Clause 18 in Report No. 1 of Committee of the Whole was adopted, without amendment, by the Council of The Regional Municipality of York at its meeting held on January 26, 2017.

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Bill 68, *Modernizing Ontario's Municipal Legislation Act, 2016*

Committee of the Whole recommends:

1. Receipt of the presentation by Joy Hulton, Regional Solicitor.
2. Receipt of the report dated December 14, 2016 from the Regional Solicitor.
3. Staff report back in April 2017 on the status of Bill 68, Modernizing Ontario's Municipal Legislation Act, 2016.

Report dated December 14, 2016 from the Regional Solicitor now follows:

1. Recommendation

It is recommended that Council receive this report for information.

2. Purpose

This report is to advise Council of proposed amendments to the *Municipal Act, 2001* and related legislation and to highlight potential implications for Regional governance and administration.

3. Background and Previous Council Direction

In October 2015, the Region submitted recommendations on amendments to municipal legislation, in response to a discussion paper released by the Province

In June 2015, the Province issued a discussion paper inviting municipalities and other interested parties to submit recommendations for legislative reform. The discussion paper focused on three key areas: Accountability and Transparency,

Financial Sustainability and Responsive and Flexible Municipal Government. As part of this review, the Province also invited comments on implementing changes to Council composition. On October 15, 2015 Council endorsed staff recommendations proposing amendments to the legislation. A copy of the Region's submission to the Province is attached as Attachment 1. Attachment 2 shows the manner in which the Region's recommendations are addressed in the draft legislation.

Bill 68 was introduced in November 2016 and proposes amendments to municipal governance and substantive powers

Bill 68, *Modernizing Ontario's Municipal Legislation Act*, *2016* was introduced in the legislature on November 16, 2016.The Bill has now received second reading and is under debate. The proposed legislation would introduce changes to municipal governance, including the method of changing council composition. There will be enhanced accountability and transparency measures, including an expanded role for Integrity Commissioners and new mandatory requirements with respect to codes of conduct and other policies.

With respect to substantive powers, the draft legislation does not represent a broad shift in municipal jurisdiction. Despite the focus on financial sustainability in the consultation process, the Bill does not reflect a major expansion in fiscal tools available to municipalities. There is some indication that additional amendments may be forthcoming through regulations. The Bill does, however, respond to concerns raised with respect to municipalities' ability to regulate with respect to environmental issues, specifically climate change, and introduces substantive amendments in these areas.

4. Analysis and Implications

The Bill will empower municipalities to change the composition of Council without a ministerial regulation, subject to the "triple majority" rule

Currently, the *Municipal Act, 2001* (the "Act") provides that an upper-tier municipality may change the composition of its council subject to certain procedures. A Minister's regulation authorizing a change in composition is required, and implementing the change is subject to the "triple majority" provision, requiring: (a) a majority of all votes on Regional Council; (b) resolutions from a majority of local councils; and (c) that the resolutions from supporting municipalities represent a majority of the electorate.

In 2013, in response to a resolution from Regional Council, the Minister made the requisite regulation to permit Council to increase its size by adding an additional

member from the City of Vaughan. The implementing bylaw did not, however, receive support from a majority of the local municipalities and the change did not proceed. With the passage of the amending legislation, the regulation enacted in 2013 would become redundant.

Bill 68 proposes to eliminate the need for a Minister's regulation as a prerequisite. The requirement to obtain a "triple majority" prior to changing the composition of Council is, however, preserved, as are the timing requirements for any change to take effect. A bylaw changing the composition of Council must be enacted by December 31 of the preceding year to be in effect for an election.

The Region will be required to periodically review representation of its local municipalities, failing which the Province may intervene

Although Bill 68 appears to confer greater autonomy on councils regarding change in composition, new provisions would introduce a level of Provincial oversight.

The draft legislation will require a regional municipality to periodically review the representation of its lower-tier municipalities on the upper-tier council. This review must be undertaken following the regular election in 2018 and following every second election subsequently. There is no guidance in the legislation as to the principles or criteria that should inform the review by council. However, if a regional municipality does not either initiate a change or affirm its existing composition within two years of an election, the Minister reserves the right to intervene by making a regulation to unilaterally change the composition of the upper-tier Council. In so doing, the Minister is required, among other things, to have regard to the principle of representation by population.

Local councils may appoint an alternate to attend Regional Council if a member is unable to attend

Currently, a local municipality may appoint an alternate member to attend Council and Committee only if a member has been unable to attend for more than one month. Council has recently expressed concern with this limitation in that it may hinder participation by municipalities with only one representative. Bill 68 introduces an amendment that may provide greater flexibility in that a lower-tier council may appoint an alternate to attend in place of a member who is unable to attend a council meeting for any reason. It should be noted that the draft legislation speaks to appointment by the council, and would not permit an ad hoc delegation by an individual council member. In addition, the draft legislation speaks to attendance at a meeting of council so clarification may be required as to whether this provision would also apply to a committee.

The Province has also introduced amendments that will impact municipal elections, including direct election of the Regional Chair

Concurrently with the introduction of Bill 68, Bill 70 was introduced and includes a requirement for the direct election of all heads of Council in regional municipalities, except in the County of Oxford. This Bill has now passed and received Royal Assent.

Currently, the term of Council commences on December 1 following a regular election. Bill 68 would amend this date to November 15, potentially shortening the lame duck period. Amendments are also proposed to the *Municipal Elections Act* to permit increases in campaign contribution limits from $750 to $1200. Combined with recent amendments to the *Municipal Elections Act*, the relevant dates for the 2018 election are:

May 1: First day for filing nominations

July 27: Nomination day

October 15: Voting day

November 15: New term of Council commences

Proposed amendments would permit electronic participation in meetings

The *City of Toronto Act, 2006* permits council members to participate electronically in meetings which are open to the public. A member participating electronically would not, however count towards a quorum. To date, this provision has not been extended to other municipalities. AMO's submission to the Province recommended that electronic participation be made more generally permissible. The Region supported this amendment as providing greater opportunities for full participation of members.

The draft legislation includes provisions for electronic participation in meetings which mirror those applicable to the City of Toronto. Remote participation would only be available for meetings open to the public and members participating by electronic means would not count towards a quorum. Implementation of remote participation would require an amendment to the Region's procedural bylaw. The draft legislation does not specifically address voting rights of remote participants, however the procedure bylaw may provide that a member can participate electronically "to the extent and in the manner set out in the bylaw". This suggests it may be open to Council to determine the appropriate level of participation, including voting.

