it that, and that historical knowledge, after the six years into the nine years or whatever the case

may be, is a good thing to have in the context of a complex area like pension policy.

Mr. Duguid: When I spoke, what I was referring to was the next motion of the government, which would be to allow the sponsors committee to determine the term of office. That would be motion 30. Motion 67 is another government motion that would propose that the term of office be three years. The idea is that that would be for the transition period. So for the transition period the term would be for three years, but the sponsors corporation would have the ability to amend that subsequently.

Mr. Hudak: To make sure I understand, because I think my colleague has a good point: If you're devolving OMERS, the sponsors corp should be able to decide, down the road, the length of term and if you can do it consecutively. It may well have a Jean-Marc Lalonde of AMO, who may want to serve for a longer period of time than simply two terms, right? You'd want to give that opportunity. I mean this very positively. You're looking at me. If a quality member such as Jean-Marc Lalonde has been for his constituents were on the sponsors corp, then why limit that individual to two terms if the representative group wanted that to be the case?

1600

I appreciate part of my colleague's motivation here on number 29. But the parliamentary assistant is basically saying that on 30 you're going to remedy that issue. So if 30 and 67 were to pass, then the initial term of office would be a maximum of three years, and the sponsors corporation would then, down the road, be allowed to decide if you could have successive terms and that sort of thing.

Mr. Duguid: That's correct.

Mr. Hudak: Thank you, Chair.

The Vice-Chair: Any further debate? Seeing none, all those in favour? Opposed? I declare the motion lost.

The next motion is a government motion.

Mr. Duguid: I move that subsection 23(4) of the bill be struck out and the following substituted:

"Term of office

"(4) The term of office of each member of the sponsors corporation is as determined by bylaw."

I pretty much talked about it in the last debate over the previous motion. This responds to requests from a number of groups—CUPE, OPSEU and CAW—to remove the limit on members' terms. Again, as Mr. Hudak said, we think this is something the sponsors committee should decide, ultimately.

Mr. Hudak: I don't know if staff would know or leg counsel: Were the groups that opposed this—the parliamentary assistant listed a number of groups who had suggested this change to devolve full responsibility to the sponsors corp for successive terms, length of term etc. once they make a bylaw. Did we have any groups that expressed opposition to this particular change?

Mr. Duguid: To my knowledge, I haven't heard any opposition to this particular—

Mr. Hudak: From staff?

Ms. Hope: I'm not aware of any group either that is opposed.

The Vice-Chair: Any further debate? Seeing none, all those in favour? Opposed? I declare the motion carried.

Motion number 31 by the NDP.

Ms. Horwath: I move that section 23 of the bill be amended by adding the following subsection:

"Co-chairs

"(4.1) The members of the sponsors corporation shall appoint two members as co-chairs in the following manner:

"1. The members of the sponsors corporation who are chosen by entities that represent employees shall appoint one co-chair.

"2. The remaining members of the sponsors corporation shall appoint the second co-chair."

Mr. Duguid: Again, we won't be supporting this particular amendment. There are examples of pension plans that have this kind of format, where you have co-chairs. There are also examples of plans where they have alternating chairs between management and employees, or employers and employees.

We feel that this is something that, again, should be left up to the sponsors committee to determine what format works best for them. There are reasons why we've decided to go with the process of alternating to begin with, but we would certainly leave it up to the sponsors committee to determine which method they'd prefer in the future.

Ms. Horwath: I guess the committee will recognize this as another one of those issues that stakeholders, I believe it was CUPE in particular, had around the structure that the government decided on in regard to the devolution of OMERS. So you'll see several of these throughout our amendments. They address the concerns raised around the choices the government made for the structure of the plan and the way it was going to be governed, and some concerns around the extent to which the sponsors corporation and the admin corporation function. This amendment that I'm putting forward is reflective of those concerns and tries to find a way to balance the interests in an egalitarian way at the sponsors corp level.

Mr. Hudak: Obviously, there were a number of groups, as my colleague said, that came before the committee that advocated for the co-chair type of model. At the same time, we want to make sure that the sponsors corp will make decisions that won't get bogged down, which I think is always a risk if you have co-chairs. I'm not sure how it's typically handled. The parliamentary assistant replies that he will leave that up to future bylaws, so if they chose to go to a chair or co-chair format, that at least would fit with a devolution theme.

I apologize, but maybe I could just ask staff to remind me, how will the chair initially be determined for the sponsors corp, and then how will that chair be determined after the initial appointment?

Ms. Hope: The transitional part of the bill, subsection 38(3), indicates that the chair of the sponsors corporation

is to be chosen by its voting members from among the voting members. So that sets up that initially they are to select for themselves a chair, but because it's in the transitional section of the bill, they could pass a bylaw to move to co-chairs if they prefer to take that approach or to make any other determination they wish around the chair.

Mr. Hudak: So there's no initial role for the minister, say, or the Lieutenant Governor in Council to appoint the chair. It's left to the sponsors corp to determine the chair at their first meeting?

Ms. Hope: Correct.

Mr. Hudak: From the members who are at the table only.

Ms. Hope: Correct.

Mr. Hudak: That's fair enough. That will put the decision with the initial members who are selected. I know the minister has made a commitment to consult broadly with the various groups as to who the initial members are going to be, and then among themselves, I would guess, by a simple majority vote, they would pick the initial chair, and then down the road they could determine if they follow a co-chair or a single chair model.

Maybe just once more back to staff: Typically, of the—I'm not sure if I know the term—multipartite, multi-member pension plans, if there are multiple employer and employee groups like we have with OMERS, do they usually follow a co-chair model or a single chair model?

Ms. Hope: To my knowledge, both models have been used with sponsors groups. I'm not aware of one being predominant.

Mr. Hudak: I'm just wondering if one model comes up typically, that if there's one major employer and one major employee group, like the teachers' pension plan, for example, and others that would have multiple employer and employee groups, they typically choose the single-chair item.

Ms. Hope: I'm sorry. I don't have the information on the top of my head to answer that in terms of the practice of other groups.

Mr. Hudak: I can't speak for all my colleagues, but it seems like a reasonable way to proceed at the outset, that the members themselves would choose the initial chair, and the OMERS board itself—the sponsors corp, to be clear—could then decide whether to follow a single or a dual-chair model, depending on best practices. While we did hear this from a number of groups, I'll be opposing this particular motion.

The Vice-Chair: Any further debate? Seeing none, all those in favour? All opposed? I declare this motion lost.

Shall section 23, as amended, carry? All in favour? All opposed? Section 23, as amended, is carried.

The next motion is a government motion.

Mr. Duguid: Thank you to Mr Hudak. I'll be taking my voting cues from Mr. Hudak from now on.

I move that paragraph 1 of section 24 of the bill be struck out and the following substituted:

"1. To make decisions about the design of benefits to be provided by, and contributions to be made to, the OMERS pension plans."

What this motion does is change the term "about benefits" to "about the design of benefits." From what I can see, it's more of a legal type of change that staff have recommended. To get more of an explanation for it, if necessary, I think I would have to go to staff on this one if members have any questions.

The Vice-Chair: Further debate?

Ms. Horwath: Can I just ask, Mr. Chair, through you to staff, what the significance is of changing the word "benefits" to "design of benefits"?

1610

Ms. Hope: It goes to the issue of being clear about the separation of responsibility between the sponsors corporation and the administration corporation. There was a concern that the phrase "about benefits" was very generic and could lead to some confusion about the relative roles. So, "about the design of benefits" better clarifies the role that the sponsors corporation plays with respect to benefits.

Ms. Horwath: Does this amendment strike out paragraph 2, the "other duties," or just paragraph 1? There are two points on page 10 of the bill, 1 and 2, in section 24. Are we to assume that paragraph 2 remains as is, unchanged?

Ms. Hope: Paragraph 2 would remain.

The Vice-Chair: Any further debate? Seeing none, all in favour? Opposed? That's carried.

Number 33 is an NDP motion.

Ms. Horwath: I move that section 24 of the bill be amended by adding the following paragraph:

"1.1 To supervise and oversee the operations of the administration corporation."

The Vice-Chair: Any debate?

Mr. Duguid: The concern I would have with this motion is that it once again gets into the situation where the sponsors committee would be overseeing the operations of the administration committee. It's really important that that administration committee focus on their primary purpose, which is getting the best investment possible from that fund. We want to see as little confusion as possible between the two roles of the sponsors group and the administration group. We want to make sure that in fact there can't be—or there should be very little, if any, interference in those decisions between the sponsors committee roles and the administration committee roles.

Mr. Hudak: Once again, my colleague from the third party is bringing forward an amendment that a number of groups have spoken in favour of, and a variety of groups as well. Others, including OMERS themselves, have suggested that this will violate that important principle of maintaining the separation between those who are administrating the plan and those who are on the sponsors corp.

By way of example—I may have spoken about this the other day—there may be groups who are on the sponsors

corp who will disagree with the government's public-private partnerships, for example the P3s for hospitals that the government is doing. It's valid. They'll have an ideological reason to oppose those. On the other hand, the admin corp may feel that's a worthy investment, that they would get a long-term and consistent return that would allow the OMERS plan to make predictable revenue for the plan members and, above all else, maintain the long-term dependability of what is one of the largest pension plans in the province. Maintaining the integrity of that plan will be paramount.

I can understand that there will be various groups who will oppose potential investments that the admin corp may see as in the best interests of the plan, but I feel quite strongly that we need to let the admin corp do the work and make the right investments. We need to make sure that there are strong appointees who will be making these decisions on the admin corp, the initial appointees, and subsequently those are going to be vital to the success of OMERS down the road.

Certainly, when we look at the situation of OMERS today, the current unfunded liability—I may not exactly be using the correct term—but the future increase that's going to be necessary on OMERS rates to close that gap shows us the importance of making the proper long-term and predictable investments for the sake of the members of the plan, whether they're police, fire, CUPE employees etc.

