

STAFF REPORT: ENGINEERING AND PUBLIC WORKS DEPARTMENT



REPORT TO: Infrastructure & Recreation Committee
MEETING DATE: August 10, 2010
REPORT NO.: EPW.10.086
SUBJECT: Response to Bill 13
PREPARED BY: Reg Russwurm, Director of Engineering and
 Public Works

A. Recommendation

THAT Council authorise the Director of Engineering and Public Works to forward a response to David Caplan, M.P.P. regarding his Private Member's Bill known as Bill 13, the *Sustainable Water and Waste Water Systems Improvement and Maintenance Act, 2010*, as outlined in and attached to Staff Report EPW.10.086, "Response to Bill 13".

B. Background

Bill 13, the *Sustainable Water and Waste Water Systems Improvement and Maintenance Act, 2010* is a Private Members Bill introduced by David Caplan, M.P.P. This Act would repeal Bill 237, the *Sustainable Water and Sewage Systems Act, 2002*. Bill 237 has received three readings in Provincial Parliament but has not yet been proclaimed into law.

Mr. Caplan's website notes Bill 237 evolves from Justice O'Connor's recommendations from the Walkerton Inquiry, and from the recommendations of the Water Strategy Expert Panel's Report. The website notes Bill 237:

- ensures the public ownership of water and wastewater systems;
- promotes financial stability;
- improves transparency in the provision of water and wastewater services to the public; and
- creates an independent economic regulator with the expertise and authority to administer this Act.

The purposes of Bill 13 are as follows:

- to ensure that public ownership of water services and waste water services is maintained;
- to promote full-cost recovery and full-cost accounting of water services and waste water services;
- to encourage an increase in scale and capacity in the provision of water services and waste water services to minimize costs to the public;

- to improve transparency in the provision of water services and waste water services to the public through the establishment of publicly-owned corporations; and,
- to create an independent economic regulator with the expertise and authority to administer this Act.

While the objectives and language of both Bills 237 and Bill 13 are similar, Bill 13 goes much further in terms of proposing additional regulatory practices and institutions.

Without repeating the content of the attached correspondence, it should be noted that all municipal water systems at present must operate in compliance with the *Safe Water Drinking Act, 2002*, including The Drinking Water Quality Management Standards. This legislation was enacted in part based on the recommendations of Justice O'Connor following the Walkerton Inquiry and significantly increased operational and treatment standards and liability.

Bill 13 goes further than Bill 237 by proposing to have all municipal water and wastewater systems be transferred to the ownership of publicly owned corporations, which are noted as having increased transparency and accountability versus operation by municipal councils. Public Utility Commissions were permitted to dissolve a decade ago and to now re-establish them across the Province would represent significant costs which would be borne by system users.

Bill 13 also proposes to establish the Ontario Water Board with the expertise and authority to administer the Act. The Board would also act as an economic regulator with respect to fees and charges the publically owned corporations might set, including the possibility of Provincially set rates.

The Board would also charge fees to the publicly owned corporations to recover all Board operational costs. These charges would again be passed on to and be borne by system users.

Municipal Councils are fully transparent and accountable in the operation of servicing systems. Public Meetings are regularly held regarding budget and rate considerations including cost recovery. Council and Committee meetings are open to the public with all Reports to be considered made available prior to meetings.

Municipal Councils are established by regular elections, whereas the Ontario Water Board would be a Provincially appointed body. It would seem a centrally located, Provincially appointed Board would operate with reduced transparency and accountability than would an elected Council.

Bill 13 would also states servicing systems with less than 10,000 customers *shall* consider whether it is possible to amalgamate with one or more other systems. Again, whether or not it would be feasible, study and engineering costs to consider amalgamation would again be passed on to system users.

Staff believe the provisions and prescriptions contained in Bill 13 would create an unnecessary level of bureaucracy within the municipal water and waste water servicing sector of the Province. The proposed level of bureaucracy would cost system users millions of additional dollars provincially beyond current servicing costs, with little apparent benefit. It is interesting that Bill 13 speaks to full cost recovery while proposing additional system user costs that cannot be quantified.

Attachment #1 highlights in more detail the purpose and goals of Bill 13. It should be noted The Blue Mountains is committed to operating sustainable water and wastewater systems without added Provincial regulation.

Staff have prepared a draft letter to be sent to David Caplan, M.P.P. to document the Town's concerns and issues with the proposed Bill (Attachment #2). As such, Staff recommend that Council authorize the Division of Engineering & Public Works to send the letter.

C. The Blue Mountains' Strategic Plan

Town's Strategic Plan Goal No. 2 "Addressing the Town's Municipal Infrastructure needs" and Strategic Plan Goal No. 6 "Providing a strong, well managed municipal government" are in part satisfied by the recommended action.

