G-41

ISSN 1180-5218

Legislative Assembly
of Ontario

Second Session, 38th Parliament

Assemblée législative
de l'Ontario

Deuxième session, 38e législature

Official Report of Debates (Hansard)

Monday 4 December 2006

Journal des débats (Hansard)

Lundi 4 décembre 2006

Standing committee on general government

Comité permanent des affaires gouvernementales

Municipal Statute Law
Amendment Act, 2006

Loi de 2006 modifiant des lois
concernant les municipalités

Chair: Kevin Daniel Flynn
Clerk: Susan Sourial

Président : Kevin Daniel Flynn
Greffière : Susan Sourial

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Hansard Reporting and Interpretation Services
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Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario

Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

COMITÉ PERMANENT DES AFFAIRES GOUVERNEMENTALES

Monday 4 December 2006

Lundi 4 décembre 2006

The committee met at 1611 in room 151.

ELECTION OF CHAIR

The Clerk of the Committee (Ms. Susan Sourial): I'd like to call this meeting to order. Our first order of business is the election of a Chair. Honourable members, it's my duty to call upon you to elect a Chair. Are there any nominations?

Mr. Brad Duguid (Scarborough Centre): I'm delighted to nominate Kevin Flynn.

The Clerk of the Committee: Mr. Duguid has nominated Kevin Flynn. Are there any further nominations? Seeing none, I declare nominations closed and Mr. Flynn elected Chair.

MUNICIPAL STATUTE LAW AMENDMENT ACT, 2006

LOI DE 2006 MODIFIANT DES LOIS CONCERNANT LES MUNICIPALITÉS

Clause-by-clause consideration of Bill 130, An Act to amend various Acts in relation to municipalities / Projet de loi 130, Loi modifiant diverses lois en ce qui concerne les municipalités.

The Chair (Mr. Kevin Daniel Flynn): We've been called to order already. We're meeting today for clause-by-clause consideration of Bill 130, An Act to amend various Acts in relation to municipalities. As we have five schedules in this bill, what I would like is unanimous consent of the committee to consider the schedules first and then come back and consider sections 1 to 3. Is there consent?

Mr. Ernie Hardeman (Oxford): Before the unanimous consent, I have a request. I wish to read into the record a written presentation that was made by the Ombudsman to the committee. I'm just suggesting that we do that prior to going through on the clause-by-clause, recognizing that the presentation deals with a number of items in the bill. In the interest of time, I don't want to have to read the presentation each time a part of the bill comes forward that the presentation deals with. I leave it to you to decide whether I should do that before we go to the schedules or right at the first of the committee hearing.

The Chair: Thank you, Mr. Hardeman. I'll just ask the clerk.

In consultation with the clerk, Mr. Hardeman, what may be the best way to proceed, which I think may accomplish both here, is that we do the unanimous consent first, and then if you would like to read the motion into the record after that—would that suit your needs?

Mr. Hardeman: That's fine with me, sir.

Mr. Duguid: Just on a point of order, Chair: I may be willing to consent to this, but it's with some reservations. We've had an opportunity to read the presentation of the Ombudsman, which I understand is what is before us here. To read word for word the presentation into the record, in my view, accomplishes absolutely nothing but takes up committee time that could be spent going through clause-by-clause and dealing with it section by section.

I understand that Mr. Hardeman has the ability to do this clause by clause and he can pursue it that way, and that may be even more painstaking than having him read the presentation out, but certainly from our side, while we will give unanimous consent to allow him to do that, it's with reservations. We hope he reads it quickly and lets us get on with our clause-by-clause. I'll close with those comments.

The Chair: Any further comments?

Mr. Michael Prue (Beaches–East York): Just quickly, as well, I'm glad that Mr. Hardeman will be reading what the Ombudsman had to say. I do have to say I was somewhat disappointed. This is an officer of the Legislature, an officer who has come forward with very unique ideas, and we should have afforded him the opportunity of a second hearing. I know that the two opposition parties both supported that, but it was not to be. Be that as it may, the very important points he was trying to make still need to be part of the record.

The Chair: Thank you very much, Mr. Prue. Is there consent? There appears to be.

Are there any comments or questions on schedule A, section 1 of the bill?

Mr. Hardeman: I guess this is where we—

The Chair: That's right.

Mr. Hardeman: I just want to say, before I read this into the record—and I think it's very important; it was somewhat mentioned by Mr. Prue—that this is a presentation from an officer of the Legislature, and it speaks primarily to the issues that we've been hearing about from presenter after presenter, both from those who support what's in the bill and those who didn't support what

was in the bill. They all spoke to primarily the same issues as this presentation speaks to.

As was mentioned by the parliamentary assistant, I think every member of the committee got a copy of this presentation so they could read it, but I just want to point out for the record that I'm sure there were a number of presentations that members of the committee got that they have not yet read. In fact, there was one here on my desk as I came in that has come in since last we met, yet we are going to be doing clause-by-clause. So I think for it to be part of the public record—and it should be part of the public record, the position of the Ombudsman on this issue. That's why I think it's so critical that we have it on the record. Recognizing it as a written presentation may be just as advantageous to the committee members, but it will not be as advantageous to the public, who want to be a part of this debate and find out how we got to the end result of the bill and why some of the changes that need to be made are being made and why some of the changes that the Ombudsman recommends are not being made.

1620

With that said, I will read it into the record. We know it will take a little bit of time, but I think it's important for all of us, particularly the constituents and the people at home, who have not had a chance to read it and who have not had a chance to dwell on some of the aspects of it. It starts:

"There is little room for closed-door politics in a mature democracy. We in mature democracies speak about transparency and openness with reverence because democracy cannot be healthy without transparency and openness. The reason is simple. Malicious or self-serving or just plain bad decisions, the bacteria of government, can flourish in the dark but in a democracy cannot survive the sanitizing light of public scrutiny. It is no surprise that those who exercise power behind closed doors invite suspicion. Closed doors breed distrust. And they should. After all, democracy and good government is a 'show-me' business, not a 'trust-me' business. It works well only when those who hold public power are prepared to stand up and take responsibility at every turn, not shelter behind closed doors, the only place where unreasonableness or indolence or indiscretion can find comfort.

"That is why I applaud the theory behind the open-meeting provisions of the Municipal Statute Law Amendment Act, 2006. It is also why I cannot applaud the specifics of the bill. It is badly flawed. Its shame is that it is in fact enabling legislation—it enables closed government while appearing without critical examination to champion openness. I want to bring that critical examination. Critical examination shows that this bill is not an effective solution to closed government. It needs to be fixed.

"As members of this committee are aware, my concerns about the Municipal Statute Law Amendment Act, 2006 are not confined to the open-meeting provisions I am about to address. They extend to the plan to let municipalities create toothless paper-tiger ombudsmen, even though it would be a simple matter to ensure that everyone in this province has access to effective oversight when confronted with the kind of bureaucratic inefficiency, bad program design, wrong-headed discretion, or simple rudeness that those we elect cannot always attend to. I have said my piece on the ombudsman issue before this committee and, as important as those observations are, I do not want them to waylay me further from addressing the errors that I think are about to be made relating to open meetings. I would have shared my open-meeting observations with this committee directly, but you will recall that I was told my time was up, that I had had my Andy Warhol 15. That is why I am addressing you in this unconventional fashion. I feel the need to do so because the points I am about to make matter. I will keep them brief.

"There are three primary flaws in the open-meeting provisions that are being proposed in Bill 130 that this committee should be aware of and attend to. First, Bill 130 does not adequately promote the culture of openness. Second, it does not provide adequately for prior restraint. And third, it does not provide for effective enforcement. I will address each flaw in turn.

"The culture of openness: Ironically, even though Bill 130 is aimed at increasing openness and transparency, it in fact expands the statutory authority of councils and boards to hold closed meetings. It does so by creating another statutory exception. Section 230(3.1) will allow 'unimportant' meetings to be closed. More specifically, it will permit boards or councils to close their meetings if members are not going to deliberate on, or materially advance, the business of decision-making, whatever that might mean. I understand the idea. If nothing important is going to happen, then we don't need open doors. But here is the thing. Even if public office holders can know in advance whether a meeting will prove to be important or not—a point I am doubtful about—mature democracy will still be harmed by closing the doors. Just as the appearance of justice is critical to the administration of courts, the appearance of accountability is essential in government administration. It is spectacularly counter-productive, if the point is to promote the importance of openness, to allow closed meetings for unimportant matters. We should be working on the notion that it must take a compelling and powerful reason for closing doors, not on the discreditable idea that there should be some compelling or powerful reason for opening them. I can say enough on the point by simply observing that the Association of Municipalities of Ontario defended this exception before this committee by remarking that participants might not be prepared to ask dumb or stupid questions when the doors are open. For my part, I doubt that we should set up a regime that facilitates stupid questions. More to the point, the public should know when their elected and appointed officials are asking dumb questions, just as they should know what else their elected and appointed officials are learning and thinking during meetings held in the public name, under public authority. Creating yet another exception to open

meetings sends the wrong message. It promotes a closed-door culture. Close doors when it is truly needed; otherwise, leave them open.