The definition of "meeting " in the Act would be expanded to clarify that a meeting of Committee or Council requires: (a) that a quorum of members is present; and (b) that members discuss or otherwise deal with any matter in a way that materially advances the business or decision making of the council. This is a useful clarification and will assist in determining whether any informal gatherings of Council members could be construed as a meeting.

The categories of matters that may be considered in closed session would be expanded under the proposed legislation

In the 2015 discussion paper, the Province specifically invited comments on the matters which municipal councils should be permitted to discuss in camera. In its response, the Region submitted that the scope for in camera meetings was too limited and did not reflect business reality. In particular, the closed meeting provisions do not align with the *Municipal Freedom of Information and Protection of Privacy Act* ("MFIPPA") which protects categories of records from disclosure, including commercially confidential and proprietary matters. This creates anomalies where material may be submitted to the Region in confidence but there is no clear mechanism for Council to receive and discuss the matter in a closed session.

The draft legislation substantially expands the existing categories of matters that may be considered in camera to include:

- information supplied in confidence by the federal or provincial government
- scientific, technical, commercial or financial information supplied in confidence which, if disclosed, could prejudice a third party
- scientific, technical, commercial or financial information belonging to the municipality that has monetary value
- a position, plan, procedure, criteria or instructions to be applied to any negotiations carried on by the municipality

These provisions reflect a greater alignment with MFIPPA and, if enacted, would confer broader powers for Council to consider sensitive commercial matters in private session.

Greater accountability measures are proposed, including the mandatory appointment of an Integrity Commissioner and a requirement for a code of conduct for Council members

Currently, the provisions in the Act designed to promote accountability and transparency are generally permissive rather than mandatory. These include:

- establishment of a code of conduct for Council members
- appointment of an Integrity Commissioner
- appointment of a Municipal Ombudsman
- appointment of an Auditor General
- establishment of a lobbyist registry

The Region's submission to the Province recommended that these provisions remain largely permissive to enable flexibility according to individual needs and circumstances. To date, the Region has appointed LAS as a meeting investigator and, effective January 1, 2016, appointed ADR Chambers as the Region's Ombudsman. This latter appointment was the result of legislative amendments that would otherwise have defaulted this role to the Ontario Ombudsman.

Bill 68 introduces amendments that would make it mandatory for municipalities to appoint an Integrity Commissioner and to establish a code of conduct for members of Council and local boards. In addition, it will be mandatory for municipalities to adopt and maintain a policy governing "the relationship between members of council and the officers and employees of the municipality". There are no specific criteria set out in the legislation as to the principles to be applied in the formulation of such a policy.

The draft legislation provides that if a municipality has not appointed an Integrity Commissioner, it must make arrangements for the functions to be performed by a Commissioner of another municipality. This potential for sharing resources would reflect the arrangement the Region established as of January 1, 2016 to share the services of an Ombudsman with local municipalities.

If these proposed amendments proceed, staff will report further to Council on recommendations to implement the required policies and appointments.

The role of an Integrity Commissioner is proposed to be expanded

With respect to the appointment of an Integrity Commissioner, Bill 68 would expand the role of this appointment beyond the existing mandate which includes the application of the code of conduct and other rules governing ethical behaviour of members. An Integrity Commissioner would be empowered to conduct inquiries on his/her own initiative as to whether a member of Council has contravened the code of conduct or the *Municipal Conflict of Interest Act*. As well, the Integrity Commissioner's mandate would include performing an advisory and educational role for members of Council on the code of conduct and conflicts of interest.

There are no substantive new financial tools proposed for municipalities

The provincial consultation in 2015 invited comment on whether municipalities had adequate financial tools available to effectively plan for and fund investments in infrastructure and expenditures for service delivery. A significant portion of the Region's submission was dedicated to these issues. Among the recommendations submitted by the Region was the ability to determine its own debt and financial obligation limit and the ability to levy direct taxes, both of which are conferred on the City of Toronto. In addition, the Region proposed a number of amendments that would provide for greater flexibility in investment and financial management.

The draft legislation reflects a limited expansion of the financial tools that are currently available. The ability to levy direct taxes granted to the City of Toronto has not been extended to other municipalities. Likewise, municipalities other than the City will still be subject to provincial scrutiny of debt and financial obligation limits.

Regional Finance staff have been engaged in discussion with provincial staff with respect to the proposed amendments and have also gained some insight into the Province's position on recommendations that were submitted by the Region but not reflected in the draft legislation. Further details on these discussions are set out in Attachment 2.

Investment powers will be enhanced for those municipalities that qualify as a prudent investor

One recommendation that received a positive response is the proposal that municipalities be afforded broader investment powers. Bill 68 provides that qualifying municipalities may invest in any security, provided that the municipality exercises the degree of diligence of a "prudent investor". The draft legislation sets out criteria to be applied in planning investments, including economic conditions, the municipality's overall portfolio, the anticipated return from income and the need for preservation of assets. The rules governing "prudent investor" municipalities will be forthcoming in regulations.

Regional Finance staff are currently participating in a consultative process that will inform the regulations, including:

- criteria needed for a municipality to be a prudent investor
- governance regime
- parameters for joint investments approaches

York Region is expected to qualify for prudent investor status. However, Regional staff would prefer governance rules that are different from these found in the comparable regulations under the *City of Toronto Act,* which require an external investment board.

Staff will report back to Council in spring of 2017 with further information and/or recommendations with regard to these regulations.

Municipalities will have clearer jurisdiction to regulate with respect to climate change and energy conservation

The Province specifically invited comment on how municipal legislation could be strengthened to assist municipalities in addressing climate change. In response, the Region submitted that it would be valuable to have clear authority in the Act to implement mitigation and adaptation measures to address climate change. It was suggested that a broad municipal power to address these issues should be included in the legislation.

The draft legislation addresses this concern through a proposed amendment which would expand the general power to regulate with respect to the environment. Municipalities would be empowered to enact by laws with respect to: "Economic, social and environmental well-being of the municipality, including respecting climate change".

