



Hemson Consulting Ltd.

1000 – 30 St. Patrick Street, Toronto, ON M5T 3A3
416-593-5090 | hemson@hemson.com | www.hemson.com

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Dear Clients,

Re: Municipal Finance Changes Arising from Bill 185

This letter summarizes proposed changes to municipal finance matters, including development charges (DCs), brought about by Bill 185 (the *Cutting Red Tape to Build More Homes Act, 2024*) which was released for first reading on **April 10, 2024**.

The observations we make in this letter are informed by extensive consultation with our municipal clients as well as with the Municipal Finance Officers' Association (MFOA) and the Association of Municipalities of Ontario (AMO). However, the views expressed below are our own.

In our view, Bill 185 is very positive for municipalities as well as developers. In respect of DCs, it would repeal the exclusion of growth-related studies' costs and mandatory 5-year phase-in of charges. If passed, this will significantly increase DC revenues and support municipal efforts to deliver growth-related infrastructure. The bill also reduces the time limit of "frozen" DCs, modernizes DC notice requirements, and implements affordable housing DC exemptions. Similar exemptions for "attainable" housing are not addressed by the bill.

Among the other legislative changes proposed by Bill 185 that have potentially important consequences for municipal finances are those that repeal planning fee refunds under the *Planning Act* and modify the prohibition on "bonusing" under the *Municipal Act*.

Submissions on the bill can be made up until **May 10, 2024** through the Environmental Registry Office (ERO 019-8371) here:

<https://www.ontariocanada.com/registry/view.do?postingId=46834&language=en>

A. DC CHANGES ARE POSITIVE FOR MUNICIPALITIES & DEVELOPERS

Bill 185 would amend the DC Act and DC Background Study process to:

1. Re-introduce growth-related studies as a DC-eligible capital cost.
2. Remove the requirement to phase-in maximum calculated DCs over five years.
3. Allow municipalities to make minor amendments to DC By-laws in certain circumstances.
4. Reduce the timeframe for which DC rates are “frozen”.
5. Update notice requirements where local newspapers are unavailable.
6. Implement affordable housing exemptions by June 1, 2024.

Our views on each of these amendments are set out below.

1. Reintroducing Growth-Related Studies

Growth-related studies typically cover land use plans, policies, and regulations as well as master servicing plans that establish growth-related infrastructure needs. The studies form the basis of long-term capital programs and, by extension, reflect the intentions of municipal councils in managing long-term growth. Typically, major capital works are not approved for construction unless appropriate studies have been completed. As such, the need for studies is largely driven by development and studies had been included as a cost eligible for DC funding as far back as the original DC Act of 1989.

Bill 185 appropriately restores the cost of growth-related studies, including formal DC background studies, as a DC-eligible cost. We note that DC Background Studies completed by Hemson since December 2023 have generally included DC calculations for growth-related studies in anticipation of this change. If the legislation passes:

- studies could be included in DC calculations either as projects within individual services or as a stand-alone service under subsection 7(3) of the DC Act; and
- DCs for studies could be included in DC By-laws passed after November 22, 2022 and before Bill 185 takes effect without the need for a background study or public meeting under the DC Act. Amending a DC By-law in this way would have to be undertaken within six months of Bill 185 taking effect.

On a less positive note, the list of DC-eligible services continues to exclude municipal parking, housing services, cemeteries, and airports (outside the Region of Waterloo). In this regard, we note that DCs for parking were historically an important funding source for many local municipalities.

Moreover, the ineligibility of housing services continues to hamper efforts by municipalities and non-profit organizations to provide housing since housing services DCs can be used to pay for a portion of municipally constructed affordable units and to provide financial support for third parties to deliver those units. The objection to using DCs to fund social housing and affordable housing overlooks the substantial “benefit to existing” shares of municipal capital expenditures that are paid for by property tax payers.

2. Removal of Mandatory Phase-in of Maximum DC Rates

Under the current DC Act, the maximum DCs calculated under a formal Background Study, if imposed under a new DC by-law, must be phased in over 5 years as follows:

5-Year Phase-in Requirement
Year 1 = 80%
Year 2 = 85%
Year 3 = 90%
Year 4 = 95%
Years 5 to 10 = 100%

Since its introduction through Bill 23 in November 2022, Hemson has expressed numerous concerns about the mandatory phase-in on the grounds of its unfairness, retroactivity, application to non-residential development, and fiscal impact. Other problems related to specific municipalities have also become apparent since the phase-in was enacted:

- DC rates have declined in municipalities where rate increases were less than 20%. In some cases, this has led to infrastructure delays.
- For municipalities with area-specific DC By-laws, or credit for service agreements, the phase-in has reduced the DC revenue needed to pay back developer front-ended costs. This has been especially problematic where agreements covered critical hard services in targeted growth areas.
- When combined with the freezing of DC rates, the phase-in has made calculations of the final DCs payable more complex for municipalities and less certain for developers.

In this last respect, we note that currently frozen DCs will continue to be subject to the phased-in rates, which will be a significant financial loss for some municipalities.

Given the above, the cancellation of the mandatory phase-in should be welcomed by developers and municipalities alike. Municipalities may still wish to phase-in or otherwise delay the implementation of DC rate increases to respond to local conditions, as many have done in the past.

3. Streamlined Process for Some DC By-law Amendments

Amending a DC By-law can be challenging as the DC Act requires that a DC Background Study and public meeting be a prerequisite to any amendment, no matter how minor. Under Bill 185, an amendment can be passed without these requirements if it:

1. Removes mandatory phase-in schedules from a DC By-law;
2. Adds a DC rate for growth-related studies into a DC By-law; and/or
3. Extends the life of a DC By-law from 5 years up to 10 years provided no other changes to the by-law are made, including changes to the DC rates.