"Prior restraint: When a meeting has been closed unnecessarily, the damage is done. Learning after a closed meeting is over that it should have been open is about as useful as learning that spinach had E. coli after it is eaten. For this reason, the most meaningful remedy against wrongful closure is prior restraint—discouraging unnecessary closures before they happen. The proposed amendments go a small way toward helping. They will require public resolutions to close meetings, something apt to discourage frivolous closures. The provision does not go far enough, however. The resolution should not simply announce that a meeting will be closed and the general nature of the matter to be considered, as the current legislation contemplates. The reasons for closure should also have to be provided, and a notice period should be required. This way, the public can participate meaningfully in any case where they are going to be shut out before they are shut out. Of course, there will be cases where prior notice is not feasible—where a matter that requires closure arises unexpectedly on a pressing issue. Where this happens, the legislation should require the council or board to explain why it is jettisoning the notice period and rushing ahead. If these kinds of safeguards are not built in, there is little real chance that pointless closings will be prevented before they occur.

"Effective enforcement: What, then, of the ex post facto response, the oversight regime? How effective is the one proposed by this legislation? In truth, the oversight regime that has been designed is decaffeinated; it is too weak to keep any councils or boards awake to the importance of open meetings. At first blush, it may look like the legislation provides for effective oversight because it gives my office, the Office of the Ombudsman of Ontario, authority to investigate allegations that the open-meeting provisions have not been respected. That is, of course, a job we are well-suited to perform because of our independence, our impartiality, our ability to promise confidentiality and our credible investigative process, supported as it is by an existing infrastructure and a professional staff. The problem with the open-meeting oversight plan in Bill 130 is that, if they are so minded, municipalities can simply oust my office. They can remove the jurisdiction of my office to investigate open-meeting violations by simply appointing their own 'investigators,' and they can define the powers and duties those investigators will have.

"Think about it. This legislation contemplates the possibility of 445 different oversight mechanisms sporting 445 different conceptions of when meetings should be open. Even leaving aside the inequality of access to open meetings that this will create from Point Pelee to points north, having a loose and undefined oversight mechanism is no way to assure the people of Ontario that the promise of open meetings is being kept.

"It is bad enough that municipalities can, either by design or inexperience, leave their investigators with a job to do but without providing the requisite tool kit. They can even oust the Ontario Ombudsman's authority to help by assigning the job to an employee of the municipality. In the world of integral Ombudsmanry—or real oversight—appointing an indentured servant to oversee its master is like making Rodney the ombudsman of Id. It defeats any confidence that the public can have that an investigation is real and impartial. Even the association of Ontario municipalities agrees that appointing a municipal employee would be a conflict of interest, but its solution smacks of the very attitude that enables pointless closed meetings to occur in the first place. 'Trust us,' they say. If public confidence could trade on trust, we would not need open meetings, but we do, and public confidence will not trade on incestuous or inadequate oversight schemes.

"The association of Ontario municipalities suggested that municipalities will likely appoint law firms to investigate. This does not solve the conflict of interest problem. It makes it worse. Ethically, law firms owe duties of loyalty to their clients—the very municipalities whose closed meetings they would be investigating. The sad fact is that the oversight regime in Bill 130 does not respect the most basic principles of oversight—independence and impartiality.

1630

"Policy should not be set on the municipal ombudsman issue and on the open-meeting question because of unmeritorious objections by municipal managers to provincial interference and to Queen's Park micromanaging. It cannot be forgotten that the stakeholders are the people of Ontario, not its municipal managers. While this province must respect the municipal jurisdiction it has created and respect the maturity of the municipal governments that serve our communities, it is the government of Ontario that ultimately is the custodian of minimal standards for government across the province. That is a responsibility the province of Ontario discharged so well and without reservation when it defined the jurisdiction of the Information and Privacy Commissioner over municipalities. That same resolve needs to be shown here.

"In light of the shortcomings in the open-meeting provisions of Bill 130, I am making three recommendations:

"(1) Delete the new open-meeting exception proposed for section 239 of the Municipal Act, 2001. It undermines the message that should be sent;

"(2) Amend section 239 so that the closed-meeting resolution provision requires notice or a public explanation for abridging notice, as well as effective reasons for closing the meeting in the first place; and

"(3) Refer complaints about open-meeting violations to the provincial Ombudsman under the Ombudsman Act.

"I am not making this last proposal to enrich our office booty. I am simply letting this committee know that there is cargo room in the very ship that the government of Ontario designed so well to do this kind of task. Do the right thing for accountability and transparency. Instead of a

'trust-me' regime, use the 'show-me' model. We would be pleased to be a part of it."

That concludes the presentation from the Ombudsman that he so desperately wanted to present to the committee but was not afforded the time to do. Thank you very much, Mr. Chairman.

The Chair: Are there any other comments or questions on schedule A, section 1 of the bill? Seeing none, shall section 1 of schedule A carry? Carried.

Moving on, still on schedule A, to sections 2 to 7: There are no amendments. Does the committee wish to collapse them? Is there agreement to collapse sections 2 to 7? Agreed. All those in favour? Opposed? That motion is carried.

Moving on, still schedule A, to section 8: The first amendment I have here is a PC motion.

Mr. Hardeman: I move that section 10 of the Municipal Act, 2001, as set out in section 8 of schedule A to the bill, be amended by adding the following subsection:

"Licences under other acts

"(2.1) The power to pass bylaws under subsection (2) does not include the power to pass bylaws requiring a licence with respect to any business or other activity for which a licence is required under another act."

The reason for this amendment is, it was put forward by a number of presenters to the committee, who put forward the option that if it's already being licensed by other jurisdictions and particularly by the provincial government, the municipality should not be able to re-license the same business just to raise money.

The home builders made a very passionate plea for this, recognizing that Tarion, the warranty corporation, is already the licensing body that all the home builders build into to provide the insurance for every home that's built in the province. They don't feel it appropriate that each municipality could then individually unlevel the playing field for the builders throughout the province by putting a special regime in their municipality to charge for each house that's being built. That's why we're putting this forward. We would hope that the government would see fit to support this motion, as it really does do what the general presenters pointed out to us.

The Chair: Any further speakers?

Mr. Duguid: I won't be supporting this motion. I'll be recommending to government members on this side of the committee to not support this motion, for the following reason: Municipalities may find that there are circumstances where they may want to license a particular sector for different purposes than the province does. We could probably think of a number of hypothetical examples, but let me give you one obvious example. Anybody who owns a driver's licence is licensed by the province. Does this then mean, if we were to pass this legislation—and I would suspect that there would be an argument to be had to say that this is what it would mean—that because somebody has a driver's licence the municipalities would then not be able to license them for other purposes?

We won't be supporting this. We have full confidence in municipalities that they will handle these new tools responsibly. I think we're going to see a trend here, from motion to motion, the differences between how the McGuinty Liberals' government approaches municipalities and how the previous government approached municipalities and still approaches municipalities. This motion, like many others, just shows to me a lack of confidence in the ability of municipalities to handle this new autonomy responsibly.

Mr. Hardeman: Again, I think, totally contrary to the comments made by the parliamentary assistant—the parliamentary assistant used the argument that this would prevent the municipality from being able to license someone who held a driver's licence. If we're going to compare it to a driver's licence, what this motion will do is prevent the municipality from putting in a regime to license truck drivers differently than the province presently does, even though they hold a driver's licence, that they put in a special licensing system, or the fact that the truck driver is performing a duty and working within a municipality as a truck driver, that the municipality could license them separately.

A home builder is licensed by Tarion and governed by Tarion to build homes according to the specifications. What this is saying is, yes, even though the municipality has nothing to do with that issue of building homes—it doesn't stand behind the quality of the homes when they're finished—they do have an ability, because they have the building function, to charge a further charge for people to be allowed to build homes in their municipality when, in fact, the person living in the municipality right across the road doesn't have to pay that. I think that's inappropriate and unfair and it creates an unlevel playing field. That's why I think this is a positive motion. I would again ask the government members to support it, though I'm not overly confident that they will.

The Chair: Any further speakers? There being none, all those in favour? Those opposed? That motion is lost.

Moving on to section 8 again, schedule A again.

