



**CITY OF HAMILTON**  
**CITY MANAGER'S OFFICE**  
**Human Resources Division**  
**and**  
**CORPORATE SERVICES DEPARTMENT**  
**Legal and Risk Management Services Division**  
**and**  
**CORPORATE SERVICES DEPARTMENT**  
**Financial Services and Taxation Division**

<b>TO:</b>	Mayor and Members General Issues Committee
<b>COMMITTEE DATE:</b>	June 19, 2019
<b>SUBJECT/REPORT NO:</b>	Bill 66, <i>Restoring Ontario's Competitiveness Act</i> , Schedule 9: Non-Construction Employer Update (HUR19015/LS19024/ /FCS19056) (City Wide)
<b>WARD(S) AFFECTED:</b>	City Wide
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<b>SUBMITTED BY:</b>	Lora Fontana Executive Director Human Resources
<b>SIGNATURE:</b>	
<b>SUBMITTED BY:</b>	Nicole Auty City Solicitor Legal and Risk Management Services
<b>SIGNATURE:</b>	
<b>SUBMITTED BY:</b>	Rick Male Director, Financial Services, Taxation and Corporate Controller Corporate Services Department
<b>SIGNATURE:</b>	

**Discussion of Confidential Appendix "A" a to this Report in closed session is subject to the following requirement(s) of the City of Hamilton's Procedural By-law and the *Ontario Municipal Act, 2001*:**

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

- Labour relations or employee negotiations
- The receiving of advice that is subject to solicitor-client privilege, including communications necessary for that purpose.

## **RECOMMENDATIONS**

- (a) That Report HUR19015/LS19024/FCS19056, respecting Bill 66, *Restoring Ontario's Competitiveness Act*, Schedule 9: Non-Construction Employer Update, regarding legislative changes to the *Labour Relations Act* arising from Bill 66;
- (b) That staff be directed to take no action with respect to Schedule 9 – Non-Construction Employer, of Bill 66 *Restoring Ontario's Competitiveness Act*; thereby, confirming the City of Hamilton as a non-construction employer effective the day subsections 127 (1) to (4) of the *Labour Relations Act*, 1995, come into force; and,
- (b) That Appendix A to Report HUR19015/LS19024/FCS19056, Bill 66, *Restoring Ontario's Competitiveness Act*, Schedule 9: Non-Construction Employer Update remain confidential.

## **EXECUTIVE SUMMARY**

Bill 66, *Restoring Ontario's Competitiveness Act*, Schedule 9, will deem the City of Hamilton (City) as a non-construction employer under the *Labour Relations Act*. This change in law applies to all Ontario municipalities, local housing corporations, school boards, hospitals, colleges, universities and public bodies within the meaning of the *Public Service of Ontario Act* – subject to a time-limited, irrevocable 'opt-out' election. The purpose of this report is to inform Council of the pending change in law and the availability of the opt-out election. Appendix A to Report HUR19015/LS19024/FCS19056 of this report is presented in-camera as it involves specific labour relations and legal advice that is subject to solicitor-client privilege.

The City must advise the Minister of Labour of its election to opt-out of the change in law by July 3, 2019, failing which the changes to the *Labour Relations Act* will deem the City to be a 'non-construction employer' and the Carpenters collective agreement will cease to apply to the City. The changes to the *Labour Relations Act* are anticipated to be proclaimed shortly after the opt-out election window closes.

The City of Hamilton was certified in September 2005 with the United Brotherhood of Carpenters and Joiners of America ("Carpenters, Local 18"). The Carpenters collective agreement obliges the City to have all carpentry work performed by signatory contractors. There will not be any staff impacts as the City does not directly employ carpenters.

Currently, the City's procurement practices require capital projects with an element of carpentry work to be awarded to signatory general contractors to the Carpenter's, Local 18. It is through the City's procurement process where hardship primarily exists – limiting much of the City's capital projects to a limited and exclusive group of general contractors and subcontractors.

The change in law will arguably broaden the pool of bidding contractors and subcontractors, expedite some procurement processes, and is anticipated to result in cost savings through increased competitive pricing.

The City's Fair Wage Policy and Schedule is applicable to all construction contracts over \$500,000 and will continue to apply. This Policy and Schedule set out the minimum labour rates payable by both general contractors and subcontractors, regardless of any union affiliation.

