



The Regional Municipality of Halton

Report To:	Regional Chair and Members of Regional Council
From:	Art Zuidema, Commissioner, Legislative and Planning Services Alex Sarchuk, Commissioner, Social and Community Services
Date:	January 16, 2019
Report No. - Re:	LPS17-19/SS-04-19 - Comments on Bill 66: Restoring Ontario's Competitiveness Act

RECOMMENDATION

1. THAT Report No. LPS17-19/SS-04-19 - Comments on Bill 66: Restoring Ontario's Competitiveness Act," be endorsed and submitted to the Province as the Region's comments on Bill 66.
2. THAT the Regional Clerk forward a copy of Report No. LPS17-19/SS-04-19 - Comments on Bill 66: Restoring Ontario's Competitiveness Act," to the City of Burlington, the Town of Halton Hills, the Town of Milton, the Town of Oakville, Conservation Halton, Credit Valley Conservation Authority, and the Grand River Conservation Authority for their information.

REPORT

Executive Summary

- Bill 66, *Restoring Ontario's Competitiveness Act, 2018*, passed first reading in the Legislature on December 6, 2018. Proposal Notices outlining legislative and regulatory changes were posted for comment on the Environmental Registry of Ontario that same day with a closing date for submissions of January 20, 2019.
- The Bill proposes a series of changes to a number of Provincial Acts. There are two changes proposed that are of particular interest: the creation of a *Planning Act* tool, the "Open for Business Planning By-law", and adjustments to various age limits and maximum numbers of children permitted to be supervised by licensed or unlicensed home child care providers.
- The Open for Business Planning By-law, as proposed, would allow the Council of a Local Municipality to pass a type of zoning by-law inconsistent with or not in conformity with many different layers of planning policy (including the Provincial

Policy Statement, Greenbelt Plan, Growth Plan for the Greater Golden Horseshoe, Source Protection Plans, and various Official Plans).

- With little public detail available, the proposal raises a number of questions that need to be clarified through the current consultation period. As designed, the Open for Business Planning By-law does not provide an opportunity for Halton Region to raise and/or address matters within its jurisdiction as they relate to development proposals.
- The amendments to the *Child Care and Early Years Act*, as proposed, would increase the number of young children that a licensed or unlicensed home child care provider can have in their care, as well as decrease the age at which home child care providers must include their own children in that count. Such amendments raise concerns regarding the potential risk to children's health, safety and well-being in a home child care setting.
- Additionally, eligibility requirements for in-home services would be removed such that families would no longer require fee subsidies in order to receive this service. Further amendments would reduce the age requirement for authorized recreational and skill building programs that serve children before or after school from six years to four years old, which aligns with the kindergarten program.
- The Second Reading of Bill 66 is on the Parliamentary Agenda for February 19, 2019.
- This report recommends that the following comments be endorsed and submitted to the Province as the Region's submission on Bill 66.

Background

On December 6, 2018, Bill 66, *Restoring Ontario's Competitiveness Act, 2018*, was introduced in the Provincial Legislature. The Bill proposes over 30 actions, affecting 12 ministries, with a stated intent in materials released to, "*eliminate red tape and burdensome regulations so businesses can grow, create and protect good jobs for the people of Ontario.*" Bill 66 was carried through first reading and is on the Parliamentary Agenda for second reading on February 19, 2019. There was no advanced notice provided of the proposed legislation.

There are two areas where changes are proposed that would affect Halton Region and its operations: the introduction of an "Open-for-Business Planning By-law," and adjustments to various age limits and maximum numbers of children permitted to be supervised by licensed or unlicensed home child care providers.