In addition, amendments to the *Planning Act* would stipulate mitigation of greenhouse gas emissions and adaptation to a changing climate as matters of provincial interest. This is consistent with the theme of addressing climate change in the recently proposed amendments to the Provincial Growth Plan, Greenbelt and Oak Ridges Moraine Conservation Plans and represents a consistent commitment by the provincial government to address climate change. Additionally, the current provision in the Act which empowers municipalities to participate in energy conservation programs would be strengthened to provide for long term planning for energy use, including consideration of energy conservation, climate change and green energy.

Council has to date implemented a number of policies and initiatives that consider climate change and energy conservation including Vision 2051, the Official Plan, Clean Air Strategy, the Climate Change Adaptation Strategy (2011) and the recently approved Energy Conservation and Demand Management Plan, which sets long-term greenhouse gas reduction targets. If the legislation is amended, a comprehensive Regional plan on climate change would be developed for consideration by Council.

Bill 68 proposes introducing mandatory policies on tree conservation and canopy cover

In further support of environmental initiatives, there would be a new requirement for municipalities to adopt and maintain a policy with respect to: "The manner in which the municipality will protect and enhance the tree canopy and natural vegetation in the municipality".

If this provision is enacted, the Region, as a leader in the management of green infrastructure, would be fully compliant with this requirement. Council has consistently supported the Regional Greening Strategy for the acquisition and protection of green infrastructure and recently approved a comprehensive 10 year Forest Management Plan which outlines actions and targets for woodland and canopy cover, aimed at attaining 25 percent woodland cover and 35% canopy cover by 2031.

The introduction of a broader scope for imposing administrative penalties would provide enhanced enforcement options

Bill 68 would expand the availability of administrative penalties to all municipal bylaws. Currently, municipalities may impose administrative penalties only for parking bylaws.

An administrative penalty is an alternate mechanism for enforcement of a bylaw whereby an offender is given a monetary penalty without any ability to dispute the penalty in court. Instead, the offender has a right to appeal the penalty to an independent hearings officer appointed by the municipality. The primary purpose of administrative penalties is to promote compliance with the bylaw rather than punishment for contraventions.

To implement an administrative penalty system, the Region would need to enact a bylaw establishing penalties. This may be a bylaw of general application or in relation to a specific bylaw, e.g. the Sign Bylaw or the Parking Bylaw.

The Region's prosecution staff support the introduction of a scheme for administrative penalties for enforcement of certain offences including parking and red light cameras .Generally, administrative penalties provide for a more expedited process because the procedural requirements are less onerous. A significant benefit is that the municipality controls the scheduling of matters which can create greater efficiency, limit delays and potentially secure increased revenue to offset the costs of promoting bylaw compliance.

If this amendment is enacted, staff will report to Council with recommendations for introducing a regime for administrative penalties in relation to Regional bylaws.

5. Financial Considerations

There are no direct financial implications associated with this report. If amendments are enacted, staff will report further to Council on any financial implications, particularly with respect to implementing any measures as a result of broader investment powers.

6. Local Municipal Impact

The draft legislation is of general application and any substantive changes will apply to upper and lower-tier municipalities, unless the provision is specific to either tier.

Bill 68 includes provisions that are solely applicable to local municipalities, including proposed amendments to tax sale procedures. These amendments are beyond the scope of this report.

7. Conclusion

In October 2015, the Region submitted recommendations to the Province for amendments to the *Municipal Act, 2001*, in response to a consultation on municipal legislative reform.

On November 16, 2016, Bill 68 and companion legislation were introduced in the legislature. The Bill includes proposed changes to municipal governance, the conduct of meetings, accountability measures, and enforcement tools. There are also substantive amendments reflecting a greater role for municipalities in addressing climate change and enjoying broader powers of investment.

Bill 68 is currently being debated following second reading. Regional staff will monitor the progress of the legislation and will report further to Council on any initiatives resulting from the passage of the legislation.

For more information on this report, please contact Elizabeth Wilson, Deputy Regional Solicitor at 1-877-464-9675 ext. 71402.

The Senior Management Group has reviewed this report. December 14, 2016

Attachments (2)

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Accessible formats or communication supports are available upon request

York Region Response to MMAH Review of Municipal Legislation

Theme 1: Accountability and Transparency

1. Current system for municipal accountability and transparency

York Region generally supports the current regime for promoting accountability and transparency. The *Municipal Act, 2001* (the "Act") provides a framework which enables municipalities to customize policies and procedures according to their individual needs and the demands of their constituents. It is appropriate that many of the measures remain permissive rather than mandatory, to underline the principle of municipalities as responsive and accountable elected governments and to acknowledge the varied challenges across the municipal sector.

The Region has implemented measures to ensure accountability and transparency

The Region has used specific tools provided under the Act, as necessary and appropriate. Regional Council adopted an Accountability and Transparency Policy in 2007 under Section 270 of the Act. This policy established practices and procedures which broadly govern the decision making process and administrative management, including financial matters, public disclosure, internal audits and public involvement. Many of these procedures predated the formal requirement to establish a policy.

Regional Council has not formally appointed an Auditor General, however since 2001 the Region's internal Auditor and staff have fulfilled the core functions contemplated under Section 223.19. of the Act. Reporting to Regional Council through the Audit Committee, the Auditor conducts regular audits to report on compliance with regulatory matters, contract terms and financial due diligence.

In common with other municipalities, the Region appointed LAS, an AMO affiliate, as a meeting investigator. Since the appointment in 2007, however, no matters before Council have been referred to the investigator.

Regional Council has to date not elected to establish a code of conduct for members of Council. Consequently, a Regional Integrity Commissioner has not been appointed.

It is recommended that the requirement for a code of conduct and an Integrity Commissioner remain discretionary. Accordingly, it is not recommended that the Act mirror the *City of Toronto Act, 2006* which provides that certain appointments are mandatory. Regional Council members are elected in their constituent local municipalities. Seven out of nine local municipalities have Council Codes of Conduct.

As a result, 18 of the 20 elected members of Regional Council are subject to a Code of Conduct. To introduce another municipal Code of Conduct would be redundant and, potentially introduce ambiguity. The seven Codes of Conduct that are in effect vary substantially. It might be helpful for the MMAH to provide a guideline or template stipulating minimum requirements.

With respect to the appointment of an Ombudsman, with the passage of Bill 8 the Region is currently initiating a process to appoint an Ombudsman, potentially in conjunction with its local municipalities.