Mr. Hardeman: I move that section 11 of the Municipal Act, 2001, as set out in section 8 of schedule A to the bill, be amended by adding the following subsection:

"Licences under other acts

"(3.1) The power to pass bylaws under subsections (2) and (3) does not include the power to pass bylaws requiring a licence with respect to any business or other activity for which a licence is required under another act."

Again, the argument, Mr. Chair, is the same as for the previous section, to say that people shouldn't be in the position where municipalities can double-dip; where, in fact, a second licensing fee could be charged for the same function.

The Chair: Any further speakers?

Mr. Duguid: Indeed, my argument would remain the same as for the previous motion. Just to add that the minister will retain the ability, through regulations, if he chooses to, to exempt a particular industry down the road.

The Chair: Mr. Hardeman?

Mr. Hardeman: I'd just ask for a recorded vote, Mr. Chair.

The Chair: Any further debate? A recorded vote has been asked for.

Ayes

Hardeman.

Nays

Balkissoon, Duguid, Mitchell, Peterson.

The Chair: That motion is lost.

Moving on to another PC motion, regarding 9.1.

Mr. Hardeman: I move that section 11 of the Municipal Act, 2001, as set out in section 8 of schedule A to the bill, be amended by adding the following subsection:

"Transfer of water and waste water powers

"(9.1) For greater certainty, sections 188 to 193 apply to the transfer of any power relating to water and waste water services."

This is an amendment to deal with the presentation made by the county of Oxford relating to their water and waste water problem. Which level of government has the responsibility? Since it was originally set up to be a straight county function, they have contracted it to the lower-tier municipalities. There was some discussion that the bill should be changed to make it a joint jurisdiction and mandate that in the bill. This resolution just suggests that a triple majority would be required to make the changes for the responsibility to go from one tier to the other.

1640

The Chair: Thank you, Mr. Hardeman. Is there further debate?

Mr. Duguid: We won't be supporting this motion. I'm not really sure what the rationale is. It appears to clarify the powers to transfer through triple majority, including water and waste water, which clearly is already possible under the legislation. I'm not really sure of the purpose of this. I guess I'd be a little bit afraid of potential different interpretations. Somebody down the road trying to interpret this legislation may think there was some kind of reason or try to interpret the reason we're doing this. So we won't be supporting it, because we don't feel it's necessary.

Mr. Hardeman: I recognize the concern expressed by the parliamentary assistant. It is strictly a motion to clarify the situation. The process has taken place. Both the county and the city presented to the committee, speaking to this issue. Because, in the spheres of responsibility, water and waste water are an upper-tier responsibility, the city suggested that it be changed to a joint responsibility. The county said it is premature to do that, even though it is already being conducted as a joint responsibility.

So this resolution is just to explain and to put it in legislation, to codify, shall we say, the position that presently exists and not to move forward and make it a lower-tier responsibility, which was, according to the county, a dangerous precedent. I think not passing this resolution will not change what is presently on the ground, but it clarifies that beyond this point they could change what they're doing. If we look at the triple majority situation presently in the bill, my understanding is that there is no rehashing of the same issue. So if you have used the triple majority once, it's difficult to move the triple majority back. This would clarify that it can go up and down with the triple majority vote at any given time.

The Chair: Any further speakers on this issue? Seeing none, all those in favour? All those opposed? The motion is lost.

Moving on then to a government motion on page 4. Mr. Milloy.

Mr. John Milloy (Kitchener Centre): I'd like to move the following motion: I move that item 2 of the table to section 11 of the Municipal Act, 2001, as set out in section 8 of schedule A to the bill, be struck out and the following substituted—and I have to apologize, Mr. Chair. I'm reading a table, so I hope this—

The Chair: I can't wait to see this.

Mr. Milloy: Yes. The table would read:

"

2. Transportation systems, other than highways	Airports	All upper-tier municipalities	Non-exclusive
	Ferries	All upper-tier municipalities	Non-exclusive
	Disabled passenger transportation systems	Peel, Halton	Non-exclusive
	Whole sphere, except airports and ferries	Waterloo, York	Exclusive

"

The Chair: Thank you, Mr. Milloy. Any comments?

Mr. Milloy: Yes. I think members will recall—and it's part of the reason that I have the pleasure to move this motion—a presentation that was made by the region of Waterloo, of which of course I'm one of the representatives. Right now, due to what I think is basically a historical anomaly, Waterloo and York regions have the authority to provide bus transportation but cannot consider other options. One of the big ones right now in Waterloo is a current discussion that's going on around light rail transit. This amendment will allow Waterloo and York to consider these other options. As I mentioned, the region of Waterloo requested this amendment, and I'm told that York region staff have raised it with officials in the ministry. I believe this is consistent with the government's decision to provide opportunity for innovative approaches to transportation; it would not, as I say, due to a historical anomaly, limit what Waterloo and York could do.

The Chair: Thank you. Mr. Prue?

Mr. Prue: I was just going to ask a question for an explanation, and I just got it without even asking.

The Chair: Okay. Are there any further speakers to this? Seeing none, all those in favour?

Mr. Duguid: Recorded vote.

Ayes

Balkissoon, Duguid, Hardeman, Milloy, Mitchell, Peterson, Prue.

The Chair: Seeing none opposed, that motion is carried.

Moving on to the PC motion on page 5, Mr. Hardeman.

Mr. Hardeman: I move that item 3 of the table to section 11 of the Municipal Act, 2001, as set out in section 8 of schedule A to the bill, be struck out and the following substituted:

"

3. Waste management	Whole sphere, including waste and recycling collection and processing, but not including disposal sites, disposal facilities and transfer sites;	Durham, Halton, Lambton, Oxford, Peel, Waterloo, York	Non-exclusive
	Disposal sites, disposal facilities and transfer sites	Durham, Halton, Lambton, Oxford, Peel, Waterloo, York	Exclusive

"

The Chair: Thank you, Mr. Hardeman. Are you speaking to the motion?

Mr. Hardeman: Yes. I think this amendment is in fact the request of both Oxford county and the city of Woodstock—they made presentations, and I believe some of the other ones—to seek clarification, as the present act says that waste collection is a joint responsibility and waste disposal is an exclusive sphere in the responsibilities, and there really isn't anything dealing with recycling and the process of collecting recyclables and whether processing recyclables is a waste disposal process or a different process. This is just intended to clarify the division between the responsibilities, that the collection of everything that's being collected is a joint responsibility and the disposal stays an upper-tier responsibility.

The Chair: Thank you, Mr. Hardeman. Further speakers?

Mr. Duguid: I recognize that this is a request from the city of Woodstock, and I believe the county of Oxford supports it as well. The concern we have is, what about the other municipalities in the region? We don't know what their views are on this—Tillsonburg, Ingersoll or others. The other concern we have is that this doesn't just impact that region or that county; it impacts all the others involved here: Durham, Halton, Lambton, Peel, Waterloo and York. We don't know how they feel about this particular amendment either.

We feel that if there is the consensus that Woodstock and Oxford county indicated existed for something like this, then they shouldn't have any trouble reaching a triple majority in terms of having the majority of councils with the majority of the population and the majority of the regional councils, or county council I guess, supporting this.

We will not be supporting it for that reason. It may be a good idea. It may actually be what's going on there now. We're just concerned about the unintended impact on other municipalities and regions which are impacted by this, and we don't know whether they're for or against it.

The Chair: Thank you, Mr. Duguid. Any further speakers?

Mr. Hardeman: I recognize the concern of the parliamentary assistant. I would just point out that, as where everyone stands, this doesn't change the present situation except that it identifies the recycling as part of the process in the non-exclusive area as opposed to in the exclusive area. Some of the ones listed may very well have a recycling depot that is an upper-tier, and I think most of them do that. That's an upper-tier, but the lower-tier municipalities have the right to be involved in that too. So I think this just clarifies what's presently happening as it relates to Oxford and the other municipalities. The resolution was from Oxford county council. They said they wanted this clarified as to where recycling fit into the system, and that was supported, obviously, by the majority of the municipalities in Oxford county through the county resolution. The city also presented to us to show their support for it.

The Chair: Any further speakers? Seeing none, all those in favour?

Mr. Hardeman: Recorded vote.

The Chair: A recorded vote is called for.

Ayes

Hardeman.

Nays

Balkissoon, Duguid, Milloy, Mitchell, Peterson.

1650

The Chair: That motion is lost.

We move on to the next motion, which is a government motion on page 6.

Mr. Duguid: Mr. Chair, this is a little unusual, but I was going to offer Mr. Hardeman an opportunity to put this motion forward. It is the one area where we were able to accommodate some of the concerns of his community. I may regret this later, as the committee soldiers on, and think that our good intentions here may not be reciprocated, but I'm pleased to let Mr. Hardeman move this. It's the same intent as his next motion that he has

put forward, but I think the wording is a little more legally accurate.

