

# TORONTO STAFF REPORT

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April 6, 2006

To: Policy and Finance Committee

From: City Manager  
Deputy City Manager and Chief Financial Officer

Subject: Bill 206 “An Act to Revise the Ontario Municipal Employees Retirement System Act” – Supplementary Report

## Purpose:

This report provides an update on the implications for the City of Toronto of Bill 206, “An Act to Revise the Ontario Municipal Employees Retirement System Act, 2005”.

## Financial Implications:

There are no direct financial implications resulting from the recommendations in this report.

## Recommendation:

It is recommended that the Mayor request the Minister to provide an extension of the June 1, 2006 implementation date to January 1, 2007.

## Background:

The Ontario Municipal Employee Retirement System (OMERS) was created by the Government of Ontario in 1962, and since mid-1968 has been the only pension plan that new municipal employees may join. Under the *Ontario Municipal Employee Retirement System Act*, the Government of Ontario is responsible for appointing directors to the OMERS Board and for determining the terms and conditions of the plan itself, including its design and the types of basic and supplementary pension benefits. The Province of Ontario has, in effect, been acting as the plan sponsor although the Province has no employees in the Plan and makes no contributions.

In 2002, at the request of the provincial government, OMERS conducted a comprehensive review of its governance structure and consulted extensively with stakeholders. OMERS concluded that it should be granted autonomy from the Provincial government and proposed a two-tier governance structure: a Sponsors Committee for the plan, whose members would in

each case be chosen by the appropriate OMERS employees and employers, and a single Administration Committee whose members would be chosen by the two Sponsors Committees.

At its meeting held on May 21-23, 2002, Council adopted as Policy & Finance Committee Report No. 8, Clause No. 4, the report (April 24, 2002) from the Chief Administrative Officer entitled "*OMERS Governance Structure*" and recommendations articulated Council's position as input to the OMERS and Provincial consultation. In so doing, Council expressed its support for the OMERS recommendations for a new autonomous governance structure consisting of a single sponsors body and an administration body, with balanced representation of employers and employees on both, but also made clear its opposition to a separate OMERS plan for specific sectors and stated a desire to have unconditional City representation on the two proposed OMERS governing bodies.

On June 1, 2005, the Honourable John Gerretsen, Minister of Municipal Affairs and Housing introduced Bill 206 "*An Act to Revise the Ontario Municipal Employees Retirement System Act, 2005*" in the Provincial Legislature, which would replace the existing *Ontario Municipal Employee Retirement System Act*.

At its meeting held on July 19-21 and 26, 2005, Council considered Policy & Finance Committee Report No. 7, Clause No. 6 entitled "*Bill 206: An Act to Revise the Ontario Municipal Employees Retirement System Act, 2005*" and:

1. directed the City to participate in the informal police/fire supplemental plan discussions hosted by the Ministry of Municipal Affairs and Housing;
2. requested the City Manager to report to Policy & Finance Committee for its meeting of September 20, 2005, on the issues raised at Council, such report to include information from the Association of Municipalities of Ontario on its strategies in this regard;
3. authorized a request to the Province of Ontario to amend Bill 206 to provide that the structure of the Sponsors Corporation and the Administration Corporation at all times include two members chosen by the City and that advisory committees to the Sponsors Committee at all times include at least one member chosen by the City;
4. directed the City Manager, City Solicitor, and Deputy City Manager/Chief Financial Officer to conduct a more detailed analysis of the OMERS governance model proposed in Bill 206 and provide an assessment of the financial implications and report to Council in the fall; and
5. directed the City Manager to provide a report to Council for its next meeting on the City's nominees to the transitional membership of the Sponsors Corporation.

