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Wednesday 6 December 2006

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Mercredi 6 décembre 2006

**Standing committee on
general government**

Municipal Statute Law
Amendment Act, 2006

**Comité permanent des
affaires gouvernementales**

Loi de 2006 modifiant des lois
concernant les municipalités

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Clerk: Susan Sourial

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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
GENERAL GOVERNMENT**

**COMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES**

Wednesday 6 December 2006

Mercredi 6 décembre 2006

The committee met at 1600 in room 151.

**MUNICIPAL STATUTE LAW
AMENDMENT ACT, 2006**

**LOI DE 2006 MODIFIANT DES LOIS
CONCERNANT LES MUNICIPALITÉS**

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): Let's call this meeting to order. We were waiting for Mr. Prue, who I understand is going to join us in progress as we start to deal with some of the issues.

Welcome to those members of the public who are just joining us for the first time.

At the previous meeting, held on Monday, the committee decided it would prefer to set aside what is page 15 of your motions, amending section 80. We have an amendment before us under section 80. There's actually a page 15 and a page 16, and you'll find they are exactly the same, duplicate motions, so it's really only the one amendment.

Mr. Ernie Hardeman (Oxford): Mr. Chairman, I suggest that when we put something aside, we leave it aside until we get back to it. That's the normal process. We go through the bill and then go back to those that were set down. That's particularly acute in this case, because Mr. Prue inquired about it when it was set down. I think it would be inappropriate to deal with this section in the absence of Mr. Prue. He has just arrived. But I still think it should be reverted back to when we have gone through the sections we have yet to deal with.

Mr. Brad Duguid (Scarborough Centre): On a point of order, Mr. Chair: I would not agree with that suggestion. I would suggest that we held it down to this meeting. We're here at this meeting now and we should deal with it now. As an aside, I think a number of people have taken an interest in this particular clause and a later clause who would probably like some reassurance that this is done. Rather than have them wait until the end of the meeting, until 6 o'clock, when we deal with it, I suggest we get on with it now. That was certainly the intention when we held it down.

The Chair: Thank you. I've heard both sides. Let me just talk to the clerk for a second.

Mr. Hardeman: Chair, I don't believe it's anyone's privilege to go back and forth in the bill as they see fit. We have started the process of following it through consecutively. We unanimously agreed to set down that section to be referred to at a later time, and I believe that that later time is when we have followed the normal process that the committee normally follows. I think it would require unanimous consent to do that differently.

The Chair: After conferring with the clerk, there is no requirement that we deal with it at the end of the meeting. If there were no members of the public here, I'd agree with you. We are all going to be here when the motion is dealt with, in any sequence. Out of respect to those members of the public who have joined us today, I think it would be timely to deal with this now.

Mr. Hardeman, anything else?

Mr. Hardeman: I still believe we have a process that we should be following. If someone wants to change that, I think they'd have to make a motion to do that, and the only motion that would be in order would be unanimous consent to move back. Having said that, I have no problem with giving that unanimous consent at this time so we can deal with that section.

The Chair: There we go. Okay.

Interjection.

Mr. Hardeman: It was at the time, when Mr. Prue wasn't here.

The Chair: That's right. Let's try it in a friendly manner, then. Do we have unanimous consent to deal with the issue that appears to have generated some interest from the public at this time?

Mr. Michael Prue (Beaches–East York): That would be numbers 15, 16, 56 and 57?

The Chair: That's right, but 15 and 16 are actually the same. You'll find that they're identical motions, so it's really the one amendment.

We're not dealing with pages 56 and 57 right now. We're dealing with the motion that was set aside by the committee at its meeting on Monday, on pages 15 and 16. You'll find they're identical, so that is really only one amendment.

Mr. Duguid: On a point of order, Mr. Chair: Mr. Prue's suggestion to deal with 56 and 57 at the same time would make sense as well, just as a courtesy to the public here, because that's the other motion that I know there's an interest in. It's up to the committee what they want to do, but that's not a bad suggestion.

The Chair: Are you suggesting, Mr. Prue, that we move those items up?

Mr. Prue: If we're extending a courtesy, as we just have, to the people here, they're here for the other motions as well. They are every bit as and probably more important to them than the first two. If they want to hear them—I assume you do; they're all nodding that they want to hear them—

The Chair: You're free to move that.

Mr. Prue: Then I move that we deal with all of those motions, those being 15, 16, 56 and 57, and then revert back to the ordinary numbering for the balance of the day.

The Chair: I think that would meet with the pleasure of the audience and the committee. Do we have unanimous consent to deal with things in that sequence?

Mr. Hardeman: Before we do, I'm not sure what we're doing. I need some explanation of which motions.

The Chair: The motion that was first envisioned to be dealt with today is the motion you'll find on page 15. Mr. Prue has just suggested that because of the relationship between that motion on page 15, which was set aside on Monday, and the motions on page 56 and 57, we deal with them all while the members of the public interested in those particular items are present, and then they can excuse themselves, should they choose to do so, for the remainder of the meeting.

Mr. Hardeman: You have unanimous consent to deal with them at the same time. I just need broad clarification to understand why they're identical motions and that far apart in the bill.

The Chair: You're talking about the motions on pages 15 and 16?

Mr. Hardeman: Yes. I'm told that motions 15 and 16 are the ones we stood down at the previous meeting. Now, to deal with that same topic, we're dealing with motions 56 and 57.

Mr. Duguid: I can explain, Mr. Chair, if I may.

The Chair: Go ahead.

Mr. Duguid: Motions 15 and 16 deal with the Municipal Act, which deals with all municipalities except Toronto. Motions 56 and 57 concern the City of Toronto Act and would only be applicable to Toronto. That's the difference and that's why they're in different places.

The Chair: Okay? We probably will not have to deal with 16 at all, as it's identical to the one on 15.

Let's start with the amendment being put forward on page 15.

Mr. Vic Dhillon (Brampton West–Mississauga): I move that section 156 of the Municipal Act, 2001, as set out in section 80 of schedule A to the bill, be amended by adding the following subsections:

“Airports

“(3) A business licensing bylaw of a municipality with respect to the owners and drivers of taxicabs does not apply in respect of taxicabs conveying property or passengers from any point within the municipality to an airport situated outside the municipality if,

“(a) the airport is owned and operated by the crown in right of Canada and the taxicab bears a valid and subsisting plate issued in respect of the airport under the government airport concession operations regulations made under the Department of Transport Act (Canada); or

“(b) the airport is operated by a corporation or other body designated by the Governor in Council as a designated airport authority under the Airport Transfer (Miscellaneous Matters) Act (Canada) and the taxicab bears a valid and subsisting permit or licence issued by the designated airport authority.

“Mississauga

“(4) No business licensing bylaw passed by the city of Mississauga with respect to the owners and drivers of taxicabs applies in respect of taxicabs, other than taxicabs licensed by the city, engaged in the conveyance of goods or passengers, if the conveyance commenced at the Lester B. Pearson International Airport.”

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The Chair: Thank you, Mr. Dhillon. Speaking to the motion?

Mr. Dhillon: Basically, this amendment would allow the cars, taxis and limos operating at Pearson airport to carry on business as they have been. They've established a clientele over the past many, many years, so they'd be able to carry on business as they have been. A considerable investment has been made by the owners and drivers, and this is an amendment to make sure their rights are protected as they were in the past.

Mr. Duguid: We've heard from a number of stakeholders on this, and we're of the view that this approach is supportable. No municipalities other than the city of Toronto have sought any licensing powers with regard to airport limousines or taxis. One of the issues put forth by the stakeholders was the possibility of a hodgepodge of licensing that could take place—unlikely, but could take place across the greater Toronto area. We're in support of this motion. I just want to make sure it's clarified on the record that this motion does not in any way affect the city of Toronto or the powers that are part of the City of Toronto Act. There's a subsequent motion coming up after this that would have dealt with the City of Toronto Act. Mr. Rinaldi has indicated to me that he'll be withdrawing that. Just to clarify, there will be no impact on the powers that have been put forward to the city of Toronto under the City of Toronto Act with regard to licensing.

I just want to put on the record—I want to invite a staff member up and ask a question just to make sure the interpretation of this is very clear, because there has been some confusion over the last 48 hours about this motion.

The Chair: Thank you.

Mr. Ralph Walton: Ralph Walton, with the Ministry of Municipal Affairs and Housing.

Mr. Duguid: Mr. Walton, could you just confirm that this amendment doesn't in any way affect the powers to Toronto under the City of Toronto Act.

Mr. Walton: Motion 15 is an amendment to the Municipal Act. It does not apply to the city of Toronto.

Mr. Duguid: That's all I needed. Thank you.

The Chair: Further speakers? Mr. Hardeman, then Mr. Prue.

Mr. Hardeman: I have a couple of questions. First of all, I understand that this motion is identical to 155(2) of the present Municipal Act. In the amendments put forward by government at the start of this committee, it seems it was deemed that this part of the Municipal Act was no longer necessary. I wonder if I could get some explanation of what prompted the need to put it back.