We did hear significant feedback that would be in support of section 24; we also heard arguments against. I think for OMERS in the long run and for the benefit of the plan members, it's most important for the integrity of the plan to prevail over sponsor corp interference in the investment decisions of the admin corp, and therefore, I cannot support my colleague's amendment to section 24.

Ms. Horwath: I do want to acknowledge formally that that is exactly why this amendment is here. It's here to build in some accountability of the admin corporation to the sponsors corporation. We heard from several groups who were concerned that the investment policies of the admin corporation need to be monitored. There were some significant problems in the past with the way that OMERS has been invested. In fact, we heard some briefs that addressed some of those scandals. Particularly the Borealis issue was a significant one.

I think it's actually appropriate for members of this plan to be concerned that if their funds are going into the very types of private-public partnerships, or P3s, that are going to eradicate public sector jobs, then in the future we could see a place where there won't be any members paying into the OMERS plan in the first place, because all those jobs will be privatized out through the P3 model.

There is some concern. What my esteemed colleague from the opposition is claiming in terms of closing the gap—ironically, the P3 model could be very much increasing the gap if we reduce the number of public sector workers paying into the OMERS plan by going through with these P3 plans throughout the public sector, at both the provincial and municipal levels.

I have to say quite clearly as a New Democrat that I don't support the P3 model. We don't believe that's the right direction to go when it comes to investment in public services. In fact, the members of this plan, many of whom are public employees, also have significant concerns in that regard.

This particular amendment is one that provides a modicum of accountability to the very members who are paying into that plan and who want to see not only the current plan being funded through member contributions but the plan being funded through member contributions well into the future, as opposed to being eroded as a result of the privatization and reduction of public sector jobs.

Mr. Hudak: I appreciate my colleague's comment and the passion with which she brings it forward, but at the same time, I think we have to be careful about politicizing the administration corporation that will make these important investments. I think the reality is that pension plans, not only in Canada but worldwide, are increasingly investing in these types of public-private partnerships because of the dependable long-term revenue stream they deliver for pension plans that look at those long-term investments.

I remember in my early days as a member, when I was a young pup like Mr. Duguid over there—it's a compliment; there, he can smile—a young fellow, I had a chance to work with Ed Doyle, who was a member for the Stoney Creek area, on the Canada pension plan and Ontario's position with respect to allowing the CPP to invest in the markets or in these types of public-private partnerships. An important viewpoint that we brought forward was to give the CPP that ability to invest and maximize its long-term revenue stream. We're always tempted to say that they shouldn't invest in certain types of companies, in certain types of countries, for example, because of political views that various Canadians who are part of the CPP may have from time to time. At the end of the day, the view of Ontario—and I think it has been taken up by the federal government in their decisions seven or eight years ago—was to allow the CPP to invest and maximize the revenue for its plan benefits. I think a similar principle should hold here with the OMERS plan.

So with all due respect to the member—and I think she brings forward a very valid point and does so passionately—I disagree on injecting politics into the administration corporation.

The Vice-Chair: Further debate? Seeing none, all those in favour? Opposed? I declare the motion lost.

Shall section 24 of the bill, as amended, carry? Carried.

Page 34, a government motion.

1620

Mr. Duguid: I move that clause 25(2)(a) of the bill be struck out and the following substituted:

"(a) make decisions about the design of the OMERS pension plans and make amendments to the OMERS pension plans;"

Again, this is a fairly technical change that would change the term "the OMERS pension plans including their design" to "the design of the OMERS pension plans," including making amendment to them. I think it's along the same roles, in terms of differentiating the roles and the responsibilities of the administration committee and the sponsors corporations. But again, if there are any questions with regard to the exact wording of this, they would have to be referred to staff.

The Vice-Chair: Any debate? Seeing none, all those in favour? Opposed? Carried.

Page 35, NDP motion, Ms. Horwath.

Ms. Horwath: I move that clause 25(2)(d) of the bill be struck out and the following substituted:

"Same

"(d) require the administration corporation to provide the sponsors corporation with such reports, opinions, contracts, information or documents in its possession or control, whether prepared by the administration corporation or any entity it controls or by a third party, as the sponsors corporation requires in relation to the objects or activities of the administration corporation;

"(e) subject to any limitations in this act or the Pension Benefits Act, amend the OMERS pension plans at their own initiative or on the recommendation of the administration corporation;

"(f) consult with the administration corporation on the actuarial methods and assumptions to be used for the purposes of administering the pension plans and pension funds;

"(g) require that the administration corporation provide it with any reports and information concerning the performance of any agents or advisers retained by the administration corporation;

"(h) establish procedures for the retention of agents and advisers for both the administration corporation and the sponsors corporation;

"(i) require that the administration corporation provide it with any information about any corporations incorporated by the administration corporation or any investments held in any manner by the administration corporation;

"(j) require that the administration corporation provide it with copies of any bylaws or resolutions passed by the administration corporation under subsection 35(3);

"(k) request that the administration corporation or any entity through which the administration corporation acts or invests to explain, consider or reconsider any policy, arrangement, plan or commitment contract;

"(l) retain advisers to assist it in carrying out its objects under the act;

"(m) seek the advice, opinion and direction of an appropriate court on any manner connected to the OMERS pension plans;

"(n) commence or defend such legal proceedings as it deems necessary; and

"(o) undertake other acts considered necessary or proper in relation to the OMERS pension plans."

The Vice-Chair: Any debate?

Mr. Duguid: In essence, what this motion does is undertake a number of oversight roles for the sponsors corporation regarding the administration corporation. Our concern, I guess, is that this runs counter to the notion that pension plans should separate their fiduciary functions from their sponsor roles. Those roles should remain distinct and separate. I think this probably goes even further than the previous motions, and we are concerned that it would probably interfere with investment decisions. As Mr. Hudak has said previously, you don't want to get into a situation where investment decisions are being based on the philosophical views of one or more of the sponsor committee members or groups.

The Vice-Chair: Further debate?

Mr. Ernie Hardeman (Oxford): I thank the member for bringing forward this motion. As I was going through it—and obviously, the first time over it's rather difficult to catch all the intricacies of (d) to (o). I guess in general for us it really kind of overlaps. I think this is one of the things we were asked in the public presentations to try and avoid, or to be very clear about which corporation carried which responsibilities. This seems almost to eliminate the need for two corporations altogether; in fact, everything that one corporation does must apply to the other corporation so they can both have decision-making authority. I think the member from the government side mentioned the types of investments and so forth, that everyone would have a part in the process as to how the decision would be made.

In the whole thing I would wonder, though we talk about providing information and discussing, is there any part of this motion that in fact delivers a mandate that you must do something as opposed to sharing of information?

That would be a question to the mover of the motion.

Ms. Horwath: I was going to take the opportunity to outline what this amendment actually covers off. But in response initially to the question, in fact it does specifically contemplate that the administration corporation can be requested by the sponsors corporation to explain or consider or reconsider any decision that the sponsors corporation might ask it to. So, yes, in short, this motion does provide the sponsors corporation with that power to ask for consideration or reconsideration of decisions, not just explanations and information.

Mr. Hardeman: Again, as I go through it I keep reading where they're providing information and they shall consider and reconsider, but there is no clear delineation, at the end of the day, of who gets to make the final decision other than the part of the bill that actually deals with the two corporations. Your amendment does not provide any tools to change or to become an assistant in making a decision. It just says that the information and so forth shall be provided and shall be considered. Is there a clause that actually says "and the other body's decision shall be final and binding"?

Ms. Horwath: I couldn't, off the top of my head, direct you to the exact part of the motion that addresses that specifically, but it's my understanding that the set of

motions we're putting forward in regard to the powers of both the admin and sponsors corporations go directly to the issue of ensuring that there is oversight of the admin corporation by the sponsors corporation. That's the point of this motion, of a couple of motions that I've put previously and in fact some to come as yet. So in combination, the effect is that the sponsors corporation will have more oversight capacity than is contemplated by the government's bill.

Exactly which part of this multi-claused, multifaceted motion deals with who gets the final say, I think you called it, I'm not sure is in here specifically, but what it does do is ask for reconsiderations of decisions. The sponsors corporation can ask the admin corporation to consider things that perhaps it didn't have on its agenda. It can ask for explanations of various pieces of information that might be coming forward or might be produced by the admin corporation, including any kinds of bylaws or reports or documents or contracts that they enter into.

Although I certainly understand the position that my opposition colleague brought forward in regard to being asked to avoid these particular types of situations, that was a certain group of presenters, a certain group of stakeholders, that saw it fit to ask that we make sure that these roles are kept separate and never the twain shall meet. However, there are other stakeholders who thought that was not the appropriate way to deal with the devolution of the plan, so that's what this group of motions that I put forward in regard to the relationship issue between the sponsors corporation and the administration corporation are meant to affect.

1630

Mr. Hardeman: Thank you very much for the explanation. I guess I would agree with you to the extent that this does provide a number of obligations to make sure that information flows between the two bodies. I'm not suggesting that I'm opposed to the circulation of information, so that everyone involved with the whole pension plan understands what other sides are doing. I also recognize the issue that it was only one group that said that what was really important in this whole bill was to make sure that we keep the administration and the oversight separate.

Having said all that, I think that the other side that didn't support keeping it separate was suggesting that it should be overlapped to the extent that both had to have power in making decisions, because in their opinion, they didn't see the sponsoring corporation as actually being able to keep it separate from the other. My concern is that this amendment is the worst of both worlds. In fact, it creates the potential of confusion over who's responsible for what, and yet it doesn't, in legal terms, change anything about who is responsible for what. It doesn't bring them back together.

