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Wednesday 30 November 2005

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Mercredi 30 novembre 2005

**Standing committee on
general government**

Ontario Municipal Employees
Retirement System Act, 2005

**Comité permanent des
affaires gouvernementales**

Loi de 2005
sur le régime de retraite
des employés municipaux
de l'Ontario

Chair: Linda Jeffrey
Clerk: Tonia Grannum

Présidente : Linda Jeffrey
Greffière : Tonia Grannum

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
GENERAL GOVERNMENT**

**COMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES**

Wednesday 30 November 2005

Mercredi 30 novembre 2005

The committee met at 1533 in room 151.

**ONTARIO MUNICIPAL EMPLOYEES
RETIREMENT SYSTEM ACT, 2005**

**LOI DE 2005
SUR LE RÉGIME DE RETRAITE
DES EMPLOYÉS MUNICIPAUX
DE L'ONTARIO**

Consideration of Bill 206, An Act to revise the Ontario Municipal Employees Retirement System Act / Projet de loi 206, Loi révisant la Loi sur le régime de retraite des employés municipaux de l'Ontario.

The Chair (Mrs. Linda Jeffrey): The standing committee on general government is called to order. We meet today to resume clause-by-clause consideration of Bill 206, An Act to revise the Ontario Municipal Employees Retirement System Act. We will now continue clause-by-clause consideration of the bill.

Committee, you have before you the definition in section 1. As you recall, we stood down consideration of section 1. Is there unanimous consent to resume consideration of section 1 and any amendments to that section?

Mr. Tim Hudak (Erie–Lincoln): Hold on, Chair.

The Chair: We're going to discuss it; it's just to discuss it.

Interjection.

The Chair: This was section 1, which you asked questions on, Mr. Hardeman. This is the material, so now you can discuss it. We stood it down. We didn't vote on it.

Mr. Ernie Hardeman (Oxford): On a point of order, Madam Chair: I would just question why we would need unanimous consent to consider the items that we had previously stood down. If we're looking for unanimous consent, we're doing something out of the ordinary.

The Chair: We have to get unanimous consent to go back to section 1 because we stood it down. This is just to go back to the beginning. When we finish section 1, we go back to 17, which is where we left off.

Mr. Hudak: I apologize, Chair. I had a conflict and was unable to be here for clause-by-clause this past Monday, so you're catching me a bit off guard with the unanimous consent request. I thought we had actually

proceeded all the way through the first 17 motions, or something like that.

The Chair: We missed section 1 because there was a question about a definition. We waited until we had the definition of a member of a police force in the act, which Mr. Hardeman requested. We felt that in order to help him be able to debate that section more effectively, we waited till we had the definition. Now we have the definition. So if we have unanimous consent, we can discuss this item and determine whether or not there's support for section 1 and the amendments.

Mr. Hudak: Let me make sure I understand. There were no amendments debated with respect to section 1.

The Chair: No.

The Clerk of the Committee (Ms. Tonia Grannum): Yes, there was. Page 2 was on the floor.

The Chair: I think we were at 2a.

The Clerk of the Committee: We were on page 2, Ms. Horwath's motion. That's where we actually stood it down.

The Chair: Subsection 1(4), which was the NDP motion, is where we were.

Mr. Hudak: I apologize, Chair. Just give me a chance to catch up here. We're looking for unanimous consent to talk about section 1, which is the definitions. Am I following correctly?

The Chair: Page 2 in your amendments. If you go back to the amendments, page 2 is where we were. In order to discuss this item, Mr. Hardeman felt it would be better if we had the definition, so we agreed to stand down this amendment until that information was available. This information is now available, so we're asking for unanimous consent in order to discuss this amendment.

Mr. Hudak: Just making sure I'm sure: You're asking for unanimous consent to discuss this, then, relative to subsection 1(4), which is NDP motion 2 in my pile?

The Chair: Yes.

The Clerk of the Committee: And all the motions to section 1, because we stood down consideration of section 1 and any motions to it. Now we're going to go back to section 1 and deal with all the motions that are there.

Mr. Hudak: If you don't mind, just for clarity: in the list that I have, the numbers of the motions that are now moving back into consideration if unanimous consent is given?

Mr. Hardeman: Just for clarification, the definitions that I was asking for are in fact for subsection 1(4).

The Chair: Yes.

Mr. Hardeman: That's where the amendment was.

The Chair: That's where you asked for the definition in order to understand section 1 better. We have not passed the section. We've only passed one amendment within section 1. The rest of the amendments are still on the table for discussion.

Mr. Hudak: Not to belabour the point, Chair, but I don't think I have the full—

Interjection.

Mr. Hudak: Here we go. I have a fresh package of amendments, right off the press. So 2a has not been debated.

The Clerk of the Committee: No, and neither has 3.

Mr. Hudak: These were stood down pending more information on the definitions of fire and police and that sort of thing.

The Chair: Yes. So you should have in front of you an additional piece of paper that just has definitions added. It has "Police Services Act" at the top of the page, with "Definitions" beside it, which will hopefully help in our discussions of this amendment.

Can I have unanimous consent to bring section 1 forward again? All those in favour? Agreed.

Since it's an NDP motion, Ms. Horwath, would you like to resume discussion on amendment 2?

Ms. Andrea Horwath (Hamilton East): Do I need to read it into the record again?

The Chair: I don't think so.

Ms. Horwath: Again, it's in front of you. I think we discussed it as a result of a number of questions that came up. It was a matter of clarification of the language. I'm happy to put that amendment forward, as was discussed at the previous meeting, and I don't think there's much more to say about it. I think staff are bringing forward the definitions for us.

The Chair: Mr. Duguid.

1540

Mr. Brad Duguid (Scarborough Centre): We're pleased to support this. Just to confirm, this is the motion that adds paramedics into the mix in terms of the supplemental benefits. That's what I'm assuming. We will be supporting that motion. It's similar to the motion that Mr. Hardeman had brought forward, at least to support this.

We will be withdrawing the government motion—I don't know if we need unanimous consent to do that—which went beyond that. If we don't need unanimous consent to do it, then we just—

Ms. Catherine Macnaughton: No. Just don't move it.

Mr. Duguid: —need not do that. Good.

The Chair: Okay. Mr. Hudak.

Mr. Hudak: I appreciate the motion from my colleague from the third party. It does appear to be quite similar to the motion brought forward by my colleague Mr. Hardeman.

Maybe if I could just ask staff to help me understand what—this is early in the bill in definitions, so what new treatment will there be for paramedics if this motion and the bill were to pass?

Ms. Janet Hope: If this motion were adopted, it would maintain the definitions of police and firefighter that were in the bill, as originally tabled. It would add paramedics. So whenever there are references in the bill to police and fire sectors, it would include paramedics in that mix. I think that's particularly relevant with regard to the references in the bill to supplemental plans for the police and fire sectors.

The Chair: Can I interrupt for just a second. Before any of the staff speaks again, could you identify yourself, at least at the beginning, to assist Hansard, because we are beginning a new day.

Mr. Hudak: Thank you to staff. So basically, this would mean that the references laid in legislation to supplemental plans would then include paramedics, but we still will be voting on that particular sentence.

Ms. Hope: I think that might have been dealt with on Monday.

Mr. Hudak: It's already dealt with. The supplemental plans—

The Chair: Can you repeat the question?

Mr. Hudak: Yes, no problem, and then if we need to look it up, a second question.

I'm just trying to understand, if the NDP motion were adopted, how that impacts other sections of the bill. Specifically, the paramedics have made a case to be included in supplemental plans, which I talked about as well. I just wondered if that had already been addressed by the committee on Monday or if it had not, specifically the treatment of supplemental plans.

Ms. Hope: Government motion 9 is the one that dealt with "Optional increases, police and fire sectors," and I believe the committee dealt with that motion on Monday.

Mr. Hudak: That was dealt with. OK.

And then, secondly, just to make sure I'm clear too, when we refer in the section to the Police Services Act, does that include those employed by police forces who are civilian officers, or not?

Ms. Hope: Yes. The definition in this motion includes the broader definition of police; it includes civilians.

The Chair: Any further discussion?

Mr. Hardeman: Just so I understand this motion, I recognize that this motion is exactly the same as the bill presently is, save and except that it adds ambulance attendants to the act.

Going to the government motion, the last time we met it was explained that the wording was such that there may be other employees within the fire service working for the police services board or for the fire services who shouldn't be considered emergency workers, and that's why it was worded that way. It would seem to me that the explanation we got on the definition would be true, that this is going to include more people than the amendment would have. Is that true?

Mr. Duguid: I think so. The original motion would have split off non-uniformed employees in the police service from uniformed employees in the police service. It wouldn't have impacted fire service employees for a variety of reasons. The government has withdrawn that motion, so it would now apply to all employees in the police service. Some of the reasons were brought up by yourself at committee; you were asking questions on it. We were asking questions on that as well among ourselves and decided the best route to go would be to withdraw the motion altogether and go with the motion supported by the opposition members.

Mr. Hardeman: I guess, Madam Chair, I'm getting a little concerned that the government would pick this time to support an opposition motion when it gives more pensions, when in fact a lot of people who made presentations to our committee had been very worried about the cost of the supplemental plans.

I guess my question would be, then, in the estimation of the government, is the plan going to cost more or less without the government motion? If the government wants to withdraw the motion that's still here, if it's better for the plan, would it be appropriate if I read it into the record and it came in that way? What would the government do with that?

Mr. Duguid: We're not supportive of going in the direction of the original motion. On further contemplation, we decided that wasn't the route we wanted to go. So we wouldn't be supporting that direction.

With regard to the cost estimates that you've heard throughout, as rough as they are, they would not have excluded the non-uniformed employees of the police services. So those cost estimates would have included those costs anyway.

Mr. Hudak: If I could, by way of clarification, to staff: Paramedics as defined in subsection 1(1) of the Ambulance Act, do you have that handy to let us know what that means exactly?

Ms. Hope: I have the police definition and I have the fire definition in front of me. No, I'm sorry, I don't have the paramedic definition with me.

Mr. Hudak: Maybe the gentleman beside you has some—

Mr. Tom Melville: Tom Melville, legal services branch, municipal affairs and housing. I don't have the definition in front of me, but I recollect that paramedics were defined in the legislation as persons who primarily perform controlled medical acts. That seemed to be the chief part of the definition.

Mr. Hudak: OK. We had a number of deputations from various unions that represented different sets of paramedics. There was OPSEU and CUPE, among others. So basically—I know we don't have it in front of us, and I appreciate your efforts to try to find it—any of those employee groups who practise as paramedics in the province of Ontario and are part of the OMERS plan will be covered by this; we'll be covering all the paramedics in the province?

Mr. Melville: In accordance with the definition in the legislation, yes.

Mr. Hudak: Then, because the section on supplemental benefits had been adopted by the committee Monday, this effectively means that paramedics will be eligible—is it eligible or mandatory to have supplemental plans?

Mr. Melville: It expands the class of persons eligible to benefit from the supplemental plan.

Mr. Hudak: That is with the benefit? OK.

Lastly, with respect to the paramedics—I apologize, and maybe the clerk can help me out too. One of the issues that the paramedics had talked about was representation on the advisory committees on supplemental plans, as well as positions on the sponsors committee. Have we dealt with that yet or is that still to come?

Ms. Hope: That's still to come.

The Chair: Any further debate or questions about this amendment that is before us? All those in favour? All those opposed? That's carried.

I believe 2a is out of order as it is exactly the same as the NDP motion, and the government motion has been withdrawn.

Mr. Hudak: On a point of order: Because my colleague Mr. Hardeman has done a great deal of work, as has Ms. Horwath, could we record that as the Horwath-Hardeman amendment?

The Chair: I don't know. Is that a friendly—

Mr. Hudak: It's doubly friendly.

The Chair: I think the fact that it's recorded in Hansard is sufficient.

Shall section 1, as amended, carry? All those in favour? All those opposed? That's carried.

Mr. Duguid: Could we now move to reopen section 9? That's the defined benefits section.

1550

Ms. Macnaughton: It was voted down.

The Chair: Just a second. Let me just have a look at the section. I think we need unanimous consent in order to reopen the section.

Ms. Macnaughton: Because we've defeated that.

The Chair: Because it was defeated on Monday.

Mr. Hudak.

