

**COMMITTEE OF THE WHOLE (WORKING SESSION) - NOVEMBER 26, 2002**

**RECENT LEGISLATION AND BILLS BEFORE THE LEGISLATURE – STATUS UPDATE**

**Recommendation**

The Director of Legal Services, in consultation with the Solicitor/Special Services, recommends that the report of the Director of Legal Services entitled "Recent Legislation and Bills before the Legislature – Status Update" be received for information.

**Purpose**

The purpose of this report is to update Council on the status of recent legislation enacted by the Province and new Bills introduced in the Provincial Legislature.

**Background - Analysis and Options**

**Bill 177 - *Municipal Statute Law Amendment Act, 2002***

This Bill was contemplated at the time the new *Municipal Act, 2001* was enacted. It received 1<sup>st</sup> Reading on September 24, 2002. The Bill primarily makes companion and technical amendments to a variety of statutes resulting from the enactment and coming into force of the new Act, although there are some provisions which appear to go beyond the stated companion or technical amendment intent.

Attached to this report (Attachment 1) is a copy of the Explanatory Note to Bill 177, which provides a summary of the purpose of the Bill and amendments proposed to the *Municipal Act, 2001*, *Planning Act* and the *Municipal Elections Act*, among other Acts.

**Bill 81 - *Nutrient Management Act, 2002***

The *Nutrient Management Act 2002* was passed on June 27, 2002. It addresses land-applied materials containing nutrients. It includes provisions for the development of new standards for all land-applied materials containing nutrients, a proposal to ban the land application of untreated septage over a five-year period, and proposed stronger requirements such as: the review and approval of nutrient management plans, certification of land applicators and a new registry system for all land applications.

The Act provides a comprehensive nutrient management framework for Ontario's agricultural industry, municipalities and other generators of materials containing nutrients, including clear environmental protection guidelines. It builds on the existing system by giving current best management practices the force of law, and creating comprehensive, enforceable, province-wide standards to regulate the management of all land-applied materials containing nutrients. The Act contains amendments to the *Environmental Protection Act*, the *Highway Traffic Act*, the *Ontario Water Resources Act* and the *Pesticides Act*, and consequential amendments to the *Farming and Food Production Protection Act, 1998* to ensure consistency and give higher recognition to the standards.

The Ministry of Agriculture, Food and Rural Affairs web site is to keep Municipal staff informed of progress on nutrient management standards development and technical aspects of nutrient management practices and technologies.

The Provincial government in recent news releases has also confirmed it will engage in public consultation on the draft nutrient management regulation.

Attached to this report (Attachment 2) is a copy of the Explanatory Note to Bill 81, which provides a summary of the purpose of the Bill and the matters addressed.

**Bill 56 - *Brownfields Statute Law Amendment Act, 2001***

The purpose of the *Brownfields Statute Law Amendment Act, 2001* is to encourage the revitalization of contaminated land and to make other amendments related to environmental matters. The Act amends the *Education Act*, *Environmental Protection Act*, *Municipal Act*, *Municipal Tax Sales Act*, *Ontario Water Resources Act*, *Pesticides Act* and the *Planning Act*.

The Act is an attempt to provide greater clarity and certainty to stakeholders involved in activities related to contaminated sites, known as "brownfields". The Act focuses on five key areas including:

1. Clear rules for the assessment and cleanup of contaminated sites
2. Clear rules for liability to Ministry of Environment administrative orders
3. Mechanisms to ensure quality cleanup
4. Planning tools
5. Financing tools.

For a considerable period of time the regulations were being worked on by Ministry officials. The necessary regulations to implement various provisions of the Bill under the *Environmental Protection Act* and the *Ontario Water Resources Act* were finally filed on October 31, 2002 and will be published shortly. These regulations will be reviewed by relevant planning and legal staff to determine what changes may have to be made to the City's "Policy and Procedures for dealing with Contaminated or Potentially Contaminated Sites".

**Bill 195 - *Safe Drinking Water Act, 2002***

In the Part Two Report of the Walkerton Inquiry, the Inquiry Commissioner, Dennis O'Connor, recommended that the Ontario government enact a Safe Drinking Water Act to deal with matters related to treatment and distribution of drinking water. As articulated by Commissioner O'Connor, the purpose of a Safe Drinking Water Act would be to gather in one place all legislation and regulations relating to the treatment and distribution of drinking water.