At its meeting held on September 28, 29 and 30, 2005, Council considered Policy & Finance Committee Report No. 8, Clause No. 9 entitled "*Update on Bill 206: An Act to Revise the Ontario Municipal Employees Retirement System Act, 2005*" and adopted the following recommendations:

- (1) the Mayor communicate to the Premier of Ontario that Toronto Council supports the devolution of OMERS to place responsibility for the plan with those who pay into

and benefit from the plan on condition that the change of OMERS governance ensure the continued financial stability of the plan, the fair and equitable treatment of all members and the containment of costs for members;

- (2) the Mayor also communicate to the Premier that:
  - (i) Bill 206, "*An Act to Revise the Ontario Municipal Employees Retirement System, 2005*" will make significant changes to OMERS governance requiring careful consideration and adequate opportunity for OMERS stakeholders to assess the financial implications;
  - (ii) the strength of OMERS has been its financial stability and balanced consideration of all stakeholders, and Bill 206 should not in any way prescribe supplemental plans or optional benefits for any one stakeholder group, or require the Sponsors Corporation to consider any specific issues regarding any one stakeholder group;
  - (iii) Bill 206 should be amended to:
    - (a) ensure that the structure of the Sponsors Corporation and the Administration Corporation at all times consist of a balanced representation of employers and employees, and include two members chosen by the City of Toronto and that advisory committees to the Sponsors Corporation at all times include at least one member chosen by the City of Toronto;
    - (b) eliminate the reference to police and fire employees in section 4 permitting the establishment of supplemental plans;
    - (c) eliminate subsection 10(2) requiring the Sponsors Corporation to consider providing optional increases in pension benefits for members employed in the police and fire sectors;
    - (d) add to subsection 26(1) a requirement for a two-thirds majority vote for all decisions of the Sponsors Corporation;
    - (e) make clear that the Sponsors Corporation may not, subject to appropriate exceptions, implement changes in benefits for members or in contribution rates, by by-law or otherwise, more frequently than triennially;
    - (f) restore the supplementary type 6 pension for municipally elected officials;
- (3) staff be authorized to continue the assessment of Bill 206 in collaboration with other employer groups to identify issues of concern and implications for the City of Toronto and, if necessary, report directly to Council at its meeting to be held on September 28-30, 2005;
- (4) the Mayor and the City Manager be authorized to represent the City at legislative hearings or other meetings concerning Bill 206 with respect to the issues identified in this report and any other relevant issues that may be identified by staff as they continue the assessment of Bill 206;

- (5) the Clerk poll the members of Council to determine their interest in being appointed to the initial Sponsors Corporation of OMERS and arrange for a Striking Committee meeting to recommend City nominees for that office to Council;

At its meeting held on January 31, February 1 and 2, 2006, City Council adopted Notice of Motion J(18) recommending that:

- the City reiterate its position and strongly recommend that Bill 206 treat all members and sectors equitably, promote true autonomy and contain costs by striking out prescribed supplemental plans from the legislation and by eliminating specific references to members employed in the police, fire and paramedic sectors;
- staff prepare a report for Council's consideration, outlining all of the potential implications of Bill 206 to the City of Toronto.;

On November 21, 2005, Councillor David Soknacki and Deputy City Manager and Chief Financial Officer, Joe Pennachetti, presented Toronto's oral submission to the Standing Committee, followed by a written submission from Mayor Miller. The written submission, attached as Appendix A, continued to reinforce Toronto's position. While the City of Toronto supports greater autonomy for OMERS, the legislative changes must ensure:

- the financial stability of the plan
- the fair and equitable treatment of all members
- the containment of costs for all stakeholders

In addition, the City as the single largest municipal employer, should have dedicated representation on each of the Corporations and Advisory Committees. The City in its submissions, requested two seats on each of the Sponsors and Administration Corporation and one seat on each of the Advisory Committees.

The Standing Committee recommended, and on December 13, 2005 the Legislature's government majority passed at Second Reading, several substantive changes to the proposed governance structure, supplemental plans and voting. The City gained representation at each of the Sponsors and Administration Corporation as well as each Advisory Committee, however, amendments to the supplemental plans were more prescriptive and potentially more costly.

After Second Reading, the Standing Committee conducted a further round of public hearings which were held on January 25 and 26, 2006. Mayor Miller restated Toronto's key concern in a further written submission to the Standing Committee. A copy is attached as Appendix B.

Bill 206 passed Third Reading and received Royal Assent on February 23, 2006. There have been many amendments throughout the process that have dramatically altered the Bill.

This report provides an update on the implications of Bill 206 to the City of Toronto.