Mr. Hudak: Just to help me, the parliamentary assistant is asking to revisit section 9 and for unanimous consent to open up section 9 again. I do apologize. I did have to work to provide some very good material for question period these last two days and—

The Chair: Are you commenting about section 9, Mr. Hudak?

Mr. Hudak: I am, just by way of background. So we're jumping ahead to section 9. I probably just asked that, but have we already proceeded through all the proposed amendments to sections 3 through 8?

The Chair: Yes.

Mr. Hudak: We're not revisiting that at all?

The Chair: No.

Mr. Hudak: There's no intention by the government members to reopen sections other than those that we've already discussed?

The Chair: Not to my knowledge.

The request on the floor is to reopen section 9, and we need unanimous consent in order to do that. We're at the point of debate on that subject.

Mr. Hardeman: On a point of order, Mr. Chair: Is there debate on the request for unanimous consent?

The Chair: I don't think so, but I'm just clarifying it, because I've been accommodating—

Mr. Hardeman: So the answer is, there's no unanimous consent.

The Chair: I think what I've been doing is trying to accommodate Mr. Hudak's request for information.

Ms. Horwath, do you have any other comment or do you want to vote on this issue?

Ms. Horwath: I was just trying to recall what section that was, but I just found it—

The Chair: Section 9.

Ms. Horwath: —so I recognize what that was. But I am prepared to vote on it.

The Chair: OK. Are there any other clarifications that we need?

Mr. Hudak: As members of the committee know, it's quite rare for a committee to revisit sections of an act that have already been debated and voted upon. I know the government members and staff from the Ministry of Municipal Affairs have been working diligently on amendments as they heard from deputants throughout the hearings, and I think you had brought forward amendments to section 9 on Monday.

The Chair: No.

Mr. Hudak: No amendments have been brought forward on section 9?

The Chair: No. I think what we're really waiting for now is a vote. Is any more clarification necessary?

Interjections.

The Chair: It's a question. I'm trying to accommodate people who haven't been here before.

All those in favour—

The Clerk of the Committee: No. Is there unanimous consent?

The Chair: Is there unanimous consent? I hear a no.

OK. We're moving on to section 17.

Committee, we're at section 17 and the motion is on the floor. Ms. Horwath.

Mr. Duguid: We're not bringing forward—

Ms. Horwath: Hold on, Madam Chair.

The Chair: Page 18. You have to move it. We were not at the point where you'd read it into the record.

Ms. Horwath: This is subsection 17(2). Is that where we're at?

The Chair: Yes.

Ms. Horwath: I move that subsection 17(2) of the bill be amended by adding "after consulting with the sponsors corporation" after "administration corporation."

The Chair: Any comments or questions?

Mr. Hudak: Just before I make comment on my colleague Ms. Horwath's proposed amendment to subsection 17(2), I didn't get a chance to jump in soon enough on the early proposal on reopening section 9. I know unanimous consent has been denied. I don't think the intent behind reopening a section that had already been debated by this committee was explained to us. Nonetheless, hopefully we'll have a chance to address this bill in second reading hearings, and perhaps at that point in time we can revisit issues surrounding section 9.

If I could, on subsection 17(2), just to help me understand how this would impact on the bill by including after "with the sponsors corporation" after "administration corporation," I'm looking for clarification from my colleague or maybe from staff about the intent of this amendment.

Ms. Horwath: What it basically does is require that the administration corporation consult with the sponsors corporation in determining the actuarial methods and assumptions. That's the point. People will recall that through the hearings one of the concerns was the structure, particularly raised by the union that has the largest number of members in the plan, and they were concerned particularly around the structure. They raised many points about the administration corporation and the sponsors corporation. One of the things they have asked us to do and that we've been looking at doing is providing some amendments to this bill that will help ensure a better relationship between admin and sponsors, particularly around the provision of information, the clarity of information, ensuring that the administration corporation has some—I guess the better way to put it is that the sponsors corporation has some oversight capacity over the admin corporation, at least insofar as things like the actuarial figures and the methods being transparent, clear and reported to the sponsors corporation.

Mr. Hardeman: Through to the mover of the motion, I'm just a little concerned here. By adding "after consulting with the sponsors corporation," are you also suggesting that we remove "based upon recommendations from the actuary"?

Ms. Horwath: No, I'm not.

Mr. Hardeman: You're just putting it in between those.

Ms. Horwath: Yes, inserting it. I'm not asking that anything be struck. I'm just asking that there be an amendment adding "after consulting with the sponsors corporation" after where you see in the bill the words "administration corporation." It's still based on the recommendations of the actuary.

Mr. Hardeman: In the intent of the motion, though, what is it that they would be consulting about? It just seems to me that it's nice to tell people they have to talk to somebody, but there's no directive as to what they're supposed to get from the sponsoring corporation before they look at the actuary's numbers to show what they can or cannot do.

Ms. Horwath: Yes. I guess the point is that there has been a significant concern over some of the past deci-

sions of OMERS. There have been allegations about some of the policy decisions that were made, some of the investment decisions that were made by OMERS. In this structure, there's a concern that those kinds of policies can continue to happen if there is no requirement in legislation for there to be this transparency of dialogue between the two corporations. So the sponsors corporation sits in one place and meets once every three years, while the admin corporation has all the responsibilities for the investment policies of the plan and the various other day-to-day operations.

The issue, at least from the perspective of some of the stakeholders, is that in fact that's not good enough. The plan members have a huge stake in what happens with their investments, if you want to put it that way, and so they want to make sure that there is something built into the legislation that requires that dialogue to take place, that requires the admin corporation to be as transparent as possible with the actuarial information.

The Chair: Mr Hudak?

Interjection.

The Chair: Will this help, maybe, if somebody else asks a question—possibly? OK. Continue.

Mr. Hardeman: Fine. They can keep—

The Chair: I'm just trying to follow in order, when people indicate to me they want to ask a question.

Mr. Hardeman: I'm just wondering if the intent of putting it in there has any positive impact. One of the things that the OMERS presentation was quite emphatic about was to make sure we clearly define who does what, so there's no overlap in responsibilities. This would be, to me, a way of creating confusion over who's responsible, when it says, "This is the report you'll have. This is what you must base your decision on, but you must talk to someone else before you make the decision. But in the end, you still get to make the decision." It seems to me it's going to cause more confusion, rather than transparency, as to who does what and when they have to do it.

Ms. Horwath: I would submit, then, that there are two different interests who have an opinion on how this should be done, and that's the bottom line. If the member doesn't feel comfortable with the amendment that I'm putting, then he votes against it. But that's actually quite clearly what I'm trying to do, not to obfuscate the language or the roles. However, it's really clear that some of the people who are interested in this particular structure, who have an interest in their pensions, are concerned about the underlying assumptions that are used by the admin corporation in making its recommendations, as well as the actuarial methods that are used. What this motion does is ask or require that the admin corporation consult with the sponsors corporation in the determination of both the actuarial methods and the assumptions underlying them.

1600

Mr. Hudak: Maybe if I could, by way of example to my colleague—and fair enough: There were a number of groups that came forward, a number of the union groups,

particularly, as you said, with some larger employee groups. I know some of these employee groups object to public-private partnerships. So if we have other P3 hospital projects that OMERS wanted to invest in, the administration corporation, your amendment would suggest that they should consult with the sponsors corporation before making that kind of investment?

Ms. Horwath: I'm not presupposing any particular situation. All I'm doing is putting forward a motion that requires that accountability to be put into place between the sponsors and the admin. Again, it's not for one specific reason or another in terms of any particular investment except to say that there is a requirement that is being asked for to increase the transparency of the kinds of initiatives and activities that are being undertaken by the admin corporation vis-à-vis the sponsors corporation.

Mr. Hudak: Maybe I could direct this to staff. On Ms. Horwath's proposed amendment—and there are other, similar public pension plans that separate out the sponsors corp from the administrative corp. My colleague Mr. Hardeman said a number of groups, including OMERS itself, talked about maintaining the integrity of a plan by having a clear delineation between the administrative corp and the sponsors corp. Is Ms. Horwath's proposed amendment common among these types of pension plans, or would that consultation with the sponsors corp be out of the ordinary?

Ms. Hope: I can't comment on the specifics of any plans, but there is a general principle in most pension plan governance to try to create a clear distinction between the fiduciary responsibility and the sponsor responsibility.

Mr. Hudak: HOOPP may be a good comparator here. Here's a multipartite, if you will, employer-employee group. Do they have a sponsors corp as well as an admin corp?

Ms. Hope: I'm afraid I can't speak specifically to HOOPP off the top of my head. I know that there are a number of public sector plans that have a sponsor entity, whether it's a corporation or not, as is proposed here, and have an administrative organization or corporation that undertakes the fiduciary responsibility.

Mr. Hudak: Right. But you can't say with certainty that the other plans similar to the proposed OMERS Bill 206 would have an amendment or language like Ms. Horwath is proposing.

Ms. Hope: We wouldn't have looked at the bylaws of each plan to be able to verify this specific type.

Mr. Hudak: I don't know if there's anybody here from OMERS. I know they were sitting through the committee hearings. Is there anybody else who can offer some assistance on whether Ms. Horwath's suggestion, which I know a number of groups have proposed, is out of the ordinary, or if that's a common aspect of similar types—

The Chair: I think you're going to have to ask your questions of staff.

Ms. Horwath, I'm going to give you the floor. You wanted to clarify?

Ms. Horwath: Part of the point of this entire bill is to get OMERS to be autonomous. The government made specific decisions around what that would look like. Many stakeholders felt that the better way to go about things would be through a jointly trustee plan. In fact, jointly trustee plans, by and large, don't have two separate corporations doing all these different jobs; they're jointly trustee plans. So either OMERS is going to grow up and be an adult organization, do its own thing and be out from under the wing of government, and we should give it the authority and ability to do that—the government chose to do it in a way that's more the corporate model, with the admin corporation and the sponsors corporation.

There was another path to take; it's called the jointly trustee plan. Unfortunately, the government decided not to go that way. What I would like to do is try to get some sense of dialogue happening or some sense of accountability happening between those two groups. The better of all three worlds would probably be a jointly trustee plan.

Mr. Hudak: I don't know, and maybe the parliamentary assistant can help too. I appreciate that we have staff here that know this bill inside and out and are working very hard on this bill. Are there other staff in the room who can respond to some of our questions? I know this is under the purview of municipal affairs to an extent, it's more so on the pension side. Do we have additional resources at hand?

Mr. Duguid: I'll respond to your questions.

Mr. Hudak: The question that I asked staff in terms of—Ms. Horwath has language and then she has subsequent amendments that have a similar theme, which is creating greater interaction between the admin corp and the sponsors corp. I was simply wondering in other pension plans, whether they be HOOPP or CAAT or the BC plan, for example, if these types of interactions are common, or is this an extraordinary change that Ms. Horwath is asking for?

Mr. Duguid: I think there's a variety of different pension plans out there.

Mr. Hudak: Just a quick question, Chair: Is there staff from OMERS available to respond to this, or other staff aside from—

The Chair: I think the staff you have in front of you are the staff who are probably available. We have no other staff who are available to answer that question today.

Mr. Hudak: That's the full comment?

Mr. Duguid: That's my full comment, yes.

The Chair: Any further comments or questions on this amendment? Seeing none, all those in favour of the amendment? All those opposed? That's lost.

Shall section 17 carry? All those in favour? All those opposed? That's carried.

Shall section 18 carry? All those in favour? All those opposed? That's carried.

Section 19: Ms. Horwath.

Ms. Horwath: I move that subsection 19(2) of the bill be struck out and the following substituted:

“Reports and recommendations

“(2) The actuary shall give to the administration corporation and the sponsors corporation such information and reports as either corporation may request, and shall make such written recommendations as he or she considers advisable for the proper administration of the pension plans.”

The Chair: Mr. Duguid?

Mr. Duguid: We won't be supporting this particular motion, and the reason is that we think it's impractical to suggest an actuary and staff of an administration corporation shouldn't be able to carry out a conversation. We think it might impact communications rather than assist.

The Chair: Any further comments or questions?

Ms. Horwath: This really is the amendment to the bill that embodies, if you will, the whole issue of trying to have some oversight occur by the sponsors corporation over the admin corporation. What it does is require the administration corporation, as well as the sponsors corporation, to receive the actuarial information and, as well, requires the actuary to provide recommendations for proper administration of the plan to the sponsors corporation rather than just to the admin corporation.

