



PO Box 1749  
Halifax, Nova Scotia  
B3J 3A5 Canada

**Halifax Regional Council**  
**December 12, 2006**

**TO:** Mayor Kelly and Members of Halifax Regional Council

**SUBMITTED BY:** M. E. Donovan  
M. E. Donovan, Director, Legal Services

**DATE:** December 6, 2006

**SUBJECT:** Legislative Amendments to Provincial Legislation

## **INFORMATION REPORT**

### **ORIGIN**

Legal Services has prepared this report to update Council on recent legislative changes in relation to the *Municipal Government Act* and other legislative changes with corporate impacts.

### **BACKGROUND**

On October 10, 2006, Regional Council approved recommendations from staff proposing fourteen amendments to the *Municipal Government Act*.

On November 9, 2006, the Honourable Jamie Muir, Minister of Service Nova Scotia and Municipal Relations, introduced Bill 95 containing amendments to the *MGA*. Bill 95 received Royal Assent on November 23, 2006 but is subject to proclamation by the Governor in Council and will come into force on proclamation. The one exception is an amendment to section 131, which amends who is responsible for the payment of business occupancy taxes, will be effective, retroactive to April 1, 2006, once the Governor and Council so declares.

In addition to the *MGA*, there were amendments to the *Halifax Regional Water Commission Act*, the *Trade Union Act*, the *Labour Code* and the *Assessment Act*.

### **DISCUSSION**

#### ***MGA Changes***

Bill 95 contains two amendments to the *MGA* requested by HRM. Staff have been advised that the remaining amendments will be considered by the Province for the next session of the House.

### *Infrastructure Charges*

On October 10, 2006, Regional Council adopted the “Infrastructure Charges Study” prepared by SGE Acres Ltd. as the basis for developing new policy and by-laws. The report recommended that Transit Facilities and Solid Waste Facilities be considered for Development Charges, and Council asked the Union of Nova Scotia Municipalities to support a request for an amendment to the *MGA*. UNSM adopted a resolution at their Annual General meeting held October 17 - 20, 2006, requesting amendments to the *MGA* to enable development charges for transit and solid waste facilities.

The amendment HRM was seeking to section 81 (1) (a) would grant Council the power to pass by-laws imposing, fixing and providing methods of enforcing payment of charges for solid-waste management facilities and transit facilities.

As requested, the *MGA* will contain two new clauses under 81 (1) thereby allowing HRM to impose charges for transit facilities and solid-waste management facilities. Relatedly, a definition of “transit facilities” will be added as including “a bus, a bus terminal, a bus shelter, a bus bay, a parking lot, a ferry, a ferry terminal and a ferry dock”. The term “solid-waste management facility” was already defined in the *Act*. Notably, the power to impose charges under section 81 for streets was not included in Bill 95.

Bill 95 also amended section 274 to allow: (1) a new infrastructure charge for new or expanded solid-waste management facilities, and (2) infrastructure charges for new or expanded transit facilities. Prior to the amendment, in relation to infrastructure charges for transit, charges could only be imposed for new transit bus bays as compared to new and expanded transit facilities.

### *Taxation*

Under section 131 (4), “vendor” is substituted for “owner” to clarify that when a purchaser pays municipal taxes on a property the purchaser has bought, the taxes include the vendor's business occupancy tax. This clause is retroactive to April 1, 2006. This amendment was adopted in response to a court case in which the court commented that the provisions in the *MGA* were too vague.

### *Planning*

The Bill provides authority for the Minister to appoint an Assistant Provincial Director of Planning to perform the Provincial Director's duties when necessary. This is intended to facilitate the approval of planning documents when the Provincial Director is not available.

Section 220 (4) (ka) is new and allows a land-use by-law to regulate the floor area ratio of a building.

Section 220 (5) is amended granting authority for a development officer, with approval of the property owner, to discharge a site plan; and section 234 is amended to clarify that the development officer, rather than Council, discharges the site-plan. The rationale was that the Development Officer has the power to approve the site plan, and, logically, therefore the Development Officer should have the power to discharge the site plan. This will also make the administration of site plans easier.

Section 268(2)(f) is amended to provide that the disposal of Provincial streets or the consolidation of Provincial streets with adjacent land is not subject to subdivision approval. This now grants exemption status to both municipal and provincial streets.

Section 273 (5A) is amended to provide that Council may transfer funds from the sale of land that is no longer needed to be used for parks, playgrounds and similar public purposes, to non-profit organizations that provide those objectives.

Section 285 (2) is amended to provide that a development officer, or a person acting for a development officer, must, within seven days of the approval of a final plan of subdivision, forward two original copies of the approved plan to the registry, one of which is to be filed in the registry.