Comments:

There are two significant features related to Bill 206.

1. It introduces a new governance model by creating a new Sponsors Corporation, which will replace the Government of Ontario as the Plan Sponsor.
2. It requires the establishment of supplemental pension plans for members employed in the police/fire sector (defined to include paramedics) within 24 months and permits the Sponsors Corporation to create additional supplemental pension plans in the future.

This report will provide an overview of the significant aspects and implications of Bill 206 to the City of Toronto.

**Governance**

Bill 206 establishes a Sponsors Corporation which will be responsible for making decisions concerning plan design, governance, contribution rates and funding reserves. An Administration Corporation will be the trustee and administrator of OMERS and will carry on a role very similar to that of the current OMERS Board. The Administration Corporation will continue to have the same fiduciary responsibilities it has today, including plan administration, investment policy, communication and preparing the actuarial valuation.

Each of the Corporations will be governed by representatives of OMERS stakeholders in accordance with by-laws to be established by the Sponsors Corporation. Until those by-laws are created, representation on the Corporation will be determined in accordance with certain transitional provisions contained in the Bill. The Sponsors and Administration Corporation each include one employer representative to be chosen by the City of Toronto. In addition, at Third and Final reading, it was determined that CUPE Local 79 and 416 would have dedicated representation as a plan member with the seat rotating between Local 79 and Local 416..

Two permanent Advisory Committees, one for police, fire and paramedics, and one for all other OMERS members will review and make recommendations on OMERS benefits.

Representatives on the Advisory Committees are to be selected by the Sponsors Corporation, which is to endeavour to make appointments in accordance with guidelines set out in the Bill. Each of the two Advisory Committees include an employer representative to be chosen by the City of Toronto.

The Bill's transitional provisions provide for balanced representation between employer and employee groups on both Corporations and on the Advisory Committees. The Sponsors Corporation and Administration Corporation will each be comprised of 14 members. Appointments will initially be made by the Lieutenant Governor in Council, but these representatives to the Sponsors Corporation will be replaced by appointees of named employer and employee groups within the first year.

## **Sponsors Corporation – Transition Year**

Based on the experiences of other public pension plans that have achieved autonomy (notably the Teachers Pension Plan, the Colleges of Applied Arts and Technology Plan and the British Columbia Municipal Pension Plan), the Sponsors Corporation's first 12 to 18 months will be a challenging one. The working relationship between the Sponsors themselves and the Sponsors and the Administrative Corporation is not fixed within the legislation and can be changed significantly. Among other things, the Sponsors Corporation will have to address the following:

- corporate by-laws and policies
- funding and fee collection mechanism for its activities
- staffing and business system requirements
- decision making protocols
- dispute resolution mechanisms (e.g., mediation, arbitration)
- composition, appointment protocols and remuneration of the Sponsorship Corporation Board
- composition, appointment protocols and remuneration of the Administrative Corporation Board
- establish a working relationship with the Administrative Corporation Board

Any of the above items could be cause for disputes between the various parties. To ensure that the process proceeds smoothly, it will be important for the Province to play a significant role as facilitator (including transition funding) and that the Sponsors initially appoint Board members with the skills and temperament to negotiate through the transition period.

OMERS has recently sent all stakeholders and the Province a suggested list of competencies for Board appointees. For the transition period of the Sponsors Corporation, OMERS staff are of the view that the following competencies are key for the Sponsors Corporation Board as a whole and that the individuals appointed to the Board would have at least one or two of these key competencies:

- Pension industry knowledge and expertise
- Legal expertise
- Negotiation expertise, especially in labour relations
- Governance expertise and experience, especially as they relate to start-up organizations

City staff have begun discussions to determine the appropriate process to follow in selecting a nominee. In addition, they will work closely with the other employer representatives of the Sponsors Corporation to ensure a well balanced Sponsors Corporation.

In addition, start-up funds are required for the Sponsors Corporation in order for it to retain independent professional advisors, such as legal counsel, to assist in fulfilling its mandate. Some employer representatives have requested that the province provide transitional funding. OMERS has indicated that they are still working to determine with more precision which Sponsors Corporation expenses can be lawfully paid by the pension fund. The OMERS Board has also

written to the Minister offering reasonable administrative support until the end of 2006. They will offer other support but only in-kind and nominal. They feel this is a common sense approach and complies with the law and is in the best interest of the Plan and members. This support will be reviewed at the end of 2006.