Mr. Duguid: In listening to a number of stakeholders regarding this, it's a power that we had given in the City of Toronto Act to the city of Toronto to be able to license unfettered in this particular area. We didn't hear from any other municipalities that they had any desire—in fact, we couldn't imagine too many scenarios where they would have a desire to be involved in this anyway. Given concerns expressed by one of the stakeholders, we thought it makes sense to not include this. Originally, we were putting forward this particular licensing provision identical to what Toronto had asked for, but upon thinking and hearing from other stakeholders, we thought we didn't need to have an identical provision in the Municipal Act that applies to everybody but Toronto.

Mr. Hardeman: Since it was this way in the original Municipal Act, and the City of Toronto Act not yet being in effect, if this part had been left in the Municipal Act and if the Municipal Act still applied to Toronto, which it always did up until the City of Toronto Act, this would not then have—this would maintain the status quo for everybody in the province. Is that right?

Mr. Duguid: I'm sorry. You're going to have to repeat that question. I didn't quite pick up the—

Mr. Hardeman: If the people of the city of Toronto had to adhere to the Municipal Act, then this would put everything back to the way it presently is?

Mr. Duguid: Once the City of Toronto Act is proclaimed, and we've indicated that would likely be in early January—if we were not to have done the City of Toronto Act and if it were to not be proclaimed, the city of Toronto would then have been part of the Municipal Act, but that's not going to be the case here.

Mr. Hardeman: Using that scenario, the resolution brings us back to the status quo until January 1.

Mr. Duguid: This resolution will have the effect of bringing us back to the status quo for every municipality except Toronto. Toronto will be governed under the City of Toronto Act.

Mr. Hardeman: But right now, the City of Toronto Act is not proclaimed. So if this one was proclaimed this afternoon, it would bring us right back to the status quo.

Mr. Duguid: Well, the status quo exists today until this is proclaimed anyway.

Mr. Hardeman: Chair, I will need a little explanation that's slightly beyond this motion. It was referred to that motion 16 will be withdrawn. As I read them, that other resolution puts this same thing into the City of Toronto

Act. That's the one that's going to be withdrawn. Is that right?

Mr. Duguid: That's correct. If the other motion carried, it would have withdrawn some of the powers that we had given the city of Toronto with regard to licensing.

Mr. Hardeman: Just one more, then I'll give Mr. Prue some time. I have a few other questions, but one more.

Monday, when this was set down, I had all the information that has been made available to me and to the public in terms of what needed to be done to amend the Municipal Act. The only presentation we had during committee was from the Airport Taxicab (Pearson Airport) Association, the airport limo operators. Would the presentations we heard have made the government decide we were going to withdraw the other resolution that deals with the city of Toronto? I want to know where we got the idea.

Mr. Duguid: The resolution to deal with the city of Toronto was not a government motion. It was moved, I think somewhat inadvertently, by a member. It was not a government motion.

Mr. Hardeman: It was not a government motion?

Mr. Duguid: No.

Mr. Hardeman: I thought we had parties: NDP motions, Conservative motions and government motions. I didn't know we had individuals within the parties bringing in separate motions.

Mr. Duguid: Through the standing orders, members are free to move motions on their own. Like I said, my understanding is that this particular motion will be withdrawn. It was really moved inadvertently. It was a motion that somebody was considering. It was moved inadvertently and placed on the agenda.

The Chair: Technically, it hasn't been moved.

Mr. Duguid: That's correct. It hasn't even been moved; it has just been circulating.

Mr. Hardeman: So the question on that topic really is, was it inadvertently put in by the member, who was then told by the government to take it out? Or is he taking it out because he's got more information now and he knows he was wrong to have put it in?

Mr. Duguid: It's not proper for me to speak for the member, but the member had thought this was something we all had agreed to have moved and moved it, I suspect somewhat inadvertently, when it was something we hadn't. I use the word "moved," but it's the wrong word. It was circulated inadvertently and submitted inadvertently. As such, he's planning to withdraw it.

Mr. Hardeman: One final question: If this information made the light come on all of a sudden for the member that he didn't really want to introduce the other motion, what prompted the government to ask to set this section down, when both motions were there, so we could talk about it more and put it off till today?

Mr. Duguid: As I said, when I set it down, it wasn't something that was critical to us. We could have moved ahead with it at that time, but we just wanted to take a closer look at it to make sure everything was good with

the motion and that we were all in agreement and that we thought it was the best motion we could put forward.

Mr. Hardeman: We'll let Mr. Prue have some time.

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Mr. Prue: I'd like to clarify motions 15 and 16. I realize we're only dealing with 15, but they appear to me to be almost identical, or perhaps identical.

Mr. Duguid: They are identical.

Mr. Prue: But at the top of 15, the one Mr. Dhillon has moved—he has moved 15, not 16—it quite clearly indicates that it came from the pen, or from the fax, at least, of Lou Rinaldi, who I assume is the MPP on this committee. The other one does not state who submitted it. I need to know, is this a government motion, or is this Lou Rinaldi's motion right now before us that you're asking us, through Mr. Dhillon, to pass?

The Chair: The clerk probably has a better explanation. I think we're all trying to—

Mr. Prue: I'm just seeking the information; it doesn't matter who it comes from.

The Clerk of the Committee (Ms. Susan Sourial): It's my error. I had the motion faxed to me and e-mailed to me. In compiling it, I didn't pay attention and put the two in together. But they're exactly the same motion, from the same member. Really, it should only have been the one, and it doesn't matter which one. It's filed as a member's motion, not as a party motion.

Mr. Prue: So 16, in any event, no matter what happens to 15, will be ruled by the Chair to be redundant.

The Clerk of the Committee: Yes.

The Chair: It doesn't even have to be moved. It doesn't have to be withdrawn either.

Mr. Prue: Okay. This was taken out, was not anywhere in the act, but under Mr. Rinaldi's authority as a member of the committee it has been included. What was the change of mind? What are you attempting to accomplish by this? It details "Mississauga" at the bottom, and I'm going to get to Mississauga. What do you have in mind here? Is it to ensure that the airport limo drivers have unfettered access to the rest of the GTA, if not to Toronto? Is that what is being accomplished here?

Mr. Duguid: To be clear, this would allow the exemption that currently exists that does not provide the authority for municipalities outside of Toronto to engage in the licensing of airport limousines. Within Toronto, that authority would be retained.

Mr. Prue: Okay, but let's get to the bottom. It says: "Mississauga

"(4) No business licensing bylaw passed by the city of Mississauga with respect to the owners ... of taxicabs applies in respect" of those who go, to put it in a nutshell, into Lester B. Pearson. Are you saying that the city of Mississauga, at this point, cannot attempt to license them?

Mr. Duguid: This is the status quo. The reason the city of Mississauga is mentioned specifically is that in the Municipal Act there was an agreement—it's fairly complex, but I think about 15 or so years ago there was an agreement, which had the agreement of Mississauga, to

move forward in this particular way. Mayor McCallion, at committee some time ago, during consideration of a transportation bill—Bill 169, I think; I can't remember the bill number—indicated that she'd prefer to keep things just as they are. Mississauga is mentioned specifically because the airport is located in Mississauga. There were two sections that provided the exemption: one was the specific Mississauga exemption and the other was the rest of the clause, which at one time included all municipalities. When the new City of Toronto Act is proclaimed, it would not include Toronto.

Mr. Prue: What would happen if this passes? Let's pick Durham. Durham wants to license who can come in, who can pick up, who can deliver from Pearson airport. They're not included in this. Where do they sit? Under what authority? Under what act?

Mr. Duguid: If this motion passes, Durham will not have the ability to license airport limousines.

Mr. Prue: I need to know from the parliamentary assistant: Have each of the cities or regions that do licensing in the GTA been told about this new proposal in section 15? Have they been told what you intend to do? This did not come up in any debates. I don't think they were expecting it. They don't know about it. Have they been asked to comment? Has Mr. Rinaldi's proposal been before any of the mayors, the reeves, the councillors, the regional chairs or anyone else in the GTA?

Mr. Duguid: I can't speak to the individuals in the municipalities. I know some municipalities have been advised of this. I know, as well, that no municipality has expressed any desire to have the ability to license in this area. The city of Toronto had it under the City of Toronto Act and did not wish to relinquish it, an indication we had from the city during the consultations on the City of Toronto Act and I believe as recently as the last week or so when the issue started to crop up. The city of Toronto is the only municipality that's expressed any desire to have the ability to license. They haven't expressed an intent to use it, but they didn't want any of the provisions that we've provided to them under licensing to be fettered.

Mr. Prue: So the city of Toronto has been called, not about resolution 15, but about 56 and 57, and they have expressed an interest?

Mr. Duguid: That would be my understanding, yes. So I've been told.

Mr. Prue: The city of Toronto doesn't care whether section 15 passes or not?

Mr. Duguid: It doesn't impact them at all and I can't imagine they'd have any interest in it.

Mr. Prue: But were they polled on this?

Mr. Duguid: I wasn't privy to the exact discussions that were held, so I don't know exactly what was discussed, but I would expect the information likely would have been shared with them. As I said, there's no interest for the city of Toronto in 15.

Mr. Prue: There are a number of changes, taxicabs being a major one but a number of others also, impacting the City of Toronto Act through this Bill 130. Is it the

intention of the government to proclaim all of those sections involving the City of Toronto Act at the same time? I need to ask, because whatever happens in terms of the taxicabs has to happen with everything else. I don't want the government to say, "Yes, we're going to pass it, but we're going to proclaim different sections and leave this out."

