

4. BILL 79
THE FAIRNESS TO PROPERTY TAXPAYERS ACT

COMMITTEE RECOMMENDATIONS AS AMENDED

That Council approve:

1. That the 10-5-5 capping program provided by the *Fairness to Property Taxpayers Act* be employed for the 1998, 1999 and 2000 taxation years for the multi-residential property class, all commercial property classes and all industrial property classes;
2. The adoption of the by-law necessary to implement the aforementioned recommendation in accordance with the legislation.
3. **The Region of Ottawa-Carleton continue to register its objections to Bill 79 as it affects Payments-In-Lieu of taxes.**

DOCUMENTATION:

1. Finance Commissioner's report dated 13 Jan 99 is immediately attached.
2. Extract of Draft Corporate Services and Economic Development Committee Minute, 19 Jan 99, immediately follows the report and includes a record of all votes.

REGION OF OTTAWA-CARLETON
RÉGION D'OTTAWA-CARLETON

REPORT
RAPPORT

Our File/N/Réf.
 Your File/V/Réf.

DATE 13 January 1999

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

FROM/EXP. Finance Commissioner

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

DEPARTMENTAL RECOMMENDATIONS

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

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

PURPOSE

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

BACKGROUND

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

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

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

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

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

DISCUSSION

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

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

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

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

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

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

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

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

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

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

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

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

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

FINANCIAL COMMENTARY

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

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

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

PUBLIC CONSULTATION

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

*Approved by
J.C. LeBelle*

BILL 79

THE FAIRNESS TO PROPERTY TAXPAYERS ACT

- Finance Commissioner's report dated 13 Jan 99

K. Kirkpatrick, Deputy Finance Commissioner, introduced the report. He stated on 18 December 1998, Royal Assent was given to Bill 79, the *Fairness to Property Taxpayers Act*. Mr. Kirkpatrick noted there were remaining important issues with the 10-5-5 capping program that were yet to be formalized through regulations expected in the near future.

With respect to the Act, Mr. Kirkpatrick explained it provided the following:

- Creates a performance standard for property tax policy for commercial, industrial and multi-residential properties. The performance standard may be achieved in one of two ways; either by using a new 10-5-5 capping tool provided by the Act, or by using one or more of the mitigation tools provided in the relevant legislation prior to the Act, which Council debated on 12 August 1998.
- The Act extends the deadline for certain decisions on the 1998 property tax policy until 31 January 1999. Mr. Kirkpatrick noted the municipal sector requested the extension to the end of March 1999, however, this was not granted.
- The Act provides the opportunity for Council to re-visit the 1998 property tax policy decisions made in 1998.
- The Act cancels the by-law passed by Council on 12 August 1998 providing the rebate program. It then amends the rebate program and any previous by-laws that had been passed by Council's implementing previous rebate programs are deemed void.
- The Act prevents any 1999 taxes from being levied against the commercial, industrial and multi-residential property classes until tax adjustments and re-billing for 1998 is complete. Mr. Kirkpatrick explained this may result in significant cash flow implications for area municipalities.
- The Act requires area municipalities to maintain "frozen assessment listings" for 1998, 1999 and 2000 for all commercial, industrial and multi-residential properties. This is essentially the 1997 assessment roll for these classes adjusted to reflect such

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Corporate Services and
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items as assessment appeal results, demolitions, building additions, vacancies and occupancy changes. This frozen assessment listing must be maintained regardless of how the performance standard is accomplished (i.e. pre-existing tools or the new 10-5-5 capping tool) since it is used to calculate the maximum taxes billable to a property in each of these years.

- The new 10-5-5 capping program provided by the Act sets out a scheme for setting taxes for commercial, industrial and multi-residential properties for 1998, 1999 and 2000 or any combination of those years. Council may elect to use the 10-5-5 capping program in any one of those three years.

Mr. Kirkpatrick explained the provisions in the Act required Council to make two decisions, as follows:

1. Did Council wish to change any of the property tax policy decisions already taken for 1998 in terms of the relative burden of taxation between property classes, specifically the use of one or more of the optional property classes and the setting of tax ratios?
2. Did Council wish to achieve the 10-5-5 performance threshold by implementing the new 10-5-5 capping program or by using one or more of the previous mitigation tools in combination?

The Deputy Finance Commissioner reported staff recommended that the decisions made by Council on 12 August 1998 regarding 1998 policy not be changed due to the significant analysis and public consultation that was undertaken. In addition, he noted the policy issues that were dealt with as part of that process had not changed.