### **FINANCIAL – STAFFING – LEGAL IMPLICATIONS**

**Financial:** See Appendix A to Report HUR19015/LS19024/FCS19056 – staff recommends that Appendix A remain confidential as the information relates to legal advice and labour relations.

**Staffing:** The City does not directly employ any member of the Carpenter's Local 18. Due to our obligations with the Carpenters, Local 18 it was necessary for both Labour Relations and Procurement staff to periodically consult and meet with the Carpenters and the Hamilton Halton General Contractors Association ("HGCA"). For each construction contract, it was essential that Procurement staff perform its due diligence to verify that a bidder is signatory to the Carpenters, Local 18 prior to the awarding of a Contract.

**Legal:** See Appendix A to Report HUR19015/LS19024/FCS19056 – staff recommendations remain confidential as the information relates to legal advice and specific labour relations matters.

### **HISTORICAL BACKGROUND**

This report focuses on the *Labour Relations Act* amendments in Bill 66, *Restoring Ontario's Competitiveness Act*, 2018 Schedule 9.

**SUBJECT: Bill 66, Restoring Ontario's Competitiveness Act, Schedule 9: Non-Construction Employer Update (HUR19015/LS19024/FCS19056) (City Wide) - Page 4 of 5**

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Bill 66, is an Omnibus Bill introduced before the Ontario Legislative Assembly on December 6, 2018. Bill 66 received Royal Assent on April 3, 2019, however the provision that would deem the City of Hamilton as a non-construction employer does not become

law until a date to be proclaimed. Bill 66 also provides for a 90-day window wherein Council may elect to opt-out of the change in law.

Discussions with senior staff at the Ministry of Labour suggest a target date, barring any changes in plans or political shifts in priorities, for the proclamation date of the non-construction employer provisions will closely follow the close of the 90 day opt-out window, possibly in early July 2019.

The City of Hamilton has been signatory to the Carpenter's provincial collective agreement (Local 18) since 2005 when the City was certified and its status under the *Labour Relations Act* (the "LRA") changed to that of a 'construction employer' relative to the Carpenters.

Bill 66 will statutorily change the legal status of the City to that of a "non-construction employer" and the City's obligations under the provincial collective agreement with the Carpenters, Local 18 will cease to apply.

Unless the City elects to opt-out of the change in law, the City will no longer be obliged to the Carpenters collective agreement.

The change in status to non-construction employer would permit the City to solicit procurement interests from both signatory and non-signatory contractors, while ensuring a minimum floor for labour rates through the City's existing Fair Wage Policy.

## **POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS**

There may be an added emphasis on the existing Fair Wage Policy. The City's procurement practices require Fair Wage Policy compliance that effectively sets the floor for labour rates for bidding contractors and subcontractors. All construction contracts over \$500,000 are applicable to the Fair Wage Policy and Fair Wage Schedule approved by Council.

## **RELEVANT CONSULTATION**

This report is a joint report between Human Resources, Legal Services, Procurement.

Staff from both Human Resources and Procurement have consulted with other municipalities who are in a similar situation with their obligations to the Carpenters union, to determine their approach to Bill 66 and the recommendations they intend to present to their respective Council.

### **ANALYSIS AND RATIONALE FOR RECOMMENDATION**

See Appendix A to Report HUR19015/LS19024/FCS19056 – staff recommends that Appendix A remains confidential as the information relates to legal advice and labour relations.

### **ALTERNATIVES FOR CONSIDERATION**

See Appendix A to Report HUR19015/LS19024/FCS19056 – staff recommends that Appendix A remains confidential as the information relates to legal advice and labour relations.

### **ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN**

#### **Economic Prosperity and Growth**

Hamilton has a prosperous and diverse local economy where people have opportunities to grow and develop.

#### **Built Environment and Infrastructure**

Hamilton is supported by state of the art infrastructure, transportation options, buildings and public spaces that create a dynamic City.

### **APPENDICES AND SCHEDULES ATTACHED**

Appendix A to Report HUR19015/LS19024/FCS19056 – staff recommends that Appendix A remains confidential as the information relates to legal advice and labour relations.