

Clause embodied in Report No. 1 of the Policy and Finance Committee, as adopted by the Council of the City of Toronto at its regular meeting held on February 4, 5 and 6, 2003.

14

Section 65 of the Ontario Municipal Board Act

(City Council at its regular meeting held on February 4, 5 and 6, 2003, amended this Clause by adding thereto the following:

“It is further recommended that the Chief Administrative Officer and the Chief Financial Officer and Treasurer be requested to submit a further report on this matter to the first regular meeting of the new term of City Council.”

The Policy and Finance Committee recommends the adoption of the following joint report (January 10, 2003) from the City Solicitor and the Chief Financial Officer and Treasurer:

Purpose:

The purpose of this report is to seek Council approval for an efficient process to address the requirements for local boards to obtain municipal approval for their commitments and expenditures, the cost of which will be raised beyond the term of Council, as provided for in section 65 of the *Ontario Municipal Board Act* (the “Act”).

Financial Implications and Impact Statement:

There are no financial implications arising from the approval of this report.

Recommendations:

It is recommended that:

- (1) the Chief Financial Officer and Treasurer be authorized to approve, on behalf of the City, an expenditure or commitment by a local board for which the costs, or any portion of the costs, may be raised beyond the term of the then current City Council provided that the following conditions are met:
 - (a) the expenditure or commitment is within the City of Toronto’s debt and financial obligation limit; and
 - (b) such expenditure or commitment is consistent with the budgets of the local board as then approved by Council; and

(2) the Chief Financial Officer and Treasurer be authorized to advise local boards of the requirement that any board authorization of the relevant expenditure or commitment is subject to the approval contained in Recommendation No. (1).

Background:

Subsection 65 (1) of the Act essentially provides that a local board, as defined in that section, may not authorize or proceed with any work of any sort if any portion of the costs of the work will, or may be, raised after the term for which City Council or the board was elected.

Clause 65(3)(g) of the Act creates an exception to that general prohibition in respect to by-laws or resolutions of local boards that authorize such work but contain a provision to the effect that the by-law or resolution does not come into force until the approval of the municipality has been obtained.

Subsection 65(5) of the Act defines “work” very broadly as any undertaking, project, scheme, act, matter or thing.

Comments:

The basic effect of section 65 of the Act is to create a technical requirement for some local boards to obtain current City Council approval for an expenditure or commitment where a future Council will be required to raise funds to pay for that expenditure or commitment. The section does not affect the situation where funds are raised during the term of the current Council, even if the funds may be spent after the term of that Council.

Thus, in situations where funds are to be raised within a single term of Council, a local board can enter into a commitment in a single budget year where the funds may be raised in a subsequent budget year, without an obligation to seek Council approval under section 65 of the Act. Clearly, the costs of any such commitment would have to be reflected in the budget submitted by the local board in subsequent budget years in order to ensure that the costs of the commitment are addressed.

Up until 1992, section 65 of the Act contained a similar provision requiring municipalities to seek Ontario Municipal Board (“OMB”) approval. At that time, the provincial government amended the Act so as to remove the obligation for municipalities to seek OMB approval provided that the commitment by the municipality did not exceed the debt and financial obligation limit updated annually by the municipality. Although the provincial government changed its approach to allowing municipalities to commit for expenditures in situations where the funds would be raised beyond the term of the current Council, it retained an obligation on local boards to seek municipal approval in similar situations.

The practical difficulty with the application of the technical wording of section 65 is that it imposes a significant administrative burden on a local board which has already received City Council approval for its annual budget, and gone through its own internal process for approval of a relevant individual undertaking, to then seek municipal approval for the individual undertaking.

This can lead to additional delay in carrying out the local board's administrative functions for many typical and minor commitments. For example, if a local board were to purchase a photocopier in the last year of the term of the current Council out of funds from its Council approved budget, there would be no need for the local board to seek municipal approval under section 65 of the Act. However, if, for good business and cost reasons, the purchase of the photocopier also involved the purchase of ongoing annual support and maintenance services for the copier for a small annual cost over a five year period, and the funds to pay for those services would have to be raised beyond the term of the then current Council, the local board could not enter into a commitment for both the photocopier and the supporting maintenance without municipal approval.

Therefore, in order to ensure compliance with the principles of section 65 of the Act while avoiding an administratively complex and cumbersome municipal approval process, it is recommended that City Council authorize the Chief Financial Officer and Treasurer to provide municipal approval for expenditures and commitments within the scope of section 65 of the Act provided that such expenditures are within the City's debt and financial obligation limit. This authority should also be made subject to the relevant local board establishing to the Treasurer's satisfaction that the expenditure or commitment is consistent with any budgetary approvals given by Council.

Conclusion:

In order to ensure compliance with requirements with section 65 of the Act and simultaneously provide an efficient process for the approval of a local board's commitments coming within the scope of that section, it is recommended that the Chief Financial Officer and Treasurer be authorized to approve any such local board commitments that meet the criteria identified in this report.

Contact:

Martin Willschick, Manager, Treasury Services
Tel. No. (416) 392-8072, Fax No. (416) 397-555

Jim Anderson, Director, Municipal Law
Tel. No. (416) 392-8059, Fax No. (416) 397-5624