> **Recommendation:** that the procedures implemented in 2006 to promote accountability and transparency continue to be generally permissive rather than mandatory and at the discretion of individual municipalities

2. Open meetings

The Region acknowledges that, in the interests of transparency and public accessibility, exceptions to the requirement for open meetings should be limited and specific.

There is, however, a basis for expanding the closed meeting provisions in Section 239(2) of the Act to align with privacy legislation.

MFIPPA provides for exemptions from disclosure for certain categories of records

The *Municipal Freedom of Information and Protection of Privacy Act* ("MFIPPA") provides for certain categories of information to be protected from disclosure to the public. These include matters where disclosure could potentially prejudice the commercial interests and competitive advantage of a third party. Certain internal records may also be withheld from public release, if necessary to protect the municipality's economic interests.

Currently, there is only partial alignment between Section 239 of the Act and MFIPPA. Subsection 239 does provide for private consideration of certain matters, including personal information, pending acquisition or disposition of land, and the security of

property of the municipality. Closed meetings are also permitted for Council education and training sessions. The scope of "security of property" matters has, however, been largely thrown into doubt by decisions of the Information and Privacy Commission which have limited its application to a perceived physical threat, rather than broader economic interests as set out in MFIPPA.

These differing statutory schemes can give rise to anomalies in the conduct of Council business. For example, proponents responding to a Request for Proposals may submit material which is designated as proprietary and which may be exempt from public disclosure under MFIPPA. Similarly, a private entity may submit confidential information on an emerging technology which may be valuable to Council in developing future strategies, for example in waste management. In either case, there is no clear mechanism for considering these matters in camera without breaching Section 239 of the Act. Subsection 239 (2) (c) permits in camera discussion of property matters but does not extend the same treatment to other potentially sensitive negotiations, e.g. commercial contracts.

Closed meeting provisions should be aligned with MFIPPA

As a result of the disconnect between the *Municipal Act, 2001* and MFIPPA, there is a risk that matters may be artificially characterized as matters of solicitor-client privilege when there is a perceived need to discuss contractual and commercially sensitive issues in camera. This undermines the principles of accountability and transparency. Alberta's *Municipal Government Act* specifically aligns the closed meeting provisions with the matters that are protected from disclosure under its privacy legislation. It is proposed that similar provisions be introduced in the Ontario context.

Recommendation:

(a) that Section 239(2) of the Act expand the matters that may be discussed in camera to include those matters that are protected from disclosure under MFIPPA; and

(b) that "security of property" be defined in the Act to include economic interests

3. Use of technology for holding meetings

Currently, the Act requires members of Regional Council to attend meetings in person. The *City of Toronto Act, 2006* provides that the procedure bylaw may provide for a member of Council to participate electronically in a meeting of City Council which is open to the public. The participation of that member, however, does not count towards a quorum.

Electronic participation in meetings should be used sparingly

Advancements in technology, particularly video-conferencing capability, would permit active participation by Council members who are not present in the Council chamber.

The Region recognizes that extensive use of technology to facilitate attendance may, however, erode the principles of accountability and transparency. If Council members are not routinely present and members of the public do not have direct access to elected officials for the purpose of making deputations and asking questions, the democratic process may be jeopardized.

The Alberta legislation addresses these concerns in part by providing that electronic participation may only be permitted where the facilities enable all the meeting's participants to watch or hear each other.

Electronic participation may be appropriate in limited circumstances

The Region recommends that electronic participation be permitted in certain limited circumstances. The Region's Accessibility Advisory Committee has requested that attendees be permitted to attend by electronic means because of mobility issues. Permitting this form of participation would support the Region's commitment to accessibility and enhance the existing measures implemented under the AODA.

In addition, there are occasions where a special meeting of Council is required to decide on a specific matter. If the meeting is called during the summer recess or the year end break, it may be practically difficult to assemble a quorum. Permitting a meeting to be conducted by electronic means would enable a greater level of participation by Council members.

Recommendation: that the Act be amended to provide that a procedure bylaw may permit electronic participation at meetings by members of Council in limited circumstances, including for accessibility purposes and for calling special meetings where it is practically impossible for Council members to attend in person

Theme 2: Municipal Financial Sustainability

1. Annual debt and financial obligation limit

The *City of Toronto Act, 2006* requires the City to establish a limit for the City's annual debt and financial obligations. The Region submits that it should be accorded similar powers to establish its own debt and financial obligation limit. This would afford more flexibility and recognize the Region as a mature municipality. This greater latitude could also be extended to other regional and upper-tier governments.

The Region acknowledges that it would be appropriate to establish a framework within which this power could be exercised. It is proposed that, to maintain fiscal responsibility a municipality would need to maintain a credit rating of at least 'AA-' or higher (or equivalent) by at least one rating agency and have Council adopt or affirm, annually, a long-term debt management plan.

Recommendation: that municipalities achieving a prescribed credit rating be permitted to establish their own debt limits

2. Tax capping

Currently under Part IX of the Act, the Province protects commercial, industrial and multi-residential properties from significant tax increases through a tax capping program. The program caps any change in property taxes at between 5 and 10 per cent if the assessment value of a property increases. As a result, capping protects landowners from paying an exceedingly high amount of taxes if their property assessment increases.

Tax capping is an administrative and budgetary burden due to the increased complexity it has added to annual tax billing and the management of tax adjustments required in response to tax recalculations. As well, tax capping creates inequitable tax treatment as two properties in the same municipality assessed at the same value can be subject to different tax liabilities.

In York Region, the current beneficiaries include property types such as: Vacant Commercial Land, Vacant Industrial Land and Large Office Building (Multi-tenanted). The payers into the capping program, by property type, are: Large Office Building (Multi-tenanted), Standard Industrial Properties and Heavy Manufacturing (Non-automotive).

Recommendation: that Part IX of the Act be phased-out over the next four years and that the Region be allowed to opt out of tax capping

3. Application of the prudent person ("investor") standard to the Region, if and when the Province extends this standard to the City of Toronto

Under the *Trustee Act, 1990*, the "prudent person" standard is applied in the context of managing an overall investment portfolio. This standard, as it applies to municipal investment officers, would require an officer to exercise due diligence and take all necessary actions to ensure the maximum performance of investments, on a portfolio basis, subject to the prescribed risk parameters dictated by the municipal investment policy.

The rationale for this approach is it enables a municipality to earn better returns and manage risk by building a more diversified investment portfolio.