Amendments 1 and 2 are only permitted for DC by-laws passed on or after November 28, 2022 and before the day the enabling section of Bill 185 comes into force. Additionally, the amending provisions will be revoked seven months after they come into force. This means that municipalities have six months to pass amending by-laws. A notice of passage of the amending by-law is still required, with necessary modifications.

Change 3 above is not limited by the six-month rule. However, any by-law amended to extend its expiry date remains subject to subsection 9(1) of the DC Act limiting the life of a by-law to 10 years.

4. Reduced Frozen DC Rate Period

Under the current subsection 26.2 (5) of the DC Act, DC rates are frozen at the time of application for site plan approval or rezoning provided building permits are not issued within 2 years of application approval. Bill 185 proposes to reduce the 2-year time limit to 18 months to support the Bill's "use it or lose it" policies by incenting developers to move quickly on their projects.

In our view, this change will have little impact on either the speed of housing construction or municipal DC revenues. However, municipalities should note that frozen DC rates that apply to existing applications (pre-enactment of Bill 185) will be those that were in effect at the time of the freeze, including rates that were phased-in under Bill 23. Municipal DC tracking systems will therefore need to be quickly modified to address this complication.

5. Updated Notice Requirements

Providing “notice” of a statutory public meeting and passage of a DC by-law is an important part of the DC Background Study process. It allows people to be meaningfully involved in deliberations on DC rates and policies and informs them of their right to be involved, including, if necessary, their right to appeal a DC by-law. However, the requirement to publish notice either in a newspaper of sufficient circulation or by personal service, fax or mail to every landowner has been problematic as local newspapers are no longer available in many parts of the Province. Personal service and mail are extremely costly options for municipalities and most homeowners no longer own a fax machine.

The courts, as well as AMO, have promoted modernizing notice requirements for some time. The new Bill 185 provisions would allow municipalities without local newspapers to use digital options to provide notice which, in our view, would not undermine the main purpose to inform the public on DC matters.

6. Gearing Up to Implement Affordable Housing Exemption

The Province has been conducting extensive consultation on affordable and attainable housing DC exemptions. Under Bill 185, the affordable housing exemption would come into effect on June 1, 2024, with affordability being defined by the DC Act and Provincial “Affordable Residential Units” bulletins to be published on Ontario.ca. Affordable housing exemptions apply to both ownership and rental units and will be defined based on average market rents, average home purchase prices, and income thresholds.

It is noted that Bill 185 makes no mention of:

- standard forms of agreement to be used for the purposes of administering the affordable housing exemption, as provided for by the DC Act; or
- the DC Act’s attainable housing exemption, notwithstanding consultation on this matter that has occurred in recent months.

B. OTHER MUNICIPAL FINANCE MATTERS

Bill 185 also proposed changes to the *Planning Act* and *Municipal Act* that have other potentially important consequences for municipal finances:

- **Planning Fees** – Among the changes to the *Planning Act* that affect municipal planning application review activities is the repeal of planning fee refunds that municipalities are required to provide if statutory application review timeframes are not met. This potentially significant fiscal liability has led to major changes to municipal review processes and a rising number of disputes over “complete” applications and pre-consultation requirements. In this regard, we agree with the Province’s own assessment that the fee refunds, rather than speeding up the review process, have in fact slowed housing approvals. It is noted that Bill 185 would also:
 - maintain eligibility for a fee refund for planning applications submitted between July 1, 2023, and the date of Bill 185 enactment;
 - exempt publicly-assisted universities from planning fees. This would mirror DC exemptions for universities, provided the development is related to their core functions, introduced to the *Ministry of Training, Colleges and Universities Act* in 2020 and intended to stimulate on-campus student accommodation;
 - maintain accelerated timeframes for processing applications; and
 - make pre-consultation voluntary at the discretion of the applicant.
- **Bonusing** – The proposed new s.106.1 of the *Municipal Act* would permit the Province to make regulations authorizing a municipality to grant direct or indirect assistance to specified manufacturing businesses or other industrial or commercial enterprises, subject to conditions. The proposal would seem to short-circuit the longstanding prohibition on municipal “bonusing” which has generally insulated local councils from pressures to subsidize individual businesses. The purpose of the change appears to be closer co-ordination of local economic development with municipalities. It may well have been inspired by the Province’s recent experience in attracting large electric vehicle operations to Ontario — notably Stellantis and Volkswagen’s EV battery plants in Windsor and St. Thomas and, most recently, Honda’s EV assembly and battery plants in Alliston (New Tecumseth). We foresee senior municipal finance officials playing a larger role in economic development decisions as a result of this change.

C. HEMSON WILL CONTINUE TO MONITOR THE CHANGES AND PROVIDE UPDATES

Hemson will continue to support changes to the DC Act that enable a fair and appropriate process for recovering development-related capital costs. We will continue consulting with the Municipal Finance Officers' Association and the Association of Municipalities of Ontario, and will closely monitor the financial impact of the Bill 185 changes generally and for specific clients.

Municipalities should be aware that while we expect Bill 185 to proceed swiftly through the legislative review process, it remains "draft" legislation and subject to change. A public hearing to discuss the bill has been scheduled for May 15, 2024.

In the meantime, should you have any questions about how the legislation affects your work please do not hesitate to contact us.

Yours truly,

HEMSON Consulting Ltd.



Craig Binning
Partner



Stefan Krzeczunowicz
Associate Partner