Again, it's very specific and it's very deliberate. It's the attempt to try to build in some accountability so that the people who are actually paying, either the plan members or the employers who are paying, who make up that sponsors corporation, can be assured that the administration corporation is working in their best interest, since it is their investment and it is the retirement income of those members who will eventually have to rely on it on retirement.

Mr. Hardeman: I guess I don't understand, and maybe the parliamentary assistant could enlighten me. Of the two corporations, are they not both run on equal representation from employer and employee?

Mr. Duguid: That would be our recommendation, yes.

1610

Mr. Hardeman: That's what's presently in the bill. I have a little concern about the assumption of this amendment, that the administration corporation will have the interest of one side of the issue more at heart than the other corporation. I just wonder why that would be. If they're a 50-50 split, both, it would be just as apt that it would be the other way around, that in fact it would be the sponsoring corporation that would not have the interest of the employees at heart. I can't understand the recommendation of trying to put two together if they're identical-type corporations. That's a question to the mover of the motion.

Ms. Horwath: There is some considerable concern over the proportion of representatives on either or both of those various corporations as they stood with the government's initial bill, so we have put some amendments. We will be putting amendments on what those corporations look like in terms of representation. The bottom line is that if those amendments don't pass, then this kind

of language needs to be built in. Even if they do pass, it needs to be built in as a way of clarifying and enshrining in legislation this perspective that there's an oversight to the admin corporation. It's got to be accountable in some way, and not just once every three years on a meeting of the sponsors corporation. It's got to be a lot more hands-on, or maybe "hands-on" is not the best word, but more functional rather than just theoretical.

The Chair: Comments or questions? Seeing none, all those in favour of the amendment? All those opposed? That's lost.

Shall section 19 carry? All those in favour? All those opposed? That's carried.

Ms. Horwath: I move that section 20 of the bill be amended by adding "in writing" after "opinion."

The Chair: Any comments or questions? Mr. Hardeman?

Mr. Hardeman: No questions on it. I see absolutely no reason why one wouldn't support putting it in writing.

Mr. Duguid: It appears harmless, but we don't consider it to be really necessary, so we won't be supporting it.

Ms. Horwath: I want to suggest that my understanding is that, oftentimes, auditors' reports are done verbally, that a verbal update is given and then eventually the documentation may arrive. But this amendment asks for the auditor's report or opinion within 10 days in writing. That's what we're looking at. Even if it's an opinion, as opposed to an audited statement, it is still something that is put in writing so that everyone is quite clear and aware and there are no misunderstandings about what the point is that the auditor might be making in any opinion that is given.

The Chair: Any further comments or questions? Seeing none, all those in favour of the amendment? All those opposed? That's lost.

Mr. Duguid: I move that section 20 of the bill be struck out and the following substituted:

"Auditor

"20. The administration corporation shall appoint one or more persons licensed under the Public Accounting Act, 2004 to audit the accounts and transactions of the OMERS pension plans each year and to express an opinion on the financial statements for the pension plans based on the audit."

What this does is remove a reference to the retirement compensation arrangements pertaining to the actuary, because we already added it through a previous motion that we've already passed. It would make that particular reference redundant.

Ms. Horwath: Just to be clear, this is more of a housekeeping kind of amendment to make it consistent with the amendments that were put at Monday's hearing?

Mr. Duguid: That's exactly what I would consider it, and staff are nodding their heads as well. I wanted to get their nod just to make sure I wasn't misleading you, but indeed it is housekeeping.

Ms. Horwath: Thank you.

The Chair: Any further comments or questions? Seeing none, shall the amendment carry? All those in favour? That's carried.

Shall section 20, as amended, carry? All those in favour? All those opposed? That's carried.

Section 20.1.

Ms. Horwath: I move that the bill be amended by adding the following section:

"Auditor opinion delivered to sponsors corporation

"20.1 Within 10 days after receipt of the written opinion prepared by the auditor under section 20, the administration corporation shall give a copy of the opinion to the sponsors corporation."

The Chair: Any comments or questions?

Mr. Duguid: We'll be addressing this, in part, through a subsequent motion, but what we don't want to do is dictate the time limit. That's what we want to try to avoid. We think that's something that the sponsors and administration corporations themselves should be deciding.

The Chair: Any further comments or questions? All those in favour of the amendment? All those opposed? That is lost.

Subsection 21(3).

Ms. Horwath: I move that section 21 of the bill be amended by adding the following subsection:

"Annual report delivered to sponsors corporation

"(3) Within 10 days after finalizing the report under subsection 21(1), the administration corporation shall give a copy of the report to the members of the sponsors corporation."

The Chair: Any comments or questions?

Mr. Duguid: Again, we won't be supporting this. The changed provision would say that the administration corporation shall give the sponsors corporation such information as the sponsors corporation may reasonably request for the purpose of carrying out its objects under the act, and that would include copies of the annual report. We think that's sufficient.

The Chair: Any further comments or questions?

Ms. Horwath: I think, again, that part of what these amendments are aiming at is to try to enshrine some of those layers of accountability. I have to say that when you provide timelines it actually encourages people to get things done in a timely fashion so that months and years cannot drag on, thereby perhaps inadvertently leading to errors or misjudgments or those kinds of occurrences taking place. So really, timeliness is an important issue, particularly when you're dealing with billions of dollars.

It seems to me that asking for some timelines to be enshrined is not a harmful thing, but rather a thing that's meant to be helpful insofar as those deadlines will allow for people to review documents and opinions and annual reports in a way that's meaningful so that the information that's contained therein can be acted upon if there's anything that's required to be acted upon in a timely fashion.

Mr. Hardeman: I agree with this motion, having just gone through debate at great length with one of the

pension plans that didn't function as well as it should have—a multi-employer pension plan. The number one issue that came out of it was that nobody was notified that things weren't going the way they thought they were, and two years later, it was too late to ask for the documentation and no one had done anything to straighten it out. So anything we can do to put timelines in there to make sure that not only thorough reporting is done but it's done in a timely manner is beneficial to the plan, so we don't end up with the pensioners being out because their employer didn't know that the plan was not functioning the way it should. I'll be supporting this amendment.

Mr. Hudak: This gets to a point I had brought up a few moments ago, and that's usual practices or best practices surrounding division of responsibility between the administration corporation and the sponsors corporation, whether it be in OMERS or other pension plans. I do appreciate that this bill has been sent out for first reading hearings. It's good to see, and we should do more of that. I'm trying to make my best judgment as to whether this motion should be supported or not.

What is the extent of staff available to respond to questions? I know we have two staff from the Ministry of Municipal Affairs. I know there are other staff in the room, including people from OMERS, who would probably have a great deal of expertise on best practices.

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The Chair: I think if you have a specific question, staff here will do their very best to attempt to answer those questions. That's what we have available to us today.

Mr. Hudak: OK. I'll ask the question very simply. There are other staff who are here and folks from OMERS. We're trying to work through first reading hearings, which I do appreciate. Are they available to respond to questions?

The Chair: No.

Mr. Hudak: Help me understand why that's the case. I appreciate the two staff we have, the municipal affairs staff. But if there are folks here from OMERS who have pension experience—

Mr. Duguid: They're stakeholders.

Mr. Hudak: —why couldn't they respond to some of our questions?

The Chair: Mr. Hudak, you're going to have to ask a specific question. I'm trying to deal with the amendment that's on the floor. We have a lot of material to cover. We did ask lots of questions on the first day that we did get additional information about. If we are unable to answer your questions today, we can try and get research for you, but we have amendments before us and staff who are equipped to answer questions based on the amendments in front of us.

Mr. Hudak: Maybe I could just simply ask the extent of the staff available to the committee on first reading hearings and why that's the extent.

Mr. Duguid: The staff that's available are quite competent and will be happy to answer your questions.

As for the OMERS staff, they're not employed by us. They're independent. They're a stakeholder. It would be highly unusual—in fact, it probably wouldn't even be in order—to have stakeholders come in and answer questions when we're going through clause-by-clause.

The Chair: Any further comments or questions on the amendment?

Mr. Hudak: Are there staff available who are experts in pension law?

The Chair: We have staff here today who are prepared to answer questions about the pension plan in front of you, about OMERS.

Mr. Hudak: Ms. Horwath's proposed amendment has a report-back mechanism: "Within 10 days ... the administration corporation shall give a copy of the report to the members of the sponsors corporation." Does that type of provision exist in other, similar pension acts, and if so, which ones?

Mr. Melville: Under the Pensions Benefits Act, which is provincial legislation regulating all pension plans, there are information and reporting requirements which apply to OMERS and other plans. I'm not aware of any 10-day provision, but there is an extensive range of access available for pension plan members and employers under that legislation.

Mr. Hudak: So is it fair to say that this would be a best practice?

Mr. Melville: I think it's fair to say it might have been an attempt to codify something like a best practice.

Mr. Hudak: Is it a common provision?

Mr. Melville: I'm not aware of similar provisions.

The Chair: Any further comments or questions?

Ms. Horwath: When was the Pension Benefits Act last updated? I think it was last updated in the 1980s. It's about 20 years old. I don't think e-mail was that popular back then, so I'm wondering if maybe some of these things that are not in the language now or that we don't see in existing plans is because some of those plans maybe weren't written at a time when it's just so easy to put an attached file to a document that's been approved. Let's face it, it's been approved already. It's been finalized. It's just a matter of putting a 10-day requirement to shoot somebody an e-mail with an attachment that's got the final report on it. I don't understand why it's difficult to support something like this. It seems fairly benign from my perspective.

The Chair: Any further comments or questions? Seeing none, shall the amendment carry? All those in favour? All those opposed? That's lost.

Shall section 21 carry? All those in favour? All those opposed? That's carried.

Ms. Horwath, you have the next motion, page 24.

Ms. Horwath: You're making me earn it today.

The Chair: I am making you earn it.

Ms. Horwath: I move that subsection 22(3) of the bill be struck out and the following substituted:

"Fiduciary duty of sponsors corporation

"(3) The sponsors corporation and its members are fiduciaries in relation to members, former members and

others entitled to benefits from the OMERS pension plan.”

The Chair: Any further comments or questions?

Mr. Duguid: We’ll be opposing this. What it would do is create a fiduciary responsibility for the sponsors corporation in relation to members, former members and others entitled to the pension benefits. We believe it’s a fundamental principle that we’re trying to uphold here, separating the fiduciary responsibilities from the political or bargaining responsibilities of the sponsors. We don’t think that would be in keeping with the role that we have in mind for both these separate corporations.

Mr. Hudak: I wonder if I could have a better indication, through staff, what the impact of this change would be.

Mr. Melville: The amendment proposed appears to create a fiduciary relationship or would attempt to create a fiduciary relationship between the sponsors corporation and members, former members and others entitled to benefits. A fiduciary relationship is a relationship that requires someone to look after the interests of the persons in that fiduciary relationship. The amendment, as proposed, would create that very strong duty as between members and former members of the plan but doesn’t have any mention of employers. So for one thing, I think it’s fair to say as a factual matter that it would be one-sided.

Ms. Horwath: The bottom line is that this is exactly the way I think it was described by the parliamentary assistant. This gets to the whole issue as to the decision the government made around how this plan is operated and whose interests it serves. I would think that the change to make the sponsors corporation subject to fiduciary obligations, as opposed to corporate law obligations—again, you will recall that I asked this of the minister initially when he made his opening remarks at the public hearings process, as to why the decision was made to go down the road of more of the corporate model as opposed to a trustee model. If I recall, he described some process that was undertaken several years ago under the previous government, that none of the stakeholders were happy about, that ended up forming the basis of this bill, unfortunately.

The reality is that all of the parties of a sponsors corporation are interested, obviously, in making sure that the plan is healthy and solid, not only now but well into the future, and will continue to be solid well into the future. The fiduciary responsibilities add that broader context that plan members and former plan members think are important when we’re talking about their retirement savings, if you want to call them that.

Certainly there are two groups paying in, but the bottom line is that the one group pays out of the wages they earn and the other group is paying deferred wages of the earners. So really, all the money in there belongs to the plan members, one way or another. It’s either the money they’ve earned or the actual cash they gave up to put into their pension plan instead of getting it in wages from their employer’s contribution.