Mr. Duguid: To the best of my knowledge, this section, along with most sections of the City of Toronto Act, would be proclaimed at the same time. There are some discussions in this act, and I would have to check with staff to see if there are any implications for the City of Toronto Act in terms of proclamation, because there has been a request from municipalities to have more time, for instance, in the setting of policies. We've asked them to set policies in a series of areas like procurement and other areas like that.

Mr. Prue: I'm not asking about all the others. I'm asking about the city of Toronto.

Mr. Duguid: I would expect that this particular part of the City of Toronto Act would be proclaimed immediately, but I will refer to staff to make sure there's not a technicality I'm not aware of. Mr. Walton is here and could probably answer that question.

Mr. Prue: If he could.

Mr. Walton: Could I have your question again, please?

Mr. Prue: Are all the portions of the bill that deal with the City of Toronto Act—because I'm still nervous about 56 and 57, although we're dealing with 15—going to be proclaimed at the same time?

Mr. Walton: There are two schedules in Bill 130 that immediately impact the city of Toronto. We are having discussions with the government with respect to the scheduling of proclamation. They should be proclaimed at the same time as Bill 53.

Mr. Prue: The city of Toronto will have the authority, should they wish, to license the limousine drivers at the airport—or to not license them. I guess it comes right down to that. They'll have that authority. When will they have that authority?

Mr. Walton: Upon proclamation.

Mr. Prue: And when is the proclamation date?

Mr. Duguid: The intent is for early January.

Mr. Prue: So it will be virtually immediately.

Mr. Duguid: Pretty much.

Mr. Prue: Thank you. Those would be my questions.

The Chair: Anything else, Mr. Hardeman?

Mr. Hardeman: A couple of other questions, Mr. Chair. First of all, just for clarification again, my understanding, up until now at least, was that the reason Mississauga is mentioned differently is because the airport we're talking about is Pearson, which in fact is in Mississauga. Point to point in the municipality would include the airport, so there's a special mention treating the airport traffic differently from the other traffic. It actually deals with traffic inside a single municipality, which would not likely be true for most municipalities. Is that accurate?

1630

Mr. Duguid: I think that's part of it. Mississauga had expressed an interest in this back about 15 years ago. I've read a history of this stuff, but I can't remember the exact times. The way it was set up in the Municipal Act was as all levels of government had agreed it would be set up. That's why it's mentioned specifically.

Mr. Hardeman: Going back to the issue of what was presented to the committee, for information to help us decide how we should deal with these motions, would the way we're dealing with this amendment, in your opinion, be the right thing according to the airport taxi and limo operators' presentation, as opposed to—let me say it this way: Would they expect that the other amendment would be in it?

Mr. Duguid: I don't know exactly what they would be expecting, but they would be in favour of our approving the amendment to the Municipal Act before us right now, yes.

Mr. Hardeman: I want to go further, since we are dealing with this in a unique way, dealing with the two, having been told that one is going to be withdrawn. Would they be in favour of the process of only passing one of these, recognizing that the only reason there are two is to make sure that the implications are the same in the City of Toronto Act as they are in the Municipal Act so all the people are being treated the same? Would the taxi and limo operators from the airport be supportive of just passing one of these, in your opinion, or have you checked that out?

Mr. Duguid: I hesitate to speak on their behalf, but clearly—you were here for their presentation—the airport limo drivers had expressed concerns about the City of Toronto Act when we dealt with the City of Toronto Act, when they came before the committee, and had expressed concerns about the Municipal Act. We're dealing with their concerns about the Municipal Act. Their concerns about the City of Toronto Act—we had already dealt with those when we dealt with the City of Toronto Act, and I would expect that those concerns remain.

Mr. Hardeman: Just to clarify it for me, as I'm not one who understands the business that well—

Mr. Duguid: You understand a lot more than you let on.

Mr. Hardeman: Does passing this one and not passing the City of Toronto Act in any way inhibit the airport operators from being able to pick up prearranged fares in Toronto and take them to the airport?

Mr. Duguid: It gives the city of Toronto the ability to license—and it's not about just this particular sector. It gives them the ability to license, period. What happens with this in terms of the rollout would depend on whether the city of Toronto decides it wants to get into licensing other vehicles like airport limousines. They haven't expressed that desire to date. Whether they will or not will be a decision that we feel they would have to make in terms of whether it's in the interests of their community and the interests of the economy and their city.

Mr. Hardeman: Say I'm a taxicab operator licensed to operate out of Pearson. In passing this amendment and withdrawing the other one, does the city of Toronto have an ability to impose or to offer licences in such a way that I would be inhibited from coming into Toronto to pick up a fare and take them to the airport?

Mr. Duguid: I hesitate to speculate on what the city of Toronto plans to do or could do, but—

Mr. Hardeman: Hypothetically, is it possible?

Mr. Duguid: It's possible for the city of Toronto to do a number of things with the new authority it was given under the City of Toronto Act. We've given them new authorities in terms of powers, we've given them alternative sources of revenue, and we've also imposed a number of accountability measures on the city, as you know, through the City of Toronto Act. So it is a different balance in terms of the powers they've been given. We've expressed confidence that the city of Toronto will deal responsibly with these powers. Some of them are such that you could speculate until the cows come home as to what they could do. I think we have to have confidence that our municipal elected officials will deal with these powers responsibly. If the city of Toronto were to deal with something that impacted the provincial interest, as you know, the province retains the ability at that point to intervene. However, that's something I think the province would use very reluctantly and only in extreme circumstances.

Mr. Hardeman: I guess I didn't ask my question properly, because the answer doesn't correspond to my question.

Mr. Duguid: I thought it did.

Mr. Hardeman: If I'm the operator living in Mississauga and operating out of Pearson, could they license it in such a way to discontinue allowing me to pick up a fare in Toronto, and yet the people who are licensed in Toronto, resident in Toronto, could do that and get that exclusively? That could put me right out of business from making that pickup. Could they, hypothetically, license it that way under this legislation?

Mr. Duguid: As I said, I really hesitate to talk about what the city of Toronto may or may not do with the new powers they have. But to try to be as clear in my answer as I can, the city of Toronto would have the ability to license just about everything that's within municipal areas. They cannot do so just to accrue revenue. It has to be something to offset costs of a program they're setting up for that particular area or that particular sector. We'll be looking at things in the regulations that would ensure that there has to be a business case to do what they plan to do. There will be some safeguards in what they can do. But in answer to your question, clearly they'll have the ability to license, which means they will have the ability to license, if they chose to, airport limousines within their jurisdiction.

Mr. Hardeman: I understand the openness of the licensing regime and the greater ability to give municipal powers and less oversight from the province because they're a mature level of government. The auditor's

report, of course, wouldn't put as much confidence in the local authorities as we've been hearing in this committee. But my question really is about licensing people not in their jurisdiction. As I mentioned, say I live in Mississauga and I have a service coming from Pearson. Will they have the ability to license a non-Toronto business to do business in Toronto just on an in-and-out basis? If the parliamentary assistant is hesitant to answer that, maybe we could get a legal opinion on whether that would be possible.

Mr. Duguid: We can get a legal opinion. I'm not hesitant to answer it. The city of Toronto would have the ability to license business that's taking place within Toronto.

Mr. Hardeman: Any business?

Mr. Duguid: I don't believe there are restrictions in terms of businesses, but like I said, there will be safeguards. They can only license in cost recovery for programs, so you're not going to get the city of Toronto licensing in areas that have nothing to do with a program they're setting up that's of public benefit. For instance, if they were going to license a particular sector to set up an inspection regime, they would have the ability to do that, provided it didn't impact the provincial interest.

Mr. Hardeman: I'm getting even more concerned now.

The Chair: Why don't we go to staff? You asked for a legal opinion. Why don't we try that first? Could somebody come forward and assist?

Ms. Elaine Ross: Elaine Ross, Ministry of Municipal Affairs and Housing, legal services. I believe the question is, if the City of Toronto Act comes into force, would the city be able to license any business? Is that the question?

Mr. Hardeman: Any business, even though it would not be based in their municipality.

Ms. Ross: They would be able to license people who carry on business in the municipality, subject to certain exemptions set out in the act and subject to any exemptions we put in a regulation, if a regulation is made. Right now, if the act is proclaimed as is, it doesn't have exemptions that relate to licensing taxis.

Mr. Hardeman: So the question—and it's quite hypothetical, I understand. The city of Toronto, under the present City of Toronto Act, can license every truck coming into the city if they're bringing product into the city or picking up product in the city, even though they have a provincial licence?

1640

Ms. Ross: If a business is carrying on business in the city, the city would have the authority to license them. Then it's the question of, what is "carrying on business"?

Mr. Hardeman: Well, who would get to decide whether they're carrying on business in the city?

Ms. Ross: The city would make that decision, and if somebody didn't agree with it and felt that they had somehow gone beyond their power, I assume they would challenge it in a court.