I guess the simple way to explain it to me and my constituents is that it provides advance warning if something was going wrong at the administrative corporation that the sponsoring corporation should know about, but it gives absolutely no ability to what in this amendment would be considered the oversight, the sponsoring corporation, to do anything about what they see as an inevitable problem area. With that in mind, I don't believe I can support the amendment, because it just seems to create more confusion. I can assure you that I'm no pension expert, but I was confused when I read it, and I'm sure that that would flow through to the operation of the plan. It clouds who is responsible for what, because all this information has to go back.

I just use the following as an example: Any report referred to in this, after it was shared with the sponsoring corporation, what would the administrative corporation do with that? Would they wait for a response? Would they wait for an approval or a non-approval? Or would they just say, "We've sent it off; now we can go on with doing it"? I just don't think that what is the intent here is delivered at the end of the motion. So with that, I don't believe I could support this.

The Vice-Chair: Further debate? Seeing none, all those in favour? Opposed? I declare that lost.

Page 36, NDP motion.

Ms. Horwath: I move that section 25 of the bill be amended by adding the following subsections:

"Confidential designation

"(2.1) The administration corporation may designate any information, document or other thing as confidential if,

"(a) the information, document or other thing contains material, non-public information concerning publicly traded securities;

"(b) in relation to a potential transaction, the public disclosure of the information, document or other thing would reasonably be expected to prejudice the terms or conditions under which the administration corporation could enter into the transaction; or

"(c) in relation to the investment strategy of the administration corporation, the information, document or other thing could reasonably be expected to prejudice the terms and conditions under which the administration corporation could implement the strategy.

"No disclosure of confidential material

"(2.2.) Any information, document or other thing that is designated as confidential under subsection (2.1) may not be disclosed by the sponsors corporation without leave of a court, except the sponsors corporation may disclose the information, document or other thing to the following:

"1. Persons who are members or employees of the sponsors corporation.

"2. Persons employed by third parties who are retained by the sponsors corporation and who execute a confidentiality agreement in regard to the disclosures that is satisfactory to the sponsors corporation.

"Same

"(2.3) Persons who receive any confidential information, document or other thing from the sponsors corporation in accordance with subsection (2.2) are

prohibited from disclosing the information, document or other thing without leave of a court."

The Vice-Chair: Any debate?

Mr. Duguid: What this motion would do is prescribe a disclosure policy for the administration corporation, and it's my understanding that it's the government's intention to make the administration corporation and the sponsors corporation subject to municipal freedom of information and protection of privacy legislation. This legislation, along with the rules contained in the Corporations Act, are really what dictate what information the administration corporation could deem to be sensitive. Again, I don't think the government side wants to get into the to-and-fro of problems that may occur between the administration corporation and the sponsors corporation. I think we want them to be separate and distinct, and we'd continue along that vein.

Mr. Hudak: Just on a point of clarification, I guess: I know my colleague here wants to ensure that there's a description of what would be confidential and what would not. I would anticipate that the revelation to plan members is important within certain bounds. Did I understand the parliamentary assistant to say that the government has the intention of making the sponsors corp and the admin corp subject to FOI legislation?

Mr. Duguid: That's correct. I've been advised that we have that intention. Exactly how it's done or whether it needs to be done in a particular fashion, I'm not quite sure, but I've been advised that we will be making the administration corporation and the sponsors corporation subject to municipal freedom of information and protection of privacy legislation. We could go to staff to perhaps get further information on that.

Mr. Tom Melville: It's Tom Melville, from the legal services branch of the Ministry of Municipal Affairs and Housing.

That would be done through a regulation or a change to the schedule under the existing Municipal Freedom of Information and Protection of Privacy Act.

Mr. Hudak: Just let me understand: You won't need another bill to do so; you can simply do that by regulation?

Mr. Melville: That's correct.

Mr. Hudak: And it's the MFIPPA legislation that would be relevant?

Mr. Melville: That's correct.

The Vice-Chair: Any further debate?

Ms. Horwath: I'm not going to belabour the point, but what the motion does is simply provide clarity around what is and what isn't considered to be confidential. It gives, of course, the administration corporation a better perspective as to what process should generally be undertaken in regard to information to determine whether or not it should be considered confidential in nature. Even though those other motions haven't passed, it still is one of the motions that addresses the relationship between the sponsors corp and the admin corp in regard to information sharing and oversight of the admin by the sponsors corp.

Mr. Hudak: Just a quick question, and my colleague Mr. O'Toole has a question too. In terms of best practices surrounding public pension plans and determining what remains confidential and what would be open to members who want to ensure that their funds are being wisely invested, what tends to be the best practice used by public pension plans in this regard?

Mr. Melville: I'm not sure I feel competent to answer the question as asked. I can say that there are rules around disclosure of information in the Pension Benefits Act that make certain pension information available to members and others.

Mr. Hudak: The reason I ask is that members will want to ensure that their funds are managed wisely, not only the investment decisions but the administration of OMERS as well, for example, to make sure that any expenses members partake in could be obtained by plan members. We recognize there would be transitional costs which could be substantial. The government has indicated that they are considering whether to help cover those transitional costs, and I'm pleased to hear that that's under consideration. Plan members may want to know that administrative and transitional costs are minimized. So separate from investment decisions, would those types of costs be available to plan members under MFIPPA or other means?

1640

Mr. Melville: I think it's fair to say that information of a factual nature is often available under MFIPPA principles. It's hard to be specific without a specific example, but that is a general principle of the legislation.

Mr. John O'Toole (Durham): Just following up on Mr. Hardeman's point—the same point that I'm still worried about—who has primacy at the end of the day? If I see, looking back at other sections of the bill, the role of the actuaries and the role of the sponsors corporation and administration corporation, they can set fees, remuneration for members of each of those boards, I assume that would be disclosed in their annual report, like most public companies disclose the remuneration. Is that too simplistic to assume?

Mr. Melville: I'm not sure I can speak specifically to what may be disclosed in terms of public reporting under the corporate rules, but the ordinary rules would apply. In addition, as I said, any information that was of a factual nature would be available under the MFIPPA legislation. I can say that, ordinarily, the ranges of salaries are available under freedom-of-information legislation.

Mr. O'Toole: Today, without any administration or regulation change, that should be a pretty routine request made by a member or a member of the public, when in fact at the end of the day it's the public who really, in one form or another, through tax or whatever, is part of this plan, as the employers basically engage for the purpose of public business on behalf of the taxpayer, really. They're represented by whom here?

Mr. Melville: I'm not sure I—

Mr. O'Toole: Well, if the employer in that group is basically an elected person—a mayor or a reeve or a regional chair—and they're really privy to approving and

voting on agreements on enhancements or changes to the plans, would they first be able to be members of the boards? I would assume they would be. They would be on the sponsors side, wouldn't they?

Mr. Melville: That's a representation question maybe.

Ms. Hope: The bill does provide for a variety of employer groups, such as the Association of Municipalities of Ontario, to make nominations both to the sponsors corporation and to the administration corporation. So there are direct avenues for the major employer groups to have a role in each of the corporations.

Mr. O'Toole: Well, it is important. I think that the mechanism for resolving disputes between the administrative group as well as the sponsor group would be through the courts. If there's a disagreement on who has primacy—because I don't think that's clear to me, and I think Mr. Hardeman was asking about the same point—the administrative group, to me, would seem to be at arm's length, with the best interest of return on investment, and as such should have primacy.

Ms. Hope: I think the intent of the bill, as drafted and as proposed to be amended by some of the government motions, is to make that distinction quite clear.

Mr. O'Toole: That they basically have primacy.

Ms. Hope: On fiduciary matters, the administration corporation would have primacy.

Mr. O'Toole: Right, and any resolution to that would be through the courts?

Ms. Hope: Presumably, yes.

Mr. O'Toole: There's no role for the government of Ontario, in this case, at all?

Ms. Hope: That's correct. There's no role for the province.

Mr. O'Toole: Quite interesting. So the current administrator of the plan today, the OMERS pension group—is there a transition? Are the members who are there today going to be transitioned in? What's happening there? Is that clear?

Ms. Hope: Later provisions in the bill, in the transitional section, set out—

Mr. O'Toole: OK. It sets that out. I apologize for not being fully briefed.

The Vice-Chair: Any further debate? Seeing none, all those in favour? Those opposed? I declare that motion lost.

The next motion is an NDP motion. Page 37.

Ms. Horwath: I move that subsection 25(3) of the bill be struck out and the following substituted:

"Bylaws

"(3) Subject to subsection 25(4), the sponsors corporation may pass bylaws and resolutions regulating its proceedings and for the conduct and management of its affairs."

The Vice-Chair: Any debate?

Mr. Duguid: This was indeed a concern that was raised by some members, but it was a concern that frankly many of us felt was misguided. We expect the sponsor committee is going to meet frequently, and I think because there was a minimum amount put in the legislation, people thought it meant that the sponsors committee would meet hardly at all or once a year or something like that. I can't remember exactly.

We expect the sponsors committee to meet very frequently, particularly in the initial years. There's no restriction on that. All the bill has in it are minimums. To suggest that it has to meet five times per year—it probably will the first year, it may the second year, but there may be times when it doesn't have to meet five times. So why would we be telling them they have to meet? They can meet whenever they need to meet, and we'll leave that decision up to the wise judgment of those who are appointed to that particular corporation.

Ms. Horwath: Mr. Chair, this is just another amendment that speaks to the relationship. If the relationship was changed to reflect all of the amendments that the New Democratic Party is putting forward in regard to the relationship between the admin corporation and the sponsors corporation, then the requirement to meet more often than the minimum of once every three years is important. That's why this amendment is before us. So I don't disagree with what the parliamentary assistant said, except that rather than keep it silent, we thought it was important to add an amendment that reflects the desire to ensure that the sponsors corporation is meeting more often.