D. Environmental Impacts

None.

E. Budget Impact

At this point an actual Budget impact could not be quantified. However, if Bill 13 were enacted as currently written, The Blue Mountains would be required to:

- establish a separate, publicly-owned corporation for the water treatment and distribution system and the waste water collection and treatment system
- undergo study to examine whether it would be advantageous for system users to amalgamate one or both systems with one or more other systems
- pay an annual charge to the Ontario Water Board for a portion of the Board's annual operational charges
- prepare annual submissions to the Ontario Water Board regarding system user rates

It should be noted all of the above-noted costs and charges are completely in addition to current system operating and capital costs and in normal cost recovery budgeting practices, would have to be passed on to system users.

F. Attached

1. Highlights: Bill 13 Sustainable Water and Wastewater Improvements and Maintenance Act.
2. Draft Correspondence to David Caplan, M.P.P., Bill 13, Director of EPW, The Blue Mountains

Respectfully submitted,

Reg Russwurm
Director, Engineering and Public Works

For more information, please contact:

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Highlights: Bill 13, Sustainable Water and Waste Water Systems Improvement and Maintenance Act, 2010. A Private Members Bill introduced by David Caplan, MPP, L.

This Act would repeal Bill 237, the Sustainable Water and Sewage Systems Act, 2002.

Note: The Sustainable Water and Sewage Systems Act, 2002, IS NOT YET IN FORCE. It comes into force on a day to be named by proclamation of the Lieutenant Governor.) Bill 237 was a Private Members Bill introduced by David Caplan, MPP, L.

1. The purposes of this Act are,

(a) to ensure that public ownership of water services and waste water services is maintained;

(b) to promote full-cost recovery and full-cost accounting of water services and waste water services;

(c) to encourage an increase in scale and capacity in the provision of water services and waste water services to minimize costs to the public;

(d) to improve transparency in the provision of water services and waste water services to the public through the establishment of publicly-owned corporations; and

(e) to create an independent economic regulator with the expertise and authority to administer this Act.

"Board" means the Ontario Water Board; ("Commission")

3. (1) The provision of water services to the public includes any source protection measure related to the provision of water services and extracting, treating and distributing water.

3.(3) A regulated entity is deemed to be providing water services or waste water services to the public for the purposes of this Act even if it has, before or after being designated by regulation,

7. The Board, in carrying out its responsibilities under this or any other Act in relation to water services or waste water services, shall be guided by the following objectives:

1. To protect the interests of consumers with respect to prices and the adequacy, reliability and quality of water services and waste water services.

2. To promote economic efficiency and cost effectiveness in the provision of water services and waste water services and to facilitate the maintenance of a financially viable water and waste water industry.

3. To promote water conservation and demand management in a manner consistent with the policies of the Government of Ontario.

10. (2) Without limiting the powers or capacities of the Board, the Board may establish guidelines governing the exercise of any of the powers and duties under this Act.

11.(2) Without limiting subsection (1), the duties of the Board include,

- (a) reviewing and approving business plans;
- (b) analyzing and ruling on quality management certification;
- (c) monitoring charges for the provision of water services and waste water services to the public;
- (d) considering requests to increase charges for the provision of water services and waste water services for any customer or class of customers beyond the prescribed maximum amount in accordance with the regulations;
- (e) overseeing the submission of progress reports and ensuring that these reports are made available to the public;
- (f) establishing and publishing contract templates for the provision of water services and waste water services;
- (g) holding hearings, receiving submissions, making decisions and preparing reports regarding, among other things, business plans, issues of service quality, abuse of dominant position, franchise areas, and any other decision, direction or order that has been made under this Act;
- (h) informing and advising the Minister with respect to matters that are of an urgent, critical or relevant nature and that are likely to require action by the Board or the Minister to ensure that the administration of this Act is carried out properly; and
- (i) examining, reporting and advising on any question respecting water referred to the Board by the Minister.

16. (1) The chair of the Board may direct that a hearing under subsection 40 (4) be held before a panel consisting of one or more members of the Board, as he or she may designate.

(3) The panel has jurisdiction to determine all questions of fact or law that arise in matters before it.

(7) An order of the panel constitutes an order of the Board.

17. (1) The Board may charge fees to regulated entities to recover the costs incurred by the Board in carrying out its functions under this Act.

20. (1) Two or more regulated entities may amalgamate their water services or waste water services or both.

(2) If a regulated entity provides water services or waste water services to fewer than 10,000 customers, that regulated entity shall consider whether it is possible to amalgamate those services with the services of one or more other regulated entities.