The Chair: Thank you, Mr. Duguid. Mr. Hardeman?

Mr. Hardeman: With that offer, I will withdraw the next motion that will be coming forward, which is our party's motion to the issue, and move this one.

I move that item 10 of the table to section 11 of the Municipal Act, 2001, as set out in section 8 of schedule A to the bill, be struck out and the following substituted:

"

10. Economic development services	Promotion of the municipality for any purpose by the collection and dissemination of information	Durham	Exclusive
		All counties, Halton, Muskoka, Niagara, Oxford, Peel, Waterloo, York	Non-exclusive
	Acquisition, development and disposal of sites for industrial, commercial and institutional uses	Durham	Exclusive
		Halton, Lambton, Oxford	Non-exclusive

"

The Chair: Thank you, Mr. Hardeman.

Mr. Hardeman: I think the resolution reflects some of the issues that were brought forward by a number of communities, including Oxford county, that they wished this to be clarified. In fact, both the presentations that came from Oxford, the city and the county, asked for the issue to deal with the non-exclusivity, because since 1975 the county has shared that responsibility with their lower-tier municipalities, and they would like it to be recognized in legislation.

The Chair: Any further speakers? Seeing none, all those in favour? Those opposed? That motion is carried.

The motion on page 7 has been withdrawn.

We're going on to a PC motion now on page 8.

Mr. Hardeman: I move that section 11.1 of the Municipal Act, 2001, as set out in section 8 of schedule A to the bill, be amended by adding the following definition:

"'recycling collection' means the curbside collection of recyclable material for delivery to a recycling facility."

Again, this amendment was put forward by the county of Oxford and recommended by the county of Oxford simply to seek a better definition of what is meant by "recycling collection" in the act. This is to explain that, since there has been considerable debate within the county in the past number of years in their waste management debate as to what is recycling and what is garbage, what part of the recycling process is collection and what part is processing, and where the processing of recyclables fits within the spheres of responsibility. This is a definition to help clarify what constitutes recycling.

Mr. Duguid: I believe this is sort of connected to motion number 5, which we voted down. Since we voted down number 5, there's really no need to redefine the recycling collection definition, so we won't be supporting this.

The Chair: Any further speakers on the motion on page 8? All those in favour? Those opposed? That motion loses.

Moving on to a PC motion on page 9, Mr. Hardeman.

Mr. Hardeman: I move that section 11.1 of the Municipal Act, 2001, as set out in section 8 of schedule A to the bill, be amended by adding the following definition:

"'waste collection' means the curbside collection of waste materials and includes special collection at curbside or depots for specific waste materials including household hazardous waste, large items or items not normally permitted or included in general curbside collection for delivery to a disposal facility or transfer station;

"'waste management' includes garbage disposal, garbage transfer stations, recycling facilities for processing or transferring recyclables and waste reduction policy initiatives designed to divert materials from garbage disposal facilities."

This is similar to the previous motion. This amendment seeks to better define the terms "waste collection" and "waste management" in the act. There has been, particularly as it relates to the—and I expect this is a greater issue in rural, smaller-town Ontario than it is in downtown Toronto, but the issue of, first of all, passing policies that restrict the—

Interruption.

The Chair: Sorry about that.

Mr. Hardeman: I didn't know that was even allowed in committee.

The Chair: This thing has never rung.

Mr. Hardeman: I think it relates a lot to the presentation made by Oxford county. Obviously, I'm missing the point on why these amendments are there, but there's a lot of concern, as the county operates the facility for all the disposal in the county but the lower-tier municipalities have jurisdiction over the recycling: When it comes to government-mandated waste reduction, whose responsibility is it? The county doesn't control the recycling materials or the process of recycling; it doesn't control the pickup. When they're trying to put initiatives in place that would reduce the amount of waste coming, they can't do that because that's a local jurisdiction. The local municipalities have no connection to the disposal site, so they're just looking at the bottom line as it relates to how much it costs to bury it and how much they want to spend on the other initiatives.

This really more clearly defines things like the spring cleanup that they hold in a lot of rural Ontario, where people have been sending their household waste all year, but then once a year the works department of the lower-tier municipality has spring cleanups. They want a clearer definition of what that is and whose responsibility that spring cleanup is.

That's the reason for this. It would not materially affect the province in their operations, but it would help

those municipalities that are affected by the definition of what is "waste collection and disposal" and what is "recycling collection" and "recycling processing."

The Chair: Thank you, Mr. Hardeman. Any further speakers?

Mr. Duguid: My concerns on this motion would be the same as the previous: that we're getting into more definitions here. Unfortunately, what this does is it has the potential to narrow the powers of the municipalities.

I can give you some examples. The proposed definition talks about collection of waste from curbside or depot, but it doesn't talk about collection of waste from other places. There could be a possibility of backyards or inside buildings. If we fill the definitions, we just narrow it too much. The current definitions provide for a little more leeway for municipalities, so we'd just as soon keep it the way it is.

Mr. Hardeman: Just in clarification, I don't believe under the Municipal Act that municipalities presently have the right to collect out of backyards. My understanding has always been that they can't go on private property to do their collections—but they do. Be that as it may, this doesn't prohibit it. The reason there is a description of the depots is, there are communities that don't have curbside, that have people bring it to the depot, and it then becomes their responsibility as waste collection, not as waste transfer stations, because they're collecting it; the original stop is for the collection from the waste depot. But having heard that the government is not going to support this motion, I guess I should save some of my powder for a different one.

The Chair: Mr. Prue may have some powder as well.

Mr. Prue: It's not so much a comment; it's a question to the mover. What would happen if the motion doesn't pass—everything would go on the way it is, and if it is passed, it would just go on the way it is? I don't understand what the difference would be.

Mr. Hardeman: If I could, Mr. Chairman, in my community, there was a lot of discussion about who's responsible for what and whether the upper tier can take that responsibility and force that level of service on all communities. Some have household hazardous waste collections; some do not. But under the present, there is no definition of the difference between the two, so they really don't know who should be getting what service. We have one town that wants a higher level of service, but they don't want to pay the full cost to the county and then also provide the high level of service just to their town. They want to clearly define who's responsible for what.

It will not change much what's on the ground with this resolution, but for future changes and what they want to accomplish in the county, it will make it clear as to who's responsible for what.

1700

The Chair: Any further speakers to the motion on page 9? All those in favour? Those opposed? The motion is lost.

Shall section 8, as amended, carry?

Mr. Hardeman: Recorded vote.

Ayes

Balkissoon, Duguid, Milloy, Mitchell, Peterson.

Nays

Hardeman, Prue.

The Chair: That motion is carried.

There are no amendments before the committee on sections 9 to 14. Shall we collapse them and deal with them as one? All those in favour of sections 9 to 14? Those opposed? Those sections are carried.

Dealing with section 15, page 10, and it's a government motion.

Mrs. Carol Mitchell (Huron–Bruce): I move that section 23.5 of the Municipal Act, 2001, as set out in section 15 of schedule A to the bill, be struck out and the following substituted:

"Delegation re hearings

"Application

"23.5(1) This section applies when a municipality is required by law to hold a hearing or provide an opportunity to be heard before making a decision or taking a step, whether the requirement arises from an act or from any other source of law.

"Delegation authorized

"(2) Despite subsection 23.2(1), sections 9, 10 and 11 authorize a municipality to delegate to a person or body described in that subsection the power or duty to hold a hearing or provide an opportunity to be heard before the decision is made or the step is taken.

"Rules re effect of delegation

"(3) If a municipality delegates a power or duty as described in subsection (2) but does not delegate the power to make the decision or take the step, the following rules apply:

"1. If the person or body holds the hearing or provides the opportunity to be heard, the municipality is not required to do so.

"2. If the decision or step constitutes the exercise of a statutory power of decision to which the Statutory Powers Procedure Act applies, that act, except sections 17, 17.1, 18 and 19, applies to the person or body and to the hearing conducted by the person or body."

If I could also provide a comment, I just want to say that it certainly has been the government's intent to provide municipalities with the flexibility to manage their affairs, and this motion restores the authority of the municipality to delegate to another body to deal with recommendations that would come back to council.

Mr. Duguid: The reason for this motion: It came to us through recommendations from municipal lawyers. They were concerned that they were no longer going to be able to delegate hearings for lottery licence refusals, suspensions and revocations to a committee of council. Their concern, which we can have legal counsel here

explain, if necessary, was that the current legislation, as it was written, Bill 130, talked about the law, but they were worried that it wouldn't include when they were required to delegate these decisions and conduct these hearings by order in council.