The Vice-Chair: Mr. Hudak?

Mr. Hudak: My colleague Mr Hardeman has a question too.

The parliamentary assistant is right. I suspect that the sponsors corporation will meet regularly, if not frequently. If we understand the process so far, the minister will consult with the various constituent groups who will recommend individuals. Those individuals obviously will be well recognized by their group; otherwise, they wouldn't appoint them to something of significance like the sponsors corporation.

Secondly, it will initially go through the Lieutenant Governor in Council for those first appointments, as we know. I do want to say again that I would like to see a process where members of the agencies committee could call for consideration for interviews those who are the initial nominees to the sponsors corporation. That acts as another check and balance, if you will. I know that this bill doesn't allow for that. Nonetheless, there could be a friendly agreement between House leaders, so to speak, to allow that to happen.

I don't know if members of the committee would do that. They may have full faith in the groups that bring names forward and see no need to do an interview in this process, but I do think as a very fair check and balance that that shall occur.

Maybe I could ask, again, one of my usual questions to staff. Is it typical in public pension plans that the legislation would outline the number of times, as a minimum, that a sponsors corp or an admin corp would have to meet, or is it best practice for them to allow their own schedule to be developed?

Ms. Hope: I'm actually not aware of the specifics that might be set out in legislation or other founding docu-

ments for other pension plans, so I can't really answer the question.

Mr. Hudak: Do we know typically if the various comparators—has it been an issue that they meet too infrequently?

Ms. Hope: I'm not aware of issues around sponsors groups meeting too infrequently or too frequently.

Mr. Hudak: Again, I'm obviously no expert on pension plans, but have been a member and represent a significant number of constituents, as we all do, who would be part of various pension plans. I don't recall this being an issue in the assembly or in my constituency office, that the HOOPP does not meet often enough or teachers do not meet often enough and such. While I think it's important for the sponsors corp to meet regularly, I think it's reasonable to give them the benefit of the doubt to devise their own meeting schedule, which I suspect will meet with the satisfaction of this committee if we revisit the issue over time. If the minister does follow through with his commitment, as expressed by the parliamentary assistant, on how the sponsors corp members will be appointed at the outset, then I would expect and have some degree of faith that the meetings will be frequent enough. If not, I guess we could always revisit the issue, but I'm willing to give them the benefit of the doubt in that respect.

1650

The Vice-Chair: Mr. Hardeman.

Mr. Hardeman: Mr. Chair, my question is through to the clerk's department, on a point of order. I'm having trouble as I look at this amendment. It would suggest that the only change is referring to a section that doesn't exist. As a point of order, it would seem to me that the number should have been changed, and the issue of whether we are going to deal with the time of meetings be in the bill. If it's not in the bill, then this amendment would look out of place, because we can't go back to deal with it again, and if we approve the first resolution and then vote against the second resolution, we're going to have a big problem. So it seems to me that the issue of the number of meetings per year should be an amendment prior to, not subsequent to, the one that refers to that amendment having been passed. I don't believe that we can make this one work if the government side deems this to be a very appropriate resolution, because it's identical to what's already in the bill except that it refers to a section that doesn't exist.

So I would suggest that if the government votes against this, they're opposed to their section, because it's exactly the same, and then we don't approve the next one, and we're stuck with something that doesn't work. So I think, in order of procedure, the amendment should have been numbered differently. I would ask the clerk for a ruling on that.

The Vice-Chair: We're going to postpone this, and we'll go to the next one.

Mr. Duguid: The government side has no objection to that, from our perspective. As long as it makes sense to the clerk procedurally, it's fine with us, for sure.

The Vice-Chair: Page 38: NDP motion.

Ms. Horwath: I move that section 25 of the bill be amended by adding the following subsection:

"Meetings

"(4) Despite any bylaw, the sponsors corporation shall meet at least five times a year for the purpose of considering any issues related to the OMERS pension plans."

Again, just as was indicated by Mr. Hardeman, this is the subsection that's referred to in the previous motion that I put—subsection 25(4)—which is a new subsection that addresses the number of times the sponsors corporation meets.

Mr. Duguid: As I said previously, we will not be supporting this. We don't think that we should be prescribing the number of meetings that the sponsors committee should be having; it should be left up to them.

Mr. Hudak: I will just repeat the arguments I made previously with respect to specifying the number of meetings in the legislation itself. I have confidence that if the process that has been outlined does take place for appointments, the sponsors corp will meet frequently enough. It could always be revisited if this is not the case. As I said, if the agencies committee does have the ability to interview intended appointees to the sponsors corp, it would certainly be a question that the members of the committee could ask, and I would think we'd get a very reassuring answer to it.

Mr. Hardeman: I appreciate the opportunity to debate the motion. First, as to the number of times they meet, I agree with the principle of this motion. I think it's ludicrous to believe that we could set up a corporation, as the government is proposing, to meet a minimum of once every three years. I just think that doesn't make sense. I don't know why one would set up a corporation to meet that often—or the lack of meetings, shall we say. I say that with all due respect to the authors of the bill.

Having said that, I believe that making it a minimum of five times each year, with what we envision the sponsors corporation to actually be responsible for—I think meeting more than once every three months as opposed to once every three years is quite a step the other way. Maybe it's asking more of the corporation than one could reasonably expect it to do.

I think this motion makes some sense if we look at all the other motions the member has put forward as to changing what the sponsors corporation is going to be responsible for or what they need to do in relation to the administration corporation and vice versa—what the administration must do with all the things they do. If they have to send as much information and have as much dialogue with the sponsors corporation, I would guess they'd likely have to meet more often, maybe even as often as five times a year, in order to deal with all that information.

Having said that, so far the amendments that have been put forward by the member have not been well received on the opposite side of the room today. So again, it looks like we're not going to be needing quite as many meetings as the member is proposing. With that in

mind, I could support this amendment with a much lower margin, and if the government comes to the part where we deal with the actual number of meetings, we would indicate that once every three years is not sufficient time to get together with any board and keep continuity and keep the board running.

It relates also to the comment that my colleague made about how they will be appointed and whether they will be interviewed. During that discussion with the ministry counsel, it was also suggested that they would be one-year appointments; that dealt with whether they could be called by the ABC committee for interviews. If they're going to be one-year appointments and they're going to meet once every three years, we would have everybody appointed for the third time before they had their first meeting. That, to me, doesn't make a lot of sense.

I think we need to look at the timing of appointments and the timing of the meetings. That's why I'm somewhat supportive of this resolution to set some kind of minimum standard that is well below once every three years, but I can't support at least five times a year. I think it may be asking too much of the sponsors corporation. With that, I will not be supporting this resolution, because of the massive number that's in it.

Mr. O'Toole: It's worthwhile pursuing, I guess, just for the record. What is the experience of the current OMERS board in terms of frequency of meetings? Is there any experience on that?

Ms Hope: I don't know a specific number, but it's my understanding that the board does meet quite frequently.

Mr. O'Toole: Would that be the administrative or the sponsoring-type functions?

Ms Hope: The administrative functions.

Mr. O'Toole: I would expect, as the point has been made here, that to be prescriptive in setting up a new plan or reviewing such things as supplementary benefits might become complex. I think that's what this is about. It's trying to empower both groups to do whatever is necessary. As you say, the way it's drafted, it sort of sounds like three years and this amendment is prescribing something more prescriptive. But that defies the whole point here of the autonomy of this organization and the government trying to tell them—I'm sure before it's actually constituted, they'll resolve these relationship issues between the administration and sponsors groups. If I look through—I finally finished reading the thing—it would look to me that that would be a lot of meetings probably in the first transitional year, whether it's the appointments and cross-appointments and affiliations, before they ever get to some of these new envisioned plans that they might have going forward.

I just think the bill sets a very low threshold; it must be based on some experience that it runs fairly smoothly on the administration side, but on the sponsorship side, with good information, annual reports to the membership—the board reviewing those as being appropriate; that's why they're appointed there—I think they make their own rules technically without prescribing things here that—meeting for the sake of an overnight stay in California or somewhere. Anyway, thanks.

1700

The Vice-Chair: Any further debate? Seeing none, all in favour? Opposed? I declare that lost.

Next is a PC motion. Page 37, I'm told, is no longer required.

Mr. Hardeman: I move that subsection 26(1) of the bill—

Mr. Duguid: On a point of order, Mr. Chair: Did we go back to that other motion?

Mr. Hardeman: It's out of order, no?

Mr. Duguid: Oh, it's out of order. OK. Sorry.

The Vice-Chair: Shall section 25 of the bill, as amended, carry? That's carried.

We're on page 38a now, with the PC motion.

Mr. Hardeman: I move that subsection 26(1) of the bill be struck out and the following substituted:

"Procedural and other requirements for decisions

"26(1) A decision of the sponsors corporation requires an affirmative vote of two thirds of its members, excluding non-voting members."

The reason this motion is being put forward is to recognize that the sponsoring body is more than a procedural process. They don't administer the plan; they just set the policies that would change the plan dramatically. As we will know through all the presentations we've had and through all the discussion we've had so far, the changing of policies within the plan is a major departure from where they are. It could have dramatic impacts on the plan that would not necessarily be visible that day.

Obviously, if we look at the OMERS plan today, the financial status of that plan is considerably different today from what it was five or six years ago, when they decided that we could have a premium holiday across the board because there were excess funds. That's not true today. Today, the premiums have to be reinstituted not only the way they were, but at a much greater level than was previously there. I don't think that's something wrong; that's just the way the world turns. But with decisions that would change the benefits or the plan in itself in its entirety, the finances that support it today may not be able to support it in the future.

