11
BILL 206
ONTARIO MUNICIPAL EMPLOYEES' RETIREMENT SYSTEM ACT, 2005

The Finance and Administration Committee recommends the adoption of the recommendation contained in the following report, August 30, 2005, from the Regional Solicitor and the Commissioner of Corporate Services:

1. RECOMMENDATION

It is recommended that:

1. This report be received for information.

2. PURPOSE

The purpose of this report is to provide Regional Council with an overview of Bill 206, *Ontario Municipal Employees Retirement System Act, 2005*. This report identifies key implications of the proposed legislation for municipalities.

3. BACKGROUND

Bill 206 received first reading on June 1, 2005 and was referred to Standing Committee. Hearings are expected to take place during fall 2005, and the government hopes to have proclamation of Bill 206 by early 2006.

If passed, Bill 206 would replace the existing OMERS Act and, in so doing would relieve the Ontario Government of its governance role in OMERS. The proposed legislation fulfils Premier McGuinty’s commitment made when he was leader of the Opposition to give municipal employees and employers who contribute to OMERS full control over the plan.

Bill 206 builds on the 2002 report of the OMERS Board of Directors in which the Board recommended an autonomous governance model with a clear separation of sponsor and fiduciary roles in the governance of the Plan. The OMERS Board of Directors believes that the autonomous model will allow OMERS to operate more effectively in the interest of its members while maintaining a secure environment for pensions.

Under the proposed legislation, the OMERS Plan would continue to be the exclusive pension plan for municipal employees and the pension would continue to offer a defined benefit. OMERS currently provides retirement benefits to 355,000 active and retired members on behalf of 900 government employers across the province.

4. ANALYSIS AND OPTIONS

The three key components of Bill 206 are:

- Autonomous Governance Model;
- Framework for establishment of supplemental plans;
- Parameters to ensure fiscal sustainability.

Bill 206 also includes transitional provisions to facilitate the introduction of the autonomous governance model.

4.1 Governance

OMERS is currently the only Ontario pension plan in which the Ontario Government plays the role of plan sponsor without being a direct contributor to the plan. Under Bill 206, the OMERS Plan would continue under the governance of two statutory not-for-profit corporations: the Sponsors Corporation and the Administration Corporation. Both corporations would exercise natural person powers to enable them to carry out their statutory objectives, subject to the restrictions set out in the Act.

4.1.1 Sponsors Corporation

The Sponsors Corporation would assume the role of plan sponsor. As such, the Sponsors Corporation would have the authority:

- To make decisions about the OMERS pension plans, including their design;
- To set contribution rates;
- To approve eligible employers; and
- To approve supplemental plans.

Bill 206 requires that the Sponsors Corporation meet at least once every three years following receipt of a triennial evaluation of the plan, at which time the Sponsors Corporation would be required to consider changes in benefits or contribution rates for any of the OMERS pension plans. The Sponsors Corporation may also be required to meet more frequently at the request of the Administration Corporation.

The Sponsors Corporation would have the power to pass by-laws and resolutions regulating its proceedings and for the management of its affairs, subject to the requirement that decisions require an affirmative vote by a majority. Bill 206 prescribes a dispute resolution mechanism to be used by the Sponsors Corporation until such time as the corporation implements such mechanism by by-law.

4.1.2 Administration Corporation

The Administration Corporation would act as administrator of the OMERS pension plans and trustee of the pension funds. The objects of the Administration Corporation are:

- To determine appropriate funding policies;
- To manage funds;
- To provide annual reporting to employers;
- To advise the Sponsors Corporation on actuarial and technical/administrative matters, including change in contribution rates and introduction of supplemental plans; and
- To provide administrative support to the Sponsors Corporation.

The Administration Corporation would be required to appoint an actuary and auditor for the purposes of assisting in its function as plan administrator and trustee of the pension fund.

4.1.3 Composition of Sponsor's and Administration Corporations

Bill 206 provides that the composition of both the Sponsors Corporation and Administration Corporation would initially be determined by the Ontario government.

As a policy matter, the provincial government proposes to make initial appointments to the Sponsors Corporation based on recommendations from participating employers. The current members of the OMERS Board of Directors would be the provincial appointees to the Administration Corporation.

Following the first anniversary, the Sponsors Corporation may pass by-laws to determine the composition of each corporation and the method for choosing members, subject to the provisions of the legislation. No person can be appointed to both corporations simultaneously. The term of office of each member of either corporation may not exceed three years, and members are eligible to hold office for a maximum of six consecutive years.