As recommended, the government has introduced a proposed *Safe Drinking Water Act, 2002*, which has now received 2<sup>nd</sup> Reading. If passed it will expand on existing policy and practice and introduce new features to protect drinking water in Ontario. It will impose a statutory duty of care on owners and operating authorities of Municipal drinking water systems. In addition, requirements for Municipal drinking water systems in Part V of the proposed legislation could become very costly for Municipalities in the future. Appropriate City Staff will be required to report on the potential impacts of this Bill and any proposed regulations over time.

Attached to this report (Attachment 3) is a copy of the Explanatory Note for Bill 195, which provides a summary of the purpose of the Bill and the matters that will be addressed.

**Bill 175 - *Sustainable Water and Sewage Systems Act, 2002***

Bill 175 received 2<sup>nd</sup> Reading on November 7, 2002 and has been referred to the General Government Standing Committee. The proposed *Sustainable Water and Sewage Systems Act*,

2002 will apply to persons and entities ("regulated entities") designated in the regulations who provide water services to the public or waste water services to the public. All regulated entities will be required to give a report to the Minister of the Environment concerning the provision of water services and waste water services. The report must include information specified by regulation about the infrastructure needed to provide the services, the full cost of providing the services and the revenue obtained to provide them. The regulations may also specify additional matters to be addressed in the report.

The Act also specifies that the full cost of providing services includes operating costs, financing costs, renewal and replacement costs and improvement costs. The full cost may also include other costs specified in the regulations.

The Minister may approve each report, and may require changes to a report before approving it. The Minister is also authorized to prepare a report on behalf of a regulated entity, and the entity is required to reimburse the Crown for the costs incurred by the Minister in doing so.

After the report is approved, each regulated entity is required to prepare a cost recovery plan describing how it intends to pay the full cost of providing the services. The contents of the plan must meet the requirements set out in the regulations. The regulations may specify the sources of revenue that a regulated entity is, or is not, permitted to use in the plan. The regulations may also specify the maximum amount of any increase in the amounts payable by customers.

The Minister may approve each cost recovery plan, and may require changes to a plan before approving it. The Minister is also authorized to prepare a cost recovery plan on behalf of a regulated entity, and the entity is required to reimburse the Crown for the costs incurred by the Minister in doing so. Once a cost recovery plan is approved, the regulated entity is required to implement it no later than the date specified by regulation.

As with the proposed Safe Drinking Water Act, 2002, this Bill will acquire extensive staff review to fully assess potential implications on the City.

#### **Financial Impacts**

It is important to note that substantial staff time will be required in order to review and implement the wide ranging new legislation and accompanying regulations, being developed and filed on a near monthly basis, along with the need for staff review of the further recent Bills before the Legislature. The vast array of matters potentially affected and the complexity of some of the matters and issues addressed (particularly financial reporting and justification requirements, new approaches to protecting the water supply and sources, etc.) will necessitate staff working teams for a more thorough review, to develop appropriate implementation steps or guidelines and, where required, to make recommendations for amendments to by-laws or policies.

The full extent of the potential financial impact to the City arising from the new legislation and regulations, or proposed legislation, remains unknown.

#### **Conclusion**

Staff will continue to keep Council updated on the status of the recent legislation and new Bills before the Legislature and, where appropriate, staff will bring forward reports recommending amendments to the City's by-laws or policies, or other changes where required.

**Attachments:**

- Attachment 1: Municipal Statute Law Amendment Act, 2002  
Explanatory Note (Extracted from text of Bill 177)
- Attachment 2: Nutrient Management Act, 2002  
Explanatory Note (Extracted from text of Bill 81)
- Attachment 3: Bill 195 – Safe Drinking Water Act, 2002  
Explanatory Note (Extract from text of Bill 95)
- Attachment 4: Bill 175 – Sustainable Water and Sewage Systems Act, 2002  
Explanatory Note (Extracted from text of Bill 175)

**Report prepared by:**

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Respectfully submitted,

  
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Director of Legal Services

Municipal Statute Law Amendment Act, 2002

## Explanatory Note (Extracted from text of Bill 177)

The Bill amends numerous Acts to make them consistent with the new *Municipal Act, 2001* which comes into force on January 1, 2003. The majority of the changes involve terminology or updating cross-references to refer to the relevant provisions in the new Act. Most of the amendments are set out in Table form in Schedule F.