The criteria for determining which municipalities would qualify to avail themselves of this standard have not been promulgated, however, these should include a weighted mix of municipal size, credit rating ('AA-' or higher or equivalent), and financial/investment performance.

The Province should consider extending to all municipalities who qualify the ability to avail themselves of the prudent person ("investor") standard in a similar fashion as is being contemplated for the City of Toronto, in particular:

(a) for those municipalities who do qualify (i.e. a credit rating of 'AA-' or higher or equivalent), equity investments should not exceed 10 per cent of the total municipal portfolio and a review of investment strategies should be conducted by an independent board;

(b) for those municipalities who do qualify (i.e. a credit rating of 'AA-' or higher or equivalent) and are looking for equity exposure without a managed fund, equity investments should not exceed 10 per cent of the total municipal portfolio and the municipality should have the ability to buy Exchange Traded Funds (ETFs) on the Canadian and US exchange directly;

(c) the "prudent investor" standard should be applied to the One Investment Program "(a co-mingled investment program available to Ontario municipalities and the broader Ontario public sector. It is operated by wholly owned

subsidiaries of AMO and MFOA.)" This would allow for greater returns on investments being made by municipalities within the program.

> **Recommendation:** that the Province extend to all municipalities who qualify the ability to avail themselves of the prudent person ("investor") standard in a similar fashion as is being contemplated for the City of Toronto, and that the standard apply to the One Investment Program.

4. Investment in U.S. dollar securities

Currently, under section 6(1) of O.Reg. 438/97, a municipality cannot invest in a security that is expressed or payable in any currency other than Canadian dollars. Municipalities do, however, purchase goods and services from US vendors that require payment in US dollars. In anticipation of these purchases, US dollars are bought and deposited in a US account earning no interest as the funds cannot be deposited into US dollar securities where they could accumulate interest.

> **Recommendation:** that the regulation be amended allowing for investments in US dollar securities of Canadian issuers. It is recommended that criteria include:
> (a) the credit exposure should be based on the equivalent rating for Canadian dollar securities at an equivalent maturity; and
> (b) the US exposure should be limited to no greater than 2.5 per cent of the total portfolio

5. Exemption from municipal taxation for Conservation Authorities.

The *City of Toronto Act, 2006* provides for tax exemption for conservation authority lands under certain circumstances. Land vested in the Toronto and Region Conservation Authority and managed and controlled by the City under an agreement can be exempt from municipal taxation as long as the land is managed and controlled by the City and used for park purposes.

The Region proposes that the power to exempt these lands from taxation should be granted to all municipalities if they satisfy the conditions set out in the *City of Toronto Act, 2006*.

The Region may in future be in a position to manage and control land vested in the Toronto and Region Conservation Authority, or another conservation authority. Broadening the power to exempt these lands from municipal taxation would ensure

that conservation authorities are treated similarly irrespective of their location within Ontario.

> **Recommendation:** that the powers under section 451(1), (2), (3), (4) of the *City of Toronto Act, 2006* be extended to all municipalities who fulfil the required criteria

6. Sale of debt payable to the Region by a third party

Currently Section 305(1) of the Act provides that a municipality may sell prescribed debt. No regulation has yet been made to prescribe classes of debt under this section. The Region does not routinely engage in loan agreements with private entities, however, there are occasions when this is done. Having the power to sell debt to a third party for collection purposes could ensure that the property tax base is protected if debt collection becomes difficult. In this way, the risk is mitigated by divesting the debt, and parties who have loans with the Region will be aware that the debts will eventually be collected.

In addition, by including bad debt as 'prescribed debt', the Region is afforded additional flexibility while ensuring the property tax base is protected.

> **Recommendation:** that the Province enact a regulation under Section 305(1) of the *Municipal Act, 2001*, allowing the Region to sell prescribed debt that is payable to the Region by a third party. The Region would recommend that "prescribed debt" under this section include accounts receivables that have become 'bad debt' as determined by the Regional Treasurer

7. Unwinding commodity hedging agreements

Currently, under section 5(3) of O.Reg 653/05 a municipality cannot sell or dispose of its commodity agreements or any interest in them, with the following two exceptions: (a) the sale or disposition is part of a transaction for the sale of real property by the municipality relating to a change in the use of the property by the municipality, or: (b) if the municipality has ceased to carry on any activity relating to the municipal system for which the commodity was being acquired.

The current exceptions within this regulation do not take into account major changes within the market place. The policy rationale behind prohibiting partial and/or full unwinding of commodity agreements (excluding the exceptions) is to prevent financial speculation. However, remedial powers on the part of the Minister can protect against

financial speculation. As well, permitting partial and/or full unwinding of commodity agreements protects the property tax base from potential increases in property taxes. As a result, by amending the regulation to allow for the partial or full unwinding of commodity agreements as well as remedial powers for the Minister, the property tax base is protected and the risk of financial speculation is mitigated.

> **Recommendation:** that the regulations be amended to permit the full or partial unwinding of commodity hedging agreements. In addition, the Region recommends amending the regulation, to afford the Minister of Municipal Affairs and Housing with investigatory and/or remedial powers should 'financial speculation' on the part of a municipality, be suspected as the underlying factor for the partial or full unwinding of the agreement(s)

8. Investment Flexibility

(a) Extended term for bond forward agreements

A bond forward agreement is an agreement where one party agrees to sell a bond to another party at a set price on a future date. With a bond forward agreement, a municipality can sell bonds and specify the interest rate at which the bond will be repaid. A municipality will issue debt through the sale of bonds in order to finance projects.

Under O.Reg 653/05 municipalities are unable to use bond forward agreements if they intend to issue debt more than six months into the future. Therefore, municipalities cannot incorporate borrowed funds at a specific interest rate into their capital and operating budgets if they intend to borrow funds more than six months into the future.

The Region would benefit from allowing bond forward agreements to have a settlement date of up to 365 days from the day on which the agreement is executed. By doing this, a municipality would be able to lock in attractive rates at any time throughout the year, even if the next issue is up to a year in the future. This also allows a municipality to have interest rate cost certainty during the annual budget process. These changes could potentially lead to lower interest rate costs that would benefit the local ratepayer and, at the very least, provide greater budget certainty.

> **Recommendation:** that the settlement date of bond forward agreements be extended from 180 days to 365 days

(b) Disposition of bond forward agreements prior to maturity

Currently, under Section 2(8) of O.Reg. 653/05 a municipality cannot sell or lend a bond forward agreement prior to maturity.