Discussion

The Open-for-Business Planning By-law

The Bill proposes to amend the *Planning Act* to add a new Section 34.1, which will allow a local municipality to pass what is referred to as an open-for-business planning by-law (OFBBL). An OFBBL, as proposed, is like a zoning by-law that authorizes the use of land, buildings or structures for a prescribed purpose. An OFBBL is proposed to be implemented without many of the statutory requirements that accompany zoning by-laws passed under Section 34 of the *Planning Act*. As an economic development mechanism, the intent of the proposed tool is to remove ‘planning barriers’ to allow municipalities to act quickly to attract businesses seeking development sites in cases where there are major employment and economic growth opportunities. According to the Province, the aim is to have “*Provincial approvals in place within one year so qualifying businesses can begin construction.*”

The OFBBL is proposed as an optional tool available to municipalities, and a municipality will only be permitted to pass such a by-law if:

1. The Council of the local municipality has passed a resolution seeking the Minister’s approval to pass the OFBBL.
2. The municipality has received approval in writing from the Minister.
3. The prescribed criteria, if any, have been met.

On December 6, 2018, the Ministry posted a Regulation Proposal Notice titled, “New Regulation under the *Planning Act* for Open-for-Business Planning Tool” (EBR Posting 013-4239). The Notice states that where a Council of a municipality requests to pass an OFBBL (made through a Council resolution), that request would need to be accompanied by information that would be prescribed in a proposed new regulation. This would include a description of the subject lands, land use planning information, and “open-for-business information” including details about the proposed employment opportunity. The Notice states the future regulation would also:

- Require confirmation that the proposal is for a new major employment use.
- Require evidence that the proposal would meet a minimum job creation threshold (e.g. 50 jobs for local municipalities with a population of less than 250,000 people, or 100 jobs for local municipalities with a population of more than 250,000 people).
- Identify the uses of land, buildings or structures that may be authorized by the OFBBL, such as manufacturing and research and development, but not residential, commercial or retail as the primary use.
- Prescribe how notice is to be given to the Minister of Municipal Affairs and Housing following the passing of an OFBBL (similar to how the Minister is notified following the passing of a zoning by-law, such as email and personal service).

How the OFBBL Would Work (First Reading Stage of Bill 66)

The OFBBL represents a new process and tool under the *Planning Act* designed for local municipalities to issue approvals for development proposals meeting a certain threshold of new jobs created. Staff provided a briefing note to Council, dated December 7, 2018, and found in Attachment #1 to this report, detailing how the tool would work.

Regional Comments on Open-for-Business Planning By-laws

Halton Region works in partnership with the local municipalities to advance a strong, integrated approach for planning that considers advancing growth and economic development that is coordinated with infrastructure delivery and is fiscally responsible. Section 32 of the Regional Official Plan details this vision as it relates specifically to economic competitiveness:

Halton recognizes the importance of a sustainable and prosperous economy and the need for its businesses and employers to compete in a world economy. Towards this end, Halton will actively maintain, develop and expand its economic and assessment base through economic development strategies, timely provision of infrastructure, cost-effective delivery of services, strong fiscal management, proactive planning policies, and support for development opportunities that respond to the vision and policies of this Plan. (emphasis added)

This vision has been implemented through a strong working relationship with our local municipal and agency partners, and in detailed planning studies to implement this vision in Halton's four local municipalities. Together, Halton Region, the local municipalities, and agency partners have worked collaboratively through established planning frameworks to ensure there are hundreds of hectares of vacant, designated employment lands and strategic growth areas across the Region ready to accommodate development.

The proposal to create OFBBLs introduces a number of changes that could undermine Halton's integrated planning system and the Region's unique role in ensuring that growth and economic development are coordinated and supported; that complete communities are achieved through planning outcomes; and that infrastructure can be provided in an efficient and cost-supportive manner.

1. The tool allows for approvals to be issued without conforming to a number of policy documents. Bill 66, as currently written, removes requirements to comply with important land use policy documents such as the Greenbelt Plan and Growth Plan for the Greater Golden Horseshoe—but also the Regional Official Plan and Source Protection Plans developed under the *Clean Water Act* (an act passed by the Ontario Legislature with the intent to prevent the recurrence of the Walkerton tragedy). In the Halton Region context, this could potentially mean approving planning permissions without ensuring requirements related to the Natural Heritage System, the Agricultural System, prime agricultural lands, and source

water protection have been met. Land use policy and growth management decisions have been made based on a considered approach to growth management, environmental and agricultural protection, land supply, and the provision of infrastructure. It is recommended that the OFBBL only be advanced if it also requires specific checks and balances in place to ensure the intent of policy represented in the Regional Official Plan and other important Planning policies are achieved.