### ***Controlled Access to Streets***

Bill 95 grants HRM the power, by bylaw, to regulate or prohibit access to a controlled access street; however, this was only one of a number of amendments HRM was seeking in relation to controlled access to streets. The Province did not include the language which would clarify that HRM could prohibit access “to any street, private road, driveway, entrance-way or gate which is part of or which is connected with or opens upon the controlled access street”. In addition, the Province did not introduce HRM’s proposal in relation to 309 (6) or 309 (10), including the immunity provision, which provisions mirrored those currently in existence in the *Public Highways Act* in respect of provincially controlled highways, as follows:

Section 309(6):

- (i) The Engineer may designate a street as a controlled access street.
- (ii) The Engineer may grant a permit to construct access to a controlled access street.
- (iii) The owner of the property may only appeal the Engineer’s refusal to permit access to a controlled access street when there is no street access to the property.
- (iv) An appeal under clause (iii) shall be filed with the municipal clerk within seven days of receiving the Engineer’s refusal.

Section 309 (10) :

(i) Where the Engineer designates a new access location, the Engineer may close any existing access to a controlled access street.

(ii) The municipality is not liable for any damages or injurious affection caused or incurred under this section.

HRM's request for this amendment stemmed from the transfer of provincially controlled access roads; specifically, a portion of the Hammonds Plains Road, and the need to maintain the existing controlled access.

### ***Dangerous and Unsightly Premises Orders***

Bill 95 provides that an "order" no longer has to personally served on the owner thereby providing flexibility in the method of serving the owner.

### ***Term of Office - Warden/Deputy Mayor or Warden***

Bill 95 removes the requirement for the term of office for a warden only to be adopted by policy and removes the requirement for the term of the office of a deputy mayor or deputy warden to be determined by policy. Prior to the selection of a deputy mayor, Council now may determine the term of office of the deputy mayor by by law, resolution or policy.

### ***FOIPOP***

Bill 95 , with respect to the Part XX of the *MGA* entitled Freedom of Information and Protection and Privacy, amends section 479 A and allows a municipality to refuse to disclose:

- i) any information obtained by a conciliation board, conciliation officer or mediator appointed under a collective agreement;
- ii) the report of any conciliation board or conciliation officer appointed under a collective agreement; and
- iii) any testimony or proceedings before a conciliation board appointed pursuant to the collective agreement.

### ***Trade Union Act Amendments - Bill 91***

In addition to the *MGA*, on November 8, 2006, Manning MacDonald, MLA for Cape Breton South, introduced Private Members Bill 91 amending the *Trade Union Act* in relation to the right to strike of firefighters. Bill 91 removes both the right of a full time firefighter to strike and the right of an

employer to “lock out” a firefighter, replacing it with interest arbitration. The Bill received Royal Assent on November 23, 2006 and is subject to proclamation by the Governor in Council. HRM is not bound by this part of the Bill until the current collective with the International Association of Firefighters expires on May 31, 2016.

The Bill also provides that an arbitrator, during the interest arbitrations for both the firefighters (after May 31, 2016) and for police, may only consider a list of factors under Schedule A of the *Act*. These factors are as follows:

1. Wages and salaries
2. Pay procedure on promotions, demotion, reclassification and increments
3. Hours of work
4. Overtime compensation
5. Premium allowances for work performed
6. Holidays
7. Vacations
8. Employee relocation expenses
9. Long Service Award
10. Leaves of absence other than for elective public office, political activity or education or training and development
11. Conditions of education leave
12. Conditions of sabbatical leave
13. Consolidated Health Plan
14. Layoff policy taking into account competency, merit and seniority of employees
15. Procedures for discipline and discharge for cause of employees
16. Grievance procedure
17. Mileage rate and allowance payable to employee for kilometres travelled when employee is required to use employee's own automobile on employer's business
18. Group life insurance
19. Long-term income-protection insurance
20. Duration of collective agreement
21. Interpretations and definitions of words and expressions used in collective agreement and not defined by collective agreement or applicable enactment.

### ***Halifax Regional Water Commission Act - Bill 72***

Bill 72 was introduced by the Honourable Barry Barnett on November 2, 2006 and received Royal Assent on November 23, 2006. This Bill is not subject to proclamation.

Bill 72 amends the *HRWC Act* to deem the Commission a “public utility” under the *Public Utility Act* for the purposes of owning, operating managing or controlling a storm system, a sanitary system, or a sewage-treatment facility. The rates to be charged for a storm water system, sanitary system or a sewage treatment facility can now be approved by the Utility and Review Board, in the event that

the HRWC becomes responsible for the wastewater system. The Bill further amends the *Halifax Regional Water Commission Act* to provide the Commission with similar liability protection as HRM in relation to the operation of sewers. Prior to the amendment, the Water Commission only had liability protection for claims relating to the water but not sewer services.

### ***Labour Code Amendments***

Bill 83, introduced by Keith Colwell, MLA for Preston, received Royal Assent on November 23, 2006 and is subject to proclamation by the Governor in Council. The Bill entitles employees to at least 30 minutes rest after every five consecutive hours of work. Where an employee works more than ten consecutive hours, the employee is entitled to (1) at least one rest or eating break of at least one-half hour and, (2) additional breaks totalling at least one-half hour for each five consecutive hours of work.