The decision of whether that is good or bad should require more than the opinion of one person on the board to make the final decision, assuming that we have the board structured to 50-50: the labour and the management side. I think it's important that we shouldn't have the vote decided by one person who, for whatever reason, may have a different view that particular day than the side they come from, shall we say, would represent. I think it makes much more sense to have a larger majority make that decision as to whether we're going to change the fundamental structure of the plan, as opposed to doing something else with the excess revenues or whatever.

I don't think it's unreasonable to assume there are other places where the higher threshold of a vote is taken into account. The sponsor being a municipal government,

if you are a member of municipal council, you will realize that if an item has been dealt with, to have it reconsidered requires two thirds of the vote, not because that's necessarily a big decision, but because it has different circumstances from the decision that's already been made. At some point, you'll have to have finality to it.

There are other reasons that require a certain larger majority than just the majority of the vote. That's why I think it's important to have this here, because this part of it is so critical to the effective and efficient operation and the ability of the plan to stay solvent. I think it's so important that all decisions on the changing of the plan have thorough discussion and no quick vote to make a major change that some of us might regret down the road, that we kind of wish hadn't been made, but it didn't get as thorough a discussion as it might have had.

We're here today, and I appreciate the fact that we're here on first reading of the bill, to have a thorough discussion, but when the minister introduced this bill, he suggested that with all the work he'd done with consultations so far, and with the people he'd heard from so far, this was the ideal bill to deal with the topic at hand, which was the devolution of the OMERS plan. I don't think he envisioned at that time that upon hearing the deputations that we heard in the four days of hearings, it would require that many amendments to make the bill deal with the issues that were brought up.

I don't think it's unreasonable to say, let's make sure that in the future the plan has that same protection, that it takes a thorough thrashing out of the ideas and convincing of all the people on the board to make sure that where they're going is where they all collectively want to go for the benefit of the plan.

We did hear from a number of deputants that, at the very least, we should have a—I don't know what you call it, a strong majority—

Ms. Horwath: A supermajority.

Mr. Hardeman: A supermajority or a strong majority—a two-thirds vote of the board in order to make major changes to the plan. That's why this motion is being put forward.

Mr. O'Toole: I also want to support the work that Mr. Hardeman has done, both now in the Legislature and in his prior term on AMO and ROMA organizations. He makes a very good point, because the argument has been made quite well, actually: There's significant opposition to any devolution here, I'm sure that we've heard that, and any significant change in a plan, specifically a pension plan, is perhaps going to cause mistrust and misunderstanding. I think the point here is that with council and other democratically constituted forums, a motion to reconsider takes a two-thirds majority, to reverse a council decision or bylaw. Maybe I could get the clerks to check that, but those are the kind of standing orders in that forum. That's a very good argument for saying that this is a transforming event in terms of some of the constituted issues here.

Any time they change a plan, I would put to you that in many cases actuaries—it's just a very sophisticated guess. When you look at some of the arguments being made here on looking for a greater return on investment, security of investment, threshold of risk, some of the assumptions on life expectancy and composition of the workforce—they're just sophisticated guesses.

I was privileged when I was in finance to do some work on the pension surplus distribution issue and a few other things, and became less and less certain. We didn't move on it. In fact, I would say that after listening to the Monsanto decisions, I was completely of the opinion that there's no such thing as an actuarial surplus. It's a fluctuation in the market. I think both groups at that time, perhaps even the government, wanted relief from the payroll issues that pensions ultimately are. You flush in 10% cost on top of payroll, which is really the pension contribution; it's significant. If those changes fundamentally affect these administration and sponsoring groups, the contribution limits, under certain decisions made, the employer would have a very diminished role, and I don't think there should be an imbalance of relationships or the voice on any of these boards. I don't think the administrators would be recommending—they would be administering the investment side of the business, I would think, and the sponsoring groups would be those groups representing employer-employee interests, and indeed taxpayers' interests, at the end of the day.

I think these issues will become much more robust as we move forward in the pension world. As long as the legacy issue, and there's some conflict with the actuarial assumptions—I will be supporting it, and I urge the government to give this consideration.

I do have a question at the end of this. Are there provisions for the constituted votes or prescriptive vote procedures in the sets of bylaws? This bill does permit them to create operational bylaws. In that, would it be in their interests, among their memberships, to prescribe this sort of amendment that Mr. Hardeman has moved? That's the question I have. Would they be able to set thresholds for certain types of votes—resignation of members, replacement of members, all those kind of things; like, who calls a meeting or what is the requirement for a meeting? If you time things properly and the attendance—I'll just put that to you as a question. I hope I've left it clear enough, what my question is.

1710

Ms. Hope: I think so. The motion that has been put forward, as I understand it, would require that all decisions of the sponsors corporation of any sort whatsoever, passing a bylaw, accepting minutes, what have you, would require—

Mr. O'Toole: A simple majority.

Ms. Hope: —a two-thirds majority of members.

Mr. O'Toole: Two thirds?

Ms. Hope: Well, it's replacing 26(1)—

Mr. O'Toole: Oh, I know what it's doing.

Ms. Hope: I beg your pardon?

Mr. O'Toole: I understand what 26(1) is doing.

Ms. Hope: The motion to amend would have all decisions require two thirds. The bill, as introduced, requires a simple majority of members for all. But I think the government does have motions that we will be coming to shortly drawing a distinction between a simple majority for a majority of matters of the sponsors corporation and a two thirds for what are referenced as "specified changes."

Mr. O'Toole: It's a very valid amendment. I hope the government is prepared to look at the democratic nature of this thing in the context of somebody tampering. I don't think we had a two-thirds majority when we cancelled our pension back in 1995. I put that on the record. I think it was more of a whipped vote. It was sort of a whipped vote, as I understand it. Many of us voted in ignorance, perhaps, retrospectively. History is a great educator.

Thank you.

Ms. Horwath: You might recall that during the public hearing portion the whole room dissolved into giggles when we talked about how many times we saw the supermajority required at the municipal level. I think the supermajority or the two-thirds majority, although I understand why it's being put forward as a recommendation, is unreasonable. I think it will do exactly the opposite of what the member was hoping it would do. I really don't think it makes things more efficient. In fact, it will bog things down, because I don't think it's going to be a way to get decisions made. It's going to cause more trouble than it's worth.

There has to be a recognition that the sponsors corporation is made up of the interests of the plan members and the employer side. With the representation of both of these interests, any ability to take a two-thirds majority will be almost impossible. I think a simple majority is the right way to go.

Something that we need to acknowledge is that it's different parties that have different interests at this sponsors corporation table. Hopefully, there will be opportunities for those interests to converge in making some sound policy decisions, and I expect that that would be the case.

Mr. Duguid: Thank you, Mr. Hardeman, for bringing this motion forward.

As we've discussed this issue, it has been one of the most talked-about issues in the legislation. Over the last number of days, we've been taking an ever closer look at it. I can tell you that the government side supports in principle what Mr. Hardeman has moved forward. I'm not saying "in principle" in a partisan fashion, saying we're going to reject your motion and rewrite it and put our own forward. In essence, we will be putting our own forward, but not because we disagree necessarily with the principle behind what Mr. Hardeman has put in front us.

The concerns we have are really twofold. The first is that requiring a two-thirds majority for all decisions is a little bit much. There are a lot of minor decisions that are made by these groups that wouldn't require two thirds. Our motion, which will be before us in a minute, would propose that specified changes only require two thirds. Specified changes are defined in the legislation—I believe it's under subsection (2)—as changes in benefits, contribution rates and/or setting up of reserves. So the important decisions, in other words, should require two thirds. The minor decisions really shouldn't need to require the two thirds.

The other concern we have with the motion as it's written is that if the two thirds are not required, and you have between 50% and two thirds, it would likely automatically be sent to arbitration. We think that the corporation should decide whether or not they want to send an issue that hasn't been decided on to arbitration. What we would suggest is once a vote is taken, if there's between 50% and two-thirds approval, the corporation or the board would then decide, on a majority vote, whether to send it to arbitration. This would provide them with the ability to continue to try to come to a consensus.

In essence, we support the principle behind Mr. Hardeman's motion. We agree with it, but we've made a couple of changes in the motions that we'll be bringing forward that we think will make it a little more effective.

Mr. Hardeman: I'm glad to hear from the government side that they too realize the risk or the problem with a straight majority vote in deciding major issues that will affect the pension plan for the future, although I would disagree with the comments from the parliamentary assistant that suggested that the two thirds would have more opportunity to go to arbitration or to an arbitrator. It would seem to me that in voting, if the vote doesn't pass, it doesn't mean it's undecided. A vote that doesn't pass is a lost vote, so that doesn't go to arbitration. Arbitration, in my estimation, is what's created in the present bill where if it's 50-50, it's not won or lost, because you have to have 50 plus one. So you could have an equal number of votes, then it goes to arbitration. Anything else is either a won vote or a lost vote. I don't think there's a problem with going to arbitration more often.

I think that one of the reasons that I strongly support having a supermajority vote for—and I would concede to the parliamentary assistant that our concern is much more for the ones that are listed in our next part about the specified changes. That's where our great concern is. We will remember from the presentations, particularly from the municipal sector, their concern was that as soon as we had a 50-50 vote, labour is all on one side and management is all on the other, they're in the dead heat, and it automatically goes to arbitration. The main issue for them was the supplementary plans and the ability to create those, particularly the ones that are mentioned in the bill. Since they've been changed to be mandated in the bill as opposed to being the first ones to be dealt with by the board, I would agree that the challenge now is just how we deal with those types of decisions in the future.

I'm pleased to hear that the government has decided to go with the two-thirds vote on major decisions that would dramatically impact the plan one way or the other. We would like to see them support our motion this way, but

we will be voting in favour of your motion if one comes forward.

1720

Mr. Hudak: I appreciate the kind words by the parliamentary assistant directed at my colleague Mr. Hardeman, who I know has done a lot of work on this particular amendment, which I think reflects a good deal of the presentations we heard. I understand the parliamentary assistant says we should be specific to specify changes for the supermajority, and then ordinary, everyday decisions could be by a simple majority.