It's pretty hard to really understand exactly what their concerns were, but our legal staff agreed with the municipal lawyers that it was an appropriate change. There's nothing more to it than that, but if you require a greater explanation, certainly our legal staff would be happy to provide it.

Mr. Hardeman: If I could, not to prolong it, I would like to hear the legal explanation, because I have real concerns about how it deals with the public hearings. If we can delegate the hearing and we didn't delegate the decision, then what good is the hearing if the people who are listening are not the people who are going to make the decision?

Mr. Scott Gray: My name is Scott Gray, Ministry of Municipal Affairs and Housing, legal branch.

The existing section 252 of the Municipal Act is virtually identical to this. It gives this authority to municipalities now. If you have an obligation to hold a hearing for making a decision, you can give that hearing function to a committee of council. They can hold the hearing, make recommendations to council and then council makes the decision.

That provision was rather enthusiastically deleted by Bill 130, and I think it was Hamilton that came up and said, "Gee, there are decisions"—in the bill, we do allow delegation of hearings for anything under the Municipal Act. But they said, "This one doesn't come under the Municipal Act; this one comes by way of the Criminal Code, and a provincial order in council authorizes us to issue bingo licences. That isn't covered by the delegation provision that's in the Municipal Act, so could you please restore the power we had before under the old Municipal Act, section 252?" That is in fact what this is doing.

What will happen, what can happen, is the same thing that happened before. They want to revoke a bingo licence—someone is a bad actor, or for whatever reason—so they can delegate that to a council committee, whoever's responsible for that, they'll review whether that should be revoked or not revoked, make a recommendation to council and then council will make the final decision. If they want to hold a complete re-hearing of the issue, they're free to do that. If they want to rely on the committee and just hold a relatively small version of the hearing, they're entitled to do that as well.

Mr. Hardeman: What you're suggesting then is really, as it relates to the rights and privileges of the charged, shall we say, the people who are in difficulty because of a licence or an infraction or something, they are losing their ability to appear before the judge who is going to sentence them, which is council?

Mr. Gray: Council has the ability to say, "Yes, you're going to make your case to this other body." Council has the will to say, "And when that decision comes to council and you want to speak directly to council, you can't speak"—

Mr. Hardeman: I guess my problem is not what council can do. Again, this is my whole problem with the whole discussion on the bill: We seem to forget that this isn't to protect council; this is a bill to protect the citizens of the province of Ontario. So what you're saying is, council can decide that they can't make a decision based on not having enough information, but the accused cannot get his day in court in front of the judge who's going to sentence him. The council gets to agree whether the licence will be suspended, but the accused will not have the opportunity to speak to council directly to put their case forward. It's like the judge deciding that, "These cases aren't that important, so we'll turn these over to my assistant, because I was looking to go off for a bit of a holiday, and I don't want to mess with these decisions that it's automatic that we're going to say we're going to sentence him anyway." It seems to me that we're having a problem here, that we're taking away one's right to be heard.

Mr. Gray: First off, it is status quo. It's a long-existing provision, but it doesn't eliminate the fact that council still has to make the decision. Council just can't accept the recommendations and rubber-stamp them; council still has to turn their mind to the issue. In many circumstances I'm aware of, council ends up holding a hearing with as much detail and time and effort as the committee that already went through it—much to their chagrin, I might say, in some cases, but that's actually what happens on the ground.

Mr. Hardeman: If it's the status quo, is that the only reason we can give for this being a positive move? If the status quo is what we're all after, then we really don't have much sense in being here, because the status quo needs to be changed, in the government's mind. I can't figure out what the positive of this change is.

Mr. Gray: It's kind of the same thing why a committee establishes a committee of adjustment. All of council's time could be taken up running these hearings. You would have to be having meetings every night of the week. The notion is that there are certain things that need to be done. Council as a whole can't exercise all those powers, and at times there's a need to have a subset of council to look into matters and report back to council, which ultimately then still has to turn its mind to that decision. If they just rubber-stamp the recommendations that come back to them, that can be challenged, because that's not a decision. They have to keep an open mind and they still have to determine whether or not the recommendation is what should be accepted. If that means re-hearing submissions from the people who have already spoken to the committee, that's what it will involve.

1710

Mr. Hardeman: But this would eliminate any possibility of the accused asking for that hearing and receiving it.

Mr. Gray: They can ask. Council has the choice whether to delegate it or not. They can ask council, "Please don't delegate it. I want the hearing at the full council." That's still a possibility. And even if it is delegated, they can say, when the recommendations come back, "I want an opportunity to speak directly to council." They can certainly continue to ask that.

Mr. Hardeman: Is there anyplace else in the bill where the decisions of an appointed body are not appealable?

Mr. Gray: Of an appointed body?

Mr. Hardeman: This one here takes away the right to appeal. Once I've presented to a committee and the committee says, "You lose your licence," and their recommendation goes to council, council never has to hear from the accused again, so in fact he has absolutely no appeal.

Mr. Gray: They have a political appeal. This is a political decision—well, it's not a political decision; that's wrong, or it wouldn't be a hearing. But it is a decision council is entitled to make. If somebody doesn't like the recommendations that the committee has made, they can certainly appeal to council: "I think they got the wrong end of the stick here. Let me say my piece and maybe I can persuade you otherwise." That isn't removed.

The Chair: Thank you, Mr. Hardeman. Mrs. Mitchell.

Mrs. Mitchell: I just wanted to add a comment. As the member knows, we come from the same backgrounds. I can tell you that this is very problematic in rural communities. You were making some comments about rural communities. By giving the ability for council to give authorization to another body, it gives them more flexibility for their meetings. I know this came up repeatedly, when I was on municipal council, to give them—and it was taxi licensing at that time. It gave a fuller opportunity for full discussion with regard to taxis. It just didn't give time within the municipal body, through the whole agenda, because of all that was going on. So that was certainly why my municipal councils requested that. Really, I do feel that this does truly reflect the scope that the municipal councils are capable of and reinforces that. This does not negate the applicant's ability to still petition council. It just allows for fuller discussion.

Mr. Hardeman: I guess that's exactly my question, and so far, from the legal branch, I keep hearing that it does prevent the applicant from appealing to council because there is no appeal mechanism left. If they make a recommendation and they've held the only public meeting, council has the ability to make a decision without ever seeing the applicant. What does the applicant do with that decision?

The Chair: Okay, let's be clear on this. Mr. Hardeman is asking if a person who is appearing before a body that's been constituted by council still maintains the right to appeal to the council as a whole.

Mr. Gray: They can certainly do what all citizens can do when council is making a decision, which is to go to that council and say, "I don't want you to follow that recommendation that's made, for the following reasons."

The Chair: So the answer is, they do maintain the right to appeal.

Mr. Gray: Yes, they do.

The Chair: Unless I'm missing something—

Mr. Hardeman: Mr. Chair, I'd like that clarified. Is there any obligation on council to hear from the applicant?

Mr. Gray: The obligation of council is to make sure that they don't rubber-stamp those recommendations. They have to make sure they have heard enough information that they can make their own decisions. They can't just close their minds and say, "That recommendation is what we're going to approve." If people are able to persuade them that they need to hear additional information, they're going to have to. I mean, if that decision is challenged, if there's a judicial review of that decision and they haven't got the information they need to make that decision, that decision can potentially be overturned.

Mr. Hardeman: So from that I'm to assume, and you just mentioned the magic words, that the only way an applicant could get his day in court in front of council, if council doesn't want to hear any more, if they're so busy with other things, is through a judicial review, and then the judge has to decide that council didn't have enough information to make their decision. This is taking away the people's right to be heard by council, because council is not obligated anywhere in this resolution to actually personally hear from the applicant before they make their decision.

Mr. Gray: The right to be heard is not guaranteed. The right to have your case fairly considered is guaranteed. They have to have evidence in front of them so that when a court reviews it, they can say, "Yes, council fairly came to that decision. The process they used was a fair process." And if it was found to be unfair because they didn't give him an opportunity to be heard, then the decision isn't valid.

Mr. Hardeman: Is that written somewhere in the act?

Mr. Gray: No, that's the common law. It's common law; some of it is statute law.

Mr. Hardeman: So it has nothing to do with the act? The act the way it's written is defined in what I've suggested, that if you're heard by the committee that was authorized to hear it, you do not have the given right to be heard by council.

Mr. Gray: The act has to be read in the context of the law that exists out there, so we write legislation on the assumption that the court system is there, on the assumption that when you make a hearing you're subject to judicial review. When there is an obligation, such as when you're refusing someone a taxi licence or revoking it, the law says you have to give them a hearing, and that hearing process has to be run in a way that's fair to that person. If it's not run in a way that's fair to that person, the decision can be overturned by a court. That's the context within which we write a piece of legislation like this.