Mr. Hardeman: So the second question on that same thing, going back to the cost—the parliamentary assistant says not to worry, because the licence fee must somehow correspond to the cost of the operation of the entity. Could they set up the licence fee in such a way that non-residents have to pay three times as much and the whole cost of the regime is borne by people not part of their electorate?

Ms. Ross: Well, the licence fee does have to be cost recovery, so they can't make up artificial costs for the purpose of selecting a particular type of business that they want to put out of business. But they do have the ability of setting different fees for different types of businesses. I don't know if I'm answering your question.

Mr. Hardeman: You're suggesting that they can charge a fee twice as high for a car coming in from Pearson that is stationed in Mississauga than for a car coming into Pearson from Toronto. They could double the fee.

Ms. Ross: They would have to, when they're setting their fees, stick to cost recovery, so what they charge would have to relate—

Mr. Hardeman: But the cost recovery is aggregate, right? The cost of recovery is aggregate for the function. They could actually eliminate the fees for Toronto cars and put it all on Mississauga cars.

Ms. Ross: If they licensed a class of business, they would have to choose a fee that reflected the cost of licensing that business. They would have to satisfy themselves that somehow the cost of licensing taxis that come from a different place is different. They have to first of all try and make it a class, and then, assuming it's a class, they'd have to try to manoeuvre the fees so that they were different, and I'm not sure how they could do that.

Mr. Hardeman: That brings me to my next question: How does the act envision the enforcement of this in total? How do you deal with a truck coming in and delivering or picking up product at a factory now being able to be licensed by the city? In fairness, in the real world, the best place to raise taxes, if you're a municipal politician—I've been there—is from people you're not responsible to at election time, and that would be all the people coming in to do business and then going out again. It seems to me that would automatically be a provincial interest, and that if that was to happen the province would do something about it. The reason I'm going here is that it seems to me that this is the time to do something about it, that that's not the type of thing you would be allowed to license: people from outside coming in and doing business and leaving again in a single trip.

Ms. Ross: Well, the city has to, in planning its licensing bylaws, decide who it's going to charge and how they're going to charge them and how they're going to enforce their bylaw. I think what happens with these sorts of bylaws is that they tend to choose taxis that are picking up within the municipality.

The Chair: Are there any further questions, Mr. Hardeman?

Mr. Prue: While you're thinking, I have some.

Mr. Hardeman: Go ahead. I'm thinking.

The Chair: Mr. Prue.

Mr. Prue: I just want to be really clear about this. At present, virtually no taxi in Ontario can poach in another municipality. A taxi in Toronto isn't supposed to go and pick up people in Mississauga and drive them to Durham. That's not supposed to happen, because they're not licensed.

Ms. Ross: Right now, municipalities have the ability to license businesses. They have a broad licensing power already, and they can license businesses that are carrying on business within that municipality, and that would include taxis.

Mr. Prue: That would include taxis, so it's highly unlikely that a taxi company from Durham is going to start picking up people in Mississauga, not just because of the distance but also because they're not licensed to do business there. You don't know?

Ms. Ross: I couldn't speculate on who they're likely to license.

Mr. Prue: Okay. But in terms of this bill, should the bill pass, the city of Toronto will have the authority to license. I'm not as concerned about their authority to license as my friend from the Progressive Conservatives. But will they have the authority to charge fees to non-Toronto limousine or taxicab services that do business in Toronto? The reason I'm asking is that a taxi that goes to Pearson airport pays \$15, I believe, to go in the lineup to pick up a prearranged flight. Will the city of Toronto have the authority to charge the limousine services \$15 to come into Toronto to pick up a prearranged flight the same way, tit for tat? Can they do it? Not will they, but can they?

Ms. Ross: If they require a licence, they can certainly charge a licence fee, and the licence fee would be cost recovery.

Mr. Prue: And if the cost recovery at Pearson airport is \$15, it would stand to reason that \$15 could be charged to pick up someone in Toronto.

Ms. Ross: I can't speculate on what the city of Toronto is going to charge for its licence fee, but it can charge a licence fee and it can be cost recovery.

Mr. Prue: For the licence itself. And can they charge user fees for coming in and picking up, as they do at Pearson airport?

Ms. Ross: There is a separate power, a user fee power, the same as exists in the Municipal Act today, that allows municipalities to charge fees to any person for services and activities within the city.

Mr. Prue: And everything we're debating is all for naught anyway, because the minister, at his or her own volition, can render redundant any bylaw or set of policies for 18 months under this act. That's also in there.

Ms. Ross: There is a regulation-making authority that allows the minister to provide that, yes, the municipality does not have the power for a period of 18 months.

Mr. Prue: So we have here what has developed into—Mr. Rinaldi, you should be very proud. You have caused a conundrum here today, for hours and hours, and

upset taxi drivers and everything. We have a situation here that is highly speculative. Is that a fair thing to say? It depends on what the city of Toronto does with it?

The Chair: Are these questions still for staff, Mr. Prue?

Mr. Prue: Yes, they are.

The Chair: Well, let's make them appropriate for staff.

Mr. Prue: They are.

The Chair: I'm not sure, from the response you didn't get, that they were appropriate. Maybe you would like to review it.

Mr. Prue: The motion we have before us allows for the status quo. You probably had nothing to do with the motion. Did you vet it?

Ms. Ross: I've reviewed the motion.

Mr. Prue: You've reviewed the motion.

Ms. Ross: I've reviewed all the motions.

Mr. Prue: So you've vetted the motion and you know what it does. Does it maintain the status quo, as has been suggested, outside of Toronto?

Ms. Ross: Yes, outside of Toronto.

Mr. Prue: But it does not in any way affect the city of Toronto, its authorities or what the city might do.

Ms. Ross: It does not affect the city of Toronto.

Mr. Prue: Did you have an opportunity, in vetting this, to discuss this with any municipal or regional councils in the 905?

Ms. Ross: That wouldn't be my role. I'm the lawyer with the ministry.

Mr. Prue: Okay. Do you know if anyone did?

Ms. Ross: I don't know.

Mr. Prue: Thank you. Those are my questions.

The Chair: Thank you, Mr. Prue. Anything—

Interjection.

The Chair: Are you serious?

Mr. Hardeman: I'll just finish off by saying that I recognize—and the reason for my debate is not to in any way circumvent or change the status quo. I just want to make sure that I and everyone else understands.

In this instance, we've seen a lot of changes, in the last two weeks or whatever it has been since we started these hearings, in how we deal with this issue. First there was no motion, then there were two motions, and now we're going back to one motion. Including all the people who are going to be impacted by this, there seems to be great confusion. I have some notes here from both groups being impacted, both very concerned for different reasons, but until the two motions were there, everybody seemed to be reasonably happy with the status quo. But the two motions—thank you, Lou—have caused a lot of people to have another look at it. That's why I thought it was very important to bring out what I think are possibilities that may not only hurt one side but that will be detrimental to everyone involved. The government is cautious of those, that if things like that happen—it's quite possible that the city council will decide, as they start their budget, that they want to tax everything that

moves to meet their budget needs. I wanted to make sure that all those points were shown on the record.

I have absolutely no doubt, with the amount of work the parliamentary assistant has done on this issue, that he is going to instruct his side of the table to vote on it exactly as he suggests. That will dictate that the motion we presently have before us will pass and the other motion will be withdrawn, as he committed to doing. Having said that, I have no further debate on this issue.

1650

Mr. Prue: Just in terms of debate—I don't have any other questions—I am reluctant to vote even for this motion, I have to tell you. I'm not sure why it's here. I take the parliamentary assistant at his word. But this motion has irritated a whole group of people, both those who operate at Pearson airport and the taxicab drivers in Toronto. It has irritated them.

I am not sure what this purports to do. I'm not sure whether it's a housekeeping measure. I'm not sure why it specifically refers to Mississauga, although I do know that the majority of the lands contained around the airport are in Mississauga, although some are in Toronto. That would surprise you to know, that some of them are on the other side of the road, mostly the hotel properties and some of the parking lots and things, but they are.

In any event, I am reluctant to vote for this. I know the government will use its majority to pass it. I am thankful, though, that you'll withdraw the second section that's going to impact the taxi drivers in Toronto because they have had a pretty raw deal for a long time. I don't know how many of the members were here in the previous government, but they surrounded this building on many occasions honking horns, and they've done it to your government as well.

The sweetheart deal that has been made over the years with the airport limousine drivers has really cost the Toronto taxi drivers a lot of money and business and everything else. I, for one, will be very happy if the city of Toronto uses the authority that is going to be granted under the City of Toronto Act in a very responsible way to ensure that the city of Toronto cab drivers have fairness at last, that if they are required to pay \$15 to pick up a passenger on a prearranged arrangement at Pearson airport, the limousine drivers are going to have to pay the same amount. I'm not trying to gouge them, but you cannot make one law for one group without imposing it on another. It has caused, quite literally, hardship to the Toronto cab drivers. They are, after all, the ambassadors of this city. Any visitor who comes here, I can guarantee you, will get into a Toronto cab.

We have to respect the men and women who do this thankless and sometimes dangerous job and we cannot do it by putting impediments in their way. I'm thankful that 56 and 57 are going to be withdrawn, but I have a niggling doubt in my mind about what this motion by Mr. Rinaldi is going to do or is supposed to do. I cannot vote for it. I would ask for a recorded vote.