There's one thing I'm not clear on. I've listened to debate, and I did miss the first day of clause-by-clause. If I could ask through you, Chair, to staff: The current status of supplemental plans for police, fire and paramedics, I think we passed amendments earlier on with respect to those issues, so could you refresh our memory as to what the current status is in the amended bill and how they would be impacted by the motion currently before us, or not at all?

Ms. Hope: The bill, as amended in earlier debate of committee, would direct the sponsors corporation to establish a supplemental plan for the police, fire and paramedics sector within 24 months. So the sponsors corporation would need to get on with doing the work that would be required in terms of developing that plan: seeking registration, doing all of the necessary work to support that process. Therefore, I don't see that the supplemental decision-making process that's referenced here would be relevant to the establishment of that plan, because the sponsors corporation is directed to establish that plan.

Mr. Hudak: Right. The bill has been amended. So supplemental plans declared for police, fire and paramedics are currently part of the legislation before us because of the amended bill.

Ms. Hope: Correct.

Mr. Hudak: That decision having been made, does Mr. Hardeman's motion affect the establishment of supplemental plans in any way?

Ms. Hope: To the extent that the sponsors corporation has any decisions to make with regard to the development of the plan text etc., in order to bring the supplemental plan into being, any decision of the sponsors corporation for Mr. Hardeman's motion would require a two-thirds majority vote.

Mr. Hudak: I'm sorry, I don't know if I follow that exactly.

Ms. Hope: Mr. Hardeman's motion suggests that any decision of the sponsors corporation, any decision whatsoever, anything that has to go to a vote, would require a two-thirds majority. So the sponsors corporation has been directed to put this plan into place, but they may face certain decisions along the way, because the bill speaks to the outcome which is to be achieved—the plan to be registered, to be put in place—but there will be, presumably, some decisions to be made along the way in order to bring that into being. So any decision that might be required by the sponsors corporation would require a two-thirds majority vote for this motion.

Mr. Hudak: Thank you. Therefore, if Mr. Hardeman's motion fails and we're debating the government motion—

Ms. Hope: I beg your pardon?

Mr. Hudak: No problem. The motion Mr. Duguid will bring forward shortly talks about a two-thirds majority for specified changes, according to legislation, and a simple majority with respect to non-specified changes. So for the purpose of what a specified change is, that does not include supplemental plans.

Mr. Melville: Just to go back a little bit, I think the new requirement that was passed by this committee would require the sponsors corporation to establish supplemental plans containing the features that are described in that section. That's a statutory requirement. So, presumably, to comply with the law, they would have to do that within 24 months. In terms of the voting mechanism, as my colleague said, presumably, they would still have to comply with the two-thirds majority.

Mr. Hudak: With Mr. Hardeman's motion.

Mr. Melville: With either.

Mr. Hudak: With either, OK. There's probably a number of questions. I'm just trying to understand, if either of these motions passes, how decisions would be made down the road and which type of changes would require two thirds and which type of changes would not, under Mr. Duguid's motion.

So Mr. Hardeman calls for a two-thirds majority in all cases, in any decision of the sponsors corp. I can appreciate where Mr. Hardeman is coming from on this, because we did hear from a number of groups that talked about the sensitivity about some of the decisions that the sponsors corp will be making. I mean, after all, it's a $36-billion plan. It represents roughly 400,000 employees across the province and 900 employer groups. So I think for any major decisions to the plan, it's very reasonable to say that it should be a supermajority.

It's my understanding from various presentations and the chart that AMO brought forward, for example, that they talk about supermajorities or unanimity being required in certain circumstances. HOOPP, for example, if AMO's chart is correct, is a majority vote, but changes that impact formula for contributions or funding require unanimous agreement of the settlers. A similar comparator, the CAAT plan, says changes to the plan require unanimous consent of the sponsors. The BC plan says a majority vote will be the normal circumstance, but changes affecting contributions require unanimous agreement of partners. LAPP, the Alberta municipal plan, which I think is just proposals only—it hasn't become legislation as of yet—says a three-quarters majority would be required for a supermajority.

So I think what Mr. Hardeman is getting at in terms of a supermajority for major changes is sensible, and you could have one member of the various constituent groups defect from what the rest of his or her membership is

saying and in that way could change—a substantial shifting in the plan.

Secondly, you do want to try to encourage groups to work together. You want to try to avoid the 50-50 divide constantly and the use of the arbitration model. The arbitration model is intended to be there as a last resort instead of the usual practice, so to speak. So I think a two-thirds majority gets you there as well.

If I understand the parliamentary assistant's words, I do think that we're on a similar page on major matters being determined by a supermajority, and other matters that are not defined as specified changes would have a simple majority and, I guess, get through quickly.

Is my logic accurate? Is the parliamentary assistant's motion or Mr. Hardeman's motion closer to what is established best practice in other public pension plans?

Mr. Melville: Again, I'm not sure I can speak to what's best practice in other pension plans, but the government's motion, I think it's fair to say, would have a two-thirds majority for the specified changes, which you can read, but they're essentially major changes. For other decisions, it would be a majority vote, and one could think of examples such as a procedural change to the bylaw, something like that.

Mr. Hudak: Sure. I appreciate staff's response, Chair. You can see by the nature and the number of amendments that have come forward and the various approaches by the delegations before the committee that this bill is extremely complex. There's obviously a number of things—there's consultation on this bill, I understand, but a lot of things that weren't anticipated that the amendments seek to address.

I believe now there's been a commitment among House leaders for second reading hearings on this bill, which is a good thing, so we can have another chance to take this out for further consultations to see if we did get it right. That's why I have a certain comfort level with major decisions reflecting a supermajority—Mr. Hardeman suggest two thirds—because the experience of this committee has been that unintended consequences may not be easy to anticipate; it may take some time to come to light.

That having been said, if Mr. Hardeman's motion is not successful, then we do appreciate that the parliamentary assistant's motion seems to be on a very similar line as Mr. Hardeman's in requiring major changes to the plan to in fact have that supermajority and try to build co-operation on the sponsors corp as opposed to setting up constant 50-50 votes.

Mr. Duguid: Believe it or not, I have a quick question to staff. I just want to get clarification. If Mr. Hardeman's motion were to carry, how would it work vis-à-vis arbitration decisions?

Mr. Melville: That would be a two-thirds majority, because it would be for all decisions.

Mr. Duguid: So all decisions—when would something be sent to arbitration and when would it not?

Ms. Hope: Subsection 26(3) of the bill clarifies when a decision is made with respect to a specified change. So it's either by the sponsors corporation itself deciding to make the specified change—and if Mr. Hardeman's motion passed, that would be a two-thirds majority—and then in paragraph 2 of that subsection (3), if the sponsors corporation decided to refer the matter for consideration under the supplementary decision-making process, so presume that that decision would then also require a two-thirds majority. So it could only be sent to mediation-arbitration with a two-thirds majority under Mr. Hardeman's motion.

Mr. Duguid: Thank you.

The Vice-Chair: Mr. Hardeman.

Mr. Hardeman: Mr. Chair, there's one quick question that I wanted to clarify, through you to the parliamentary assistant: My understanding is that the only difference between the government motion and the amendment I've proposed is for normal procedural things, but in fact anything to do with the supplementary plan would require, in the government's motion, a two-thirds vote. It says in 26(2)(a) "a change in benefits for members of any of the OMERS pension plans," so any issue to deal with supplementary plans would then, in your motion, also require a two-thirds vote. Would the non-requirement for a two-thirds vote be in the operation of the corporation aside from pension benefits?

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Mr. Duguid: My understanding is that only specified changes would require a two-thirds vote and that that would include benefits, contribution rates and/or setting up a reserve. I can check section 2 here. Maybe it would be easier just to ask staff whether there's anything else included in section 2 that would involve supplemental benefits, but I'm not aware of anything.

Mr. Hardeman: If I could just go one more, I think you can answer it for me. Your definition of "specified change" isn't changing?

Mr. Duguid: No.

Mr. Hardeman: So when you're talking about specified changes, it refers to the specified changes presently in the bill?

Mr. Duguid: Yes, as defined in the bill.

Mr. Hardeman: I'm quite comfortable with that.

The Vice-Chair: Any further debate? Seeing none, all those in favour of this motion? All opposed? That's lost.

We're going to skip page 39 until we deal with the motion on page 67. Next is 39(a), a government motion.

Mr. Duguid: I move that subsection 26(3) of the bill be struck out and the following substituted:

"Decision about a specified change

"(3) Despite subsection (1), a decision respecting a specified change is not valid unless it is made in one of the following ways:

"1. At a meeting called for the purpose of considering the matter, the sponsors corporation decides to make the specified change and passes a bylaw providing for the specified change by an affirmative vote of two thirds of its members.

"2. At a meeting called for the purpose of considering the matter, the sponsors corporation decides on an

affirmative vote of a majority of its members to refer the matter for consideration under the supplementary decision-making mechanisms described in subsection (4) or (5) and, using those mechanisms, the decision is made with respect to the specified change."

I have a subsequent motion that will speak to the issue of when it's referred to an arbitrator, but I'll move that then.

In essence what we'll get is that if a two-thirds vote is achieved on a specified change, it will carry. If it's less than 50%, less than a majority, it will lose. If it's between 50% and two thirds, it could go to an arbitrator if a majority of the corporation board members decide to send it there.

I can repeat that if necessary. Do you want me to repeat that?

Interjections: Yes.

Mr. Duguid: OK. Staff, let me know if that's not correct. That's my read of it.

If two thirds is obtained, a specified change would be approved. If less than 50% is obtained, then the vote would be lost. If it's between 50% and two thirds, then it could go to arbitration, but that would still require a majority vote to send it there. So the members would have to agree on a majority basis that they want to send it to arbitration.