Amendments that did not lend themselves to table form, either because of their length, complexity or the fact that they relate to provisions that are not yet in force, are set out in Schedule A (amending the *Municipal Act, 2001*), Schedule B (amending the *Planning Act*) and Schedule C (other amendments). For instance, the extensive amendments to the old *Municipal Act* made by the *Responsible Choices for Growth and Fiscal Responsibility Act (Budget Measures), 2001* have been incorporated into the new *Municipal Act, 2001*.

Schedule D amends the *Municipal Elections Act, 1996* in respect of election administration, eligibility to vote and run in an election and election finances. A number of the amendments are of a minor nature to clarify existing provisions. For example, "voting place" is defined for the purpose of displaying campaign material (section 18).

Amendments made to the administrative procedures of an election include,

- (a) providing for a deadline of September 1 for submission of referendum questions (section 3);
- (b) extending the time between nomination day and voting day from 31 to 45 days (section 10);
- (c) requiring condominium corporations managing buildings with 100 or more units to provide voting space if requested (subsection 16 (2));
- (d) increasing the time for a recount in certain cases from 10 to 15 days (sections 20, 21 and 22).

Amendments made in respect of eligibility to vote and run in an election include,

- (a) defining "owner or tenant", in relation to an election, to include persons entitled to use the land under a time share contract if they meet certain criteria (subsection 1 (1));
- (b) clarifying that proof of citizenship and residency may be required by the clerk responsible for conducting an election (section 4);
- (c) requiring municipal employees to take a leave of absence without pay once they are nominated to run for council (section 9).

Amendments made in respect of election finances include,

- (a) requiring records of election expenses to be kept by the candidate for a period of three years (subsection 26 (2));
- (b) enabling municipal council to allow electronic filing of financial returns (subsection 28 (4));

(c) allowing municipal council to appoint a committee to stand in the place of council to decide whether there should be a compliance audit and allowing an appeal to the court from the decision of the council or committee (section 31).

Amendments are made to the **Education Act** in Schedule D to parallel or reflect the changes made to the *Municipal Elections Act, 1996*.

The Bill also revises the **Territorial Division Act**. The new Act is set out in Schedule E. The names and descriptions of the geographic divisions, which are now set out in the Act, would be prescribed by regulation under the new Act.

Nutrient Management Act, 2002**Explanatory Note (Extracted from text of Bill 81)**

The Bill deals with the management of materials containing nutrients which include materials such as manure that are applied to land for the purpose of improving the growing of agricultural crops or for the purpose of a use specified by regulation. Nutrients do not include any material that the regulations specify does not come within the definition. The Bill does not affect the application of the Environmental Protection Act, the Ontario Water Resources Act or the Pesticides Act.

Part I. Any Minister responsible for a provision of the Bill may, for the purposes of the Bill, appoint Directors or analysts or designate provincial officers.

Part II. The Lieutenant Governor in Council has broad powers to make regulations establishing standards respecting the management of materials containing nutrients or establishing standards respecting farm practices and other uses to be followed with respect to those materials. Farmers and other persons are required to comply with the standards established by regulation. For example, the regulations may require persons to hold a certificate if they carry out prescribed management practices, to have a licence if they are engaged in the business of applying materials containing nutrients to lands or to obtain an approval for their nutrient management plans or strategies. The regulations can also establish local committees to assist in matters specified by the regulations, such as the mediation of disputes in connection with the management of materials containing nutrients on lands.

The Lieutenant Governor in Council is also authorized to make other regulations, including regulations respecting farm animals and regulating the use of prescribed nutrients on lands used for the production of prescribed crops.

Part III. A person is entitled to request a hearing by the Environmental Review Tribunal whenever a Director issues, refuses to issue, amends, suspends or revokes a certificate, licence, approval or order under the Bill. There is a further right of appeal to the Divisional Court and the Minister responsible for the administration of the Bill.

Part IV. A provincial officer is entitled, without a warrant or court order, to enter and inspect any land or premises related to an agricultural operation or other operation affected by the Bill or to inspect a vehicle or vessel. A provincial officer may also obtain a court order for an inspection.

A provincial officer or Director may make orders to prevent, decrease or eliminate an adverse effect resulting from the discharge of materials containing nutrients into the natural environment. By way of information, the Supreme Court of Canada in *R. v. Canadian Pacific Ltd.*, (1995) 125 D. L. R. (4d) 385 (S.C.C.) held that a discharge had to be of some significance to constitute an adverse effect; it was not an adverse effect if it posed only a trivial or minimal threat.