In that letter, they also encourage the Minister to make available start-up funding so that the Sponsors Corporation can retain professional advisors, such as legal counsel, to assist in fulfilling its mandate. OMERS has not been able to establish an estimated cost and it will be up to the Sponsors Corporation to determine how it will fund its operations.

In addition to the operation costs, the City may experience legal and consultant costs if they are to participate in any arbitration process that may be required under the supplementary decision making mechanisms. Depending on the issues and the functioning of the Sponsors Corporation, these costs may be minimal or could be substantial, however cannot be estimated at this time.

Following the transition year, if no alteration to the composition of the Sponsors Corporation is proposed, the default composition is as outlined below:

The groups that are able to make appointments to the **Sponsors Corporation** are as follows:

<b>Employers (7)</b>	<b>Plan Members (7)</b>
AMO (2)	CUPE (Ontario) (1)
City of Toronto (1)	CUPE Local 79 and 416 (1) – rotating appointment
School Boards (1)	PAO (1)
OAPSB (1)	OPFFA (1)
Other Employers (2)	OSSTF (1) Other Member Groups (1) Former Members (1)

AMO and CUPE (Ontario) are given multiple (i.e., weighted) votes. The two AMO members will each have two votes and the one CUPE (Ontario) member will have three votes. In other words, the employer and plan member groups will each have nine votes, for a total of 18.

The groups that are able to make appointments to the **Administration Corporation** are as follows:

<b>Employers (7)</b>	<b>Plan Members (7)</b>
AMO (2)	CUPE (Ontario) (2)
City of Toronto (1)	PAO (1)
School Boards (1)	AMCTO (1)
OAPSB (1)	OPFFA (1)
Other Employers (2)	Other Member Groups (1) Retirees (1)

There are no multiple (weighted) votes on the Administration Corporation and so, unlike the Sponsors Corporation, total votes remain at 14.

As can be seen from the charts above, the composition of the Sponsors Corporation and the Administration Corporation is not the same, and representation is not directly proportional to OMERS membership.

The **Advisory Committee for police, fire and paramedics** will have a total of eight members, and the guidelines for the Sponsors Corporation propose the following structure:

<b>Employers (4)</b>	<b>Plan Members (4)</b>
AMO (2)	OPFFA (1)
City of Toronto (1)	Toronto Police Association (1)
OAPSB (1)	PAO (1)
	CUPE/OPSEU (1) – re paramedics

The **Advisory Committee for all other members** will have a total of 12 persons, and the guidelines for the Sponsors Corporation propose the following structure:

<b>Employers (6)</b>	<b>Plan Members (6)</b>
AMO (3)	CUPE (Ontario) (3)
City of Toronto (1)	Other Member Groups (3)
Other Employers (2)	

### **Mediation/Arbitration**

A simple majority of the Sponsors Corporation members could refer a proposed plan change to mediation and to arbitration. While there are some limitations on the orders that can be made by an arbitrator, including a three year cumulative limit on the impact of awards, there is no limit to prevent the proliferation of supplemental benefits. On balance, an arbitrator's discretion is broad and awards could have very significant financial implications for sponsors.

### **Plan Design**

The Sponsors Corporation is empowered to make plan changes affecting benefits, contributions and funding reserves, but any such change requires approval from two-thirds of Sponsors Corporation members. Should that threshold not be achieved, a proposed change could be referred to mediation and arbitration with simple majority support of Sponsors Corporation members.

It is noted that the Bill at Second Reading allowed the Sponsors Corporation to consider plan design without restriction, but the requirement that all OMERS pension plans be defined benefit plans was reinserted at Third Reading.

## **Supplemental Plans**

Bill 206 restructures OMERS into a system comprised of a primary plan and possible additional supplemental plans. The current OMERS provisions continue as the primary plan. The supplemental plans will be standalone pension plans that are operated under the OMERS umbrella in conjunction with the primary plan.