2. Section 39(1) of the *Clean Water Act* currently prescribes that, “*A decision under the Planning Act or the Condominium Act, 1998 made by a municipal council, municipal planning authority, planning board, other local board, minister of the Crown or ministry, board, commission or agency of the Government of Ontario, including the Ontario Municipal Board, that relates to the source protection area shall conform with significant threat policies and designated Great Lakes policies set out in the source protection plan, and have regard to other policies set out in the source protection plan*”. All *Planning Act* decisions, therefore, must conform to policies in approved source protection plans that address significant drinking water threats prescribed by the *Clean Water Act*. The removal of this clause opens a door to introduce uses or related activities that may constitute potential quality and quantity threats to Halton's drinking water sources. There is further concern with the passing of an OFBBL by adjacent municipalities, as groundwater aquifers and wellhead protection areas can extend across municipal boundaries. It is recommended that approvals not be exempted from the *Clean Water Act*.
3. There is no mandate within the tool, as proposed, for local municipalities to consult with Halton Region on matters within its jurisdiction—including, for example, phasing and servicing requirements, transportation (including transportation impact studies, access, and noise studies and mitigation), ensuring the completion of related planning studies or subwatershed studies, and ensuring protections related to the Natural Heritage System, the Agricultural System, and municipal drinking water sources are implemented. As an example, the minimum job thresholds proposed would likely necessitate the provision of urban-level of services. A proposed development under the OFBBL within the rural area could necessitate a need for extension of urban services at a significant cost, without a mandate to include Halton Region at the table in any discussions or decisions. This runs counter to the collaborative approach that the Halton municipalities have successfully employed in planning for growth and economic development in this Region. This could mean that Halton Region would only have a role if voluntarily engaged by the local municipality, with no guarantee that matters of Regional interest are satisfied, and no ability to appeal an OFBBL enacted by a local municipality for any reason. It is recommended that the Province ensures that upper-tier municipalities and agencies be consulted in the review process for OFBBL approvals in order to ensure their roles and responsibilities are represented in the approval process, and offer appeal rights to upper-tier municipalities and related agencies.

4. The Regulation Proposal Notice states that residential and commercial uses cannot be, “the primary use.” There is no definition or standard for “primary” at this time. It would be helpful to understand if and how this tool could be used to allow mixed use developments to proceed on employment lands. In particular it may be relevant in advancing Council’s endorsed policy framework for the Health Oriented Mixed Use Node in Oakville (Report No. LPS67-15). It is recommended any implementing regulation provide that definition or standard, and clarify the scale of secondary or accessory uses that can be permitted through an OFBBL.
5. There are also no details on ensuring the minimum number of jobs provided are subject to any criteria, including a minimum length of time guarantee or job security requirement. It is recommended that any implementing regulation allow for agreements to secure that minimum number of jobs over a certain amount of time (as allowed for in the inclusionary zoning regulation O.Reg 232/18).
6. There are no details on whether or not a Provincial review of any request is provided, or if an OFBBL request is intended to remain at the Ministerial level. It is recommended that clarity on the Ministerial request process be provided in any implementing regulation.
7. While no appeal for passing an OFBBL is proposed, there is no clarity on what happens if, after a Ministerial approval to pass is granted, the By-law is ultimately refused. Clarity should be provided on this scenario - with the recommendation being no appeal of non-passing of an OFBBL in order to prevent the additional administrative burden on municipalities.

Before advancing the OFFBL in legislation and regulation, the Region is requesting that the Province provide a response to all of the comments above.