Mr. Hardeman: I still disagree, but we'll leave it at that. I request a recorded vote on it.

The Chair: Are there any further speakers? Seeing none, all those in favour?

Ayes

Balkissoon, Duguid, Milloy, Mitchell, Prue.

Nays

Hardeman.

The Chair: That motion is carried.

Shall section 15, as amended, carry? Those in favour? Those opposed? Section 15 is carried.

The committee will note that there are no amendments for sections 16 to 27. Can we deal with them as a whole? Can we collapse them? No objection? All those in favour of sections 16 to 27? Those opposed? They are carried.

Moving on to page 11, part of section 28: It's a PC motion. Mr. Hardeman.

Mr. Hardeman: I move that section 28 of schedule A to the bill be amended by adding the following subsection:

"(2) Section 69 of the act is amended by adding the following subsection:

"'Region of Waterloo

"'(8) The region of Waterloo may use any technology within the full range of higher order or rapid transit technologies for both conventional and disabled passenger transportation systems.'"

The Chair: Thank you, Mr. Hardeman. Are you speaking to the motion?

Mr. Hardeman: Yes. This amendment seeks to rectify an old exemption that causes the region of Waterloo and York region to be the only regions that do not have the authority to employ the full range of higher-order rapid transit, light rail etc. The region of Waterloo is growing rapidly and has been designated by the province as an area of further growth. The PC caucus believes that they should be given the tools to deal with that growth. This comes from a presentation that they made directly for this part of the act to be changed to allow them to do the full range of things that they believe they need to do.

The Chair: Further speakers?

Mr. Duguid: We've already done this in a motion moved by Mr. Milloy, motion number 4. This is just different wording to do the same thing. You don't want to have duplication within a piece of legislation. We won't be supporting this for that particular reason. It's already done.

Mr. Hardeman: I'll withdraw the motion.

The Chair: Okay, that motion is withdrawn.

All those in favour of section 28, as written? Those opposed? Section 28 is carried.

1720

Sections 29 to 36 have no amendments before us. We'll deal with them as a whole and collapse them. Any objections? All those in favour of 29 to 36? Those opposed? That motion is carried.

Moving on, then, to item number 36.1. It's a government motion.

Mr. Bas Balkissoon (Scarborough–Rouge River): I move that schedule A to the bill be amended by adding the following section:

"36.1 Clause 95(2)(d) of the act is amended by striking out 'subsection 128(4)' and substituting 'section 128.'"

Just an explanation: This simply gives the municipalities broad authority to prescribe any rate of speed on highways under their jurisdiction, with the only limit being that it does not exceed 100 kilometres per hour. That's basically what the motion does.

Mr. Duguid: Just by way of further explanation, section 128 of the Highway Traffic Act was amended in the original Bill 130. This is consequential to that; it's a cross-reference between the Municipal Act and the Highway Traffic Act.

Mr. Balkissoon is quite right: It's to do with speed limits and giving more flexibility to municipalities with regard to speed limits.

The Chair: Thank you. Further speakers? Seeing none, all those in favour of the motion? Those opposed? That motion is carried.

Shall section 36.1, as amended, carry? Section 36.1 carries.

There are no amendments before us on sections 37 to 50. Is it okay to collapse those? All those in favour? Those opposed? They are carried.

We're dealing with the motion on page 13. It appears to be a government motion.

Mr. Duguid: I move that schedule A to the bill be amended by adding the following section:

"50.1(1) Subsection 111(1) of the act is amended by striking out 'or Oxford.'

"(2) Subsection 111(2) of the act is amended by striking out 'upper-tier municipalities of Durham and Oxford' and substituting 'upper-tier municipality of Durham.'"

This is a consequential amendment to, I believe, the amendment that Mr. Hardeman moved regarding the county of Oxford previously.

The Chair: Before we can deal with that, I understand we need unanimous consent to open the section. It's not open in Bill 130. Do we have unanimous consent? Thank you.

Mr. Hardeman, any comments? Mr. Prue?

All those in favour? Those opposed? That is carried.

Shall section 50.1 carry? Those in favour? Those opposed? That is carried.

Moving on to section 51 on page 14: It's a government motion.

Mr. Duguid: Sure, Mr. Chair, I'll read this one too, since my colleagues don't seem to eager to do this.

The Chair: It's hard to get good help, isn't it?

Mr. Duguid: I move that section 51 of schedule A to the bill be struck out and the following substituted:

"51 Section 112 of the act is repealed and the following substituted:

"'Industrial, commercial and institutional sites

"'112 Despite section 11, a lower-tier municipality in the upper-tier municipality of Durham may acquire, develop and dispose of industrial, commercial and institutional sites it acquired or had entered into a binding agreement to acquire on or before the day the upper-tier municipality came into existence.'"

The explanation is identical to the previous amendment. It's consequential to the economic development sphere motion that we moved for the county of Oxford.

The Chair: Any further speakers to the motion on page 14? All those in favour? Those opposed? That motion is carried.

Shall section 51, as amended, carry?

Mr. Hardeman: I have a question. I don't know if it's appropriate, but the previous amendment that was read into the record, I have here on my page, "section 50.1 of schedule A," section 112 of the act. Someone suggested that that should have read "111." I just wonder which way the parliamentary assistant read it into the record, because we just did 112.

The Chair: We'll check that out to make sure we get it right.

Mr. Hardeman: Somebody more astute than myself looked at it and said that that should really be section 111. It doesn't say "sure"; it says "I think."

The Chair: We'd better find somebody more astute.

Mr. Duguid: I guess we'd better find somebody more astute than me as well, Mr. Chair, to take a look at it. Maybe staff could just come up and make a formal confirmation.

Ms. Elaine Ross: Elaine Ross, municipal affairs and housing, legal branch. The first motion was section 111.

The Chair: So that should be changed?

Ms. Ross: I didn't notice that it was read incorrectly. It sounded like it was read correctly to me.

Mr. Hardeman: Was it read as 112?

Ms. Ross: I don't think so; I think it was read as—

The Chair: Just so we're clear, we're dealing with the amendment that's on our page 14, is that right?

Mr. Hardeman: Page 13.

Ms. Ross: The amendment on page 14 is 112, and the previous one is 111.

Mr. Hardeman: On page 13—

Ms. Ross: Oh, the title is wrong.

The Chair: Just in the title?

Ms. Ross: Yes. The amendment is correct: 111. The title has "section 112" in the motion on page 13. Very good.

Mr. Hardeman: One for my side.

The Chair: Mr. Hardeman, it has been noted and that change will be made.

Mr. Hardeman: Thank you very much.

Mr. Duguid: Thank you, Mr. Hardeman.

The Chair: There are no amendments before us on sections 52 to 78. Can we collapse them and deal with them as one? All those in favour? All those opposed? Those sections are carried.

Dealing with 79, we're just going to take a very short break.

The committee recessed from 1728 to 1734.

The Chair: We have a new motion by Mr. Hardeman that hasn't been distributed as yet—now has been distributed during the break, is that right? Mr. Hardeman.

Mr. Hardeman: I move that section 79 of schedule A to the bill be amended by adding the following subsection:

"(4.1) Section 148 of the act is amended by adding the following subsection:

"'Exception

"'(4.1) Despite subsections (1) and (3), a municipality may not require that a retail business establishment be closed to the public on a holiday if the retail business establishment is described in section 3 of the Retail Business Holidays Act as an establishment to which section 2 of that act does not apply.'"

The Chair: Thank you, Mr. Hardeman. Speaking to it?

Mr. Hardeman: I think the main purpose of this is to make sure that, as we provide the ability of municipalities to have more say in when their stores are open, those that are prescribed to be allowed to be open under the act presently—that municipalities could not pass bylaws to close those so that in fact the opportunity for serving the public would be reduced rather than increased. That's because it relates only to the sections where it would describe which ones are allowed to be open under the law presently. This relates primarily to the presentation we heard from one of the large retailers that was concerned about municipalities restricting their ability to do business in that municipality by forcing them to be closed when other municipalities in the neighbourhood were already allowed to be open.

The Chair: Mr. Duguid?

Mr. Duguid: We listened very carefully to the Shoppers Drug Mart deputation when it was held here and certainly looked for ways that we could potentially assist in taking care of their concerns. In the end we came to the conclusion, as we will with a number of these issues, that municipalities are responsible, mature levels of government and will act in the best interests of their communities. We don't expect any municipality to deprive their communities of access to essential drugs and health products that they may require any time, in particular during the holiday season or statutory holidays. So we have confidence that municipalities will deal with this maturely and appropriately, and as a result, we don't feel that this motion is necessary and we will not be supporting it.