The Chair: Any further speakers? Seeing none, I'll put the question. Shall the motion carry?

Ayes

Brownell, Dhillon, Duguid, Peterson, Rinaldi.

Nays

Hardeman, Prue.

The Chair: The motion is carried.

Moving on, shall section 80, as amended, carry? Those in favour? Those opposed? Section 80 is carried.

Moving on now to section 91.

Mr. Duguid: Mr. Chair, on a point of order: Just to clarify for the people in the audience, the taxi and limo issues have been dealt with?

The Chair: That's right.

Mr. Prue: I think you need to formally withdraw numbers 56 and 57 so they know that's been done.

Mr. Duguid: They were never moved. Maybe you could just clarify for the audience that those sections that were circulated were never moved, so they're not before the committee.

Mr. Dhillon: On a point of order, Mr. Chair: Can I request an expedited copy of Hansard?

The Chair: You can certainly ask for one. We'll make that request on your behalf.

Mr. Dhillon: Thank you.

The Chair: The motions aren't going to be placed on the floor, as I understand it. If you want them formally withdrawn, we could deal with it that way. It's entirely up to you.

Mr. Prue: I think the taxi people want to know before they leave the room that they're not going to be debated. If they're withdrawn, they can't be.

Mr. Duguid: They can't be withdrawn if they're not before us. They haven't been moved.

Mr. Prue: I have it in my package.

The Chair: Just to make it very clear for everybody, there was unanimous consent to deal with these prior to dealing with other ones, so we are going to move to section 17, the motions being referred to as 56 and 57. If a member would like to formally withdraw those? Mr. Rinaldi.

Mr. Lou Rinaldi (Northumberland): I will withdraw motions 56 and 57.

The Chair: Thank you. Those motions have been withdrawn. Any further speakers? Seeing none, thank you very much.

So we're clear, we've dealt with all issues this afternoon that pertain to the taxi industry and the limousine industry in particular. You're all welcome to stay. It's fascinating stuff. You're all welcome to leave. If you'd like us to take a two-minute break while you exit, that would be great. I'd ask that any conversations take place outside the room, though.

Mr. Hardeman: Mr. Chairman, I would like to assure everyone who was here that what we have done, after all this time with the two different resolutions, is that we are

right back to the status quo we had before these hearings started.

Interruption.

The Chair: Quiet.

If you'd like to take any conversations outside the room, I'd love you to have them. I don't want this to turn into a to-and-fro between the audience and the committee.

Mr. Prue: I wonder if I could move a two-minute recess?

The Chair: That's what I suggested right from the start.

Prior to that, we were dealing with item 17. The clerk is suggesting that to formalize that, we put the question on section 17 so it is dealt with while everybody is here.

Shall section 17 carry? Those in favour? Those opposed? Section 17 is carried.

Thank you.

The committee recessed from 1656 to 1701.

The Chair: Okay. That's a healthy two minutes, I think. I call the meeting back to order.

Picking up where we left off on Monday, we'll be dealing with section 91. That would be page 21. The first motion is a government motion.

Mr. Duguid: I'll start off with the first one, and then we'll rotate.

I move that subsection 218(4) of the Municipal Act, 2001, as set out in subsection 91(3) of schedule A to the bill, be struck out and the following substituted:

"Term of office

"(4) Without limiting sections 9, 10 and 11, those sections authorize an upper-tier municipality to change the term of office of an appointed head of council so long as the new term does not extend beyond the term of council."

A short explanation: This is something that was requested specifically by the Western Ontario Wardens' Caucus and the Association of Municipal Managers, Clerks and Treasurers. It allows upper-tier municipalities to appoint their heads of council, often the wardens of a county, to any term not extending beyond the term of office. The way our current bill was written, they'd only be able to do it for one-year appointments or the full term. This gives them a little more flexibility, something they requested and something we on this side of the committee fully support.

The Chair: Mr. Hardeman.

Mr. Hardeman: I don't disagree with the motion. As a friendly amendment, I would propose that we go to the next one, which is a PC motion. It's a bit clearer than the government motion. There is a bit of a concern. The way the government motion is written doesn't prohibit the ability to change terms of office while the head of council is there. They can set it at any time. It doesn't say when they must set it. They could decide that, for whatever reason, they don't like the present one and could pass a motion to have a reconsideration of the appointment. Ours is only slightly different in the wording. It does exactly the same thing, but they set the term that

they elect the person for as they're doing it. They don't have the ability to go back, during the term they've set, and change it.

The Chair: Any further speakers?

Mr. Prue: I'd just ask the government to comment. Mr. Hardeman has made a case as to why his is a better motion. They both do the same thing. I want to support both of them, but I want the best one to go forward. Has the government looked at Mr. Hardeman's motion? Why have you put in a different one? Are they just two ships crossing in the night? I want to make sure one of them passes. He has made a pretty good case why his is better. You tell me why it's not.

Mr. Duguid: I'm not sure that Mr. Hardeman's motion, if it were to pass, would be the end of municipal government as we know it in Ontario. At the same time, it gets into that issue of whether the upper-tier municipality has the ability to reappoint sometime during the term, I suppose. I guess my preference at this point would be to stay out of that argument, because we haven't really been able to consider it fully.

Interjections.

Mr. Duguid: Maybe I just haven't had the chance to consider it fully.

The Chair: Mr. Hardeman?

Mr. Hardeman: I guess I would equate it with picking the Speaker of the House. There's a process in place that after an election, when we don't have a Speaker, at the first meeting of the new Legislature, the Legislature collectively elects a new Speaker. The Speaker, in our case, sits for the term of office, but that doesn't prohibit the same process from being used if, for whatever reason, there is a vacancy in the Speaker's chair and you must replace the Speaker. But it doesn't say that you can change that term of Speaker during the term of the Legislature.

I think our motion just says that when you elect the warden—in fairness, in most of Ontario in the county government, the warden is the speaker of county council; they don't have any powers beyond being head of council. Wardens are not elected directly by the people; they're picked by county councillors. In my interpretation of it, and maybe we could ask the legal branch to give us some comments on it, when it says, "authorize an upper-tier municipality to change the term of office of an appointed head of council so long as the new term does not extend beyond the term of council," that would tell me that they could do that at any point in time, where the next resolution is amending to strike out, "so long as the term is either one year or the same as the term of council," at the end substituting, "to a term of any length, so long as it does not exceed the term of council." So at the start of each term of office, they can make that decision as to what term of office they're going to have.

The Chair: Were you asking somebody from staff to come forward, Mr. Hardeman? Would you like somebody to come forward?

Mr. Hardeman: Yes.

The Chair: Did you understand the question, Mr. Gray?

Mr. Scott Gray: I think so. I think what's the better motion is the general question. I think I prefer the government motion. The first reaction—when I look at the government motion, it says, "the term does not extend beyond the term of council." The other motion says, "does not exceed the term of council." I mean, it looks like whenever that term is being set, it could be four years. I see nothing in either motion that says the term has to be set at the time of the first meeting of council. They both say that at the first meeting of council you can appoint the first warden for one year, and after the end of one year, you can appoint the next warden for two years, and for the last year, the only option is to appoint them for one year.

The government motion makes it clear that, whatever the term is, it can't go past the end of the term of council. The opposition motion suggests to me that after three years of running, you could still set a four-year term, because it says you can set a term as long as it does not exceed the term of council. The term of council is four years, you appoint a warden after three years, so you could have one running over into the next term of office of council.

The Chair: Any further questions?

Mr. Hardeman: Far be it from me to argue with a lawyer, but I don't know how one could interpret the last line in our motion, "so long as it does not exceed the term of council," not "a term," the generic term but, in fact, the council.

Mr. Gray: It's just more ambiguous; that's all I'm saying. It "does not exceed the term of council." The term of council is four years. The government motion says, "does not extend beyond the term of council." So there's something that comes to an end. What comes to the end is a four-year cycle.

1710

Mr. Hardeman: A further question, then, again to the legal branch. The municipality can "change the term of office of an appointed head of council so long as the new term..." If we're going to get that generic about whether it's the council, does that mean that at any meeting when council comes together, they could decide to change the head of council? There is no stipulation there of when that's to be done or that it has to be set. The upper-tier municipality can "change the term of office of an appointed head of council so long as the new term does not extend..." So they could wake up any morning and decide they don't like me anymore.

Mr. Gray: I guess the section does provide that—what section is that? If you're making changes under 218, those can only come into force—you have to do it before the start of the election year. Subsection 219(2) says that a bylaw passed under 218—no, that doesn't apply, does it? Is it (3)? Oh, yes:

"(3) Despite subsection (2), a bylaw passed under section 218 does not come into force until the day the new council is organized following,

“(a) the first regular election following the passing of the bylaw.”

If you’re going to change the terms of office, you have to do that before the start of the election year, just like if you’re going to change some other aspect of the composition of council. This year is an election year, 2006, so it would have to be before 2006 that you pass a bylaw to say that the term of the warden of the county for the next four years is going to be one year, two years and one year; one year and three years; or four years; whatever the case might be.

Having now focused on that section, this turn of phrase, “does not exceed the term of council” or “does not extend beyond the term of council,” probably doesn’t have any difference in meaning, because you have to decide what the change is before the start of the election year.