Changes to Early Learning and Child Care Programs

The Bill proposes a series of legislative amendments to the *Child Care and Early Years Act (CCEYA)* and *Education Act*. These amendments affect the number of children in a licensed or unlicensed home child care setting and authorized recreational and skill building programs. Legislative changes seek to:

- Lower the minimum age at which home child care providers’ own children are exempt from being counted towards the maximum allowable number of children in care from six years to four years of age.
- Increase the number of young children that home child care providers can have in their care under two years of age, from two to three children under two years of age.
- Reduce the age requirement for authorized recreational and skill building programs that serve children before or after school from six years to four years old.

- Remove the restriction that a parent must receive financial assistance (child care fee subsidy) before in-home services can be provided for their child.
- Repeal requirements under the *Education Act* that third party programs (before and after school or PD day programs) be led by early childhood educators and require school boards to ensure that third party programs are delivered by licensed child care centres or other programs set out in regulation by the *Education Act*.

Regional Comments on Changes to Early Learning and Child Care Programs

The proposed amendments to the CCEYA are intended to increase choice and availability of child care for families. The proposal to reduce the age requirement for authorized recreational and skill building programs from six to four years old aligns with the kindergarten program in schools. This would provide families with additional before or after school options for four and five year olds. Currently, families in receipt of child care fee subsidy are eligible for in-home care, which allows a licensed provider to care for the child in the child's home if there is a need (e.g., the child requires medical care and their home environment is the best place for care). Removing the eligibility requirement for fee subsidies may increase the demand for in-home services, but would accommodate children where care is best, based on their needs. Presently, there are no home child care agencies that offer in-home services in Halton and the impact is expected to be minimal.

The increase in number of children under the age of two years, from two to three children in home child care, is intended to increase access to child care spaces for infants, as they are in high demand and can be hard for families to find. However, this change presents some concerns regarding the health, safety and well-being of children in a home child care setting.

1. The increase in number of spaces for children under the age of two would mean one child care provider could be responsible for up to three children under the age of two at one time. In a licensed home, that could represent half of the children in care (maximum is up to six) and more than half in an unlicensed home (maximum is up to five children). Increasing the number of infants in a home care setting also contradicts Ministry requirements for staffing in family age groups, which allows the placement of children of different ages in the same play activity room with certain conditions. A home child care setting could be considered comparable to a family age group setting. In a family age group where there are six or fewer children, one staff member is required and there are to be no more than two children under two years of age (Schedule 4 of Ontario Regulation 137/15). It is recommended that the number of children under the age of two not be increased.
2. The CCEYA requires that licensed home child care providers' own children that are in the home must be counted, except where a child is six years old or older, or a child under the age of six years old is attending full-day kindergarten in a publicly-funded school, and the provider cares for more than one child under the age of two. Bill 66, if passed, will amend the CCEYA to reduce the age where the

provider's own children are counted from six years old to four years old without any conditions. While this change aligns with the age that children are enrolled in a school setting, there are concerns with reducing the age at which the provider's children are included in the allowable maximum number of children, particularly if the number of children under two years of age increases. In an emergency, it may be difficult for the one adult to safely evacuate all children.

If the decreased age where the provider's own children are counted was the only proposed amendment to age, it would be less concerning, as the impact would likely be minimal in a home. In light of this proposed change and the proposed change to increase the number of children under two years of age to three, it is recommended that the provider's own children under six years old be counted towards the maximum allowable children when the provider cares for more than one child under the age of two.

Bill 66 is also proposing amendments to the *Education Act* that would ensure a licensed child care centre or another program set out under the *Education Act* is responsible for delivering before and after school programs or PD day programs in schools. As a result, these programs would be required to meet licensing standards outlined by the Ministry of Education. Currently, all third party programs in Halton schools are delivered by licensed child care centres. It is anticipated that there will be little to no impact in Halton.

Conclusion

At present, Bill 66 remains a proposal. In its current state, the Bill presents a number of issues and challenges with respect to Halton's integrated land use planning system and child care and early learning system. As part of the current consultation period (closing date of January 20, 2019), staff recommend submitting this report with a covering letter highlighting the issues identified with a recommendation that these issues be resolved prior to advancing this tool.