The ability to sell a bond forward agreement prior to maturity would allow for more flexibility to react to market fluctuations and/or change the timing or size of debenture issues as a major change in interest rates may impact the debt management strategy.

> **Recommendation:** that the regulation be amended to provide municipalities with the ability to collapse or sell bond forward agreements, placed or hedged in anticipation of a financial transaction authorized by Council, prior to maturity

(c) Extended period for holding investments

Currently, under section 3(6) of O.Reg. 438/97, if an investment falls below the required standard, the municipality must sell the investment within 180 days after the day the investment falls below the standard.

In periods of market turmoil, selling these investments may worsen market conditions for these particular investments and prevent market stabilization. By extending the time period beyond 180 days, the market could be allowed to stabilize after periods of instability.

> **Recommendation:** that the regulation be amended to provide municipalities the ability to create a workout plan beyond the 180 day period, to be used in times of market turmoil

(d) Diversification of investment portfolio

Currently, sections 2(7.1), 3(1), 3(4.1), 4, 4.1(1.1) of O.Reg. 438/97 limit the quality and duration of securities which the Region may invest in.

The market for 'AA-'or higher bonds, with a maturity greater than five years in Canada, has grown smaller. Currently, there are only a few companies (36 as of 2014) that are in this category with a debt outstanding of approximately $17 billion. Limiting investments to 'AA-'or higher prevents a broader credit diversification for municipalities and decreases potential portfolio investment returns. Furthermore, the available market and potential yield for investments of 1 to 5 years is limited to a

credit rating of 'A'. This negatively affects the potential returns for municipal investors and increases concentration risk.

Recommendation: that this regulation be amended as follows:

(a) to allow municipalities to invest directly in corporate securities that have a credit of 'A' or higher (or equivalent)[1] for a maturity of ten years provided that the municipality maintains a 'AA-' or higher (or equivalent) credit rating by at least one ratings agency; and

(b) to allow municipalities to directly invest in securities that have a credit rating of 'BBB+' or higher (or equivalent) for greater than one but not longer than five years, provided the municipality maintains a 'AA-' or higher (or equivalent) credit rating by at least one rating agency. The Region would add a stipulation noting that the overall exposure to 'BBB+' credit shall not exceed 10 per cent of the total portfolio value

9. Power to impose direct taxes

Under Part X, section 267 of the *City of Toronto Act, 2006*, the City may, by bylaw, impose a tax in the City if the tax is a direct tax. Direct taxes may include: motor vehicle ownership/driver's licence tax, real property transfer tax, a parking tax or a billboard tax.

The Region is a large, sophisticated government and should have the financial management powers that reflect its maturity as a government. These revenue generating tools would allow the Region to achieve recognition as a mature municipality. In addition, the new revenue tools can help alleviate the pressures on the property tax base.

Two direct taxes that could, in meeting growth plan targets, be of interest to the Region would be the vehicle ownership tax and parking tax. A vehicle ownership tax could not only provide the Region with additional revenue, but it should also help to encourage use of the rapid transit system.
As Regional Express Rail comes online and services such as park-and-ride become more prevalent, a parking tax could become a revenue source to help fund transit investments.

[1] Note: 'A' rating is still well within the investment grade standard.

Recommendation: that the powers under Part X, sections 267 – 272 (inclusive) of the *City of Toronto Act, 2006* be extended to the Region

10. Publication of financial statements

Currently, under section 295(1) of the Act, within 60 days after receiving the audited financial statements of the municipality for the previous year, the Treasurer is required to publish the entire copy of its financial statements, or a notice that they are available upon request, in a newspaper with wide circulation in a municipality. However, there are more widely available forms of media.

The Region would benefit from the ability to select publishing its financial statements in a newspaper or an online medium (or both).

Recommendation: that section 295 (1) of the Act be amended to permit the publishing of the financial statements in either print or digital format

11. Revisions to the 'heads and beds' policy in light of inflationary pressures

Currently, Section 323 of the Act authorizes local municipalities to pass bylaws to levy annual taxes payable by colleges and universities, hospitals and correctional institutions in an amount not to exceed the prescribed amount of $75 for each full time student, provincially-rated bed or resident place, as determined by the responsible Ministry. This section is more commonly referred to as the 'heads and beds' provision.

As a result of a 'heads and beds' policy which has remained stagnant and unreflective of inflationary pressures, municipalities are forced to compensate the difference through other means such as increases to property taxes. The rate of $75 per student/bed does not reflect the change in cost of delivering services by Ontario municipalities. Using historic CPI or historic Construction Index (for inflation), that rate would be more appropriately set at between $140 and $149. The result is undue pressure on all tax classes.

Recommendation: that O.Reg 384/98 be amended to prescribe a rate consistent with the appropriate inflationary index. It is also recommended that the rate be revisited and reset every 5 years, based upon the inflationary index

Theme 3: Responsive and Flexible Municipal Government

1. Division of powers between upper and lower-tier municipalities

Generally, the Region supports the division of powers between upper and lower-tier municipalities. The clear delineation in jurisdiction supports the principles of self-governance and accountability that were introduced as key concepts in 2003. The Region has exercised its authority over major infrastructure to improve the quality of services while implementing efficiencies and cost effectiveness. In this regard, Council has endorsed various initiatives, including:

- State of Good Repair Programs
- Asset Management policies
- Transportation Master Plan
- System Performance Monitoring
- 10 year Capital Programs

The Region is also achieving efficiencies by implementing technology that provides the public with self-serve options through open data initiatives. For example, constituents have direct access to a wide array of data sets including traffic, bus schedules, energy use and facility locations.

2. Conflict with provincial and federal legislation

The Act expresses municipal authority in broad terms, in contrast to the traditional prescriptive approach in the former legislation. These broader powers provide greater flexibility for municipalities, but can result in potential conflict with federal and provincial legislation in some areas of jurisdiction. This is particularly evident in environmental and health regulation which are matters where senior levels have regulated extensively.

It can be problematic to determine with certainty whether a Regional bylaw may conflict with existing regulation by a senior government. The test articulated in Section 14 of the Act is that a municipal bylaw is in conflict with federal or provincial enactment if it “frustrates the purpose” of the enactment. The case law that has evolved with respect to this issue has developed a two part test: (a) is it possible to comply simultaneously with the municipal bylaw and the senior level enactment; and (b) does the bylaw frustrate the purpose of the enactment. It is submitted that the first part of the test provides clearer guidance to a municipality in determining the scope of its authority and, if enshrined in the Act would potentially reduce the risk of *ultra vires* challenges.