Mr. Hudak: Simple majority?

Mr. Duguid: A simple majority, yes. Does that describe it?

Ms. Hope: Yes, what you've described is the effect of this motion as well as subsequent motions to reflect the transitional section of the bill.

Mr. Duguid: That's right.

Mr. Hardeman: There's just a little confusion. It seems to me that we've had some debate about what happens when a vote is won and when a vote is lost. It seems to me that with this approach—someone says that between 51% and 66%, two thirds—a vote doesn't win or lose. It would seem to me that if you were voting with the part between 51% and 66% and you lost, you would almost always be in favour of sending it to arbitration. You have nothing to lose and everything to gain by going to arbitration. So what you're really saying is that any vote that doesn't have the support of two thirds of the board is in fact going to go to arbitration, which in the end gives us the worst of all worlds, as the presenters said. We take away the presenters' benefits. They said, "We need to have a clear delineation of a 50% vote so we can make the changes that we want to make as labour, because management has a different view than we do," and now you're saying that even management can't make any decisions at 50%. Anything between 50% and 66⅔%, an arbitrator is going to decide. I think if there's one thing we heard, it was that everyone agreed it shouldn't be decided by arbitrators, and now we're building in an almost certainty that these types of decisions will go to an arbitrator, because any vote between 50% and 66⅔% is going to go to arbitration. To me, that doesn't make sense.

As the parliamentary assistant said earlier, I think I could support the principle of saying that the two thirds doesn't apply to everything but applies only to specified change, but then you say, "But no, it doesn't apply to all specified changes." The "specified changes" will have this unique voting system that doesn't exist anywhere else, where the results at a certain point are going to be made by arbitrators. We don't know whether they won or lost, so we're going to make them use arbitrators and the rest go where they might. If we don't get 50% support, then it dies; if we get over 66%, it goes with that vote, and everything in between an arbitrator will decide.

I just can't imagine anyone putting forward that type of proposal, to take away the voting capabilities of everyone in between those two and giving them two votes for one. "You won't count in the first vote, but just remember that you get to decide that it goes to arbitration. Don't worry about the two-thirds vote because we'll likely do better by going to arbitration." In fact, that's what we've been told by a lot of people, that arbitrating tends not to take into consideration the municipal employers. "We're better off with arbitration than we are with a consensus at the board, so make sure we don't get the two thirds but make sure the vote is over 50%." Just vote for 50%, go to arbitrators and have a settlement there; take it out of the democratic process and put it in one person's hands.

I can't really imagine that the government would put something like that forward. I just can't see that working.

Mr. Duguid: I think the member is correct in saying that it is complex; it certainly is that. The idea is that if more than a majority of members support something, it should be considered further. Remember, if you're dealing with a particular issue, when you're talking about a majority, you've got a proportion of employer representatives and a proportion of employee representatives who may be supporting something.

I guess what we're thinking is that if a majority of committee members want to go in a particular direction but they don't get their two thirds, they should have an opportunity to try to work something out. The idea would be, number one, maybe the committee can work out a compromise so that something doesn't have to go to arbitration and, number two, if that doesn't work, then perhaps that's when you do want to bring in an arbitrator, to make sure that the best decision can be made.

Mr. Hardeman: If that was the way it was going to work—and maybe the parliamentary assistant envisions that that's how it's going to work. After a 52% or 51% vote, the bare minimum, I can't imagine anyone within this group of people who have just voted 49% to 51% believing that they could negotiate at some point a two-thirds support for it. They will automatically have won the day by forcing arbitration. To me, that's exactly what everyone told us we should try and avoid. This new model should be run under the auspices of an elected board of representatives of both management and labour, to come up with the best decisions, in the best interests of all the people who are being pensioned. They told us to

make sure it doesn't become the purview of one arbitrator who gets to make all the decisions of the board.

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This really directs us to an arbitrator making all the specified changes in the plan, because as long as you get 50% of the vote of the board, it goes to arbitration. In my mind, there's absolutely no benefit in saying it requires a two-thirds vote. In fact, this may be even worse than just having a majority vote. Now they have to work harder at trying to get a majority vote than they would the other way, because as they're voting, nobody really cares. "We have to have a two-thirds vote for this to pass and if it doesn't pass, guess what? It goes to arbitration." The employer side has told us all along that the one thing we should do within the plan is to make sure it doesn't go to arbitration, or to make sure the plan isn't based on an arbitrator making arbitrary decisions on behalf of the plan and on behalf of everyone involved in the plan.

This amendment, if that's the way it is—and incidentally, I'm not sure if that's what I heard when you read it, so maybe we should have it read again. I just can't imagine anyone designing an amendment like that, which would take out 16% of the people; that the vote doesn't make any difference.

Mr. Duguid: You're right, the arbitration part was not in the amendment I read; it's in a subsequent amendment. I brought it into the discussion just so you'd know where we were going with it. The motion I read was just on the two thirds with specified changes. We'll then be moving another motion afterwards which talks about the arbitration aspect. You should have it in front of you. The members have those motions, do they not? With all the paper we have, some of them may not have been able to find them.

Interjections.

Mr. Duguid: It's hard to keep track of them.

The Clerk of the Committee (Ms. Tonia Grannum): It was handed out last week, but it was a separate set.

Mr. Hudak: Just a quick question, if I could, to make sure I'm clear. I think it's important to consider those amendments as a package, and I appreciate the parliamentary assistant talking about that. It does make it a bit more complex, but I think it's the best way to go, because we understand then where the government is going with subsequent changes.

If it's between 50% and two thirds, if these amendments carry, it would go to arbitration—the opportunity for a majority vote to go to arbitration.

Mr. Duguid: Just in answer to that question, if it's between 50% and two thirds, if a majority of the members chose to send it to arbitration, they could.

Mr. Hudak: A simple majority.

Mr. Duguid: But it would still require a vote. It wouldn't automatically go.

Mr. Hudak: OK. When you said between 50% and two thirds, that means 50% fails and there's a split vote?

Mr. Duguid: I'm assuming that would be 50% plus one. Is that a simple majority?

Mr. Melville: It would be a simple majority, so if it was 50%, it would be a fail.

Mr. Hudak: So a simple majority would hold under what circumstance? That's to refer it to arbitration after a vote is defeated by not achieving a two-thirds vote on a specified change?

Ms. Hope: If I could just take one step back, just to make sure we're all clear about this particular motion, as opposed to the other motions that address the transitional features.

Mr. Hudak: But it matters, right? It's a package.

Ms. Hope: Yes, but if I could, to be clear on this one, which is in the permanent part of the bill, this motion says that if the sponsors corporation makes a decision on a specified change, if it has a two-thirds majority vote, or if it decides, through a simple majority vote, to send the matter to supplementary decision-making, the sponsors corporation has on an ongoing basis the authority to decide what that supplementary decision-making process will be. The transitional part of the bill, which comes later, does set out an initial supplementary decision-making process, and it does provide that before a matter could go to arbitration, the first step is mediation. I just wanted to be clear that the transitional features set that out. The impact of those subsequent motions on the transitional stage: If there's not the two-thirds majority vote, but there is a simple majority in favour of the motion, then it is eligible to be referred for supplementary decision-making, and that requires a subsequent decision with a simple majority vote.

Mr. Hudak: Then that would engage the supplementary decision-making mechanisms. They exist in the bill.

Ms. Hope: Correct.

Mr. Hudak: So there's a mediation stage in between. But Mr. Hardeman's point would be that the default will be that it will end up at arbitration, in all likelihood. Maybe it will be resolved at mediation, but the numbers would suggest, if the numbers didn't change through mediation, that it will end up going to arbitration.

Ms. Hope: If a majority of members vote to refer the matter to supplementary decision, and if it goes through mediation and resolution is not reached, then subsequent processes are followed.

Mr. Hudak: And if a tie vote occurs on a specified change, what, then, is the outcome?

Ms. Hope: The matter is defeated. It's not eligible to go to supplementary decision-making.

Mr. Hudak: OK.

The Vice-Chair: Mr. Hardeman?

Mr. Hardeman: Thank you very much. I don't know the procedure, again, on a point of order, Mr. Chairman. Since it's not subsection 43(11) or (12) we're debating at this moment, with the Chair's permission, I want to go to that section. As I said, the debate—I couldn't understand anybody coming forward with the proposal, and as I read it, it doesn't. I just want to put that on the table. It says that under subsection (11), "The sponsors corporation may decide by an affirmative vote of two thirds of its

members to accept the proposal with or without amendments, or may decide by an affirmative vote of the majority of its members to reject it."

Then, when we go to the arbitration section, it says, "If the sponsors corporation neither accepts, with or without amendments, nor rejects the mediator's report, within 30 days after its first meeting after receiving the report, the sponsor corporation may, by affirmative vote of the majority of its members, refer the matter to arbitration."

It would seem to me that if you had the vote in subsection (11) and you couldn't get two thirds to support it, then you voted again and got 50% to reject it, which would be one and the same. If you were somewhere in between, if the motion didn't totally fail—if the motion was 50 plus 1, it wasn't passed, it would automatically be called to vote again; it would be to reject—then it would not be within 30 days.

I ask the staff this: Within 30 days, there'd be no decision to be made. It wouldn't go to arbitration because the motion had been rejected. That's the way I read it. It doesn't say that you just have one vote, and if it doesn't have two thirds, it's over. It actually refers to "or may decide by an affirmative vote of the majority" to reject the motion. Isn't that the end of the story? Why would you go to the next section if you reject the motion? You couldn't get it passed, but you could reject it?

Mr. Melville: Again, I'm not sure I can answer the question as asked. Are we able to talk about subsection (11) now that it's in the—

Mr. Hardeman: Maybe I could rephrase it, Mr. Chairman.