I think this is an appropriate amendment. It’s one that reflects the special nature of this kind of pension plan, that is really in the interest of the members who it’s supposed to be serving.

Mr. Hardeman: I’m not a pension expert, so I’m a little slower than most. Does this mean that the directors, the representatives on the sponsors corporation, are in fact supposed to base their decisions on how it will benefit their present members and pensioners, as opposed to the effective operation of the corporation for the future? Which is the high priority in this motion?

1630

The Chair: Are you asking staff or are you asking the mover?

Mr. Hardeman: Well, I guess we could ask staff. Ms. Horwath has told us why she is doing it. I just wondered, what would this do? If I were one of the members on that board and I read that section, what would I think was happening with that section?

Mr. Melville: I think, as I said previously, this would create a duty for the member on the sponsors board to look after the interests of, as it says here, “members, former members and others entitled to benefits.” There’s no mention of employer interests in this, so in effect it’s a duty to look after the interests of one side of the equation as a factual matter and not the other.

Mr. Hudak: Maybe on that point, to my colleague Ms. Horwath, the staff has raised the point that that leaves off employers, that they have a fiduciary duty to members, former members and others if this were to pass. Are you worried about the needs of the employers on that panel as well? Would they be, I guess unfairly, left out of the consideration if this amendment were to be passed?

Ms. Horwath: I’m sorry; I’m not sure in what way employers’ interests will be left out. The intent of the motion is to indicate that the fiduciary responsibility is to the people whose pension plan it is. It’s not the employer’s pension plan per se, the municipality itself that might be an employer. It’s not the municipality’s pension that’s going to be affected in any way by any decision; it’s the individual members who pay into that pension plan. Certainly part of the contributions to the pension plan are made by employers, but I would submit that even the employer portion that gets put into the pension plan is the deferred wages of the employee, because the employee didn’t get that as a raise; they got it as an employer contribution into the pension plan instead.

I guess I’m saying that I wouldn’t think this in any way indicates a negative onus on any of the members of the sponsors corporation to not consider anything that the employer sponsors would have to say, but that when it comes to making decisions, the fiduciary obligation is to the plan members, the former plan members and the future plan members.

Mr. Hudak: If I could, to staff again, one of my usual questions: Does this type of obligation exist in any other public pension plans?

Mr. Melville: I can’t answer that specifically because I’m not aware of any exact parallels. But the pension plan

administrator, which is the administration corporation, does have a fiduciary duty to the members of the plan and the former members. That body is the one that's responsible for such functions as actually administering pensions to pensioners or making investments, so their fiduciary role is to balance the interests of them all as administrator. The function of the proposed sponsors corporation is to make changes to the plan from time to time. It's quite a different role.

Mr. Hudak: And would you describe this proposed amendment as a best practice?

Mr. Melville: I could not describe it as such.

Mr. Hudak: I think this goes to the heart. I know my colleague has brought forth amendments, and these amendments have been suggested by groups that have been before the committee. Philosophically, and I think government members have voted this way, it's important to maintain the integrity of the plan to make sure there's a clear delineation in the responsibilities of those who are sent there to participate in the administration corp and those who are meant to be sent there in the sponsors corp. They have very different responsibilities and spheres that, in the general sense, should not intersect. I think that would be a fair way of describing best practices.

Maybe I've got to understand better the intent of the bill to make sure I'm right. I mean, is the role of the individuals who are sent to the sponsors corp, those who come from the various employer and employee groups to sit on the sponsors corp, to do what's in the best interests of the plan as a whole or are they there to represent the interests of the groups that nominate them?

Interjection: On the sponsors corporation?

Mr. Hudak: Those who sit on the sponsors corporation.

Mr. Melville: For the sponsors corporation, the role, as Mr. Duguid mentioned, is a role of changing the plan or not changing it from time to time. So the members are representatives of the various constituencies that are responsible to appoint them in the transition provisions and presumably would come together and decide about making decisions from time to time with respect to the pension plan. The role of the administrator is to carry out, once those decisions are made, the day-to-day decisions on the plan.

Mr. Hudak: Management. I think I'm on the right line here. Then, by way of example, if I were the CUPE designate on the sponsors board—I know Mr. Ryan probably is interested to hear me say that is by way of example—and Mr. Hardeman were there as the—

Ms. Horwath: He's busy right now.

Ms. Deborah Matthews (London North Centre): It's unlikely he will be.

Mr. Hudak: Let's say, hypothetically, CUPE suggests that I be the CUPE representative down the road and Mr. Hardeman is the AMO representative down the road. Are we there to represent the interests of the group that we have been nominated by, for example? I'm not going to use an exact word. Am I there to look out for CUPE's interests and Mr. Hardeman for AMO's interests? Or are

we there to look out for the interests of the plan as a whole on the sponsors corporation?

Mr. Melville: On the sponsors corporation, I think the role of the member essentially is to—well, they presumably also have some duty to the sponsors corporation and its purpose is, from time to time, to make changes to the pension plan. Presumably, the member who represents a particular constituency will keep the interests of that constituency in mind. I can't say that it would extend to being a duty. They were appointed by that constituency and I think they would probably keep it in mind in acting on the board of the sponsors corporation.

Mr. Hudak: Fair enough. Would this amendment, if passed, change the duty of the rep to the sponsors corp in any way? Basically, if I understand it—I'm not saying it exactly the same way that you did, but ideally the intent is that those in the sponsors corporation would make decisions for the plan as a whole. They will obviously understand those who nominated them and they'll have that in their mind. But this amendment, if passed, would change that relationship, wouldn't it? Wouldn't it make them more beholden to the individual members who sent them there than to the plan as a whole?

Mr. Melville: It states that it would create a fiduciary responsibility, which is a kind of legal duty to the members, yes. It would change that relationship.

Mr. Hudak: Chair, I appreciate my colleague announced that this does represent a number of the groups that have called for this amendment. I think my concern—and I'd appreciate staff's help on this—is to make sure that we maintain that clear line between the admin and the sponsors corporation in making sure that there's no doubt the sponsors corporation members will reflect to a degree in their thinking the representatives of the party that they would come from, but at the same time we have to ensure that they bear in mind the interests of the pension members as a whole, as opposed to individual groups. Therefore, I cannot support Ms. Horwath's particular motion on 22(3).

The Chair: Any further comments or questions on this amendment?

Mr. Hardeman: Just to get it clear in my mind on this one, if the proposal before the sponsoring board was to create another supplementary plan, if this motion was passed, would it inhibit the ability of the labour side of the equation to vote not to have the supplementary plan? Would that be considered that they were then fulfilling their duty? Obviously they weren't looking after their representatives as number one. I'm just guessing.

Mr. Melville: It's a hypothetical question—

Mr. Hardeman: Exactly. I have no facts. I have nothing but hypothetical.

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Mr. Melville: It's a potential issue because the duty of a member of the sponsors corporation, if this amendment were in place, would be to the members, former members and others, but not to the employers if it doesn't say that. Presumably they have a greater duty to those members

and former members. I'm not sure if that answers your question.

Interjections.

The Chair: May I have some order, please. I can't hear the answer. Thank you.

Mr. Hardeman: Recognizing the fact then that if they created another supplementary plan, the employees would not have to participate if they decided not to, because it's not a mandated plan, but the employer, if the employee decided to participate in the supplementary plan, they would get twice as much—they would invest twice as much of their money but they'd also get twice the return. If that was good for their members, it would be pretty hard to fulfill this commitment on the board and not vote for the supplementary plan, wouldn't it?

Mr. Melville: I'm not sure I can answer that question. I'm sorry.

Mr. Hardeman: I think, Madam Chair, I'm going to vote against the amendment.

The Chair: Thank you for letting me know that, Mr. Hardeman.

Any further comments or questions? Seeing none, all those in favour of the amendment? All those opposed? That's lost.

Shall section 22 carry? All those in favour of section 22? All those opposed? That's carried.

Again, Ms. Horwath, you are working for your paycheque today. You're next up.

Ms. Horwath: I move that section 23 of the bill be amended by adding the following subsection:

"Employee representatives

"(1.1) The sponsors corporation shall ensure, in any bylaw referred to in subsection (1), that the entitlement of organizations that represent employees to choose members of the sponsors corporation shall be allocated among those organizations based on the number of employees who are members of the OMERS plan that each of them—

The Chair: Ms. Horwath—

Ms. Horwath: OK, I'll start over.

The Chair: Please. Sorry.

Ms. Horwath: "...the sponsors corporation shall be allocated among those organizations based on the number of employees who are members of the OMERS pension plans that each of them represents for collective bargaining purposes."

The Chair: Thank you. Mr. Duguid?

Mr. Duguid: We'll just vote against it if it can go quickly.

Ms. Horwath: If I can, really briefly, this again reflects the idea of ensuring that there is proportional representation, pretty much, on the corporation. That was the point of that resolution. It's one of those issues that we heard about in the hearings. Certainly it's not without controversy, but I think it's important to recognize that the number of members any organization brings to the table in terms of the OMERS pension plans should be receiving the appropriate proportional—the number of seats they have, on either of the corporations for that

matter, should be reflective of that. I think what the amendment says and does is pretty clear, so I'll leave it at that.

Mr. Duguid: Just briefly, the concern I have with this is it removes the ability of an employee group to have representation on the sponsors corporation if they're not represented by members for collective bargaining purposes. When you look at the proposed model, it includes representation for employees who are not members of trade unions, such as 20% of employees, of active members who are unaffiliated, non-union members. We're a little concerned—not a little concerned; a lot concerned—that these particular groups would lose their voice if we were to support this.

Mr. Hardeman: My concern is equal representation, representation by population. The parliamentary assistant mentioned those who are not represented by an organization. We would then have to have a rep for each one of those, because they need to be represented too. That would mean that we would need representatives, to make it fair, for every single member in the plan, which doesn't make a lot of sense.

I also have a problem, apart from those, as to the number of bargaining units that would be involved, some being very small. Then when you get into the larger groups, such as CUPE, they would have to have a great number of members in order to have fair representation on the board. I think this would likely create a rather large organization. I wonder if the member has any suggestions as to how we would deal with not having a 50- or 60-member board in order to get equal representation from all the bargaining units? And I suppose from the sponsors, from the employers too. They have the same problem. They all have different organizations, so they all want to be—somebody would leave. One of the municipalities would leave AMO, and they would no longer be represented by AMO—

The Chair: Mr. Hardeman, I think that the question has been asked. Ms. Horwath, do you want to respond to it?

Ms. Horwath: No, Madam Chair. Again, I don't think that the structure that the government put forward in the bill has addressed all the concerns of the stakeholders, and so perhaps there are ways of dealing with that issue. But I don't think at this committee that we're in the position to roll up our sleeves and develop a new structure. I think it's important to put on the record the concern about representation by population and leave it at that.

The Chair: Any further comments or questions?

Mr. Hardeman: A question through to the staff: In this section, if this resolution was to pass, does the board have the ability to change the numbers and the representation from different groups for their board?

Ms. Hope: The sponsors corporation would have the authority, over time, to change the composition of both the sponsors corporation and the administration corporation. So it will have that authority on an ongoing basis. The later sections of the bill set out an initial composition for each corporation.

Mr. Hardeman: So the initial composition would have to pass a bylaw to meet this requirement after the board was struck, if this was to pass?

Ms. Hope: If this were to pass and other sections of the bill were to remain as drafted, I believe what that means is the initial composition, as set out in the bill, would stay, but that any subsequent bylaw that the sponsors corporation would pass would need to be consistent with the language here.

The Chair: Any further comments or questions?

Mr. Hardeman: I guess I have some real concerns with passing a resolution like this which does not provide any direction to the corporation, that the second time around, here's what you have to do, but we had no idea how you would do that. We have concerns about how they would get a representative of everyone in the bylaw. I can't support this resolution.

The Chair: Any further comments or questions?

Mr. Hudak: There's no doubt that the workability of representation on the sponsors corp, particularly for the smaller employee groups, is problematic. I'm just looking forward through amendments to see—OK, so the government does have a motion, number 27, down a couple. I do apologize; I don't have this in front of me. How many different employee groups actually do exist that could have representation on the sponsors corp?

Ms. Hope: Sorry, did you say employee or employer?

Mr. Hudak: Employee groups.