The Chair: Further speakers?

Mr. Hardeman: Hearing that, I'm somewhat disappointed. I think this just reassures the people who are trying to do business in our communities of the minimum

protection. If, as the parliamentary assistant suggests, municipalities will not do this, that this will be a moot point in the legislation as to whether—why would anybody need this in there if no one will do that? I think just for the reassurance of the people who, under that section of the act, are allowed to be open, to be assured that that will not disappear in any community when this bill is passed. I think for that we could give that type of assurance by putting this in the act. I don't think it puts any onus on municipalities to do anything other than in the definition of who can stay open under these circumstances, that they must stay open. I don't think that's in any way inferring that they're not a mature level of government. I think it just provides reassurance for the people who expressed concerns, who did not have the same faith in municipalities that the parliamentary assistant has, who were very concerned about what municipalities might do in different circumstances and that they would have a patchwork of opening and closing situations where they couldn't do business in certain communities. I think this is a small way of dealing with that concern.

He did mention the Shoppers Drug Mart presentation. In fairness, in their presentation, they didn't share the concern that municipalities would in no way affect their present operations in the community. I think we could all satisfy their needs by passing this amendment.

The Chair: Mr. Duguid?

1740

Mr. Duguid: In speaking to statutory holidays and special days, I just want, on behalf of our entire government, to wish Mr. Ernie Hardeman a happy birthday. It's his birthday today, and I understand he celebrated it on the weekend with his family. This is not the greatest place, probably, to be spending your birthday, but on behalf of all of us—speaking of statutory holidays—

Mr. Milloy: Is it a statutory holiday?

Mr. Duguid: Trust us. We like Ernie Hardeman, but his birthday will never be a statutory holiday—as long as we're in government, anyway.

Mr. Hardeman: I agree with that. I wasn't going to mention it in this gathering, but having mentioned it now, I wouldn't want the legislation to provide the ability for municipalities to no longer allow me to celebrate my birthday. So I want to leave this in. My birthday has been there for quite a number of years and I want it to be able to stay there.

Mr. Milloy: Hardeman Day.

Mr. Hardeman: I don't want a special day, no.

The Chair: All those in favour? All those opposed? That motion is lost.

Shall section 79 carry?

Mr. Hardeman: Recorded vote.

Ayes

Balkissoon, Duguid, Milloy, Mitchell, Peterson.

Nays

Hardeman.

The Chair: That motion is carried.

Moving on now to section 80, we've got two identical motions, I understand.

Mr. Duguid?

Mr. Duguid: I'm just going to ask the indulgence of committee that this be held down until Wednesday. We'd prefer to move it on Wednesday; I suppose that would mean we'd have to hold down the section. I'll go with the clerk's advice on this. With the indulgence of committee, we'd like to hold that down till Wednesday.

The Chair: So you'd like to hold down consideration of all of section 80; is that correct?

Mr. Duguid: I suppose so, yes.

The Chair: Is that the way to deal with it, Madam Clerk? Yes.

Mr. Hardeman?

Mr. Hardeman: At this point I don't have any judgment. I'd like a little better explanation of why we're not dealing with it now.

Mr. Duguid: We'd just like to deal with this on Wednesday. There are some further discussions we'd like to have about this. If we could have another 48 hours to have a closer look, that would be our preference.

The Chair: It's just a matter of timing, Mr. Hardeman.

We need unanimous consent to allow that to happen. Do we have unanimous consent?

Mr. Duguid: Mr. Prue is not aware of what we've asked for, Mr. Chairman.

The Chair: Go ahead, Mr. Duguid.

Mr. Duguid: We've just asked, Mr. Prue, to hold down section 80 until Wednesday, to consider it Wednesday. We have a few further discussions to undergo on it. We're asking for the indulgence of committee to hold it down until Wednesday. It's not critical, but it would be helpful to be able to deal with it then instead of now.

Mr. Prue: This is the taxicab issue—

Mr. Duguid: Yes.

Mr. Prue: —that you explained to me earlier. It does not impact the city of Toronto, but it may impact the surrounding 905 region.

Mr. Duguid: This motion does not impact the city of Toronto, no.

Mr. Prue: But it may impact the 905 region.

Mr. Duguid: It would deal exclusively with the 905 region, yes; the rest of the province.

Mr. Prue: In the spirit of fair play, I'll let it sit for two days.

The Chair: Thank you. If Mr. Hardeman is agreeable to that, we have unanimous consent.

Interjection.

The Chair: That's right. Section 80 will be held down.

Shall section 81 carry? All those in favour? All those opposed? Section 81 is carried.

Dealing with section 82, which would be on page 17: It's a government motion.

Mr. Milloy: I move that section 82 of schedule A to the bill be amended by adding the following subsection:

"(0.1) Clause 186(1)(b) of the act is repealed and the following substituted:

"'(b) prevails over any act or regulation with which it conflicts except,

"(i) this section and regulations made under this section,

"'(ii) sections 171 to 185, and

"'(iii) regulations made under sections 171 to 185.'"

The Chair: Thank you. Speaking to the motion?

Mr. Duguid: This is a technical amendment. I've been advised that the way it was originally written there was a comma that could have led to misinterpretation, so they've rewritten it in a different form to accommodate that.

The Chair: Any further speakers? Mr. Hardeman?

Mr. Hardeman: Yes. I take the parliamentary assistant at his word that it's nothing more than the comma. I get concerned when we have an act that gets preferential treatment or has jurisdiction over any other act.

Is that what's already in the bill, or is that what's already in the Municipal Act? Is this an amendment to Bill 130 or an amendment to the original Municipal Act?

Mr. Duguid: This bill would be an amendment to Bill 130. But like I said, it's a technical amendment, so any details regarding why we need to do this would be better placed to our legal staff.

The Chair: Would somebody like to come forward, then?

Mr. Gray: Once again, the name's Scott Gray, municipal affairs, legal branch.

This really is about a comma. The Ministry of Education raised this. They said that right now the Municipal Act says that the things the minister can put in a restructuring order actually come into effect despite what other legislation says. Because of the existence of one particular comma, the interpretation—in the Ministry of Education's view—is that the Minister of Municipal Affairs could, in fact, put things in a restructuring order that cabinet had not authorized.

The cabinet regulation that says what can go in a restructuring order has safeguards in there for the Ministry of Education, one of them being that you can't have a restructuring that splits wards in the middle of an election year, because that throws out their whole election process. They said, "Because of this extra comma being in there, there's an argument to be made that the municipal affairs minister's restructuring order could in fact override the cabinet regulation that gave the minister his powers in the first place." They wanted to be clear that, as they put it to me, "We're not beholden to the goodwill of the Minister of Municipal Affairs to protect our interests."

The Chair: Mr. Hardeman?

Mr. Hardeman: I guess, then, just to make sure I have it clear: The problem we're solving is presently in existence in the present Municipal Act?

Mr. Gray: Yes, it is.

Mr. Hardeman: And this is just an amendment added to this section in order to correct—

Mr. Gray: That's right, yes.

Mr. Hardeman: Okay.

The Chair: Thank you, Mr. Gray. Any further speakers? All those in favour? Those opposed? That is carried.

Shall section 82, as amended, carry? Those in favour? Mrs. Mitchell likes it. Those opposed? That is carried.

No amendments before us on 83, 84 or 85. Can we collapse them and deal with them as one? Seeing no objection, all those in favour? Those opposed? They are carried.

Moving on to page 18, there is a PC motion under section 86.

Mr. Hardeman: I move that section 203 of the Municipal Act, 2001, as set out in section 86 of schedule A of the bill, be amended by adding the following subsection:

"Financial statements

"(2.1) A corporation established under this section shall make its financial statements available to the public on an annual basis through the publication of an annual report."

This is straightforward. This amendment says that municipal corporations dealt with in the act should be forced to publish their financial statements on an annual basis so that the public can be sure that their interests are being kept.

There was a lot of concern expressed by our presenters to the committee that there was some hidden plan here to say that documentation could become concealed, and in fact the corporations could be performing duties not necessarily in the most cost-effective manner, but no one would ever know because the documentation would be hidden.

This is a motion that would clarify that, if it was an independent corporation, even though it was under the private corporations act, they would have to publicly publish—not just present it to the council of the municipality—their document. It would be available to the public so they could see how their private corporation was doing.

