

REGION OF OTTAWA-CARLETON
RÉGION D'OTTAWA-CARLETON

REPORT
RAPPORT

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DATE 13 January 1999

TO/DEST. Co-ordinator
 Corporate Services and Economic Development Committee

FROM/EXP. Finance Commissioner

SUBJECT/OBJET **BILL 79 - THE FAIRNESS TO PROPERTY TAXPAYERS ACT**

DEPARTMENTAL RECOMMENDATIONS

That the Corporate Services and Economic Development Committee recommend Council approve:

- 1. That the 10-5-5 capping program provided by the Fairness to Property Taxpayers Act be employed for the 1998, 1999 and 2000 taxation years for the multi-residential property class, all commercial property classes and all industrial property classes;**
- 2. The adoption of the by-law necessary to implement the aforementioned recommendation in accordance with the legislation.**

PURPOSE

Bill 79, the *Fairness to Property Taxpayers Act*, received Royal Assent on December 18, 1998. This Act requires that Council make a number of decisions regarding 1998 property tax policy before January 31, 1999. The purpose of this report is to provide a description of the implications of the Act, the decisions required of Council and recommendations with regard to those decisions.

BACKGROUND

During 1997 and 1998, the provincial government enacted legislation that fundamentally changed the property taxation and assessment system in Ontario, effective in 1998. Importantly, the new system included a significant policy role for Regional Council involving decisions that affected the relative burden of property taxation between property classes, temporary mitigation

of the tax impact of the new systems on individual properties within property classes as well as ongoing tax rebate and tax relief programs for certain properties. On August 12, 1998, Council passed a number of resolutions dealing with these decisions. This followed a process of public consultation where analysis and recommendations presented by staff in a series of reports were considered. These reports and extracts of the public consultation meetings are consolidated in Report 18 of the Corporate Services and Economic Development Committee.

On November 5, 1998, the Minister of Finance introduced Bill 79 in response to concern expressed by Ontario businesses that property tax increases resulting from the new system were unmanageable and jeopardizing their viability. In many parts of the province, upper-tier municipalities failed to make use of the mitigation measures provided under the new system to relieve or phase-in significant tax increases to commercial and industrial property taxpayers.

In Ottawa-Carleton, Council provided mitigation to residual commercial and residual industrial property class taxpayers through a rebate program that provided a rebate in 1998 for the total "assessment related" increase, as defined in the legislation. In addition, Council elected to use a three year phase-in program to phase-in assessment related increases and decreases within the shopping centre property class. Report 18 of the Corporate Services and Economic Development Committee, should be referenced to provide details regarding these programs.

The rebate program was considered to provide the most mitigation possible to small business from the tools that were available to Council through the relevant legislation. It was recognized, however, that a large number of businesses faced significant increases even after the application of the rebate program, particularly in the rural areas of Ottawa-Carleton where a number of factors combined to create very large increases. Staff were in discussions with representatives of the Ministry of Finance regarding how the legislation governing the application of the rebate program could be amended in order to enrich it when the Minister of Finance announced Bill 79.

DISCUSSION

The *Fairness to Property Taxpayers Act* (the Act), is very complicated, as are the regulations to the Act. The most significant changes made by the Act are as follows:

- The Act creates a performance standard for property tax policy for commercial, industrial and multi-residential properties. After adjusting for any 1998 municipal levy changes over 1997, as well as integrating a minimum 30% Business Occupancy Tax, a property in any one of these classes cannot have an increase of more than 10% for 1998, 5% for 1999 and 5% in 2000.
- The Act allows for this performance standard to be achieved in one of two ways; either by using a new 10-5-5 capping tool provided by the Act, or by using one or more of the mitigation tools provided in the relevant legislation prior to the Act. With regard to the latter, if any property has an increase in excess of the performance standard after the application of one or more of the tools, the excess would have to be written off with the Region and the relevant area municipality absorbing the cost (including any education taxes written off).