Mr. Hardeman: If there was a need to fill the seat of the head of council, you’d go through the same process. This section, then, has to apply beyond the first meeting of the new council.

Mr. Gray: You mean if there’s a vacancy.

Mr. Hardeman: You would still need to fill it under this system, so the term of council does apply.

Mr. Gray: Oh, yes, but the term of council has to be set before. I think that’s the point you were making earlier. The term of council has to be pre-set before council is actually sitting there.

Mr. Hardeman: Well, Mr. Chairman, I was very sincere in wanting the government to make it a better bill, but if it’s against their wishes, we’ll carry on.

The Chair: Point made, okay.

Dealing with the government motion on page 21, any further speakers? If not, all those in favour? Those opposed? That motion is carried.

As a result, the PC motion on page 22 would be out of order.

Going on to the PC motion on page 23, Mr. Hardeman.

Mr. Hardeman: I move that section 91 of schedule A to the bill be amended by adding the following subsection:

“(4) Section 218 of the act is amended by adding the following subsection:

“Region of Niagara

“(9) Despite any provision of this act or any other act, the regional chair of the region of Niagara shall be directly elected by general vote in the regular elections held in 2010 and in regular elections in later years.”

This is a fairly straightforward amendment. We have a number of regions presently in the province that have directly elected regional chairs. We’ve had some regions in past municipal elections that have had that on as a referendum on the ballot, that they were looking to have that included.

The people in a lot of communities feel that direct election gives a better accountability for the regional chair and for wardens of the county. They don’t feel it appropriate that 30 people get to decide who’s going to

be head of council, particularly when you look at the new rewording of the Municipal Act, where it’s giving more power to the head of a council. They feel that they should be directly elected, so it was put forward that the region of Niagara should have them directly elected.

The other problem, and it’s evident in a number of municipalities, is where we have the person elected from a council itself, where then the municipality whose member gets elected as warden does not have the same representation on council as they were initially to have, because the head of council, of course, represents all of the county or the region, as opposed to just their own municipality. That does not apply to the region of Niagara, because they elect outside of council. When I’m referring to “directly from council,” that’s mostly in county governments, where the wardens are elected directly from council. If you have a council like we have in Oxford, that municipality’s only representative will likely be head of all the county, and that does not give the same representation to the rest of the municipality for the local issues. I guess that’s why I’m in support of this, based on what I’ve seen happen in my local municipality. I believe the people have a right to have the region represented—the head of the region representing them and given an opportunity to vote.

The Chair: Thank you, Mr. Hardeman. Mr. Prue.

Mr. Prue: I just have a question of the mover. I listened to all of the debate, and maybe I missed it, but did somebody come forward from the regional municipality of Niagara and ask for this? I don’t remember anybody asking for it. I don’t remember seeing a letter or correspondence. Did I miss it?

Mr. Hardeman: I am not aware. I did sit through all of the hearings, and I am not aware. I was requested to put this amendment forward by a resident of the region of Niagara.

The Chair: Thank you. Mr. Prue, you’ve got the floor.

Mr. Prue: I don’t think I can support this. If this had come from the regional municipality of Niagara or if I had seen a groundswell or if that person had even sent me the letter to explain why they wanted it—with all respect, I can’t vote for this. It may be a good idea. I do believe in direct democracy. I believe what Halton has done recently and gone to the directly elected regional chair is an important thing. I prefer that over non-elected people being the regional chair, as we do have in some instances. Having said that, without any input from the regional municipality requesting this, I think this is a bit of a stretch. Unfortunately, to my colleague, I can’t support it.

The Chair: Thank you, Mr. Prue. Mr. Duguid.

Mr. Duguid: Mr. Prue is doing my work for me here. I couldn’t agree more. I don’t recall any request coming forward from any deputant on this. There hasn’t really been any consultation, that I’m aware of, on this issue. It may well be that there’s a consensus in the region of Niagara on this, but if there is, the government members at this point in time aren’t aware of it.

This is something that could happen and it's something that the minister, I believe, has the power to do if it were to come forward in the appropriate way, but to do it in this way might be seen as trying to sneak something in, and I wouldn't be in favour of doing that.

Mr. Hardeman: There has been—I was going to say considerable debate. I can't speak to the extent of it, but there has been debate in the region of Niagara about this issue. It was pointed out that they already do it this way in Waterloo and Halton.

On November 27, there was an editorial in the St. Catharines Standard concerning this: "Anyone holding a political job with such power and responsibilities should have a direct mandate from the electorate," and, "We support this move. It should be up to the electorate to decide who fills the post. The position is too powerful and high-profile to be left to the whims of council."

Then it describes: "Currently only 30 people (regional councillors and Niagara mayors) out of 426,550 Niagara residents have a direct say over who will be selected as the regional chair.

"The regional chair is the head of a government that now spends some \$740 million per year, a budget three times as much as those of St. Catharines, Niagara Falls and Welland combined. The region is directly responsible for the delivery of big ticket items such as police, waste management, ambulance services, regional roads and public health."

This is the editorial in the paper talking about why they think the public should have a say in who heads that council. I'm also informed that the regional chair of Niagara presently is not opposed to this move. He says it would be an interesting debate.

1720

The Chair: Thank you, Mr. Hardeman.

All those in favour of the motion? All those opposed? That motion is lost.

Shall section 91, as amended, carry? Those in favour? Those opposed? Section 91 is carried.

No amendments are before us on sections 92 to 95. We'll collapse those, if that's the wish of the committee, deal with them all at the same time. Sections 92 to 95: All those in favour? Those opposed? Those sections are carried.

Moving on to section 96, motion 24: It's a government motion. Mr. Brownell.

Mr. Jim Brownell (Stormont-Dundas-Charlottenburgh): I move that subsection 223.13(1) of the Municipal Act, 2001, as set out in section 96 of schedule A to the bill, be amended by striking out "investigate" and substituting "investigate in an independent manner."

Mr. Duguid: By way of explanation, Mr. Chair, this is in keeping with some of the recommendations that came forward from the Ombudsman in discussing the need that these duties be carried out in an independent manner. That's what this particular motion is designed to do. It clarifies that the ombudsman is to function in an independent manner.

The Chair: Very good. Any speakers to this?

Mr. Hardeman: It seems to me that saying it doesn't make it so. We're changing nothing about how it's done. The Ombudsman says we should have an independent ombudsman or investigator, but to just put that in and say they should be independent—unless it gives some direction of what independence means, I don't know how anyone would be assured by this that it will be independent. If it still allows that person, who's now doing it independently, to be an employee of council, I don't know how the public could see that as independence. Due to the whole nature of the bill, there will be no avenue for the public to be involved in whether it's independent or not, because the very fact that the individual is appointed prohibits that person from going to the Ontario Ombudsman to ask for an independent review.

To me, just saying it doesn't cut it. There needs to be more direction as to how independent they must be, that they must be appointed separately from council, that it can't be, as was suggested on a very negative note by the Ombudsman, just hiring a lawyer who—no disrespect to lawyers—is obligated to work for the people who hire them. Obviously, an independent investigation by a hired lawyer is not going to suffice for the public to be assured that they have an independent ombudsman.

I think we need more in the bill to declare independence than to say it should be independent. I don't think anybody thought it wasn't already assumed in the bill that they were going to be independent; it's just that there was nothing in there to show it was happening. Now we're going to put it in words, but there is still nothing there that shows it's going to be happening.

The Chair: Any further speakers?

Mr. Prue: I always look at amendments to see whether or not they cause any harm. Quite frankly, I don't think this causes any harm. I agree with what Mr. Hardeman has to say, but it doesn't cause any harm. We can just leave in "investigate" or we can say "investigate in an independent manner." Whether it changes what actually happens—I don't think this is going to change it in any great way. To me, it doesn't matter whether it passes or not, but it gives me some tiny bit of comfort that the government wants this individual to be independent, so I guess I'm going to support it. But I do acknowledge that Mr. Hardeman has made a good point. This isn't going to change the earth, but in the end it's not going to harm it either.

Mr. Duguid: I'd just clarify that this is not the only amendment that will discuss the expectations and the independence of the ombudsman. There's a subsequent amendment, which we'll speak to later on.

Mr. Hardeman: I appreciate the comments from the parliamentary assistant. I haven't looked through any other amendments to see where we're going, but I'm happy to hear that there are going to be more amendments to deal with this. I guess I would ask, more to deal with directing the independence?

Mr. Duguid: We'll get to it in two amendments, Mr. Chair. Maybe it would be best, in the interests of time, to speak to it then.

The Chair: Anything else, Mr. Prue? No? All those in favour of the motion? Those opposed? That motion is carried.

Moving on to the PC motion on page 25: Mr. Hardeman.

Mr. Hardeman: I move that section 223.13 of the Municipal Act, 2001, as set out in section 96 of schedule A to the bill, be amended by adding the following subsection:

“Joint appointment

“(1.1) Two or more municipalities may jointly appoint an ombudsman under subsection (1).”