The Sponsors Corporation is authorized to establish supplemental plans to provide for optional additional pension benefits, such as enhanced early retirement benefits, but Bill 206 specifically requires that a supplemental plan be established (within 24 months) to provide police, fire and paramedics with the opportunity to negotiate local access to the following benefits:

- 2.33% accrual rate;
- unreduced pension at 80 points (if age 50 or older) for NRA 60 members;
- unreduced pension at 85 points (if age 55 or older) for NRA 65 members;
- 3 or 4 best average years formula (compared to the best 5 years in the basic plan) and,
- buy-back option (to be paid by plan members) for service before the date that the 2.33% accrual rate benefit is made available locally.

The Bill limits the ability of providing these supplemental pension benefits to one every 36 months. The benefits will be negotiated locally and at different times by various employers. It is very important for employers to consult and be aware of negotiations taking part in other jurisdictions that will impact their own collective bargaining. The value of these new supplemental pension plans must be included when calculating the compensation provided to members of the bargaining unit.

The potential costs to the City related to each of these supplemental plans are included in the chart below.

**Potential Annual Cost of Supplemental Plans**

SUPPLEMENTAL PLAN		CITY OF TORONTO			TORONTO POLICE SERVICE		TOTAL	
		Fire	Paramedics	All Other Employees	Police	All Other Employees	WSF	WOSF
2.33% accrual rate	WSF	\$4,359,580	\$1,339,600	n/a	\$7,742,000	n/a	\$13,441,180	
	WOSF	\$4,359,580	\$1,339,600	n/a	\$7,742,000	n/a		\$13,441,180
unreduced pension at 80 points (if age 50 or older) for NRA 60 members	WSF	\$4,250,591	n/a	n/a	\$7,548,450	n/a	\$11,799,041	
	WOSF	\$1,144,390	n/a	n/a	\$2,032,275	n/a		\$3,176,665
unreduced pension at 85 points (if age 55 or older) for NRA 65 members	WSF	n/a	\$887,485	\$12,382,695	n/a	\$1,717,200	\$14,987,380	
	WOSF	n/a	\$267,920	\$3,738,172	n/a	\$518,400		\$4,524,492
3 or 4 best average years formula (compared to best five years in the basic plan)	WSF	\$4,741,043	\$837,250	\$11,681,788	\$8,419,425	\$1,620,000	\$27,299,506	
	WOSF	\$2,615,748	\$452,115	\$6,308,165	\$4,645,200	\$874,800		\$14,896,028

WSF – with solvency funding

WOSF – without solvency funding

These costs were included in the City’s submissions to the province and were determined as follows:

- the estimated annual 2005 payroll and pension contribution costs were used
- OMERS provided formulas to be used by stakeholders to estimate potential costs of supplemental plans. These formulas were provided as a rough order of magnitude reference and were generic and non-employer specific
- the “with solvency funding” costs are the estimated annual costs for the first five years. The annual costs for the next 10 years (years 6-15) are identical to those identified as “without solvency funding”
- the “without solvency funding” costs are the estimated annual costs for the first 15 years
- the continuous costings, after 15 years in both scenarios, were not costed

On December 8, 2005, Minister of Finance, Dwight Duncan, wrote to Frederick Biro, Chair of OMERS, regarding the creation of supplemental plans and the proposed exemption of these plans from the solvency requirements under the Pension Benefits Act (PBA).

In his letter, he would recommend to Cabinet that:

“...the new supplemental plans under OMERS be exempted from the solvency funding rules, through an amendment to the PBA Regulation at the time that the plans are created and registered with the Superintendent of Financial Services. This recommendation is, however, subject to three conditions.

First, if a solvency exemption is granted and if Bill 18 comes into law, the supplemental pension plans, subject to Cabinet’s approval of my recommendation, will be prescribed by regulation as jointly sponsored pension plans under the PBA as amended by Bill 18.

Second, subject to Cabinet’s approval of my recommendation, the supplemental pension plans will be exempted from coverage under the Pension Benefits Guarantee Fund (PBGF) by Regulation under the PBA. (These plans should not be covered by the Fund if the sponsors are not going to fund supplemental plan benefits on a solvency basis.) Section 47 of the Regulation already exempts OMERS from PBGF coverage.