- To provide for this, the Act extends the deadline for certain decisions on 1998 property tax policy until January 31, 1999. More specifically, the extension applies to the 2.5% capping tool, phase-in, graduated tax rates, optional classes, tax ratios and municipal rebates. This allows Council to re-visit the decisions on 1998 property tax policy made on August 12, 1998, within certain limitations, the most significant being that tax rates for the residential property class cannot change.
- The Act cancels the bylaw passed by Council on August 12, 1998 providing for the rebate program. The Act then amends the rebate program previously provided for in the legislation by stipulating that the education component of the cost of any new rebate program is to be funded from within the property class, instead of by the province. The Region had extracted a commitment from the Province to fund the education share of the cost of the rebate program passed on August 12, 1998. This commitment to that rebate program has effectively been withdrawn.
- The Act prevents any 1999 taxes from being levied against the commercial, industrial and multi-residential property classes until tax adjustments and rebilling for 1998 are completed.
- The Act requires area municipalities to maintain “frozen assessment listings” for 1998, 1999 and 2000 for all commercial, industrial and multi-residential properties. This is essentially the 1997 assessment roll for these classes adjusted to reflect such items as assessment appeal results, demolitions, building additions, vacancies and occupancy changes. This frozen assessment listing must be maintained regardless of how the performance standard is accomplished (i.e. pre-existing tools or the new 10-5-5 capping tool) since it is used to calculate the maximum taxes billable to a property in each of these years.
- The new 10-5-5 capping program provided by the Act sets out a scheme for setting taxes for commercial, industrial and multi-residential properties for 1998, 1999 and 2000 or any combination of those years. First, 1997 mill rates are applied to the assessments in the frozen assessment listing to determine the “1997-level taxes” for that property. Adjustments are then made to phase-in 1998 tax changes from the 1997-level taxes. Tax increases are phased-in to a limit of 10 percent for 1998 and a further 5 percent for each of 1999 and 2000. Tax decreases are phased-in based on the percentage of the aggregate tax decreases for properties in the class necessary to fund the aggregate of increases that are “capped out” by the program. In this regard, the program is self-financed individually within the broader commercial, broader industrial and multi-residential property classes. Importantly, municipal budget changes and a minimum 30% Business Occupancy Tax threshold are adjusted for in the capping calculation so that only those changes related to the new property assessment and taxation system are phased-in by the capping program. The calculation of “municipal budgetary factors” will be outlined in regulations to the Act and will include both regional and area municipality budget changes adjusted for Local Services Realignment impacts.

The provisions in the Act require Council to make the following decisions:

1. Does Council wish to change any of the property tax policy decisions already taken for 1998 in terms of the relative burden of taxation between property classes, specifically the use of one or more of the optional property classes and the setting of tax ratios?
2. Does Council wish to achieve the 10-5-5 performance threshold by implementing the new 10-5-5 capping program or by using one or more of the mitigation programs previously available i.e. the 2.5% capping, graduated tax rate, phase-in or rebate (as amended) programs with municipally funded tax write-offs for those properties that would still face increases in excess of the performance standard? This decision must be made for each of the years 1998, 1999 and 2000?

With regard to the first question, staff recommends that the decisions made by Council on August 12, 1998 not be changed. As mentioned previously, the decision to use all optional property classes and transition tax ratios was made in the context of significant analysis and public consultation. The policy issues that were dealt with as part of that process have not changed. The only new factor that the Act raises in this regard is that, if the 10-5-5 capping program is used, the property classes and tax ratios used in the previous tax year cannot be changed. In other words, if Council elects to use the 10-5-5 capping tool for 1999, the property classes and tax ratios used for 1998 are locked in. The same scenario would apply for the year 2000 if the 10-5-5 capping program is used in that year.

The issue of tax ratio setting is the most fundamental component of Council's new role in property taxation policy. In setting tax ratios for 1998, Council dealt with the difficult question as to what relative burden of municipal taxation between property classes in Ottawa-Carleton is the most equitable from a social and economic development policy perspective. In choosing to use the transition ratios for 1998, Council decided to employ the principle of reflecting, to the extent possible under the new system, the tax burdens that existed between property classes in 1997.

Council's stated intent was to make future years' decisions on this important issue with the benefit of appropriate research and consultation with representatives of residents, landlords, homeowners, tenants and business property owners in Ottawa-Carleton. To this end, Council established a property tax policy committee to organize the necessary public forum sessions to ensure property taxpayers and other stakeholders are given the opportunity to provide necessary input into the process of setting tax ratios for 1999 and future years. With the use of the 10-5-5 capping program, the ability to set new property tax policy by changing tax ratios is deferred. Despite this fact, and with regard to the second question, **staff recommends the use of the 10-5-5 capping program to meet the performance standard created by the Act, primarily because the pre-existing tools will not effectively deliver the necessary result.**

The pre-existing tools include the 2.5% capping program, the graduated tax rate program, the phase-in program and the rebate program (as amended by the Act). **Staff continues to recommend that the 2.5% capping program and the graduated tax rate program be discarded for the reasons stated in Report 18 of the Corporate Services and Economic Development Committee.**

The amended rebate program is not recommended for a number of reasons. First, a rebate program must be approved by the Minister of Finance. This approval could take a significant amount of time to receive, delaying the 1999 interim billing and resulting in negative cash-flow implications. The ability to obtain ministerial approval is uncertain, as the Ministry of Finance has refused to provide a description of the criteria that would be used in assessing a proposed rebate program.