Mr. Duguid: Just on a quick point of order, Mr. Chair: I understand where the member is going to. If we move forward section by section we'll get to that section and perhaps give staff an opportunity to think about the very complex question he just asked, get clarification on it and have a more substantial answer. It's 10 to six now. I expect we're probably not going to get to that section by tonight.

Mr. Hudak: On a point of order, Mr. Chair: I do appreciate that the government motion, similar to Mr. Hardeman's motion, is looking to create that supermajority. My hesitancy in voting on this—I'm inclined to support a supermajority—is that I don't know what the ramifications are down the road. I'd be glad to move on. Could we just stand this one down until we get to the other section, just so we could understand it? Is that within procedure?

The Vice-Chair: Is that agreed?

Mr. Duguid: We don't have a problem with that.

Mr. Hudak: Thank you.

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Ms. Horwath: On a point of order, Mr. Chair: If we stand it down, it can still be debated after it comes back up? OK, because I have a point.

Mr. Hardeman: I don't object to standing it down. If I could ask one more question before we stand it down, I just wonder, in subsection (12), where "mediator's report" comes from?

Mr. Melville: It refers to a previous section that's not before us at the moment, but it would be in section 43. There is a mediator, as my colleague mentioned, as an intermediate step.

Mr. Hardeman: The real explanation, then, is that we shouldn't be jumping out of order with motions.

The Vice-Chair: We'll go to the next motion. It's an NDP motion, page 40.

Ms. Horwath: I move that paragraph 2 of subsection 26(6) of the bill be amended by striking out the portion before subparagraph i and substituting:

"2. When deciding a matter relating to a specified change to the primary pension plan, the arbitrator shall consider the following matters:"

Mr. Duguid: I'm just wondering—I've got number 39 here. Did we miss 39? We stood the whole section down?

The Clerk of the Committee: We stood down the motion on page 39 until we deal with the motion on page 67, and then we stood down 39a because there was agreement. Now we're on page 40, which is still to section 26 of the bill.

Mr. Duguid: That's fine.

The Vice-Chair: Any debate?

Mr. Duguid: Very briefly, we believe arbitrators need to take into consideration a variety of elements for decisions on all plans, not just the primary pension plan. This would require the arbitrator to take into account various circumstances outlined in the bill, such as legal requirements relating to pension plans, the advice of the administration committee, the economy of the province and the overall financial state of OMERS employers. This is only with regard to arbitrated decisions for the primary pension plan and not with regard to arbitrated decisions for supplemental plans. As a result, we won't be supporting it.

The Vice-Chair: Any further debate? Seeing none, all in favour? Opposed? That's lost.

Page 41, an NDP motion:

Ms. Horwath: I move that paragraph 4 of subsection 26(6) of the bill be struck out.

This is the issue of the 0.5% cap of pensionable earnings of members of the plan. It's a limit that we heard over and over again was inappropriate and should be struck, so this motion is one that strikes that cap. It's pretty clear. A number of members, a number of deputants who came before the committee indicated concern over this cap and, similarly, some of the other caps in the bill. In effect, this motion addresses the removal of the cap.

Mr. Hardeman: I have a quick question. As I read this amendment, I see that it has nothing to do with the cap; it has to do with making bylaws of what they're going to do. If we take that away, that still doesn't mean they aren't covered by the cap that's in the bill in other sections. You can see where, in one place, if one overrides the other, we have a problem. But if it's not mentioned anywhere, I don't know why they wouldn't be

covered by the cap anyway. I don't necessarily support the cap. In my mind, this doesn't change the bill.

Ms. Horwath: What it does, though, is it caps the amount of a decision that the arbitrator can have effect on. So what it does is it caps the amount of pensionable earnings of a member of any of the plans that can be addressed.

I don't know if perhaps you're looking at the wrong section, Mr. Hardeman. I'm referring to the restriction that's being put on an arbitrator's decision in this section, and that's why it was raised as something that was of concern. It basically prohibits the arbitrator from making a decision to increase benefits where the result would be an increase in the required contribution rate of more than 0.5% of pensionable earnings of the members of the plan. It is an unnecessary limit since the arbitrator is already required to consider such factors as the economic conditions of the province and the financial state of employers that are participating. In effect, the arbitrator is required to consider all of these factors already, and putting that cap in is not necessary, in the opinion of New Democrats as well as a number of the deputants who came forward.

Mr. Hardeman: I apologize. I was looking at the wrong section of the bill, and I stand corrected.

I just have a question to staff on the 0.5%. I know the member proposing the motion suggested—and we heard presentations on it—a cap to the increases or to the value of the pension for a lot of the members of the OMERS plan. Is that what this 0.5% does? Does it have anything to do with that, or is this just the amount by which an arbitrator can increase pensions to anyone in the plan, including the supplementary plans, to see a phased-in approach, as the management side was suggesting was required?

Ms. Hope: The impact of this 0.5% is more the latter in your question. It is a limitation on the cost impact of what an arbitrator can award through an arbitration decision.

Mr. Hardeman: So it's reasonable, then, to make the assumption when we're talking about the presentation from CUPE group, and they talked about the cap—the lower range of pay, how much they could go up to and what was the maximum of their pension, they're being capped, that's the best they can get—that has nothing to do with this 0.5%?

Ms. Hope: Yes. If employee groups were permitted to seek a higher CPP integration rate—I believe that's what you're referring to—there would presumably be some cost associated with that in terms of the impact on contribution rates. If that kind of matter were before an arbitrator, the arbitrator could not make an award that would impact on the contribution rates of each of employers and employees by more than half a percentage point. I don't know if that helps.

Mr. Hardeman: Thank you.

Ms. Horwath: So if I can, then, what this does in any one arbitration settlement, in any one arbitration decision, is restrict what the arbitrator can award. The other language I think the member is referring to is just the overall cap, so if this wasn't here and the award was able to be higher than this, it's quite possible that they would still be prevented from making gains because of the other cap. But if this particular cap on arbitration awards were removed, it might be a quicker process over time to move those plans up to a better amount for the members who raised this issue when they came to committee.

The Vice-Chair: Any further debate? Seeing none—

Mr. Jean-Marc Lalonde (Glengarry–Prescott–Russell): Mr. Chair, all I can say in this case is that this section is as much for the employee as it is for the employer. Otherwise, if we were to remove that section, there wouldn't be any cap or limit.

Ms. Horwath: I think that if the member had had some time to look through Hansard to see the issue that was raised over and over again, not necessarily with regard to this cap, but the other caps, that's exactly why the caps aren't necessary. It's in both the employer's and the employee's interest to have a reasonable view to what the contribution rates should be. Whether it was CUPE members or firefighters or police or anybody who came to the table, I asked them specifically whether or not they thought that the give and take or the checks and balances of contribution rates increasing, having an effect on both parties, would balance the interests, and in fact they said that it did. So those caps were not necessary. I very much agree with Mr. Lalonde, although I have to say that I think it reinforces my argument more than anything else.

Mr. Hardeman: In suggesting that I'm not going to support this amendment, I do believe that the cap is in there to change, whether we agree or disagree with the regime that's changing, to make sure that it's done in an orderly fashion on behalf of both the employer and the employees as it relates to the amount they have to contribute to get the higher benefit plan. I've talked to some people who have concerns, and I think it has been presented to us, that even if it's a much more lucrative plan, they as individuals don't believe that they want to pay that much more in premiums in order to be able to get that when they retire.

I think it was brought forward—and the government side mentioned it a number of times—that not everyone is going to go to the maximum available in a plan, but I think this helps make sure that it doesn't and that everyone will make the transition in what we could consider an orderly fashion. So I will not be supporting this, to eliminate that 0.5%, though I do support the need to look at that other one as we get further into the plan, as it deals with concerns that were presented to us some time back.

The Vice-Chair: Further debate? Seeing none, all those in favour? Opposed? That's lost.

This committee now stands adjourned until 3:30 p.m. on Wednesday, December 7.

The committee adjourned at 1801.

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STANDING COMMITTEE ON GENERAL GOVERNMENT

Chair / Présidente
Mrs. Linda Jeffrey (Brampton Centre / Brampton-Centre L)

Vice-Chair / Vice-Président
Mr. Vic Dhillon (Brampton West–Mississauga / Brampton-Ouest–Mississauga L)

Ms. Marilyn Churley (Toronto–Danforth ND)
Mr. Vic Dhillon (Brampton West–Mississauga / Brampton-Ouest–Mississauga L)
Mr. Brad Duguid (Scarborough Centre / Scarborough-Centre L)
Mrs. Linda Jeffrey (Brampton Centre / Brampton-Centre L)
Mr. Jean-Marc Lalonde (Glengarry–Prescott–Russell L)
Ms. Deborah Matthews (London North Centre / London-Centre-Nord L)
Mr. Jerry J. Ouellette (Oshawa PC)
Mr. Lou Rinaldi (Northumberland L)
Mr. John Yakabuski (Renfrew–Nipissing–Pembroke PC)

Substitutions / Membres remplaçants
Mr. Ernie Hardeman (Oxford PC)
Ms. Andrea Horwath (Hamilton East / Hamilton-Est ND)
Mr. Tim Hudak (Erie–Lincoln PC)
Mr. David Orazietti (Sault Ste. Marie L)
Mr. Ernie Parsons (Prince Edward–Hastings L)
Mr. John Wilkinson (Perth–Middlesex L)

Also taking part / Autres participants et participantes
Mr. John O'Toole (Durham PC)
Ms. Janet Hope, director, municipal finance branch,
Mr. Tom Melville, legal counsel,
Ministry of Municipal Affairs and Housing

Clerk / Greffière
Ms. Tonia Grannum

Staff /Personnel
Ms. Catherine Macnaughton, legislative counsel