One of the areas that we had considerable discussions on, from the Ombudsman and from all the other presenters, was that when you looked at the bill, it was more likely that the larger municipalities would be appointing their own ombudsmen and their own investigations and so forth, but smaller municipalities would not likely be in a position to be able to do that. If it's going to be available to some municipalities, we should do everything we can to make it available to all municipalities. Particularly if we look at the issue of independence, if, as the previous amendment put forward, we're going to have an independent investigation, it would seem unnecessary to make sure they were working for only one municipality. There's no reason why two or three or, in the case of my home community of Oxford county, eight municipalities couldn't have an ombudsman office that would do the work for all nine municipalities. This allows that to happen. It doesn't direct anything. The government keeps pointing out that they want to recognize them as a mature level of government. It seems to me that how they provide this service should not be the biggest issue with the government. I think it makes a lot of sense to approve this.

The Chair: Any further speakers to the PC motion?

Mr. Duguid: We don't disagree with the idea or concept of municipalities jointly appointing ombudsmen. In fact, it's something that may well happen down the road. The legislation totally allows this to happen, so this particular amendment is not necessary. I don't like putting amendments into legislation if they're not required, because you never know how they could be interpreted down the road. As it stands now, the legislation totally allows municipalities to share ombudsmen, just as the current legislation allows municipalities to share clerks and treasurers. The amendment's not necessary.

The Chair: Any further speakers?

Mr. Prue: Could you point out where that is true in the legislation so I can verify that and support your position?

Mr. Duguid: Rather than myself fuddle through the legislation, we'll have staff confirm that for you.

Mr. Prue: If the staff can tell me where it's contained, in what section of the act this is already allowed so that the amendment is redundant, then I even think Mr. Hardeman would accept it, if it's there.

Mr. Hardeman: Yes.

Mr. Gray: There is no section in the act that says you can have joint appointments for clerks or treasurers or any other position. What you have is authority to appoint officers, and there's nothing that says a clerk of one municipality can't be a clerk of another municipality. As long as both municipalities accept it, they can appoint anybody they want to be their clerk. Call it a natural person power; call it whatever you want. You have the power to appoint a person. There's no prohibition on having one person be—when I lived in Petrolia for a short time, there was one office in Petrolia and a clerk-treasurer who sat there, and she was the clerk-treasurer for three separate townships at the same time. There is no specific authority for that either.

Mr. Prue: He's answered my question. Back to Mr. Hardeman.

Mr. Hardeman: I just want clarification. I totally agree with Mr. Prue: If I'm convinced that it can be totally shared, as is suggested, I don't have any problem with it. The reason for this amendment is because in the last bill we went through, the issue of having a—I forget what the position was, but it was in the Planning Act, and in order to appoint someone, they were not allowed to share. We tried to get an amendment that they could share, and it was decided that, no, no, that was inappropriate. I really had concerns that this was going to be the same thing. As long as the record shows, as was just stated, that there would be no prohibition on having one ombudsman who would do the work for all the municipalities in a certain area, then I have no problem with it, and I'd withdraw the motion.

1730

The Chair: Withdraw it? Okay. Thank you. The motion on 25 is withdrawn.

Moving on to page 26, we have a government motion.

Mr. Rinaldi: I move that section 223.13 of the Municipal Act, 2001, as set out in section 96 of schedule A to the bill, be amended by adding the following subsections:

“Matters to which municipality is to have regard

“(2.1) In appointing the ombudsman and in assigning powers and duties to him or her, the municipality shall have regard to, among other matters, the importance of the matters listed in subsection (2.3).

“Same, ombudsman

“(2.2) In carrying out his or her functions under subsection (1), the ombudsman shall have regard to, among other matters, the importance of the matters listed in subsection (2.3).

“Same

“(2.3) The matters referred to in subsections (2.1) and (2.2) are,

“(a) the ombudsman's independence and impartiality;

“(b) confidentiality with respect to the ombudsman's activities; and

“(c) the credibility of the ombudsman's investigative process.”

The Chair: Any speakers from the government side?

Mr. Duguid: A short explanation, Mr. Chair. What these amendments do is require the municipality to have regard to the important principles of independence, impartiality, confidentiality and a credible investigation process when appointing and assigning powers and duties to an ombudsman. They also require that municipal ombudsmen themselves have regard to these principles when carrying out their functions.

This is part of the four cornerstones of the ombudsman functions that the Ombudsman spoke to when he was here. I want to take this opportunity to thank the Ombudsman for his input on this. I have full confidence, and always have, that municipalities would have taken into consideration all of these principles. At least what this does is ensure that they have to consider them, have regard to them, and we have confidence in municipalities that they will deal appropriately with these new powers.

The Chair: Any further speakers?

Mr. Hardeman: I guess I just want to comment on, and I've been quite a supporter in the past of, "shall have regard to." But I just caution and question that it wasn't too long ago, again, in the planning documents, that we didn't think "have regard to," when municipalities have to deal with the provincial policy statement, was strong enough. The province decided it had to be "shall be consistent with." I would think that this issue is as important to the people of Ontario as the planning documents are as relates to the provincial policy statement. So I'm a little concerned with just "have regard to," because that has been interpreted in the past as—we considered it, but we decided that, in this case, it wasn't the driving force. So I have some concern about that.

I think we're just slightly short of meeting the suggestions of the Ombudsman as it relates to providing that impartiality with the appointment, as opposed to asking the ombudsperson appointed at the time to take these items into consideration as they're making decisions. Is their job dependent on them making a decision favourable to municipal council? This doesn't take away from that. But I do want to commend them. This is a long ways from where we were, and we appreciate that, with some assistance on everybody's part, we at least got this far.

The Chair: All those in favour of the motion on the floor? Those opposed? That motion is carried.

Moving on to the PC motion on page 27, Mr. Hardeman.

Mr. Hardeman: I move that subsection 223.13(4) of the Municipal Act, 2001, as set out in section 96 of schedule A to the bill, be amended by striking out "or" at the end of clause (a) and by adding the following clause:

"(a.1) in respect of which an investigation has been commenced under the Ombudsman Act; or"

This is an amendment. The Ombudsman, in his presentation, was quite clear that he had concern about looking at the process where, if you have an ombudsman, then that's the end of the line for folks; if you don't have an ombudsman, if it's investigating the closed-meeting

issue, then the Ombudsman of Ontario can be contacted and he can do the work. His concern is that if there is a problem, the municipality could, in the interim, appoint an ombudsman and then that application could no longer stay with the provincial Ombudsman. So this is to prevent that from happening, that once it's been referred to the provincial Ombudsman, it would stay there regardless of what the municipality did, and for people who were not taking advantage of it, it would have absolutely no impact at any point in time.

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

Mr. Duguid: Only that the government doesn't have any intention of allowing ombudsmen to be the fallback for municipalities. Municipalities will decide whether they appoint an ombudsman or not for this particular matter. We're not talking about the provision of open meetings at this particular point in the bill, which is a different scenario. Here, we're not planning on appointing the Ombudsman to be the ombudsman of municipalities. That makes this particular motion I guess either moot or not supportable.

The Chair: Any further speakers?

Mr. Hardeman: I stand to be corrected, but the Ombudsman was quite clear that he had concern about the open-meeting provision in the bill and reverting to the Ontario Ombudsman. The act directs that a municipality that does not appoint an investigator themselves can—a citizen can ask the Ontario Ombudsman to look into that. The Ombudsman said that he had concerns about removing his jurisdiction by just appointing the investigator and then taking that case out of the hands of the Ombudsman. So I think this would clear that up, that that couldn't happen.

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

There's going to be a motion on 27.1, but we're going to deal with the motion on page 28 first.

Mr. Hardeman: I move that subsection 223.13(7) of the Municipal Act, 2001, as set out in section 96 of schedule A to the bill, be struck out and the following substituted:

"Arm's length relationship

"(3) The ombudsman shall be a person who is at arm's length from council and the municipality and shall not be a municipal employee."

Again, I think this really deals with the whole issue of the impartiality. We don't believe it's good enough to just tell the ombudsman, "Now, you be totally impartial and make sure that the public understands you're totally impartial and at arm's length from the problem," yet their job depends on coming up with a favourable decision. This points out that they must appoint someone as the ombudsman who is at arm's length from the council and, furthermore, that they aren't employed otherwise by the municipality. This would prevent the municipality from appointing the CEO to be the ombudsman for the municipality.

The Chair: Any further speakers?

Mr. Duguid: We won't be supporting this motion. In a previous motion we've clarified that the ombudsman function is to be independent. In another motion we've clarified that the municipality has to have regard to the principle of independence when appointing and assigning powers and duties to that ombudsman. We feel that those sections cover this off. There are a variety of interpretations to the wording in this motion that could provide some degree of difficulty for municipalities down the road, and we'd rather not complicate that. We have confidence that municipalities will—in fact, when we had AMO before us during the hearings, Mr. Reycraft made it very, very clear municipalities are not going to appoint somebody as an ombudsman who is not independent, and would not get an employee of the corporation or the city or town or village or region to do that. But there are issues in terms of definitions of “employee” that I think we'd rather not get into.