(3) The Minister may direct two or more regulated entities to amalgamate their water services or waste water services if, after considering any advice provided by the Board, the Minister considers it appropriate to do so.

(4) Two or more regulated entities shall amalgamate their water services or waste water services if,

(a) under subsection (2), all of the regulated entities determine that it is possible to do so; or

(b) under subsection (3), the Minister directs the regulated entities to amalgamate their water services or waste water services.

21. (1) A regulated entity that provides water services or waste water services to the public shall prepare a business plan for the provision of those services.

(2) If a regulated entity provides water services and waste water services to the public, it shall prepare a separate business plan for the provision of each of those services.

(4) A regulated entity shall ensure that the business plan meets the requirements of this Act and the regulations, the Safe Drinking Water Act, 2002 , any provincial growth management policy, and municipal official plans, and in preparing the business plan, shall take into account,

(a) efficiencies available through technological choice and innovation as well as economies of scale and scope;

(b) efficient provision of services, including existing or revised contracting possibilities;

(c) natural economic communities, such as centres which draw commuters from the surrounding area; and

(d) management of septage on a municipality or multi-municipality basis.

(5) The business plan must contain the following information:

1. A governance model, a financial model and an accountability model.

2. An inventory of and management plan for the infrastructure needed to provide the water services or waste water services, prepared and certified by a professional engineer.

3. An assessment of the full cost of providing the water services or the waste water services and the revenue obtained to provide them.

4. A description of how the regulated entity intends to pay the full cost of providing the water services or waste water services to the public.

5. Any other prescribed matter.

(6) For the purposes of paragraph 3 of subsection (5), the full cost of providing the water services includes any fees charged by the Board, source protection costs, operating costs, financing costs, renewal and replacement costs and improvement costs associated with extracting, treating or distributing water to the public and such other costs as may be prescribed.

(8) A regulated entity shall specify in the business plan that full metering of customers will be used as a source of revenue, subject to any prescribed exceptions.

Submission of business plan

22. (1) A regulated entity that is a municipality shall submit the business plan required under subsection 21 (1) to its municipal council for approval.

(3) After a business plan has been approved by a municipal council under subsection (1), or by all municipal councils under subsection (2), the regulated entity shall submit the plan to the auditor mentioned in subsection (4).

(4) For the purposes of subsection (3), the auditor shall be,

(a) if the regulated entity is a municipality, the municipal auditor;

23. (1) The Board may prepare a business plan for the purposes of subsection 21 (1) on behalf of a regulated entity if the Board considers it appropriate to do so.

27. (1) A regulated entity that provides water services or waste water services to the public shall prepare progress reports, at such intervals as may be specified by the Board, concerning the implementation of its business plan approved by the Board.

31. A regulated entity shall make its business plan approved by the Board, any updated business plan approved by the Board and any progress report available to the public as soon as is reasonably possible by ensuring that the plan or report is,

(a) posted on its website;

(b) published in a local newspaper; or

(c) available at a local library.

32. (1) A regulated entity that provides water services or waste water services to the public shall establish and maintain a corporation under the Business Corporations Act, in accordance with the regulations, to deliver those services and to own or lease the relevant assets.

(2) If a regulated entity provides water services and waste water services to the public, it shall create a single corporation for the provision of both of those services.

(3) A regulated entity that establishes a corporation under this section shall be the sole shareholder of the corporation.

34. In addition to the responsibilities set out in the shareholder's declaration, a corporation established under section 32 shall be responsible for,

- (a) creating a strategic plan;
- (b) overseeing operating practices;
- (c) metering, billing and making collection arrangements with customers; and
- (d) any other prescribed matter.

40. (1) If, in the opinion of the Board, a regulated entity has done or omitted to do something in contravention of this Act, the Board may issue an order requiring the regulated entity to do or refrain from doing such things as the Board considers advisable.

(2) A regulated entity may, by written application and within the prescribed time period, request a reconsideration of an order issued under subsection (1) and, if such a request is made, the Board shall reconsider the order.

(3) After the Board reconsiders an order under subsection (2), it shall confirm, rescind or vary the order.

(4) On any application under subsection (2), the Board shall not confirm or vary the order without first holding a hearing to which the regulated entity is a party.

41. The Minister may exercise control and charge over the regulated entity's provision of water services or waste water services to the public if,

(a) the Board advises the Minister that it is of the opinion that the regulated entity has failed to comply with an order issued under this Part;

(b) the Minister considers it appropriate to do so; and

(c) the prescribed time period within which a regulated entity may request a reconsideration of an order issued under this Part has expired or, if such a request is made, the Board has confirmed or varied the order.