Most importantly, the cost of a rebate program would be problematic. Under the amended rebate program, the education share of the cost, approximately 50%, would be funded through a higher education tax rate levied against the properties in the commercial and industrial property classes. The municipal share of the cost would be too high to be able to be funded from the budgetary provisions made by municipalities for the original rebate program, requiring the municipal share to be funded from within the property class in question through a higher tax rate. This would result in a re-iterative calculation that in the end would fund the cost of capping from within the classes, just as it would be under the 10-5-5 capping program. The only difference would be that under such a rebate program, the cost of rebating increases over 10% would be borne by properties experiencing decreases and properties facing increases of less than 10%. Under the 10-5-5 capping program, the cost of capping increases over 10% is absorbed only by those properties facing decreases. Due to its uncertainty and degree of imprecision, **staff does not recommend the use of an amended rebate program.**

The phase-in program is also not recommended as it would not be effective, either alone or in combination with a rebate program, in achieving the performance standard set by the Act. This is because the phase-in program phases-in the “assessment related” change faced by an individual property. The calculation of this amount is defined in the legislation and does not capture the full change a property experiences as a result of the new property taxation and assessment system, primarily as a result of how the notional tax rates, that are used in the calculation, are defined. In addition, the calculation does not capture the effects of upper-tier tax ratios and the difference between where provincial costs were downloaded and education tax room was vacated under Local Services Realignment. (These factors were known to Council through previous staff reports and are one of the reasons why Council chose to rebate 100% of the “assessment related increase” to small businesses, thereby providing the maximum mitigation possible under the provisions of the legislation.) As a result, phasing-in the “assessment-related” change provided for under the phase-in program will not result in the performance standard being achieved for many of the properties in the commercial and industrial property classes. Remaining increases in excess of the performance standard would have to be written-off for many properties, resulting in a severe cost to the Region and area municipalities, especially since the lost education taxes would have to be funded as well.

Staff recommends the use of the 10-5-5 capping program because it will reliably produce the results required to meet the performance standard created by the Act. Although the Act allows for the pre-existing mitigation programs to be used, the new 10-5-5 capping program is a superior alternative. It is expected that, with few exceptions, the 10-5-5 capping program will be the policy tool chosen by upper-tier municipal governments across the Province to comply with the requirements of the Act.

FINANCIAL COMMENTARY

The recommendations made in this report will not have an impact on 1998 results of operations. They will also not have a budgetary impact in 1999 and 2000. The cost of capping increases is funded within the multi-residential and broader commercial and industrial property classes by reducing the decreases that properties within those classes would otherwise have experienced.

It is important that the work necessary to complete the calculation and rebilling of 1998 tax liabilities for the multi-residential, commercial and industrial properties be completed as soon as possible. These property owners are facing uncertainty over their tax liabilities. The rent decrease calculations for tenants of multi-residential properties cannot be done. Until this work is completed, no 1999 interim levy can be made against these properties. This can have significant cash flow implications for area municipalities and the Region. While the province has stated that they will reimburse municipalities for the costs of this re-billing it is not clear whether that will include interest costs resulting from deferred billing cycles.

The percentage of decreases that would still flow through to properties that received a decrease in the originally billed 1998 taxes is not known at this point. The Ministry of Finance is updating the Online Property Tax Analysis (OPTA) system for use in calculating restated 1998 tax liabilities under the 10-5-5 capping program. This system will not be available until January 21, 1999, at the earliest. Until this tool is available with the 1997 frozen assessment listing loaded, and until it is known whether or not the province will honour the previous commitment to funding, the percentage cannot accurately be estimated.

PUBLIC CONSULTATION

The deadlines set by the Act do not provide time for public consultation on the recommendation contained in this report, however, this recommendation builds upon the analysis contained in previous staff reports. As mentioned previously, those reports were the subject of significant public consultation in July and August of 1998.

*Approved by
J.C. LeBelle*