Mr. Hardeman: I recognize that the president of AMO, on behalf of all the member municipalities of AMO, was making a presentation and suggested that he would never, nor would any municipality, do anything that would be contrary to the best interests of the people who were being impacted by their decisions. At the same time, we do have a Municipal Act that says that there are restrictions on their closed meetings. If we were so sure, as the government purports to be, that they would never do anything against the best interests of the citizens, then why do we have legislation that restricts meetings at all? Why don't we open it up and say, as we have here at Queen's Park, “Obviously you're an accountable and respected governance and you're a mature government.” Why do we need to tell them what they can put into legal and personnel and what they can't?

1740

At the same time, if you're going to have a third party review for decisions that they make, the public would expect that third party review to be by an impartial third party. If we don't do something like this, the old adage about “You can't fight city hall” is going to be true, because the judge is going to be somebody at city hall, and I don't think that's an appropriate way. I think this is one that should be passed, and I do request a recorded vote on it.

The Chair: Any further speakers?

Mr. Duguid: I was going to, but I'm not.

The Chair: A recorded vote has been requested.

Mr. Prue: Is this motion 28?

The Chair: We're still on 28, yes. And I misspoke before: It's not motion 27.1 we'll be dealing with next; it's actually 28.1.

Mr. Prue: Okay. I just wanted to make sure.

If I could ask Mr. Hardeman, you do not believe that it can be a municipal employee? The Ombudsman of Ontario is a provincial employee. He works for the Legislature. Why can it not be a similar circumstance working for the municipality?

Mr. Hardeman: In comparison, the present Ombudsman in Ontario is a servant of the Legislature appointed

for a period of time. Upon his report, he is not putting his livelihood in danger—only at the end of his appointment. The other job cannot be a municipal employee; if this amendment was passed, they can't appoint the CEO, or the CAO, of the municipality to be the ombudsman.

Mr. Prue: They did—well, I guess they legally could, but it would be kind of bizarre, don't you think?

Mr. Hardeman: Exactly. But the present act, without this amendment, allows it.

Mr. Prue: All right. But this also would forbid them from having a municipal employee, somebody who would have rights to—I'm thinking about a municipal employee, maybe a lawyer from a municipality, who was taken for a tenure, a term of council, four years, and appointed by the council with all faith to be the ombudsman, and at the end of four years would either get the job back or they would go out and find another municipal employee. I'm reluctant, because that employee might not then be able to go back to his or her job. Do you understand where I'm trying to get to? I agree with you; it needs to be for a finite period of time, for the period of time of the municipal council. But at the end, if there's a new mayor and a new council and they want a new ombudsman, I don't want that municipal employee to suddenly find themselves on the street. I think they should at least be able to go—that's why I have some problem here where they cannot be a municipal employee.

Mr. Hardeman: I think this is the same as it presently is in the Municipal Elections Act. A municipal employee may seek office, hold office, and take a leave of absence. While they're on the leave of absence to run for council, they are not a municipal employee; they are a citizen. They must resign their seat as a municipal employee during the tenure of council. They can go back and work for council again after they've finished being on council, but while they're there, they can't be an employee of the same council so their livelihood depends on that. This motion makes them an independent officer of the council as opposed to an employee who could also be holding another part of the operation in their hands and can't afford to make a negative report to council because their work superintendent's job may depend on it.

Mr. Prue: I understand his rationale.

The Chair: Thank you, Mr. Prue. Any further speakers? Seeing none, all those in favour of the motion?

Ayes

Hardeman, Prue.

Nays

Brownell, Dhillon, Duguid, Rinaldi.

The Chair: That motion is lost.

We'll just take a very, very short break while we distribute a new motion 28.1. I'd point out to the members that Mr. Richmond has provided you with a final

summary of the recommendations and also the information that was requested on municipal corporations, and it should be on your desk as well.

Mr. Hardeman: While they're passing those out, Mr. Chair, and we're on a break, I find it interesting that we are almost on our last day of clause-by-clause and we're now getting a summary of the recommendations. I don't want in any way to apply that negatively to the staff; I apply that to process. It seems kind of redundant to have done all that work and in fact none of us are going to read it because we're pretty well through the debate when the recommendations come from the committee hearings.

Mr. Prue: I don't know where you are, Mr. Hardeman, but I see us on 28.1, and we've got what, 83? I think we're a long way from the last day.

Mr. Hardeman: I'm a positive thinker.

The Chair: Most of us are planning our Monday afternoons.

Okay, we have PC motion 28.1. Mr. Hardeman.

Mr. Hardeman: I move that section 223.19 of the Municipal Act, 2001, as set out in section 96 of schedule A to the bill, be amended by adding the following subsection:

"Investigation

"(1.1) A person may request that an investigation of whether a municipality conducted its procurement processes in a fair, open and transparent manner be undertaken,

"(a) by an auditor general referred to in subsection (2); or

"(b) by the Auditor General appointed under the Auditor General Act, if the municipality has not appointed an auditor general referred to in subsection (1)."

This resolution is to point out a concern expressed by a number of the presenters. One that comes to mind was the Ontario Road Builders' Association. They wanted to be sure that all the procurement, the contracting and so forth, particularly as it relates to municipal corporations—all the procurement and tendering—was done in a fair and open manner and that there was something put in place to allow that to be looked into if a citizen believed that was not happening.

The Chair: Any further speakers?

Mr. Prue: I just want to make sure that this, if it passes, would not be abused. What is to stop anyone who, in a tendering process, doesn't win—I heard some of these people very vociferously saying that no municipality should be allowed to conduct these operations. They don't want them in the operation. I heard some of them say what has been suggested here.

So a municipality, the county of Oxford, sets up a little corporation to build sidewalks maybe—let's just do something simple, put in the sidewalks—and they can undercut and they can do it for a cheaper price than private enterprise or any of the bids. I can see that people who own these companies will then go off and try to take the municipality to court, go through the auditor general process, do the whole thing. I would gladly let them do that provided that if they don't win, I would want them to

pay the costs. I don't want these frivolous and vexatious things because someone else has undercut their bid, and a municipality can undercut their bid just as easily as another private company can, if they have a corporation. I just want to know in the end that this isn't the avenue whereby anyone who's disgruntled in not having their bid taken or who is underbid by a municipal corporation will use this to go out and wreak havoc upon the municipality, because they can do so without costing them a single cent, as I read this. You call in auditors general, you do all kinds of reports—I don't know. I'm a little reluctant to go there unless you assure me that anyone who takes that process, if they don't win, pays the full cost.

1750

Mr. Hardeman: I guess in the comments from Mr. Prue, I share your concern that I don't think we want to pass a bill that would make that happen. I would suggest that the very thing that this does is try to prevent all these things from going to court. The Municipal Act tells municipalities to do it in a fair and open process, so I suppose all would be challengeable in a court of law. This is to try and put something in place that can be, "Did or did they not?" and keep it from going to court.

The Chair: Any further speakers?

The motion on page 28.1 is on the floor. All those in favour? Those opposed? That motion loses.

Shall section 96, as amended, carry? All those in favour? Those opposed? Carried.

Sections 97 and 98 have no amendments. We can deal with them as a whole, with the approval of the committee. All those in favour of sections 97 and 98? Those opposed? Those sections carry.

Going on to section 99, there's a PC motion on page 29.

Mr. Hardeman: I move that section 226.1 of the Municipal Act, 2001, as set out in section 99 of the bill, be amended by striking out "the head of council shall" in the portion before clause (a) and substituting "the head of council may."

We had some discussion about that in my presentation to the Legislative Assembly on second reading of this bill. I think the act, in saying that they "shall," goes a long way in directing heads of council on what they may do that they had no intention of doing and no need to do.

One that comes to mind is "act as the representative of the municipality both within and outside the municipality, and promote the municipality locally, nationally and internationally." I support the issue of letting that responsibility rest with the head of council. But the word "shall" means that if a mayor was elected in the last municipal election, and four years from now, when he had to stand up at the all-candidates meeting and say, "I've adequately fulfilled the responsibility as head of council," if he never went to Europe that whole four years to promote the municipality abroad, then someone could suggest that he hadn't fulfilled the obligation. Because it doesn't say he "may"; it says he "shall" do these things.

“Uphold and promote the purposes of the municipality” makes sense.

“Promote public involvement in the municipality’s activities.” How would you measure whether he did or did not do that?

The word “may” says he can do all these things, but there is no obligation to do that.

“Participate in and foster activities that enhance the economic, social and environmental well-being of the municipality and its residents.” In fact, if the mayor was indisposed for six months and he couldn’t get out, then he could be held as derelict in duty because he didn’t do the things that this lists.

I think changing the word from “shall” to “may” covers it all off and it allows him to do all those things. I don’t think anybody can take that away from him and, in fact, it wouldn’t hold him to doing all those things in any given term of office.

The Chair: Further speakers? Seeing none, all those in favour? Those opposed? That motion is lost.

Mr. Prue, this will be your first amendment.

Mr. Prue: My goodness, it took a long time to get to the first one. Oh, you’ve still got to do—

The Chair: I’m sorry to cut you off. Shall section 99 carry? Those in favour? Those opposed? That motion is carried.

Do you want to get into it, Michael? We’ve got about four minutes left.

Mr. Prue: I think it’s going to take longer than that.

The Chair: Why don’t we just call the meeting, then, for the time being and see everybody on Monday afternoon.

We’re adjourned. Thank you.

The committee adjourned at 1755.

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