Third, the plan documents that create and support the supplemental pension plans must provide that on wind up of the plans if there are insufficient assets to pay for accrued benefits, members would only receive benefits to the extent that they are already funded (i.e., the pension plans will reduce benefits if there are insufficient assets rather than require additional payments by employees and employers). Section 30 of the Regulation under the OMERS Act already has this provision for the primary plan.”

Although the Minister has indicated he will make these recommendations, there are no guarantees. Until such time as the PBA is changed to allow the supplementary plans to be exempted from solvency funding we must assume the higher cost of providing the supplementary pension benefits as outlined in the chart on page 10.

### **Government Undertaking**

The government successfully averted a threatened CUPE province-wide strike by undertaking to review OMERS governance in the years following Bill 206. The details of the undertaking are to be set out in a new bill, which if passed would take effect on or before June 30, 2006, providing as follows:

- 1.1 A commitment for the Minister of Municipal Affairs and Housing to undertake, beginning no later than 2012, a review of the governance model for the OMERS Pension Plan put in place through the devolution process (Bill 206).
- 1.2 The review would focus on the actual experience of the OMERS governance model in practice, and would include (but not be limited to) the following areas:
  - a) The effectiveness and fairness of the overall governance framework in representing the interests of employees and employers and ensuring efficient governance and accountability of the OMERS pension plan;

- b) The efficiency and effectiveness of Sponsors Corporation decision-making, including any use of alternative dispute resolution; and
  - c) The effectiveness of the governance framework in ensuring the overall fairness of the plan and its overall financial stability, including ensuring that cross-subsidization is not occurring between the primary pension plan and supplemental plans.
- 1.3 The review would explicitly not include the following:
- a) Reconsideration of the general principle of transfer of governance responsibility to OMERS Sponsors; and
  - b) Consideration of continuation of any supplemental plans put in place
- 1.4 The review will be conducted by an independent person mutually acceptable to the Minister and to the employer and employee representative groups, with collective bargaining and pension expertise. Failing mutual acceptability, to be appointed by Chief Justice.
- 1.5 A report and any associated recommendations will be provided to the Minister and made public within 30 days of the Minister receiving the report. The Minister will give serious consideration to the recommendations contained in the report.
- 1.6 There would also be provision that after the first full valuation and in any event no later than 2009, the Minister or his or her designate will consult with the employee and employer representative groups to assess progress in effectively implementing the legislation, including governance matters.

## **Nominations**

In a letter from Minister Gerretsen to Mayor Miller dated March 6, 2006, the Minister outlined the process the government plans for the establishment of the Sponsors and Administration Corporations. In the case of the Sponsors Corporation, the government has asked for the City's nominee to be provided to them no later than April 13, 2006. In the case of the Administration Corporation, the government plans to appoint the current members of the OMERS Board for the remainder of their current terms in order to provide for continuity during the transition period. Currently Cam Weldon, the Treasurer at the City of Toronto, is a member of the OMERS Board. His term expires May 31, 2008 at which time the City will be responsible for naming a replacement. The City will also need to appoint representatives on each of the two Advisory Committees.

The Mayor has responded to the Minister's letter advising that the City is unable to meet the April 13<sup>th</sup> deadline. Given the role of the Sponsors Corporation it is important to establish an appointment process that ensures an individual with certain competencies is nominated.

The Mayor has indicated that a January 1, 2007 implementation date is much more feasible and has requested transition funding and support from the province.

Conclusion:

The City was not successful in having all the changes we proposed addressed, however, representation on each of the Corporations and Advisory Committees is significant. Staff continue to work with other employer groups in order to develop a process for appointments that ensures appropriate and balanced representation.

It is essential that knowledgeable pension and labour experts are appointed to the Sponsors Corporation as well as each of the Advisory Committees. It is also essential that now that the access to costly supplementary pension benefits has been pushed down to the local level, that the City of Toronto have pension experts at the bargaining table. The Toronto firefighters begin collective bargaining this fall as their current contract expires December 31, 2006.

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