The proposed composition of the Sponsors Corporation proposed by the provincial government is as follows:

Employer Representatives	Employee Representatives
Association of Municipalities of Ontario – 3 members	Canadian Union of Public Employees – 3 members
Ontario Public School Board Association – 1 member	Police Association of Ontario – 1 member
Catholic School Trustees' Association – 1 member	Ontario Professional Firefighters' Association – 1 member

Ontario Association of Police Services Boards – 1 member	Representative of other plan employees – 3 members
Representative from other plan employers – 2 members	Non-voting representative – 1 member
Non-voting representative of employers – 1 member	

The proposed composition of the Administration Corporation is as follows:

Employer Representatives	Employee Representatives
Association of Municipalities of Ontario – 3 members	Canadian Union of Public Employees – 2 members
Ontario Public School Board Association/Catholic School Trustees' Association – 1 member (rotated)	Police Association of Ontario – 1 member
Ontario Association of Police Services Boards – 1 member	Ontario Professional Firefighters' Association – 1 member
Representative from other plan employees – 2 members	Representative of retirees – 1 member
	Representative of other plan employees - 2 members

4.1.4 Expenses

The expenses of the Sponsors Corporation which are, in the opinion of the Administration Corporation, fees and expenses relating to the administration of the plan would be paid from the pension fund for the primary pension plan. The Sponsors Corporation may enact a by-law requiring employers and members of an OMERS pension plan to pay a fee for the purpose of funding other costs of the Sponsors Corporation that do not constitute fees and expenses of administering the pension plan. Such fees may include expenses incurred in connection with mediation and other dispute resolution, including actuarial or consulting fees, and expenses incurred for collecting or administering fees required for the administration of the plan.

4.2 Supplemental Plans

Bill 206 provides for the creation of supplemental plans for the purpose of providing optional benefits to members. This would see OMERS restructured into a system comprising the primary plan and supplemental plans. The Bill specifically directs the Sponsors Corporation to consider making available optional increases in benefits to

OMERS members employed in the Police and Fire sector. An increased pension accrual rate of 2.33% has recently been permitted under the *Income Tax Act* for emergency service personnel. It is reasonable to conclude that the Advisory Committee noted below, comprised of Police and Firefighters Association members whose purpose is to advise the Sponsors Corporation regarding the supplemental plans, will have a strong agenda to push for the approval of 2.33% accrual rate for their members.

Once approved, entitlement to the supplemental benefits will be achieved through collective bargaining at the local level. This will create an environment of protracted negotiation around pension benefits, where previously the pension was fixed and not a negotiable item. Given the tendency to pattern bargaining and arbitration decisions in the police and fire sector, if one service successfully bargains for the supplemental benefits, it will be very difficult to prevent others from being awarded the same.

4.2.1 Advisory Committees

Bill 206 provides for the establishment of two advisory committees to advise the Sponsors Corporation when making decisions about supplemental plans. One advisory committee would be comprised of employer and employee representatives of the police and fire sectors:

Employer Representatives	Employee Representatives
Association of Municipalities of Ontario – 2 members	Ontario Professional Firefighters' Association - 1 member
Ontario Association of Police Services Boards – 1 member	Police Association of Ontario – 1 member
	Toronto Police Association - 1 member

A second advisory committee is to be established for other plan members as follows:

Employer Representatives	Employee Representatives
Association of Municipalities of Ontario – 3 members	Canadian Union of Public Employees - 3 members
Representatives of other employers – 2 members	Representatives of other employees – 2 members

The Sponsors Corporation is also to provide actuarial and other technical or administrative advice regarding the establishment and administration of supplemental plans from the Administration Corporation.

4.3 Fiscal Sustainability

One of the stated purposes of Bill 206 is to establish permanent parameters to safeguard the fiscal sustainability of the OMERS pension plans. The Sponsors Corporation would not be permitted to make benefit changes within the primary plan unless the ratio of the market value of the assets of the pension fund to the going concern liabilities is not less than 1.05 and the ratio of solvency assets to the solvency liabilities is not less than 1.00. These parameters would not apply with respect to an amendment that is required to comply with provincial or federal legislation or an amendment that does not increase going concern liabilities by more than 1%.

Bill 206 also expressly provides that the total amount of contributions payable to any of the OMERS pension plans by an employer for a year must equal the total amount of the contributions payable to the pension plan for the year by the employer's employees.

If the Sponsors Corporation approves a supplemental plan, consideration must be given to the impact of contributions to the supplemental plan on the required contribution rate for the primary plan.

5. FINANCIAL IMPLICATIONS

Bill 206 stipulates that enhanced pension accrual can apply on a go forward basis only and not on past service. No information has been generated regarding the cost for the supplemental plans; however, there is no doubt that if Police and Fire Services successfully bargain the supplemental plans, pension costs for the municipalities will rise.

Additionally, Paramedics were included in the *Income Tax Act* amendment allowing the enhanced accrual rate of 2.33% and it could be reasonably anticipated that they too will lobby for any enhanced benefit made available by a supplemental plan, which will further increase costs.

The Sponsors Corporation, by by-law, may impose a fee on employers and members of OMERS to pay for costs that do not constitute fees and expenses of administering the pension plan. This could include the costs of mediation/arbitration when necessary as outlined by Bill 206.

6. LOCAL MUNICIPAL IMPACT

OMERS is the exclusive pension for all Municipalities, therefore, all of the local municipalities will be impacted in a similar fashion by Bill 206.

7. CONCLUSION

OMERS is one of the only large public sector pension plans in Canada where the contributors do not have control. The OMERS Board of Directors has sought an autonomous governance model for many years to allow OMERS to operate more effectively. Assurances have been given by the President and CEO of OMERS that the OMERS investment strategy will not be affected by the autonomy initiative.

Autonomy in and of itself is not a bad thing for the OMERS plan; however, a slower implementation phase that would allow for more in depth understanding of the supplemental plans and their potential cost would be beneficial.