A provincial officer or Director may also make orders requiring persons to comply with the Bill, the regulations or a certificate, licence or approval. A person to whom an order made by a provincial officer is directed may request a Director to review it. If the Director does not review it within seven days of receiving a request, the Director is deemed to have made an order confirming the order of the provincial officer.

Part V. If a preventive order or compliance order that requires a person to do work has not been stayed, a Director may cause the work to be done in a number of cases, including where

it is in the public interest. The person whom the order required to do work shall not do it without the permission of the Director. The Director may make an order requiring the person to pay the costs of having the work done. The amount of the costs can be recovered as taxes against real property owned by the person.

Part VI. A Director may levy an administrative penalty against a person who, in the opinion of the Director, has contravened the Bill, the regulations, an order except an order to pay costs or a condition of a certificate, licence or approval. The maximum amount of the penalty is \$10,000 for each day or part of a day on which the contravention continues. The person is entitled to a hearing by the Environmental Review Tribunal. The Minister responsible for the administration of the Bill may apply for a court order restraining a person from continuing the contravention. In addition, a person who commits the contravention is guilty of an offence, but cannot be prosecuted if the administrative penalty for the contravention is paid.

Part VII. The Minister responsible for the administration of the Bill can, by agreement, delegate to other persons any of the powers and duties relating to any prescribed matter, except for a matter under Part IV, V or VI. There is certain protection from liability for the Crown, the Minister, employees of the Ministry and other persons with respect to acts or torts of persons including delegates.

Part VIII. There are complementary amendments to other Acts, such as the Environmental Protection Act, the Ontario Water Resources Act and the Pesticides Act, with respect to matters such as inspections and offences.



Bill 195 - Safe Drinking Water Act, 2002

**Explanatory Note (Extract from text of Bill 95)**

The Act recognizes that the people of Ontario are entitled to expect their drinking water to be safe and provides for the protection of human health and the prevention of drinking-water health hazards through the control and regulation of drinking-water systems and drinking-water testing. The Act identifies the Minister of the Environment as the Minister responsible for overseeing the regulation of safe drinking water in Ontario and for the administration of the Act. The Minister shall prepare and lay before the Assembly an annual drinking-water report.

The Minister shall establish an advisory council, to be known as the Advisory Council on Drinking-water Quality and Testing Standards, to consider issues and provide recommendations relating to standards for drinking-water quality and testing. The Act requires the Minister to appoint a Chief Inspector who will be responsible for providing advice and implementing operational policies related to inspections, the development of inspection training programs and monitoring the efficacy of inspections conducted under the Act.

The drinking-water quality standards prescribed under the Act are applied where there is a requirement in any Act, regulation, legislative instrument or municipal by-law that water be "potable". Owners and operating authorities of municipal drinking-water systems and regulated non-municipal drinking-water systems (classes of non-municipal drinking-water systems to be prescribed in the regulations) must supply water to users that satisfies quality standards for drinking water under the Act. The Act imposes duties on owners, operating authorities and operators of drinking-water systems, related to the operation, management and maintenance of drinking-water systems. There is a duty on owners, operating authorities and laboratories to immediately report adverse water test results from municipal and regulated non-municipal drinking-water systems to the Ministry and the local medical officer of health. The Act imposes a standard of care on those who have oversight over municipal drinking-water systems.

The Minister may enter into agreements with accreditation bodies to provide programs for the accreditation and audit of operating authorities for drinking-water systems and for the accreditation and audit of laboratories for the conduct of drinking-water tests. Accreditation bodies may also be designated or established by regulation. An accredited operating authority must be in charge of a municipal drinking-water system. Five years after Part VI (Non-municipal drinking-water systems) comes into force, the Minister may make regulations requiring accredited operating authorities to be in charge of regulated non-municipal drinking-water systems. Operational plans for every system under the control of an accredited operating authority must be reviewed and approved under the Act.

The Act establishes a system of permits, licences and approvals for municipal drinking-water systems, regulated non-municipal drinking-water systems and laboratories at which drinking-water tests are conducted.

