

FTR Now

Amended Ontario Budget Bill Passes

Date: June 20, 2012

INTRODUCTION

Earlier today, the Ontario Legislature passed the government's Budget bill – Bill 55, the *Strong Action for Ontario Act (Budget Measures), 2012*. In this *FTR Now*, we will consider the status of the government's Budget measures generally, and review the key changes adopted by the Standing Committee on Finance and Economic Affairs (the "Committee") prior to the passage of Bill 55.

At the time of writing, the Legislature had not yet published a revised version of Bill 55. Therefore, the information in this *FTR Now* has been taken from the original version of the Bill and the amendments that were filed with, and adopted by, the Committee.

BACKGROUND

In our March 29, 2012 *FTR Now*, ONTARIO BUDGET 2012, we provided a detailed description of the government's proposed Budget and how aspects of it were to be implemented through Bill 55. If you would like a more detailed review of the overall Budget proposals, please consult our prior [FTR Now](#).

Some of the key aspects of the original Budget Bill, and their status after the Committee hearings and subsequent passage of the Bill, are as follows:

- A commitment by the government to negotiate a two-year wage freeze for teachers, affecting salary, sick days and short term disability amongst other matters. If an agreement is not reached, the government has suggested that it may pass legislation to implement the freeze. The government also suggested that it will seek similar freezes in other sectors of the Broader Public Sector ("BPS"). None of these bargaining-related wage freeze measures were incorporated into Bill 55. We understand that the government is continuing to pursue these goals.
- The implementation of new restraint measures on executive compensation to replace the wage restraint measures that expired on March 31, 2012. The executive compensation restraint measures were included in Bill 55, and underwent significant amendments at the Committee. Those amendments are discussed below.
- The government also proposed changes to the interest arbitration procedures that apply to various sectors of the BPS. The proposed changes were included in Bill 55, but were

rejected by the Committee. This issue is also addressed below.

- The 2012 Budget also contained a wide variety of proposals related to pensions, benefits and tax issues. Many of the proposals relate to measures that would be designed to improve the sustainability and efficiency of public sector and BPS pension plans without adding further cost to the taxpayers. Other proposals related to solvency funding relief and additional funding flexibility for private sector pensions. Details of all of these proposals can be found in our March 29 *FTR Now*.

It is important to stress that most of these proposals were not included in Bill 55. To the extent that pension or tax-related measures were included in Bill 55, they were passed as originally proposed.

KEY AMENDMENTS TO BILL 55

At the Committee stage, prior to the passage of Bill 55, two key sets of changes were introduced related to interest arbitration and non-union compensation restraint. We will consider these two key measures in this section of the *FTR Now*.

INTEREST ARBITRATION

Bill 55 contained a number of provisions to address perceived shortcomings in the interest arbitration model that applies in a number of BPS sectors. Bill 55 proposed amendments to a variety of statutes that incorporate interest arbitration, consistent with the following principles:

- require written submissions from the parties to the arbitration;
- require written rationales from the arbitrator at either party's request;
- create a 12-month time limit on the issuance of an arbitration award (subject to limited extension in exceptional circumstances); and
- permit the Ontario Labour Relations Board to issue an award if the arbitration award is not rendered in a timely fashion.

The affected statutes were the *Ambulance Services Collective Bargaining Act, 2001*, the *Fire Protection and Prevention Act, 1997*, the *Hospital Labour Disputes Arbitration Act*, the *Police Services Act*, the *Toronto Transit Commission Labour Disputes Resolution Act, 2011*, and the *Ontario Provincial Police Collective Bargaining Act, 2006*.

At the Committee hearings, the Liberal government proposed a number of amendments to these provisions, including, for example, an extension of the 12-month time limit to 16 months.

However, the NDP and PC members of the Committee voted to reject the interest arbitration provisions in their entirety. **Therefore, the final version of Bill 55 contains no amendments to the interest arbitration provisions of any of the statutes listed above.** Thus, the status quo remains in effect for the present.

COMPENSATION RESTRAINTS

The second key measure of Bill 55 relates to the establishment of a new wage freeze for executives of certain BPS organizations, which will be accomplished through amendments to the *Broader Public Sector Accountability Act, 2010*. Highlights of the new wage freeze include the following.

First, and subject to a significant amendment discussed below, the wage freeze would apply to “executives” at the following BPS organizations: public hospitals; school boards; universities, colleges and certain other post-secondary institutions; Hydro One; the Independent Electricity System Operator; Ontario Power Authority; and Ontario Power Generation. Other BPS organizations could be added by regulation.

“Executive” is defined as any of the following individuals who make at least \$100,000 in compensation on an annualized basis: the head of the organization (whatever his or her title); a full-time member of the board; a vice president, chief administrative officer, chief operating officer, chief financial officer, chief information officer or other similar executive; a director of education or superintendent of a school board; or the provost or dean of a university or college.

The wage freeze incorporates a **complete** freeze to base salary at the level in effect on March 31, 2012 (or other applicable effective date). Moreover, the exceptions to this wage freeze are narrower than the previous wage freeze pursuant to the *Public Sector Compensation Restraint to Protect Public Services Act*. For example, there is no provision for increases in compensation through a pay range based on an assessment of performance. There is to be a general freeze on bonuses, benefits and perquisites, subject to very limited exceptions.

Two significant changes were made by the Standing Committee to the new wage freeze provisions.

The first significant change is the result of a PC motion supported by the NDP. This motion extends the 2-year wage freeze period originally set out in Bill 55. Instead, the new wage freeze will now apply indefinitely until the Province of Ontario ceases to have a budget deficit. At present, the most optimistic projection for the elimination of the deficit is 2017.

The second significant change was previously announced by the government. The Liberals introduced a new wage freeze component that will apply to “performance pay.” More specifically, affected BPS employers must ensure that the “performance pay envelope” for any “performance cycle” that falls in whole or in part during the wage restraint period does not exceed the total performance pay envelope for the last performance cycle that ended before the effective date of the freeze.

For example, if an employer had paid out a total of \$1 million in performance pay in its most recent performance pay cycle, it would be limited to a total of \$1 million for performance pay in its next

cycle.

Importantly, the new restraints on performance pay apply to **all non-bargaining employees**, and not just designated executives caught by the wage freeze.

We finally note that the new compensation restraint provisions come into force retroactively, and will be deemed to have been in force since March 31, 2012.

CONCLUDING COMMENTS

As can be appreciated from the preceding discussion, much of the government's 2012 Budget remains on track at least in the sense that the government is continuing its quest to negotiate wage freezes in the unionized portion of the BPS, and is continuing to pursue its pension reform agenda. While these matters were not affected by Bill 55, other significant matters were, and employers in the BPS sector will now have to contend with an expanded wage freeze that may apply indefinitely.

If you would like to discuss how Bill 55 affects your organization, please contact your regular [Hicks Morley lawyer](#).

The articles in this Client Update provide general information and should not be relied on as legal advice or opinion. This publication is copyrighted by Hicks Morley Hamilton Stewart Storie LLP and may not be photocopied or reproduced in any form, in whole or in part, without the express permission of Hicks Morley Hamilton Stewart Storie LLP. ©