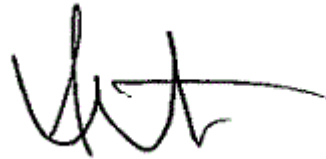
FINANCIAL/PROGRAM IMPLICATIONS

There are no financial or program implications associated with this report. Staff will monitor the proposals as they move through the legislative process and provide updates as more information becomes available.

Respectfully submitted,



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Approved by



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If you have any questions on the content of this report,
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Attachments: Attachment #1 – Briefing Note

Bill 66, *Restoring Ontario's Competitiveness Act, 2018*

CURRENT STATUS:

Restoring Ontario's Competitiveness Act, 2018 (Bill 66): First Reading at the Legislative Assembly on December 6, 2018. Carried.

BACKGROUND:

On December 6, 2018, Todd Smith, Minister of Economic Development, Job Creation and Trade announced Bill 66, *Restoring Ontario's Competitiveness Act, 2018*. This is the second in a series of bills that will form part of the government's multi-year Ontario Open for Business Action Plan. The Bill proposes over 30 actions, impacting 12 ministries, with a stated intent to "eliminate red tape and burdensome regulations so businesses can grow, create and protect good jobs for the people of Ontario." Staff did not have advanced knowledge of the proposed legislation.

This Briefing Note will focus on the amendment being proposed to the *Planning Act* (the "Act") by the Ministry of Municipal Affairs and Housing (the "Ministry").

Amendment to the *Planning Act*

The changes being proposed by the Ministry would introduce a new economic development tool intended to remove planning barriers to allow municipalities to act quickly to attract businesses seeking development sites in cases where there are major employment and economic growth opportunities. The Province's stated goal is to facilitate obtaining Provincial approvals within one year so that qualifying businesses will be able to begin construction.

The Bill proposes to amend the Act to add a new Section 34.1, which will allow a local municipality to pass what is referred to as an open-for-business planning by-law ("OFBBL"). An OFBBL is designed to be a type of zoning by-law which authorizes the use of land, buildings or structures for a prescribed purpose. As proposed, an OFBBL can be implemented without many of the procedural and substantive requirements that accompany zoning by-laws passed under Section 34 of the Act (as outlined below). An OFBBL is proposed as an optional tool available to municipalities, and a municipality will only be permitted to pass such a by-law if:

- (a) the Council of the local municipality has passed a resolution seeking the Minister's approval to pass the OFBBL;
- (b) the municipality has received approval in writing from the Minister; and
- (c) the prescribed criteria, if any, have been met.

Criteria for Use of Open-for-Business Planning By-Laws

The proposed legislation would create regulation-making authority to set out the prescribed criteria that must be met. There are currently no draft regulations for review; however, the Ministry has provided a description of the contemplated regulation.

On December 6, 2018, the Ministry posted a Notice entitled "New Regulation under the Planning Act for open-for-business planning tool". The Notice states that where a municipality requests to pass an OFBBL (which request must have been made by Council resolution), that request would need to be accompanied by information that would be prescribed in a proposed new regulation, such as a description of the subject

lands, land use planning information, and open-for-business information, including details about the proposed employment opportunity. The Notice states that the proposed regulation would also:

- require confirmation that the proposal is for a new major employment use;
- require evidence that the proposal would meet a minimum job creation threshold (e.g. 50 jobs for municipalities with a population of less than 250,000 people, or 100 jobs for municipalities with a population of more than 250,000 people);
- identify the uses of land, buildings or structures that may be authorized by the tool, such as manufacturing and research and development, but not residential, commercial or retail as the primary use; and
- prescribe how notice is to be given to the Minister of Municipal Affairs and Housing following the passing of an open-for-business by-law (similar to how the Minister is notified following the passing of a zoning by-law – e.g. email and personal service).