A municipal drinking-water licence is required for every municipal drinking-water system in Ontario. In order to obtain a licence, the owner must have a drinking-water works permit, an operational plan and, in certain cases, a financial plan and a permit-to-take-water under the *Ontario Water Resources Act*. The Act provides that the licence and permit for a municipal drinking water system may be issued with conditions. There is authority to amend conditions and to suspend and revoke permits and licences in certain circumstances. If a municipality transfers the ownership of a drinking-water system to a person other than another municipality, the municipality must ensure that the transfer agreement includes the prescribed requirements.

After the transfer, the system is deemed to continue to be a municipal system for the purposes of the Act.

Regulated non-municipal drinking-water systems will be required to meet certain standards prescribed by regulation. Certain systems will require an approval under the Act. An approval previously issued under section 52 of the *Ontario Water Resources Act*, while it remains in force, is deemed to be an approval under the new Act for a regulated non-municipal drinking water system. If a person intends to construct, maintain or operate a drinking water system that serves a major residential development (defined as six or more private residences), the person must obtain a municipal consent to do so. Municipalities may require financial assurances as a condition of the consent.

All laboratories that conduct drinking-water tests must be licensed under the Act. In order to obtain a licence, laboratories must generally be accredited for the tests they conduct. Certain exceptions apply to accommodate geographic constraints, or if the accreditation body does not have an accredited method for a particular test. The Act provides that a licence may be issued with conditions. There is authority to amend conditions and to suspend and revoke licences for failure to comply with the requirements of the Act. The Director who issues the licence may issue a direction requiring one or more laboratories to conduct a test in accordance with a specified method.

The Act also authorizes inspections of drinking-water systems and laboratories. A follow-up inspection is required within one year if a deficiency is found during an inspection of a drinking-water system. Provincial officers and directors may issue orders requiring compliance with the Act or to address drinking-water health hazards. The Act also authorizes the Director to appoint a person to take control of drinking-water systems in the case of emergency or to appoint an interim operating authority if the owner of a drinking-water system has been ordered to correct a deficiency and has failed to do so. The Act also requires the Director to give the medical officer of health notice of certain decisions made under the Act. The Minister may also issue an order requiring specified things to be done if the Minister is of the opinion that an imminent drinking-water health hazard exists or there is a threat to human health.

The Act makes a complementary amendment to the *Health Protection and Promotion Act*. If the position of medical officer of health of a board of health becomes vacant, the board of health and the Minister of Health and Long-Term Care, acting in concert, are required to work expeditiously towards filling the position with a full-time medical officer of health.

**Bill 175 – Sustainable Water and Sewage Systems Act, 2002**

**Explanatory Note (Extracted from text of Bill 175)**

The Bill establishes a new Act, the *Sustainable Water and Sewage Systems Act, 2002*. This Act applies to those persons and entities designated in the regulations who provide water services to the public or waste water services to the public. In the Act, they are called "regulated entities".

Regulated entities are required to give a report to the Minister of the Environment concerning the provision of water services and waste water services. The report must include information specified by regulation about the infrastructure needed to provide the services, the full cost of providing the services and the revenue obtained to provide them. The regulations may also specify additional matters to be addressed in the report.

The Act specifies that the full cost of providing services includes operating costs, financing costs, renewal and replacement costs and improvement costs. The full cost may also include other costs specified in the regulations.

The Minister may approve each report, and may require changes to a report before approving it. The Minister is also authorized to prepare a report on behalf of a regulated entity, and the entity is required to reimburse the Crown for the costs incurred by the Minister in doing so.

After the report is approved, each regulated entity is required to prepare a cost recovery plan describing how it intends to pay the full cost of providing the services. The contents of the plan must meet the requirements set out in the regulations. The regulations may specify the sources of revenue that a regulated entity is, or is not, permitted to use in the plan. The regulations may also specify the maximum amount of any increase in the amounts payable by customers.

The Minister may approve each cost recovery plan, and may require changes to a plan before approving it. The Minister is also authorized to prepare a cost recovery plan on behalf of a regulated entity, and the entity is required to reimburse the Crown for the costs incurred by the Minister in doing so.

Once a cost recovery plan is approved, the regulated entity is required to implement it no later than the date specified by regulation.

Provision is made for amendments to reports and plans, and for the preparation of joint reports and plans by two or more regulated entities.

The Minister is authorized to make orders requiring regulated entities to do, or refrain from doing, such things as the Minister specifies in order to ensure that the entity pays the full cost of providing the services.