The breaks do not apply where:

- i) an accident occurs, urgent work is necessary or unforeseeable or unpreventable circumstances occur;
- ii) it is unreasonable for an employee to take a meal break;
- iii) an employee whose terms of employment are determined by a collective agreement; or
- iv) in any other case prescribed by the regulations.

For all employees, including those caught under a collective agreement, an employee, for medical reasons, is entitled to a rest or eating break at a time or times other the half hour breaks. An employee who has worked five hours and has not been provided a rest or eating break is entitled to eat while working.

### ***Canadian Forces Reservists Protection Act***

Bill 80, received Royal Assent on November 23, 2006 and is subject to proclamation by the Governor in Council. The Bill protects the civilian employment and students in the Canadian Forces Reserves. The Bill also protects a student's right to return to his or her program of study. The Bill also protects reservists job if the employee has been employed for at least one year and while he or she is on active duty: (1) the employee provides the employer with the required notice of the employee's intention to take a leave of absence for a period of service and an anticipated date of return, and (2) returns to work or applies for re-employment at the employee's workplace within a reasonable time upon completion of the employee's service. The Governor in Council will determine the period of time in which the employee must return to work.

The *Act* provides that an employee, who has been employed by an employer for at least one year and is required to be absent from the employer's civilian employment for purpose of service, is entitled to an unpaid leave of absence. "Service" means both active duty and training in the Reserves. The leave is contingent on the employee: (1) giving the employer the required notice of the date that the leave will begin and the anticipated date of return to work; and if the employer so requests, a certificate from an official with the Reserves stating that the employee is a member, is required for service and, where possible, specifying the expected dates for the period of service. The employee is required to provide his or her employer with: (1) reasonable notice prior to the date when the employee intends to take a leave of absence for a period of service; and (2) reasonable notice prior to the date when the employee intends to return to work upon completion of service.

As with pregnancy and parental leaves, the employer must grant to the employee the option of maintaining a benefit plan in which the employee participated prior to his or her service. Where the employee opts to maintain the benefit plan, the employee must enter into an arrangement with the employer to pay the cost required to maintain the benefit plan, including the employer's share of the benefit plan. Nothing prevents the employer from contributing to the cost of a benefit plan if the employer so desires.

The employer must allow an employee to return to work after service in the position held by the employee immediately before service or, where that position is not available, in a comparable position with not less than the same wages and benefits; and with no loss of the seniority or benefits that accrued to the employee before the commencement of service.

### ***Wind Turbine Facilities Municipal Taxation Act***

Bill 84 received Royal Assent on November 23, 2006 and is subject to proclamation by the Governor in Council. The Bill applies to the 2005-2006 and subsequent municipal taxation years except where the facilities are owned by Nova Scotia Power Incorporated, in which case it applies to the 2006-07 and subsequent municipal taxation years.

The Bill, supported by the Union of Nova Scotia Municipalities, puts in place, for wind turbines, a different taxation model than assessment times rate. The legislation exempts wind turbine facilities from the assessment process but not the real estate component of the property. The wind turbine facilities are then taxed on an alternative system of either a payment of \$5,500 or \$4,500 per megawatt based on the total capacity of the turbine or turbines at a facility that is commercially producing electricity for sale on the grid. Facilities already in production, or those that already have signed a Power Purchase Agreement with Nova Scotia Power and are in the planning and construction phase, will pay a tax rate of \$4,500 per megawatt. New facilities will pay the \$5,500. Pursuant to section 9, the Province will provide for a payment to the affected municipal units of \$1,000 per megawatt in respect of **existing** facilities. This payment will continue for the life of the existing contracts up to a maximum of 20 years.

The legislation also provides for an escalator clause to annually increase the tax for the wind turbine facilities based on the consumer price index. In addition to being a general scheme for taxation, the legislation also provides that the taxation of wind turbine sites and taxation of the real estate on which they reside applies to Nova Scotia Power Incorporated installations commissioned after April 1, 2006.

The *Act* expressly exempts the legislation from the operation of 519 of the *MGA*. Under section 519 of the *MGA*, for any legislation, regulation or administrative action which applies to municipalities and not to the Province generally, the Minister is required to notify the Union of Nova Scotia Municipalities at least one year prior to the effective date of any undertaken by or on behalf of the Government of the Province that would have the effect of decreasing the revenue received by municipalities in Nova Scotia or increasing the required expenditures of municipalities in Nova Scotia.

#### ***Assessment Act***

Bill 92 was introduced by Minister Muir and received Royal Assent on November 23, 2006 and is subject to proclamation by the Governor in Council. The Bill amends the *Assessment Act* to extend the current 10% cap on taxable residential property for the 2007-2008 fiscal year and fixes the rate for 2008-2009 and future years at CPI.

#### ***Municipal Government Act***

On November 23, 2006, Bill 9 received Royal Assent. Bill 9 is in relation to funding for the Conseil scolaire acadien provincial. Staff previously prepared a report for the August 1, 2006 Regular Council meeting in relation to this matter.

#### **ATTACHMENTS**

None.

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.html> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.



Report Prepared by:

M.E. Donovan, Legal Services, 490-4226