Recommendation: that Section 14 of the Act be amended to provide that a municipal bylaw is deemed to be in conflict with federal or provincial legislation only if it is not possible to comply simultaneously with the bylaw and the federal or provincial enactment

3. Transfer of powers (service migration)

The Region supports the current regime for service migration and does not recommend any fundamental amendments. The scope of the services that are subject to service migration is appropriate and the mechanism for transfer (the "triple majority") ensures the requisite level of support is obtained before a fundamental change in service delivery is implemented.

The Region used the predecessor to these provisions in assuming transit service from its local municipalities in 2001. One issue that proved challenging is that there was no clear guidance on the status of contracts entered into by the local municipalities in connection with their local transit services. There were over one hundred associated contracts including bus service providers, maintenance contracts and advertising contracts. Many of these contracts did not contemplate that the authority for transit service would be assumed by a different entity. This exposed the Region to claims that the contracts were not binding and could be terminated or renegotiated at the option of the contractor. Conversely, it was unclear whether the Region could take the position that the contracts could be renegotiated on more favourable terms, if appropriate.

Recommendation: that the Act clarify the status of existing contracts where service migration is implemented. This would be analogous to the provision in Section 53 where jurisdiction over a highway is transferred and provides that the municipality assuming the highway stands in the place of the transferor under any agreement in respect of the highway

4. Climate Change

Climate change has been identified as a key concern for municipalities. The Region is taking action to address climate change through a number of corporate and strategic initiatives and action plans, including partnerships with external stakeholders. The Province has been demonstrating leadership by addressing climate change in a number of policy/regulatory reviews. It will be important for the Province to take a holistic approach to balance climate change with other Provincial priorities.

Challenges and/or barriers that York Region is facing in implementing initiatives related to climate change

Action at the municipal level will be a critical component of any climate change strategy developed at the provincial or national level, however there are a number of challenges for municipalities outlined below:

- Municipal climate change initiatives have been largely implemented through voluntary programs. Legislative mandates would empower municipalities to implement initiatives consistently on a wider scale.
- Impacts of climate change are difficult for municipalities to foresee and to adequately allocate resources. The Province, by coordinating modeling exercises with a goal of data sharing among stakeholders, would alleviate some of this uncertainty.
- Adaptation will be costly and challenging for municipalities to implement. A portion of the funds collected from the Province's upcoming Cap and Trade program could assist municipalities in implementing climate change adaptation and mitigation measures.
- Municipalities are constrained by the Ontario Building Code. It is important that construction practices effectively consider climate change adaptation and mitigation measures.

What tools in the Municipal Act do municipalities need to address climate change mitigation and adaptation?

Many of the challenges outlined above require a co-ordinated approach through a range of legislative and policy tools. It would be of assistance to the Region to have clear authority in the Act to implement mitigation and adaptation measures to address climate change. Municipally driven climate change mitigation and adaptation measures should be included as a broad municipal power under Section 11 of the Act. This authority would assist municipalities in implementing a range of measures under the general regulatory powers in the Act.

Recommendation: that Section 11 of the Act be amended to include "climate change mitigation and adaptation" as a matter under the jurisdiction of municipalities

Additional comments and proposed amendments

Technical amendments are recommended to clarify interpretation.

In reviewing the Act in connection with this submission, a number of provisions have been identified which would benefit from clarification. These are essentially technical amendments and do not fit within the broad themes outlined above. Accordingly, they have been summarized in chart form and are attached as Appendix 1.

Region's Recommendation		**Bill 68**
Accountability measures should continue to be permissive, not mandatory	(✓)	Code of conduct for Council and appointment of an Integrity Commissioner will be mandatory
The matters that may be considered by Council in camera should be expanded to align with the privacy legislation	✓	Matters that may be discussed in camera will include proprietary and commercially confidential information and matters under negotiation.
"Security of the property" should be defined to include economic interests	✘	Not adopted but may be addressed through the broader scope of permitted in camera discussions.
Members of Council should be permitted to participate in meetings electronically	✓	Electronic participation will be permitted if a meeting is open to the public. A member participating remotely will not be counted towards a quorum.
Municipalities should be empowered to levy direct taxes	✘	At this time, the Province is not considering extending this power broadly to municipalities.
Municipalities achieving a prescribed credit rating should be permitted to establish their own debt limits	✘	This recommendation was not adopted.
There should be a phased approach to permit the Region to opt out of tax capping	✓	This was already addressed in Bill 44, *Budget Measures Act, 2015*
Municipalities that meet certain criteria should be permitted greater flexibility in investing municipal funds, subject to the "prudent investor" standard	✓	Municipalities will be permitted to invest funds, subject to meeting the "prudent investor" standard. Criteria to determine qualifying municipalities will be prescribed within regulations. A consultative process on this is anticipated early in 2017.

Municipalities should be permitted to sell prescribed debt payable to the municipality by a third party	✘	This recommendation was not adopted.
Municipalities should be able to fully or partially unwind commodity hedging agreements	✘	This recommendation was not adopted.
Municipalities should be able to sell or lend a bond forward agreement prior to maturity Settlement date of bond forward agreements should be extended from 180 days to 365 days	(✓)	The Province is amenable to reviewing O. Reg 653/05 as it relates to bond forwards.
Municipalities should be permitted to publish financial statements in a newspaper or an online medium, or both	✘	This recommendation was not adopted.
The Province should amend the regulation with respect to "Heads and Beds' and prescribe rates consistent with the appropriate inflationary index	✘	This recommendation was not adopted.
The Act should be amended to clarify the test for conflict between a municipal bylaw and provincial or federal legislation.	✘	This recommendation was not adopted
The Act should be amended to clarify the status of existing contracts where service migration is implemented.	✘	This recommendation was not adopted
The Act should be amended to include "climate change mitigation and adaptation" as a matter under the jurisdiction of municipalities	✓	Proposed amendments would specify that addressing climate change is a matter under the jurisdiction of municipalities