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Mr. Duguid: We won't be supporting this particular amendment. We believe that municipalities are responsible and accountable and will use these new tools in that way. Corporations are subject to the applicable reporting or filing requirements for corporations through the Corporations Information Act, the Business Corporations Act and the Corporations Act. These are the kinds of accountability measures that, if they are to be in place, should probably be put in place through regulation. I can give you some examples. The regulations are not done yet, but we're looking at potential accountability meas-

ures in the regs that would include, for instance, the need for a municipality to outline a business case to put in place a corporation. So we are looking at some accountability measures. The one I outlined is one of the ones we're looking at. Again, decisions haven't made on the regulations yet, but this would not be the appropriate way to do it.

Mr. Hardeman: I accept the explanation by the parliamentary assistant, and I look forward to supporting anything we can do to make sure that the public is confident that the corporations are accountable. The reason this amendment is here is that under the private corporations act, obviously all corporations have an obligation to report to their shareholders on an annual basis in order that the shareholders know what their corporation is doing. If that is a corporation set up by the municipality, the shareholders are considered the council of the municipality as opposed to the general population, and they can in fact operate by just reporting to council, and then there's no further direction that council must then disseminate that information to the real shareholders, who are the people of their municipality. So I think this is put forward to make sure that the people, on a regular basis, have the opportunity to see how their corporation is doing and what their corporation is doing.

The Chair: Any further speakers? If not, all those in favour of the motion? Those opposed? That motion is lost.

There's a government motion on page 19.

Mrs. Mitchell: I move that clause 203(4)(e) of the Municipal Act, 2001, as set out in section 86 of schedule A to the bill, be struck out and the following substituted:

"(e) providing that specified corporations are deemed to be or are deemed not to be local boards for the purposes of any provision of this act or for the purposes of the definition of 'municipality' in such other acts as may be specified."

The Chair: Any speakers to this motion?

Mr. Duguid: This is another one of those sort of confusing legal motions, but I'll do the best I can. What this does is fix up the cabinet regulations authority. In Bill 130 now, the minister can deem corporations not to be local boards, and it was never the intent of the drafters. But with this amendment, it gives the minister the ability to also deem corporations to be local boards. I'll say it again: The minister can deem corporations not to be local boards. We also want to make sure that the minister has the ability to deem them to be local boards. So it was just a case of a variety of interpretations. In order to be cautious, we thought we'd better clarify that the minister can do either: deem it or not deem it.

Mr. Hardeman: I guess I would just question the parliamentary assistant why the minister would need the option one way or the other. It would seem appropriate to me that, regardless of how they were structured, at some point, for reporting purposes, all of them would be considered a local board for those reporting purposes. Then this amendment would do the same as I was suggesting in the other one, that there is a clear line of reporting to the public of what these corporations are doing if they had to report through the municipality as the local board. So it would seem to me that it would be appropriate—rather than saying that the minister may do it—that they would automatically all be declared a local board.

Mr. Duguid: In current regulations there are certain statutes that deem corporations to be local boards, and that continues. This just clarifies that the minister has the ability to continue to deem, under certain statutes, local corporations to be local boards. The way it was written, one interpretation—and there are various interpretations, as you know, to some of the wording of these things—was that the minister would be able to not deem corporations to be local boards but would not have the ability to deem them to be local boards, and that may be something down the road in a particular circumstance that he may need the ability to do. I know it's confusing, but that's the explanation that I have for it.

Mr. Hardeman: I live my life in confusion.

The Chair: Any further speakers? If not, all those in favour? Those opposed? That motion is carried.

Shall section 86, as amended, carry? Those in favour? Those opposed? Section 86 is carried.

No amendments to 87. Shall section 87 carry? Those in favour? Those opposed? Carried.

Moving on to section 88, there's a government motion on page 20.

Mr. Balkissoon: I move that section 216 of the Municipal Act, 2001, as set out in section 88 of schedule A to the bill, be amended by adding the following subsection:

"Exception, City of Greater Sudbury

"(3.1) Despite subsection (3), the City of Greater Sudbury may, in accordance with subsection (1), change the number of members it appoints as its representatives on the board of health of the Sudbury and District Health Unit, subject to the following rules:

"1. The number shall not be smaller than two or larger than seven.

"2. At least one of the members shall also be a member of the council of the city.

"3. At least one of the members shall not be a member of the council of the city."

I think it's pretty self-explanatory.

The Chair: Mr. Duguid?

Mr. Duguid: I think they want a further explanation.

Mr. Hardeman: Yes.

Mr. Duguid: Maybe it's not that self-explanatory. The motion continues the authority of the city of greater Sudbury to change the number of members it appoints to its board of health. This authority was previously found in regulation, but in the amended act there is no longer authority to do this by regulation. This is something that is supported by the Ministry of Health and Long-Term Care and, I assume, the city of greater Sudbury.

Mr. Hardeman: I guess I'm just wondering about the connection between the rest of the province and the city of Sudbury as it relates to how we appoint members to the board. Why is it that Sudbury is different than everyone else?

Mr. Duguid: I think I'd best refer this one to staff to respond to. I don't want to mislead you in any way. Is there anybody here who has a background on the greater Sudbury—

Mr. Gray: Scott Gray from municipal affairs again. This is a provision that was in the old Regional Municipality of Sudbury Act. How long it was in the act, I'm not sure, but we brought it forward in the Municipal Act into a regulation. Now that authority no longer exists, so all we're doing is retaining status quo. Why it was there in the first place, I'm not sure I know. I'm told it relates to the fact that most regions' councils are the board of health. In Sudbury, they have a board of health that includes Sudbury and some surrounding territories. Sudbury council itself is not the board of health. I think how it related was, Sudbury was of the view that if other regions changed their council composition, that changed the composition of the board of health. When we change our composition, that doesn't automatically change the composition of the board of health. They wanted to have flexibility. Their view was, other regions had the flexibility—if they went from a council of 12 to 10, the board of health went from 12 to 10, and so Sudbury wanted some kind of flexibility itself.

Mr. Hardeman: I guess I would ask: Oxford was not one of the regions where the upper tier was the board of health; they were an appointed board of health. They changed it a number of years ago. I'm not aware that any legislation was changed, so I have to presume that it was agreed to by regulation through the province. Now you're suggesting that the regulation has disappeared to do that, so I wondered whether in fact there's a problem with the Oxford board of health, as it was with Sudbury.

Mr. Gray: No. My understanding, if I can remember now, the regulation—it used to be that we restricted municipalities on what changes they could make to local boards. They could only do prescribed changes. The limits on what changes they could make were all in regulation. For instance, they couldn't make any changes to boards of health, police service boards or certain core provincial local boards that we didn't allow them to touch. No municipality can alter their board of health because its composition is established by regulation under the public health and promotion act or whatever that act is called. We made this one exception for Sudbury because it had pre-existed before, and we put that in the regulation. Now we're saying that municipalities can make any changes they want to any local board except for this list, but it's in legislation now, so we can't set up the list and set up the exceptions to the list by regulation. The prohibitions are right in the legislation, and the one leftover piece is the exception we made for greater Sudbury.

Mr. Hardeman: For the record, I just wanted to make sure we understood that if the removal of the regulation has an impact on others, that should be noted here and this list maybe should be larger than just the city of Sudbury. I guess I'm assured by the legal branch that in fact we've looked at it and this is the only place where this is needed.

Mr. Gray: That's right. The only exception was for Sudbury.

Mr. Hardeman: Okay. Thank you.

The Chair: Any further speakers? Those in favour of the motion? Those opposed? That motion is carried.

Shall section 88, as amended, carry? Those in favour? That's carried.

Sections 89 and 90 have no amendments. All those in favour? We'll deal with them at the same time. Those opposed? Sections 89 and 90 are carried.

It being 6 o'clock, the committee stands adjourned until 3:30 p.m. Wednesday, December 6, 2006.

The committee adjourned at 1802.

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Mr. Kevin Daniel Flynn (Oakville L)

Vice-Chair / Vice-Président
Mr. Jim Brownell (Stormont–Dundas–Charlottenburgh L)

Mr. Jim Brownell (Stormont–Dundas–Charlottenburgh L)
Mr. Vic Dhillon (Brampton West–Mississauga / Brampton-Ouest–Mississauga L)
Mr. Brad Duguid (Scarborough Centre / Scarborough-Centre L)
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Mr. Bas Balkissoon (Scarborough–Rouge River L)
Mr. Ernie Hardeman (Oxford PC)
Mr. John Milloy (Kitchener Centre / Kitchener-Centre L)
Mrs. Carol Mitchell (Huron–Bruce L)
Mr. Michael Prue (Beaches–East York / Beaches–York-Est ND)

Also taking part / Autres participants et participantes
Ms. Elaine Ross, senior counsel,
Mr. Scott Gray, counsel,
municipal law section, Ministry of Municipal Affairs and Housing

Clerk / Greffière
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Ms. Cornelia Schuh, legislative counsel