Ms. Hope: Employee groups? We know that there are some 50-odd unions that represent members in OMERS and that about 20% of the members of OMERS are not represented by a union.

Mr. Hudak: Twenty per cent of the—

Ms. Hope: OMERS plan members.

Mr. Hudak: —OMERS plan members are not represented by—

Ms. Hope: By any union.

Mr. Hudak: Are they organized in a group currently, that remaining 20%?

Ms. Hope: Not for collective bargaining purposes.

Mr. Hudak: Right. But how about for seats on the sponsors corp?

Ms. Hope: The government does have motions to address that issue in this package.

Mr. Hudak: Ok. I guess I have to decide, is Ms. Horwath's motion superior to the status quo? And then we'll vote on that. Then, from there we would look at the government's motion and determine if that's superior to the status quo or to Ms. Horwath's presentation, depending on how the vote goes.

Under Bill 206 as it stands, without any amendments to the section, seats on the sponsors corp, how do you determine how the seats will be divided up among employee groups if they don't pass any bylaws themselves?

1650

Ms. Hope: The transitional provisions of the bill set out a composition for the sponsors corporation and provide for which sponsors shall select individuals to sit in the various seats on the sponsors corporation. Those

provisions are in place until December 31, 2009. So it will be incumbent on the sponsors corporation between the time this would come into effect and that date to pass a bylaw to adopt the composition they wish to have on an ongoing basis.

Mr. Hudak: Right. If the sponsors corp fails to do so—

Ms. Hope: So your question is if, by 2009, when these provisions are no longer there, they've passed no bylaw?

Mr. Hudak: Let's say the sponsors corp is hopelessly divided and cannot adopt a bylaw on future seats.

Ms. Hope: I think we rely on their responsibility to the corporate entity that they're a participant in to pass a bylaw.

Mr. Hudak: But there will be those who are, hypothetically, on the sponsors corp to start out with who may find they enjoy being on the sponsors corp, and there will be those who are not on the sponsors corp to start out with who would like to be on the sponsors corp.

Interjection.

Mr. Hudak: Nobody wants to be there? Hopefully groups would not act this way, but there may be an incentive under the bill, as currently constructed, to have the sponsors corp simply not adopt any new bylaw and maintain representation as set out initially in the bill.

Ms. Hope: Theoretically, yes.

The Chair: Any more comments or questions on this amendment?

Mr. Hudak: Certainly, Chair.

The Chair: Mr. Hudak.

Mr. Hudak: Some of the groups had expressed concern about rotating into positions and the mechanism that would be used as you went through the numbers that are in the different employee groups. I haven't had a chance to look up some of those particular groups, but there were those that were the smaller employee groups that expressed concern about a rotation mechanism. How is that to function?

Ms. Hope: As set out in the transitional sections of the bill.

Mr. Hudak: Right. I'm sorry. We haven't got there yet, I guess, but help me understand how that is supposed to work, because Ms. Horwath is proposing a different approach on employee representation.

Ms. Hope: Ms. Horwath's motion, as I understand it, sets a certain requirement for any bylaw that the sponsors corporation should set. It doesn't seem to address, to my read, any issue of a rotating amongst different employee groups. It seems to imply that all employee groups that represent members for collecting bargaining purposes would be entitled to some representation on the sponsors corporation in proportion to the number of members they represent.

Mr. Hudak: Sure. But what Ms. Horwath's motion is asking us to consider when we vote on it is, is this a superior change to the status quo under the bill, right? So if Ms. Horwath's motion fails, if it's unamended, this part of the act, how, then, will the smaller employee groups—I thought I remembered something in the

hearings about a rotation mechanism based on population of those employee groups.

Ms. Hope: There are provisions in the transitional section of the bill which address a rotational process for the small employee groups.

Mr. Hudak: Right. All I was trying to get at was how exactly that rotational basis works.

Ms. Hope: It's outlined in section 39 of the bill. It's described.

Mr. Hudak: OK. So could you help me understand, then, if the bill is not amended, as Ms. Horwath suggests, and the bill proceeds in an unamended form in this section, how a rotation mechanism functions.

Mr. Duguid: On a point of order, Mr. Chair: I think the rotation mechanism is part of other motions later in the bill, other sections, so we're going well beyond this particular amendment at this point in time.

The Chair: Mr. Hudak, have you got enough information yet to determine whether the superiority of this amendment will supersede the government motion or not?

Mr. Hudak: I don't think so, Chair.

The Chair: I just wondered where we were.

Mr. Hardeman: We haven't gotten to the government motion yet.

The Chair: I know we haven't.

Mr. Hardeman: We don't want to be debating a motion that's not yet on the table.

The Chair: Clearly not. Mr. Hudak, you have the floor.

Mr. Hudak: But in the absence of some debate on transitional powers under section 39—

Interjections.

The Chair: I don't want any more debate. This is taking long enough as it is. Mr. Hudak, do you have a question for staff?

Mr. Hudak: Well, I was trying to best understand how the transitional mechanisms work.

The Chair: How about Ms. Horwath? She has asked to speak. While you're looking through your notes, maybe she could clarify for you.

Ms. Horwath: I think my next motion actually gets rid of any transitional period anyway, so you can support both.

The Chair: Thank you for being helpful. I appreciate that.

Mr. Hudak: So we can discuss, then, sections 38 and 39 under Ms. Horwath's next motion, since that section does refer to them.

The Chair: No, I think we're going to have to do one at a time. So you're going to have to make a decision on the amendment that's in front of you right now.

Mr. Hudak: No, I understand that, Chair. I do want to explain, though, that the transitional sections, 38 and 39, are relevant as we discuss sections 22 and 23. In fact, Ms. Horwath's motion 26 addresses subsection 23(2), which refers directly to those transitional sections.

Mr. Duguid says that you have to debate the bill in order. Fair enough. You have to go through a bill in some

order to get through it. But sections 38 and 39 are surely relevant for the discussion on section 23. You can't treat section 23 differently than sections 38 and 39—you can't treat them separately.

Anyway, in the absence of debate on sections 38 and 39—

The Chair: Mr. Hudak, would you like some other clarification? I think staff is willing to try to assist you in your evaluation.

Ms. Macnaughton: This particular amendment deals only with when there will be a bylaw after the transitional provisions have run their course, and the transitional provisions are sections 38 and 39. So they're mutually exclusive.

Mr. Hudak: Thanks. I'm not going to belabour the point, but if you do change—as I said earlier with respect to bylaws, my earlier questions were, if the sponsors corp does not make a bylaw change, then what transpires? Transitional provisions deal with the issue of seats on the sponsors corp as well. I'm more than willing to talk about the transitional issues in subsection 23(2), but in absence of a full debate on that, I don't think I could support Ms. Horwath's amendment as it stands on its own without fully working through its impact on transition in bylaws from the sponsors corp.

The Chair: Seeing no further questions or comments, shall the amendment carry? All those in favour? All those opposed? That's lost.

Ms. Horwath, you're on deck again.

Ms. Horwath: I move that section 23 of the bill be amended by adding the following subsection—oh, wait; I'm on the wrong one. Sorry.

I move that subsection 23(2) of the bill be struck out. And I can tell you why, if you like.

The Chair: Please do.

Ms. Horwath: The point is that in the process of going through the final reading of the bill—so we'll go through second reading debate and we'll go through final reading of the bill and then we'll wait for royal assent to take place—during that whole process there's plenty of time for the sponsors corporation to be set up and for the various stakeholders to appoint their members. There's really no need for the transitional period. There's no reason why those parties can't have their appointments ready for proclamation of Bill 206.

The other piece of it, then, is that you have this long time frame whereby the sponsors corporation could, theoretically, implement bylaws that might not be satisfactory to the majority of those people who would be interested.

Everybody who's interested is aware that this bill is going through the process; it's going to be a long process, thanks to Mr. Hudak. No, I'm just kidding. It's going to be a long process because it's a difficult bill and it's an important bill. There's a lot at stake in this bill, and it's been a long time coming, quite frankly. People have been asking for this.

1700

It's funny, because some of the stakeholders said, "We don't know where this came from. Nobody's been asking

for it.” That would have been the employer side. On the other side, pretty much every stakeholder we heard was saying that they have been desperately wanting this legislation—not this particular legislation, but for the OMERS pension plan to be devolved to the stakeholder level.

What this does is say, “Hey, if you are going to be doing this, let’s just do it right away. Let’s not set in some transitional period. Let’s get things up and moving in the interests of the stakeholders immediately upon proclamation.”

The Chair: Any further comments or questions?

Mr. Duguid: What this does as well is—it could vary, as it gives the sponsors corporation the ability to alter its composition in its first year. We don’t have a problem with that. The problem we have is that there is no default if they aren’t able to agree on a changed composition at the end of that one year. So that’s the difference between this motion and the government motion, and as such, we won’t be supporting this one. Subsequently, we’ll be supporting one that’s similar but different.

Mr. Hardeman: Maybe I’m on the wrong amendment here, but the comments from the parliamentary assistant that the government has one similar but different—how do you have a motion that’s similar and different when this motion just says subsection 23(2) of the bill shall be struck out?

Mr. Duguid: The difference is that we strike out that motion as well, but we provide a process for default composition if the sponsors don’t agree upon a changed composition after one year.

Mr. Hardeman: Oh, OK. It seems fairly simple: If it’s similar, it’s the same. Striking out is striking out, regardless of how you do it?

Mr. Duguid: No, it adds more to it.

Mr. Hardeman: I’m just—

The Chair: Mr. Hardeman, would you please go through the Chair and signal to me, because I’m trying to keep an eye out for who wants to talk. Mr. Hardeman, you have the floor.

Mr. Hardeman: I’m concerned about the timing in the resolution. We’ve noticed it in other areas. There may be a lot of time, because it takes a long time for legislation to be approved and implemented. At the same time, the people who are getting ready for new organizations and do it properly before the final i is dotted and t is crossed.

We see it in health care, where we have the LHINs which have been up and operating and there’s still no legislation that actually allows them to be there. It’s the example of the other way, the length of time it takes to make these things happen. So I commend the legislation and the government for putting something in there for a transitional period, because obviously none of this happens overnight.

I don’t think you can pass a piece of legislation that requires that everybody will be ready or assumes that everybody will be ready to be appointed and get into

operation when the bill is passed and gets royal assent. I support that part of it. I don’t think we can afford to just strike it out and not have a transitional process in place.

The Chair: Any further comments or questions?

Seeing none, all those in favour of the amendment? All those opposed? That’s lost.

Mr. Duguid, you have the next motion.

Mr. Duguid: I move that subsection 23(2) of the bill be struck out and the following substituted:

“Initial composition

“(2) Despite subsection (1), the composition of the sponsors corporation is determined as follows for the following periods of time:

“1. The composition of the sponsors corporation is as determined under section 38 for the period commencing on the day that subsection 22(1) comes into force and ending immediately before the first anniversary of that day or when the sponsors corporation passes a bylaw under subsection (1), whichever is earlier.

“2. If the sponsors corporation has not passed a bylaw under subsection (1) on or before the day that is the first anniversary of the day that subsection 22(1) comes into force, the composition of the sponsors corporation is as determined under section 39 for the period commencing on the first anniversary and ending when the sponsors corporation passes a bylaw under subsection (1).

As I said before, this motion would allow changes to the initial composition of the sponsors corporation in that first year, upon the sponsors corporation passing a bylaw, so that they can re-establish the composition of the corporation in that first year of operation. It allows them to make those kinds of decisions. However, if the sponsors do not pass a composition bylaw in the first year, the composition outlined in section 39 of the bill would apply under this particular motion.

The Chair: Further comments or questions?

Mr. Hardeman: I’m afraid we’re going to have to try it again, Mr. Parliamentary Assistant. I don’t understand it.

Mr. Duguid: Just briefly: In the current bill, there’s not an ability to change the composition of the sponsors corporation. This will allow for the sponsors corporation to have the ability to amend their composition should they pass a bylaw and agree to it. We agree with that. If at the end of the first year they haven’t passed a new sponsorship composition, what’s proposed here in section 39 will then apply until they decide in the future to do it. So if they haven’t been able to agree to anything, they’ll stick with what they have.

Mr. Hardeman: So you’re making the assumption that it’s possible that the corporation will decide that once they’re appointed, they’ll be ready—as Ms. Horwath suggested, because they’ve been waiting for this—and able to pass a bylaw in six months. In six months, they could then structure a new board, and they wouldn’t have to wait till the end of the year before that board could take over its operations.