Bill 68, *Modernizing Ontario's Municipal Legislation Act, 2016*

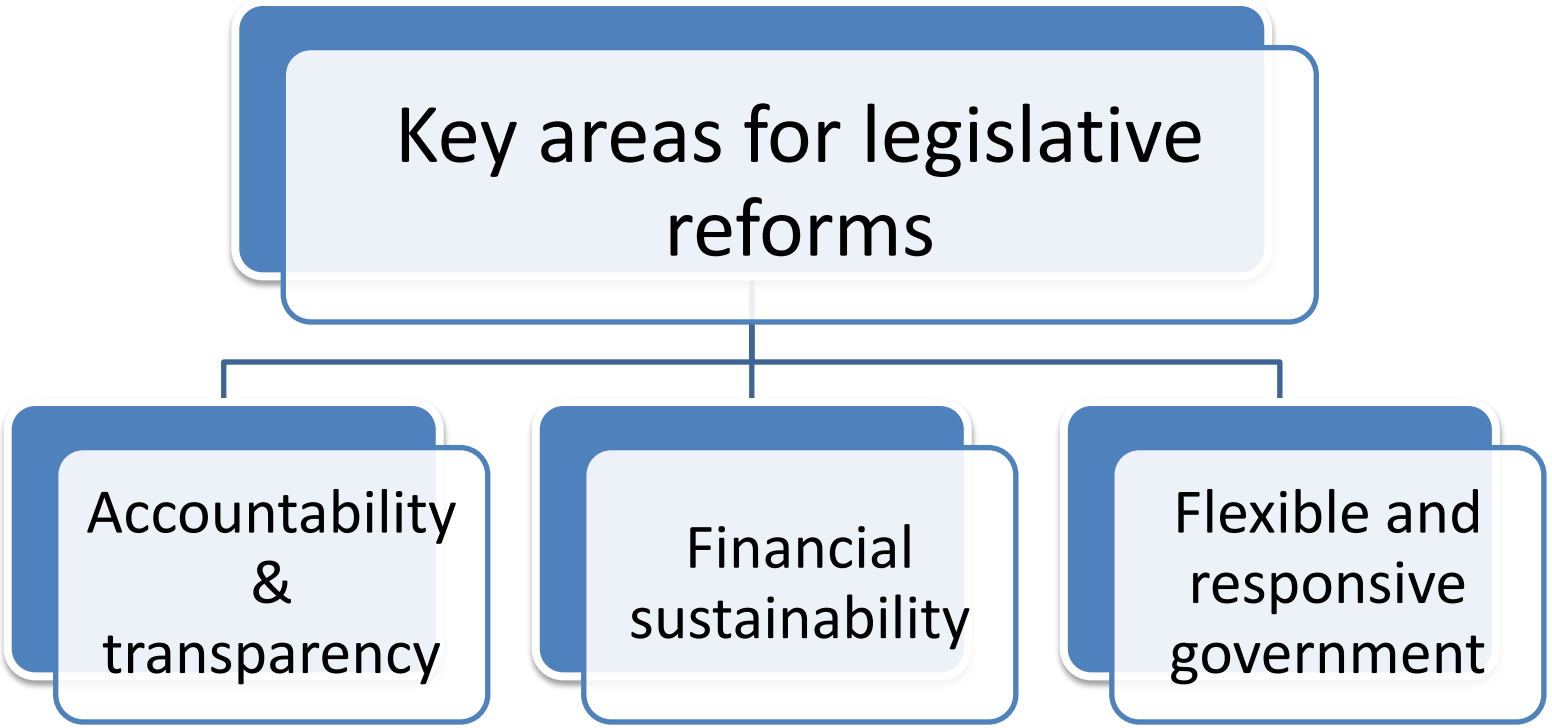
Presentation to
Committee of the Whole

Joy Hulton, Regional Solicitor

January 19, 2017

Background

- Provincial consultation on municipal legislation released June 2015



Background

- Region submitted recommendations in October 2015 (Attachment 1)
- Bill 68 introduced November 2016 – received Second Reading
- Bill 70 (Budget) has been enacted – provides for direct election of Regional Chair

Scope of Proposed Amendments

Accountability & Transparency	• Code of Conduct • Integrity Commissioner • Mandatory Policies
Fiscal Sustainability	• Broader municipal investment powers
Responsible & Flexible Service Delivery	• Council procedures • Climate – change bylaws • Change in Council composition • Expanded use of administrative penalties

Council Composition

A regulation will no longer be required to change the composition of Council

The “triple majority” rule and other provisions of s.216 will still apply

A change in Council composition must be implemented by December 31 of the year preceding an election

Council Composition

Regional municipalities must review representation of local municipalities within 2 years of 2018 election and then after every second election

Province may intervene and change Council composition by regulation, taking into account representation by population

If changes are made prior to 2018, a review is not required until after 2026 election

Terms of Council and Alternates

- Term of Council will commence on November 15th in the year of the election
- Local Council may appoint one of its members as an alternate to attend Regional Council when a member cannot attend for any reason
- Only one alternate at any given time

Procedural Amendments

- Electronic participation in meetings will be permitted, if meetings are open to the public
- Members participating remotely would not count towards a quorum but may participate to the extent set out in bylaw
- Procedural Bylaw would need to be amended

Procedural Amendments

- The definition of “meeting” will be clarified
- Categories of matters that may be considered in private would include:
  - Plans, instructions or positions to be carried out in negotiations
  - Information supplied in confidence
  - Commercially confidential material

Accountability Measures

- A code of conduct for Council members will be mandatory
- Council must develop a policy governing the relationship between Council members and staff
- Integrity Commissioners will be mandatory
- The role of an Integrity Commissioner would be expanded to include conducting inquiries on their own initiative

Environmental Regulation

- Municipalities will have clear jurisdiction to regulate with respect to climate change
- Amendments to the *Planning Act* will reflect climate change as a matter of provincial interest
- Municipalities must develop policies for tree conservation and canopy cover

Administrative Penalties

- Administrative monetary penalties (AMPs) may be used for all municipal bylaws
- Amount of penalty must not exceed amount required to promote compliance
- Unpaid penalties are a debt owed to the municipality

Financial Provisions

- Bill 68 includes limited expansion of financial tools
- Direct taxing power would not be available to municipalities except Toronto
- The “prudent investor” standard will be applied to municipalities

Next Steps

- Finance to report back to Council on prudent investor regulations

- Staff will monitor the progress of Bill 68 and report back on steps required to implement changes once enacted