Town of The Blue Mountains

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August 10, 2010

Mr. David Caplan
M.P.P., Don Valley East
Room 1308, Whitney Block
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Toronto, ON M7A 1A4

Re: Bill 13, *Sustainable Water and Waste Water Systems Improvement and Maintenance Act, 2010*

Dear Sir:

I am writing with regard to the above-noted Bill 13 and how I believe it would impact the Water Treatment and Distribution System and the Waste Water Collection and Treatment Systems owned and operated by The Town of The Blue Mountains on behalf of connected users. The impacts I refer to would be similar to impacts on any municipally operated service system in the Province of Ontario.

GENERAL

I would note Bill 13 would repeal Bill 237, the *Sustainable Water and Sewage Systems Act, 2002*. Bill 13 has objectives and language very similar to Bill 237, yet Bill 237 has never been proclaimed and is not yet in force.

All municipalities in Ontario that provide potable water to system users operate in compliance with the *Safe Drinking Water Act, 2002*, legislation enacted in part based on the recommendations of Justice O'Connor following the Walkerton Inquiry. I believe there has never been safer drinking water in Ontario than at present, given legislated operational requirements, including the Drinking Water Quality Management Standards. Bill 13 would appear to be unnecessary and excessively costly in application, given the quality and accountability now present in the municipal servicing regime.

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SPECIFIC

The purposes of Bill 13 are listed as ensuring public ownership of service systems, promoting full-cost recovery, to encourage longer systems to achieve economies of scale to minimize user costs and to improve transparency in operations through the establishment of publicly-owned corporations.

I would note that municipal servicing systems are publicly owned at present. The Drinking Water Quality Management Standards currently require the preparation of business plans which address the issue of full-cost recovery and accounting. Servicing system extensions to non-serviced development areas are welcomed and encouraged and act to establish economies of scale.

Regarding improved transparency through establishment of publicly-owned corporation, Public Utility Commissions (PUCs) were dissolved across the Province years ago. Where municipal councils operate servicing systems, accountability and transparency are paramount. To re-establish and operate PUCs or similar bodies as new corporations across the entire Province would require an expenditure of hundreds of thousands of dollars in legal and administrative fees and charges, additional costs which would be borne by system users.

The people of the Province of Ontario have been well served by the Ministry of Environment with regard to oversight for the provision of clean drinking water and I see no need for another regulator.

The final purpose of Bill 13 is listed as the creation of an economic regulator with the expertise and authority to administer the Act. This body is to be known as the Ontario Water Board (the Board). Bill 13 notes the Board may charge fees to regulated entities (municipal servicing systems) to recover operational costs of the Board. These additional costs would be passed on to and borne by system users.

Bill 13 notes one objective of the Board would be to protect the interests of consumers with respect to prices of water and waste water services. During annual budget preparations, municipal councils are transparent and accountable, and water and wastewater budgets are considered on cost-recovery and system sustainability principles. There is a no more transparent and accountable entity than local government. The cost of operating servicing systems vary greatly based on distance and topography, among other factors. The consideration of Provincial servicing rates would be a futile and wasteful exercise, with Board costs incurred in such an exercise again, borne by system users.

Bill 13 also speaks to amalgamation of separate, existing municipal servicing systems. It is noted that servicing systems providing water or waste water services to fewer than 10,000 customers *shall* consider whether it is possible to amalgamate the services with one or more other systems. While amalgamation may be possible in urban settings with adjacent systems abutting each other, consideration of amalgamation of localized or rural setting systems may be nothing more than an exercise in futility, again with study and engineering costs incurred in such consideration borne by system users. I acknowledge that there is some administrative economies to larger systems however I put that there will be no net benefit for well run smaller systems.

The current municipal water and waste water servicing regime in the Province of Ontario is the envy of Canada, if not the world. Municipalities have spent millions of dollars to date in order to comply with current legislation. The lessons from the Walkerton crisis have been well learned. To re-invent the wheel at this point in time would be an exercise in waste and excess.

To reiterate, I believe the provisions and prescriptions contained in Bill 13 would create an absolutely unnecessary level of bureaucracy within the municipal water and waste water servicing sector of the Province. The proposed level of bureaucracy would cost system users millions of additional dollars provincially beyond current servicing costs, with little apparent benefit. The Town of The Blue Mountains is committed to operating sustainable water and wastewater systems without added Provincial regulation.

Yours truly,

THE BLUE MOUNTAINS

Reg Russwurm, Director of Engineering and Public Works

cc: Dalton McGuinty, Premier
Hon. John Gerretson, Minister of the Environment
Jim Wilson, M.P.P., Simcoe-Grey
Mayor and Council, The Town of The Blue Mountains
J. Paul Graham, Chief Administrative Officer, The Blue Mountains
John Caswell, Manager of Water and Waste Water Services, The Blue Mountains