Mr. Duguid: Yes. The sponsors corporation may decide they want to amend their composition, and this gives them the ability to do that if they pass a bylaw.

Mr. Hardeman: In setting up the corporation with a bylaw, is that still predicated on a certain level of employee-employer representation?

Mr. Duguid: Yes. It still has to be 50-50, employee-employer.

Mr. Hardeman: That's predicated on the fact that they can't have a bylaw that takes the—

Interjection.

Mr. Hardeman: All of a sudden, I see we have a problem. I see that staff would like to answer a question.

Mr. Duguid: They may be able to—

The Chair: Can I ask that you go through the Chair, please? This is becoming a conversation, but you really should be going through the Chair.

Mr. Duguid: They may be able to alter that, but I don't think you're going to see the employers or the employees give up 50% representation on either corporation, let alone the sponsors.

The Chair: Staff, do you have some additional information? No, they don't.

Did you have any more questions?

Mr. Hardeman: Yes, I would like that question answered by staff.

The Chair: I don't think they had any additional information on this issue. I think they were satisfied with the answer Mr. Duguid gave. They were nodding. Am I wrong?

Mr. Hardeman: I quit listening to the speaker because I was waiting for staff to answer it, so if staff could repeat it for me, I'd much appreciate it.

The Chair: Maybe staff could repeat what Mr. Duguid said.

Mr. Duguid: It would be preferable, if a member's asking a question, that they listen for the answer in the future, and maybe we can speed through the hearings a little quicker.

The Chair: Ideally, that would be the case, Mr. Duguid. Staff, could you respond to Mr. Hardeman's question, please?

Ms. Hope: What Mr. Duguid referenced was that it will be up to the sponsors corporation members to determine what the composition would be, should they wish to revisit what is in the bill in the transitional section, and so it would be their decision on how that would be structured. But it would be difficult to imagine a context in which employers or employees would agree to a composition that did not involve equal representation of both sides.

Mr. Hardeman: If I could go one step further, then: The passing of the bylaw is in fact predicated on just a straight majority vote of the board.

Ms. Hope: Correct.

Mr. Hardeman: Since we have exactly a 50-50 split, is it possible that if someone was ill, we could actually pass a bylaw to change the proportion of labour and management?

Ms. Hope: I just want to double-check something. The reference to the decisions of the sponsors corporations requires an affirmative vote of a majority of its

members. Regardless of whether people were in attendance or not, a majority of members would need to support a bylaw in order for it to pass. It's not a majority of those present at a meeting, it's a majority of members.

1710

Mr. Hardeman: That's to say, then, that this board is going to operate almost totally differently than any other board, where it's based on—the vote count is not who's present, but the vote count is the majority of the members.

In the Legislature, there are 103 members, but you're suggesting that the majority should be, then, 53. If that were the board for this corporation, the vote that would be required to make this change would be 53, regardless of who was in the chamber?

Ms. Hope: If this principle were being applied, yes.

Ms. Horwath: It piqued my interest because—I couldn't say a reason, actually. So that would mean, then, that the mechanisms for that kind of a vote would be through a proxy, for example. If someone couldn't attend, they could do a proxy or some other kind of methodology to make sure that those votes were counted. Is that how it goes?

Ms. Hope: The bill doesn't address issues like proxy, but those would be issues that the corporation could address through its own bylaws, what rules it might be prepared to have around use of proxy.

The Chair: Any further comments or questions?

Mr. Hardeman: Are you suggesting that the corporation can decide how they decide they're going to call a vote on certain issues? Like you say, there's nothing in the bill that says how we're going to decide the majority of the members. They could just say, "Why don't we have it so you can just call in your vote?"

Ms. Hope: As a corporation, they would be able to set bylaws to determine how voting could occur, whether proxy votes could be used and those sorts of things. That's within the normal scope of a corporate entity, to set its own bylaws.

Mr. Hardeman: So this bylaw, then, could actually come up. Maybe that's where we get to the point of the corporation only having to meet once every three years, because in fact they could do everything by telephone, according to the bylaw. They could pass a bylaw that says, "We only have to meet once every three years, and the chair will from time to time call around"—do a conference call or something—"to make decisions." Is that—

Ms. Hope: You're speculating a bit on what they might decide to do. They would have to be consistent with the law, so whatever requirements are set out in the bill. Obviously, they couldn't set bylaws that would contradict those parameters. But beyond the parameters set out in the bill and any other legal requirements they might be subject to in things like the Pension Benefits Act or other laws of Ontario, they would be free to set their own bylaws.

The Chair: Mr. Hardeman, do you still have questions?

Mr. Hardeman: Yes, if I could.

Help me understand again. The parliamentary assistant mentioned that this amendment really just opens it up to speed up the process if they want to become self-governing before the first anniversary. In your opinion, is that a likely scenario?

Ms. Hope: I couldn't speculate on how likely it would be, but I think on the substantive issue you are right. The substantive issue that this amendment addresses is to permit them to pass a bylaw in the first year of their existence. As currently drafted, they could not pass such a bylaw until after the first anniversary of their coming into being. I think the feeling on the government's part was that that was not a necessary restriction and that it should be removed.

Mr. Hardeman: Isn't it reasonable to assume that they would gain some comfort and knowledge of how the corporation works and what their responsibilities are during that first year or so, that the corporation would be better served if they didn't cast it in stone before the first year was up?

Ms. Hope: I can't comment on how they might or might not be comfortable with making decisions at different points in time.

Mr. Hardeman: Maybe this is one the parliamentary assistant would be better to answer, if I could, Madam Chair, refer it to the parliamentary assistant. That's a political question.

The Chair: Are you going to listen to the answer this time?

Mr. Duguid.

Mr. Duguid: Without a crystal ball, I don't think anybody knows how independent, autonomous organizations are going to make their decisions. In the end, they have a structure they have to follow. We're just giving them some flexibility in that first year. Should they agree to move in a particular direction, we're giving them the ability to do that.

Mr. Hardeman: Could you tell me what the driver is behind giving this opportunity? Obviously, when the bill was originally written, it was deemed that one year was an appropriate phase-in period to go from the present structure to the new structure. What prompted the need for this amendment to say that this could be done in a shorter time?

Mr. Duguid: This was an amendment that was requested by a number of stakeholders who thought it was something that would be reasonable and that a year in abeyance and not being able to make these kinds of decisions could, at some point in time, restrict their ability to function as well as they think they could, as quickly as they could.

Mr. Hardeman: You said that we got that from a number of stakeholders. Are these stakeholders who made presentations or stakeholders who have spoken to the ministry outside of the committee hearings? I don't remember a lot of it coming forward.

Mr. Duguid: They would be stakeholders that made presentations. I don't recall whether this was a point they

mentioned specifically in their presentations or a point they mentioned in meetings with ministry staff and others, potentially even myself, prior to this coming forward. At some point in time, these—

Mr. Hardeman: I would be interested to know. When you mentioned that there were people coming forward with a request for this, I'd like to know who, because I spent a lot of time listening to presentations and I didn't hear any of that. I just wondered where that came from. If I could get that information, I'd much appreciate it.

Mr. Duguid: Sure. I'd suggest the Association of Municipal Clerks and Treasurers of Ontario was one group that specifically requested this; the Municipal Retirees Organization of Ontario was another one. There may have been others, but I know for sure that they're two that requested it.

Mr. Hardeman: That's fine, thanks.

The Chair: Any further comments?

Mr. Hudak: To the parliamentary assistant: In terms of those who supported this motion, were there any who opposed this change?

Mr. Duguid: I'm aware of none.

Mr. Hudak: I think what's important to understand too is the government's intent on its initial appointees to the sponsors corp. What's the process the government is going to undertake on the initial representatives who are going to sit on the sponsors corporation?

Mr. Duguid: I'm sorry? You're going to have to explain that question a little more.

Mr. Hudak: The bill, as it is, sets out the initial sponsors corp, and they're delineated on certain employer-employee groups that they represent. Before we change that mechanism, what's the government's intention in terms of how you determine who the first individuals are going to be?

Mr. Duguid: The individuals will be appointed by the organizations named in the bill that are given the ability or the opportunity to appoint representatives on the original founding corporations.

Mr. Hudak: So basically, CUPE, by way of example, would determine—is it two members in the sponsors corp for CUPE?

Ms. Hope: Three.

Mr. Hudak: Three members of CUPE. So you would basically go to CUPE Ontario and ask them to name their three representatives?

Mr. Duguid: That would be my understanding, yes.

Mr. Hudak: Is there a time frame or a mechanism to ensure that they're brought forward in a timely manner?

Mr. Duguid: If they want their voices to be heard, they'll appoint their members when the corporations come forward.

Mr. Hudak: Maybe a better way of asking is, have you already been talking to the different groups about selecting their members and the qualifications of those members, that sort of thing?

Mr. Duguid: I think it would be premature for us to be talking to the various groups or even influencing the various groups in terms of whom they should or

shouldn't be appointing. That's the decision of the groups.

Mr. Hudak: Is it the government's intention to give certain standards for members, or are the employer-employee groups wide open in terms of whom they would select as the sponsors committee representatives?

1720

Mr. Duguid: I'm not aware of any standards that are set. I think, though, the groups know, having participated in the current OMERS structure, that it's very important that people who are on these boards are qualified.

Mr. Hudak: Maybe through staff: The sponsors corp has yet to exist, but with the current administrative structure of OMERS, how does the government go about currently determining which members sit on the admin corp?

Ms. Hope: There's a regulation under the OMERS act that sets out the structure, the composition. It has been the practice of successive governments to seek nominations from a variety of the stakeholder groups in making appointments. The province also has policies with respect to the whole public appointments process that would also factor into any LGIC appointment process, including the current OMERS board.

Mr. Hudak: For example, is somebody who is sitting on the admin corp recommended by the particular groups? Is there somebody currently on the admin corp who's an AMO representative?

Ms. Hope: You're referring to the administration corporation in the bill?

Mr. Hudak: Exactly; currently.

Ms. Hope: For the OMERS board presently, the regulation sets out a certain number of positions that must be directors of an OMERS employer. It can be the practice of the government to go to groups such as AMO. It's a matter of policy to go to groups like that for nominees to fill those positions presently.

Mr. Hudak: Basically it's the intent to follow a similar process on the sponsors corp?

The Chair: Any further comments or questions?

Mr. Hudak: That was a question for the parliamentary assistant.

The Chair: I couldn't tell it was a question.

Mr. Duguid.

Mr. Duguid: To the best of my knowledge, that's the intent. I don't know if it's in the legislation, but perhaps we could direct that to staff to see if they're aware of anything specific on this.

Mr. Hudak: Sure.

Ms. Hope: The legislation does make clear that that first sponsors corporation will be appointed by LGIC; however, the Minister of Municipal Affairs and Housing is on record that it would be the government's intention as a matter of policy to make such initial appointments based on nominations from the groups, as outlined in the composition in the bill. If they are indeed LGIC appointments, as is laid out in the bill, then they would be subject to any of the policy parameters that government has in place with respect to making public appointments.

Mr. Hudak: If it's devolution, as the government says, true devolution would mean that the individual employer/employee groups would choose representatives on the sponsors corp. There are those who argue that it's not really devolution, that this piece of legislation is actually very directive as opposed to devolving the authority.

It's a very important decision, off the top, who will sit on the initial sponsors corp. Whether this amendment passes or not, it will play an important role at the beginning in setting up bylaws and such. Would you characterize this as devolving the—

The Chair: Who is this question for?

Mr. Hudak: Maybe we could ask the parliamentary assistant. Are you devolving the decision as to who makes appointments on the sponsors corp with the initial set-up of the sponsors corporation?

Mr. Duguid: I think the response from staff was clear, that the minister has indicated that he would be abiding by the recommendations made by the various parties for this initial set-up of the corporations. Keep in mind, as we've been discussing, even during the first year of operation, the sponsors corp would have the ability to amend their composition at any time.

The Chair: Mr. Hudak, you had another question?

Mr. Hudak: Yes, I do. Thanks.