Streamlined Process

Certain provisions of the *Planning Act* and other Acts that would normally apply to a zoning by-law would not apply to an OFBBL, as proposed in Bill 66. If a municipality's request to the Minister to pass an OFBBL is approved, the municipality can pass an OFBBL through a streamlined process, which would:

- allow municipalities to permit the use (i.e., zone the lands) without having to strictly adhere to existing local requirements (e.g., official plan and zoning);
- remove the application of a separate approval process for site plan control;
- remove the ability to use density bonusing (community benefits in exchange for height or density) and holding by-law provisions;
- allow the municipality to impose limited planning-related conditions that may help to facilitate the proposal [e.g., approval of plans and drawings that show site plan matters (transportation access, lighting, parking, etc.)] and enter into agreements to ensure development conditions are secured;
- allow public consultation at the discretion of the municipality, while requiring public notice after the by-law is passed (at a minimum);
- provide that decisions are final and cannot be appealed to the Local Planning Appeal Tribunal (but allow the Minister of Municipal Affairs and Housing to intervene before the by-law comes into effect, 20 days after its passing); and
- remove the requirement for decisions to strictly adhere to provincial policies and provincial plans (but allow the Minister of Municipal Affairs and Housing to impose conditions to protect matters like public health and safety when endorsing the use of the tool).

IMPLICATIONS:

Bill 66 presents a new process and tool under the *Planning Act* designed for local municipalities to issue approvals for development proposals meeting a certain threshold of new jobs created. The aim is to have "*Provincial approvals in place within one year so qualifying businesses can begin construction.*"

If a local municipality so chooses, is granted written approval by the Minister and meets the prescribed criteria, this option would open a faster approvals route for qualifying proposals. The use of this tool is optional; there is currently no proposal to make the adoption of this tool by municipalities mandatory.

If passed, the proposed new legislation would enable a municipal council to approve a zoning instrument notwithstanding any nonconformity or inconsistency with in effect Provincial, Regional, or local plans and policies. Additionally, public works associated with an OFBBL would not be required to conform with applicable official plans.

An OFBBL can be passed without the traditional statutory notice or processes (only a notice of passing is required). Site Plan Control is also not required, with a modified process and outcomes proposed in its place. There are also no appeal rights contained in the proposed OFBBL process. In the Halton Region context, this means that Halton Region would only have a role if engaged by the local municipality and would not be able to appeal an OFBBL enacted by a local municipality for any reason.

An OFBBL, as currently contemplated, is not required to conform to an official plan, the Greenbelt Plan, the Growth Plan for the Greater Golden Horseshoe or the Provincial Policy Statement. (The *Niagara Escarpment Planning and Development Act* is not included in the proposal.) In the Halton Region context, this could potentially mean overlooking phasing requirements and protections related to the Natural Heritage System. Further, certain provisions of the *Clean Water Act, 2006*, the *Great Lakes Protection Act, 2015* and other legislation would not apply to an OFBBL.

Conditions on the use of the land or the erection, location or use of buildings or structures can be applied by the local municipality as part of an OFBBL, as the legislation is currently proposed. This does include, quoting the draft legislation, “[a]ny requirement that is reasonable for and related to the appropriate use of the land and that the municipality considers necessary for the protection of public health and safety.” Site plan agreements would not be required on lands subject to an OFBBL. That said, the various plan of subdivision, condominium and consent sections of the *Planning Act* are proposed to remain applicable, which may provide an opportunity in this regard.

RECOMMENDATIONS AND NEXT STEPS:

At this stage, there remain many uncertainties with respect to the proposed legislation. As of the date of this Briefing Note, the Bill has only received First Reading. As referenced above, postings have been made to the Ontario Environmental Registry on Bill 66 and associated regulations (<https://tinyurl.com/bill66ebr>, <https://tinyurl.com/bill66ebr-reg1>, <https://tinyurl.com/bill66ebr-reg2>). Comments can be made to the Ministry on these proposals until 11:59 p.m. on January 20, 2019. There is no timeline available as to the planned passing of the legislation.

Halton Region Staff will monitor the proposals as they move through the legislative process and provide updates to Council as more information becomes available.

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