Referencing the other mitigation tools reviewed in 1998, Mr. Kirkpatrick stated staff continued to not recommend using those programs for the same reasons stated in Corporate Services and Economic Development Committee Report No. 18. In addition, staff did not recommend the amended rebate program. He believed the Province may consider this program only for areas where there were relevantly few properties and the cost of the program would be insignificant.

Mr. Kirkpatrick explained staff did not recommend the use of the phase-in program as it would not be effective, either alone or in combination with a rebate program, in achieving the performance standard set by the Act.

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In closing, Mr. Kirkpatrick stated staff recommended the use of the 10-5-5 capping program as it was the superior alternative and would reliably produce the results required to meet the performance standard created by the Act.

Chair Chiarelli noted the significant impact Bill 79 had on the payments-in-lieu issue with the Federal Government that was not yet resolved. The Chair wished to reserve the option to approach the Province and believed the staff recommendations implied Council's endorsement of the Bill. Councillor Loney moved a Motion stating the Region would continue to register its objections to Bill 79 as it affects payments-in-lieu of taxes.

Mr. Kirkpatrick reported that recently staff were made aware that the Province had agreed to forward to the Regional Municipality of Halton and the Regional Municipality of Hamilton-Wentworth the funding they had committed to in the fall in 1998 for the rebate programs approved by those Councils. He stated Ottawa-Carleton Council also approved a rebate program with a Provincial share of approximately \$6 million. Mr. Kirkpatrick reported staff would be formally contacting the Minister requesting them to honour this commitment. He added that funding would be available to assist in mitigating the impact of a 10-5-5 capping program.

In response to a question from Councillor van den Ham regarding new 1998 tax bills for *all* commercial, industrial and multi-residential properties, Mr. Kirkpatrick confirmed new bills would be distributed in March 1999. He explained the Online Property Tax Analysis system used by the municipalities to assist with the administration of the 10-5-5 capping program should be available in February.

Councillor Hume referenced the revised deadline (28 February) for registration of vacant property space and how it would affect Ottawa-Carleton. Mr. Kirkpatrick reviewed the particulars around the commercial vacant class and commercial occupied class. He explained the deadline was extended because only a small percentage of the property owners had returned the registration forms. As a result, the Province recognized the need to ensure the 1999 data was more accurate and provided a deadline extension. He was not aware of the effect on Ottawa-Carleton.

Councillor Hill inquired about the frozen assessment listing. Mr. Kirkpatrick stated he believed the creation of the 1997 frozen assessment listing and the checking by the assessment office of omission and magnitude problems, would not assist with the situations in the rural townships.

Councillor Hume assumed the Chair as Committee Vice-Chair.

Mr. Tony Kue, President, Capital Parking and property owner in Toronto, Montreal and Ottawa, addressed the Committee on this matter. Mr. Kue reported that in comparing the taxes paid for similar properties in Toronto to Ottawa, he determined the amounts to be unfair with Ottawa's being substantially higher. Mr. Kue reviewed examples of similar properties in the two cities and the amount of taxes paid. He blamed the unfair situation as a result of the numerous re-assessments completed in Ottawa-Carleton over the years, noting older Toronto (downtown) has not been reassessed for many years. The speaker referenced the outrage expressed by the business and ethnic communities in Toronto when taxes were going to increase. In closing, Mr. Kue urged the committee members, as Ottawa-Carleton representatives, to voice their opposition.

In response to a question from Councillor Hunter, Mr. Kirkpatrick confirmed that with the implementation of the Ontario Fair Assessment System effective in 1998, all Ontario properties, including those in Toronto, were assessed as of their current market value 30 June 1996. Mr. Kue stated the taxes for 1997 were based on 1988 values at which time the market values were much higher, thereby, creating the inequity.

The Committee thanked Mr. Kue for his submission. They then considered the Loney Motion and report recommendations, as amended.

Moved by Councillor Loney

3. The Region of Ottawa-Carleton continue to register its objections to Bill 79 as it affects Payments-In-Lieu of taxes.

CARRIED

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

- 1. That the 10-5-5 capping program provided by the *Fairness to Property Taxpayers Act* be employed for the 1998, 1999 and 2000 taxation years for the multi-residential property class, all commercial property classes and all industrial property classes;**
- 2. The adoption of the by-law necessary to implement the aforementioned recommendation in accordance with the legislation.**
- 3. The Region of Ottawa-Carleton continue to register its objections to Bill 79 as it affects Payments-In-Lieu of taxes.**

CARRIED as amended