My understanding of the intent is, the minister has said that he will work with the different groups—the employer and employee groups—and they'll have a mechanism to determine who their reps would be who would sit on the various chairs of the sponsors committee. This is sort of the intent of the minister. Has that process begun? Have the various groups that are going to be on the sponsors corp begun that process of determining their members?

The Chair: Are you asking staff, or are you asking Mr. Duguid?

Mr. Hudak: Staff.

The Chair: You're looking at staff, but I'm not sure that it's a staff answer.

Ms. Hope: I believe Mr. Duguid already provided an answer to that question.

The Chair: Thank you. Mr. Duguid?

Mr. Duguid: I can repeat it: No, it would be premature to be discussing appointments on a board that hasn't yet been approved.

Mr. Hudak: But the government's intent, then, if the bill passes, is to begin that process, and then take it through cabinet. They have to be LGIC appointments, if I understand. Will the LGIC appointments be able to be called by the agencies committee for interviews?

Mr. Duguid: I'm not aware of that.

Mr. Hudak: This is important. I appreciate that the groups will bring it forward. I'm sure the groups will do very good due diligence on the right members to sit on the sponsors corporation. The minister doesn't have to do that, but he's made the declaration that he will consult. Good for him; I'm glad to hear that. I'm sure we'll see that undertaking completed. The process, then, will bring

it to cabinet, and cabinet will decide whether the groups' nominations would sit on that initial sponsors corp or not.

There is an important check and balance in our system, and that's the government committee on agencies. Some members here have sat on that committee. Mr. Rinaldi doesn't like that committee.

The Chair: So who was your question for, Mr. Hudak?

Mr. Hudak: It's part of debate, Chair.

The Chair: I'm just wondering. I can't tell questions from just general conversation any more.

Mr. Hudak: I was trying to remember if Mr. Rinaldi, for example, had sat on the agencies committee.

Mr. Lou Rinaldi (Northumberland): Wrong.

Mr. Hudak: OK. I couldn't remember.

Ms. Horwath, for example, is the Vice-Chair of the agencies committee, and I chair that. There's an important check and balance within our system to ensure that Lieutenant Governor in Council appointees go through a due process that's made up of all three, right? We have members of the government side, the opposition side and the third party. They may or may not be called to come before the committee for a brief interview, and then the committee would vote to determine whether they thought that was an appropriate fit to a particular position or not. There are exceptions to that if it's not an LGIC appointment, there are exceptions to that for reappointments, and there are exceptions to that for appointments that are less than a year.

This is an important bill. These appointments will be going through cabinet. It seems to be reasonable that the agencies committee, if members chose to, could call an appointee for an interview.

Mr. Duguid: Madam Chair, I guess that's a question.

The Chair: I can't tell if it's a question. Is that a question to Mr. Duguid?

Mr. Hudak: Well, I was just seeing if anybody else wanted to—

The Chair: Jump in?

Mr. Hudak: —jump in, and if they agree with me or not.

The Chair: OK, you've asked the question. Mr. Duguid, would you like to respond?

Mr. Duguid: The member can rest assured that all proper procedures will be followed in these appointments.

The Chair: Mr. Hudak, you had another question?

Mr. Hudak: Just to be clear: If the agencies committee wanted to call one of the initial appointments to the sponsors corp to the committee, the government would oblige?

Mr. Duguid: As I said, I'm sure all proper procedures will be followed in making these appointments, as would be expected of the minister and the government.

Mr. Hudak: I guess I'm looking for just a very simple yes or no. I'm not sure; maybe he is saying yes. But I think it's important that members on the agencies committee, whether they be on the government side or opposition or third party, would maintain that right. It's

respected in all other bills that have LGIC appointments, as far as I know. I do recognize that this is a bit of different mechanism, that the groups will give their recommendations to the minister, who would then take them through cabinet. I recognize that that's a slightly different mechanism than the standard. All that being said, I still think it's important that the committee retain that right to call forward members—whatever group they represent. I'm asking the parliamentary assistant for a clear yes or no: Can I have that undertaking that the ABCs committee could call these appointments?

The Chair: Mr. Hudak, I think you've asked the question twice. I think you've had an answer you're not satisfied with. If you keep asking it, I don't think you're going to get a different answer, but I will try one more time.

Mr. Hudak: Just a yes or no, Chair, would be fine.

The Chair: I'm not sure you're going to get it, Mr. Hudak.

Mr. Duguid.

Mr. Duguid: I take under advisement the suggestions being made by the member. As I said, all appropriate procedures will be followed in making these appointments, as with all government appointments.

The Chair: Any further comments or questions?

Mr. Hardeman: Just for clarification, because I want to make sure I understand these appointments: Are they made by order in council, or are they actually ministerial appointments?

Mr. Duguid: I think that question has been answered.

Mr. Hardeman: Well, maybe you could try again.

Mr. Duguid: Well, maybe you can pay attention better next time.

Mr. Hardeman: Oh, thank you. Madam Chair—

The Chair: Committee, I'm going to try to restore some order. We have a lot of material to cover, and I understand that the opposition is trying to clarify information. Perhaps staff could answer this question?

1730

Ms. Hope: These are Lieutenant Governor in Council appointments.

The Chair: Any further comments or questions? Mr. Hudak.

Mr. Hudak: Lieutenant Governor in Council appointments would be the same thing as order in council appointments, just for clarity on the record.

I guess the point I'm getting at is that I think it's important for the committee to retain that right to call forward members for interviews. My colleague, Ms. Horwath, may agree with me, and members may very well not. They'll say, "Well, you know what? AMO picked the right rep, and if one of the other groups pick the right rep, we're not going to intervene," but I think they should retain that right.

There are exemptions to the ability of the committee to call representatives. Those exemptions are if service is less than a year or if it's a reappointment. Obviously, reappointments would be moot in this point, right? There's no such thing as a sponsors corp, so there would

be no such thing as a reappointment to this corp when it starts up. If you have an appointment that is less than a year, the committee would not have the right to call them. That's why I thought it was important to try to get the confirmation from the parliamentary assistant that the government would allow these individuals to be called forward.

Let me make sure I understand this: If the composition of section 23 stands without amendment, the appointments will be for a three-year term, unless they pass a bylaw to change that?

Ms. Hope: It's a one-year term.

Mr. Hudak: So if the sponsors corp does not pass a bylaw to change its structure, do those original committee members remain on the committee until that happens, or would it go through another LGIC process?

Ms. Hope: There's no provision for further LGIC appointments beyond the initial year.

Mr. Hudak: So if I'm appointed as the CUPE rep, so to speak, if CUPE supports me, the Lieutenant Governor in Council agrees and the OIC occurs, I'll sit on the sponsors corp. The sponsors corp has some time to make bylaws respecting membership. If a year passes and these bylaws are not made, what's my standing on the committee?

Ms. Hope: The sponsors are responsible for further appointments on the basis of the transitional provisions set out in the transitional sections of the bill.

Mr. Hudak: The example helps me understand whether or not an individual could be called to the agencies committee. So if I'm the CUPE representative, I'm appointed initially through an order in council. The sponsors committee then fails to make a bylaw respecting membership on the committee within the first year. Help me to understand what would then happen.

The Chair: Mr. Hudak, can I ask, are you speaking to the motion, the amendment that's on the floor? I understand you're trying to clarify, but we're really talking about the composition in this amendment.

Mr. Hudak: Absolutely.

The Chair: I just want to make sure we're still talking about the amendment.

Mr. Hudak: Absolutely, Chair.

The Chair: If you can structure your question based on what's in front of us, I think it would be easier for me to follow what you're asking.

Mr. Hudak: The amendment in front of us, 23(2), would amend the existing 23(2) of the act, which deals with the initial composition of the sponsors committee set out in the transitional provisions of sections 38 and 39. What I'm trying to understand is the due process: Will it be followed? Will the agencies committee, which has had this right in this place for some time, still be able to call forward these individuals for an interview if they so chose? This particular amendment before us, if passed, would change that, and actually could make it a shorter period of time for the composition to change. So I'm trying to understand—

The Chair: I think you've made an assumption that I don't think staff agrees with.

Ms. Hope: The initial appointments made by LGIC are for the one-year period, regardless of this amendment or not. What this amendment in effect does is give that initial sponsors corporation the capacity to pass a bylaw in that first year that would alter the composition on a go-forward basis.

Mr. Hudak: Exactly. So it's conceivable, then, that the appointees would be less than a year sitting on that committee. The structure could change, and new appointees would come forward.

Ms. Hope: It is theoretically possible, if the sponsors corporation so decides, but that doesn't change that the initial appointments would be for a one-year period.

Mr. Hudak: OK. So if I follow the logic, no matter what this amendment says, the individuals who get an order in council to be an initial part of the sponsors corp could be called by the agencies committee?

Ms. Hope: I don't think that's a question I'm in a position to answer.

Mr. Hudak: Chair, is there anybody who could—I know you and the clerk are looking through the standing orders, which describe the agencies committee and when they can call individuals to come forward. This comes up from time to time, no matter which party is governing and which are in opposition, but sometimes appointees—

The Chair: Maybe I could help you with clarification. It reads here: "Standing committee on government agencies which is empowered to review and report to the House its observations, opinions and recommendations on the operation of all agencies, boards and commissions to which the Lieutenant Governor in Council makes some or all of the appointments, and all corporations"—and this is the most important language—"to which the crown in right of Ontario is a majority shareholder...." It won't be a majority shareholder, should this legislation pass.

Mr. Hudak: I'm sorry, Chair. Could I see it one more time?

The Chair: Yes. Does anybody else have any other questions?

Ms. Horwath: So that means the answer is no.

The Chair: I think the answer is no. It's a long-winded way to say no. Any other comments or questions?

Mr. Hudak: So the standing committee on government agencies, as you said, is "empowered to review and report to the House its observations ... " etc. "agencies, boards and commissions to which the Lieutenant Governor in Council makes some or all of the appointments, and all corporations to which the crown in right of Ontario is a majority shareholder...."

I'm still not clear that those are mutually exclusive, and I think the Lieutenant Governor in Council makes appointments—my reading of that had been that wherever the Lieutenant Governor in Council makes appointments for more than one year, they could be called, whether they're a majority shareholder or not.

That was my understanding—I could be wrong—which brings me to the main point, that there's a lack of clarity right now if these individuals can be called or not.

Mr. Rinaldi: It's very clear. What part don't you understand?

Mr. Hudak: Well, the parliamentary assistant said that all proper processes or whatever would be followed.

Mr. Duguid: That's clear.

Mr. Hudak: Right, so if the—

The Chair: I don't really want to debate back and forth on this issue. I think Mr. Hudak is attempting to find clarification. You have the floor.

Mr. Hudak: So if the process is that they would be there for one year, no matter what, if this amendment passes or not, and the Lieutenant Governor in Council makes the appointments—and I think regardless of whether it's a majority shareholder or not—I think those are two different things. I think they're mutually exclusive, as opposed to meeting both necessary conditions for an appointment to be called.

The parliamentary assistant says due process will be followed. What makes me a bit nervous is that that means he's actually telling me no, that they won't be called before the committee. That's what I worry about in interpreting the parliamentary assistant's undertaking to us.

I just want to state for the record that I think, under the circumstances, the way to this bill that's before us today and the complexity of it—in fact, that individuals in that initial sponsors corporation will have tremendous responsibility to manage and make decisions on this \$36 billion in pensions with so many different employee-employer groups. Those individuals, irrespective of how they get the LGIC appointment, should be subject to review by the committee, if the committee so chose.

I don't think I can make a motion to that. I guess we could research whether that motion would be in order or not, Chair, but I do think that if we did have the undertaking from the parliamentary assistant or the minister, while this committee is sitting, that those appointments could be reviewed, I would sit much more comfortably that full due diligence would be undertaken.

1740

The Chair: Are you asking a question, Mr. Hudak? I'm not sure in that preamble where it was a question.

Mr. Hudak: I've asked the question; I'm just not satisfied with the answer I received. So I was more or less hoping I'd hear from some members at the table that they think I'm right that, regardless of the proper process—language that the parliamentary assistant described—these appointees should be able to be called, not that they should be called necessarily but it should be up to the members of the agency's boards and commissions, the agency's committee of government, to determine whether they should be called or not. We should be very hesitant about creating any new groups that can circumvent that process, at least at the outset.

The Chair: I think you've had your answer, Mr. Hudak. I believe there are no further comments or questions on this amendment.

Mr. Hudak: Would anybody over on my—

The Chair: No. You've really made a very valiant attempt, but I don't think you're going to do that.

Any more comments or questions? I don't see any.

All those in favour of the amendment? All those opposed? That's carried.

Mr. Duguid, I believe you have the next amendment.

Mr. Duguid: I move that subsection 23(3) of the bill be struck out and the following substituted:

“Eligibility

“(3) A person who is a member of the administration corporation is not eligible to hold office as a member of the sponsors corporation or to be appointed to any committee established for the purpose of advising the sponsors corporation.”

This is to prevent members of the administration corporation from being appointed as members of an advisory committee established by the sponsors corporation. It ensures a clear separation between members of the administration committee, which is the fiduciary body, and any committee of the sponsors body.

The Chair: Any comments or questions?

Mr. Hardeman: I'm not sure whether I dare ask the parliamentary assistant again, because I've had a long day and he doesn't want to answer questions any more.

Mr. Duguid: On a point of order, I have answered questions very well and specifically.

The Chair: Mr. Hardeman, I'm not going to allow this debate. You can ask your question, but you do have to listen to the answer.

Mr. Hardeman, your question.

Mr. Hardeman: Thank you very much, Madam Chair. I thought I was asking a proper question.

I'm a little concerned about the eligibility. I don't necessarily disagree with the separation of the two. What we heard very clearly in the presentation from the OMERS board was the fact that we should have the separation. But I don't know how, with passing a motion like this, we deal with the fact that it's not autonomous any more. We have the board, supposedly autonomous, that can pick who they like, when they like in the bylaw; now we're saying there are certain people who can't be picked for certain things. I don't know how one deals with the autonomy, putting something like that in there. Maybe the parliamentary assistant could explain that.

Mr. Duguid: It's not about certain people or appointing certain people, as the member indicated. It's about making sure that you don't have people sitting on both boards, holding both offices. Really, the responsibilities must be separate. There's a fiduciary responsibility and then there's the sponsors role. It's very important and most, if not all, stakeholders probably would agree that that's—I shouldn't say “all.” Most stakeholders would have agreed that that's an important principle.

Mr. Hardeman: Going back to previous discussions we've had here this afternoon and brought forward by other amendments, there's been a concerted effort to bring the two bodies together to have a better communi-

cation method between the two. Here, we have one that's actually making sure that that isn't possible in any way, shape or form, that no one can be in both places serving a similar task for two totally different corporations. In the bill, it totally divides the two responsibilities. I find it hard to understand, if one was serving on a committee of the other board, what difference that would make. Again, it's not so much as to who they are or the people, but this is taking away autonomy from the board as to how they want to do their business. The person who is there may very well think that's the most appropriate individual or group of individuals to do the task, but because they're on the other board, they can't be involved. I just can't understand the logic of saying, "We want you to have autonomy, but this is how we want you to run the corporation."

Mr. Duguid: In answer to that question, I think the member has to determine for himself whether he agrees with the principle of separation between the fiduciary responsibility and the sponsors responsibility. If he doesn't take that position, then I can understand that he wouldn't want to vote in favour of this amendment. If he does take that position, then I would suggest that to be consistent with that principle, he should be voting in favour of this particular amendment.

The Chair: Any further questions?

Mr. Hudak: Listen. As my colleague said, there are two principles here. The government says on one hand that they want OMERS to be autonomous, that this is an autonomy bill, as opposed to, as Mayor McCallion called it, a downloading exercise or a directed exercise. The parliamentary assistant earlier described the government's intent—and I appreciate his description of the intent—as to how appointments are going to be made. If I understood correctly, various groups that will have initial seats on the sponsors corp will be asked to recommend the best individuals and the government will put a lot of faith in those appointments and bring them forward. So one could describe that process as a more autonomous process.

At the same time, to an extent, this amendment takes us away from autonomy by directing which individuals may or may not sit on the sponsors corp or any committee established for advising the sponsors corp. By way of example, if CUPE had chosen, just to shake things up, Mr. Hardeman as their representative after my initial one-year term—you see, if I had the one-year term, they could call me to the agencies committee and members may have said, "Hudak's not good for that spot," and they would vote me down.

So Hardeman is the CUPE rep and CUPE determines that he is the best individual to represent their interests in the plan as a whole on the sponsors corp or, say, an advisory committee sponsors corp. The government at the time decides that Mr. Hardeman has extensive experience in business and a municipal background and would be an ideal appointee to also sit on the administration corp. He would act with due diligence in implementing the plan and making the right investment decisions, by way of example. So the principle of

autonomy would say that if CUPE also chose Mr. Hardeman to sit on the sponsors corp or an advisory group, then they should.

Of course, the other principle that has been discussed, and I've tended to subscribe to, is that you want to maintain a separation between the administrative corp and the sponsors corp. You want to make sure that the admin corp will do what's in the best interests of the plan as a whole and carry out the undertakings relevant to the admin corp and not have interference with the sponsors corp. We've already dealt with a number of amendments that would abridge that principle.

In a general sense, then, I guess the committee would decide which of those two—pure autonomy versus maintaining the integrity and the arm's-length nature of the admin corp—is paramount. Clearly, when you put it in this context, the admin corp separation and integrity of the \$36-billion pension is paramount and, therefore, despite discussions of autonomy, there's some sensible rationale behind this.

The one aspect that I have some questions about is when it says appointed to any committee "established for the purpose of advising the sponsors corporation." I understand that intent of the government. What kind of committees would be contemplated under this amendment that they would be concerned about?

The Chair: Is that directed at staff? Perhaps they could have—

Mr. Hudak: I'll start with the parliamentary assistant.
1750

Mr. Duguid: I can give you a very non-technical response to this. I'd have to check to see what the proper names of these committees are, but I know there's a committee for the emergency workers, and I believe the firefighters and police traditionally have had a committee that has worked under the current regime. I think that's the kind of committee they're looking at, or would be looking at, as those kind of advisory committees.

Mr. Hudak: With respect to the supplemental groups, for example, and the advisory committees for those that are not eligible—there are the two advisory committees that have already been discussed in debate, and a number of groups have brought forward advice on the structure of those advisory committees. Does the bill allow for any other committees to be struck by the sponsors corp aside from the advisory committees on supplemental and those that are not eligible for supplemental plans?

Ms. Hope: The bill doesn't specifically address any other committees, but as with natural person powers, the sponsors corporation would have the capacity to strike any committees it saw fit.

Mr. Hudak: OK. So—

The Chair: Mr. Hudak, are you on the same line of questioning? I do have other people who would like to ask questions.

Mr. Hudak: I'll finish off on this one.

The Chair: It's on the same subject?

Mr. Hudak: Yes, and I'm pretty much at the bottom of it. So the sponsors committee is allowed, basically, as a natural person power, to create any number of com-

mittees it so chooses, as long as it would fit with their mandate. Is there any committee you could contemplate that would be appropriate for somebody who is on the admin corp to also sit on; for example, if they want to have a committee for better communication between the sponsors corp and the admin corp?

Ms. Hope: Given the separation of the roles, it's hard for me to contemplate such a context; however, this prohibition against cross-appointments would never prevent individuals from coming to meetings, appearing at meetings, being invited to meetings, providing information. It speaks to the appointment of members and I think gets at the issue of separation of duties.

Mr. Hudak: My colleague Ms. Horwath has talked quite a bit about her concern about the separation between the two in a communications and timeliness aspect: One will be meeting much more often than the other. If there is some kind of breakdown in communication between the admin corp and the sponsors corp, could they contemplate a committee that would have both reps of the admin corp and the sponsors corp to try to solve those issues?

Ms. Hope: I think what I hear you describing is something that's not so much a committee of one corporation or of the other corporation but of some decision of individuals who sit on two different entities to come together and have a discussion. I don't believe there's anything in this bill that would prohibit people from speaking with one another.

Mr. Hudak: So this is relevant, really, to committees created by the sponsors corp, and if they were to try to develop that kind of bipartite committee for communications, for example, they would do so outside of a bylaw from the sponsors corp.

Ms. Hope: Yes.

Mr. Hudak: So as we debate this today and send it back to the House for second reading, it's hard to contemplate any committee that it would be sensible for somebody from the admin corp to participate in, to be a member of, to sit on?

Ms. Hope: As I said, I can't imagine such an example.

The Chair: Ms. Horwath.

Ms. Horwath: When I read this amendment, what came to my mind—and I just wanted to clarify again. Although I have raised possible amendments to alter the accountability and transparency pieces of the relationship, I didn't necessarily have a problem with this particular motion, because what I thought it did was make sure that the admin corporation, in the role that it undertakes, didn't cross-pollinate the decision-making process of the sponsors corporation. So I didn't see it as either/or in terms of the amendments that I was putting in regard to the relationship of accountability and some of these amendments that the New Democrats have been putting through the process of this bill, but rather as a way of ensuring that as the sponsors corporation undertakes its work around possible changes to the plan—the main plan or supplemental plans or various other issues in its purview—that that be done from the perspective of the sponsors corporation and not be

unduly influenced through the possibility of having the voice or the views of those active in the administration corporation feeding in through the advisory committee process.

I didn't see this as something that I couldn't support, but having heard what the parliamentary assistant's perspective is on what this amendment does, I'm starting to wonder now whether I had it right or I didn't. So perhaps once again I can get the parliamentary assistant to outline what it was, specifically, that the government was trying to do in putting this amendment forward.

Mr. Duguid: I think the role of those on the administration committee is to focus on the investment and make sure they get a good return for the pension fund. I think it's important that they not be conflicted in any way with other potential concerns that may come in as representatives of individual concerns within the fund, whether it be on a subcommittee or whether it be on the sponsors committee itself. I think that's pretty consistent with most approaches that would be recommended in the pension industry.

Ms. Horwath: If I can just continue to clarify, this section is under the heading of the sponsors corporation, so it's not really talking about what we see or don't see as to what effect this would have on the administration corporation, but rather the effect it would have on the sponsors corporation, because all these sections come under the descriptions around the sponsors corporation's roles and jobs and, more specifically in this case, who can and cannot sit on the advisory committees or on the sponsors corporation itself.

I'm actually prepared to support it, because I think it's not such a bad idea to just include that other section; right? Because the addition really is "any committee established for the purpose," so you are adding the committee, not just the sponsors corporation.

Mr. Duguid: It adds the committee in as part of the consideration.

Ms. Horwath: It adds committee as another office the administration corporation member cannot be eligible to hold. So they cannot hold office in the administration corporation and a sponsors corporation or any committee that actually gives advice to the sponsors corporation. I think that's fairly clear.

Again, I don't think it's exclusive of some of the other things that New Democrats have put on this table in regard to transparency and accountability. In fact, I think what it does is reduce any undue influence on policy matters that the sponsors corporation might be undertaking. In municipal days, we used to call it rowing and steering debates, but let's not go down that road because we had a difficult time with it in the city of Hamilton.

So I think I will actually support this motion because, in principle, I think it's something that's supportable.

Mr. Hudak: Again, a couple on standard best practices: In the opinion of staff, is this approach common to most public pension plans?

Ms. Hope: Without detailed knowledge of the text of a variety of pension plans, it would be my sense that this kind of provision would be relatively standard.

Mr. Hudak: Your sense would be that it would be a best practice?

Ms. Hope: Yes.

Mr. Hudak: Chair, if could just ask legislative counsel—

The Chair: Is it a quick question, Mr. Hudak? If we're not able to provide a quick answer to you, I'm going to—

Mr. Hudak: Absolutely.

The Chair: Is there a quick question?

Mr. Hudak: Absolutely. If legislative counsel could report back to committee at our next meeting on whether the LGIC appointments to the sponsors corp initially could be reviewed by the agencies committee or not, just as a point of clarification?

Ms. Macnaughton: It would be our opinion, no.

Mr. Hudak: That was fast.

The Chair: That was a quick decision.

Ms. Macnaughton: Based on the standing orders as currently drafted.

The Chair: Are there any further comments or questions on this amendment?

Seeing none, all those in favour of the amendment? All those opposed? That's carried.

Committee, I think we're going to have to stop at this point, it being 6 of the clock. We're at amendment 28. We'll begin amendment 29 the next time we meet.

This committee now stands adjourned until 3:30 p.m. on Monday, December 5, 2005.

The committee adjourned at 1800.

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