

Third Session - Thirty-Eighth Legislature
of the
Legislative Assembly of Manitoba
Standing Committee
on
Intergovernmental Affairs

Chairperson
Ms. Marilyn Brick
Constituency of St. Norbert

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MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Eighth Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON INTERGOVERNMENTAL AFFAIRS

Thursday, December 2, 2004

TIME – 10 a.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Ms. Marilyn Brick (St. Norbert)

VICE-CHAIRPERSON – Mr. Harry Schellenberg (Rossmere)

ATTENDANCE – 11 QUORUM – 6

Members of the Committee present:

Hon. Mr. Smith

Mr. Aglugub, Ms. Brick, Mr. Caldwell, Mrs. Driedger, Ms. Korzeniowski, Messrs. Reimer, Schellenberg, Schuler, Mrs. Stefanson, Mr. Swan

WITNESSES:

Mr. David Sanders, Deloitte & Touche LLP

MATTERS UNDER CONSIDERATION:

Bill 4–The City of Winnipeg Charter Amendment Act (Differential Business Tax Rates)

Madam Clerk Assistant (Ms. Tonia Grannum): Good morning. Will the Standing Committee on Intergovernmental Affairs come to order.

The first item of business is the election of the Chairperson. Are there any nominations?

Mr. Andrew Swan (Minto): I nominate Marilyn Brick.

Madam Clerk Assistant (Ms. Grannum): Are there any further nominations?

There being no further nominations, I declare Ms. Brick nominated as Chairperson.

Madam Chairperson: The next item of business is the election of a Vice-Chairperson. Are there any nominations?

Mr. Drew Caldwell (Brandon East): I would like to nominate the Member for Rossmere (Mr. Schellenberg).

Madam Chairperson: The Member for Rossmere has been nominated. Are there any other nominations?

Seeing no other nominations, the Member for Rossmere is appointed the Vice-Chairperson.

**Bill 4–The City of Winnipeg
Charter Amendment Act
(Differential Business Tax Rates)**

Madam Chairperson: This morning the committee will be considering Bill 4, The City of Winnipeg Charter Amendment Act (Differential Business Tax Rates). We do have a presenter registered to speak on this bill. It is the custom to hear public presentations before consideration of bills.

Is it the will of the committee to hear public presentations on this bill?

An Honourable Member: Yes.

Madam Chairperson: Yes. I will then read the name of the person who has registered to make presentation this morning. David Sanders from Deloitte & Touche is the presenter who is listed.

The person and organization that I have registered so far is David Sanders from Deloitte & Touche. If there is anybody else in the audience that would like to register, or has not yet registered and would like to make a presentation, would you please register at the back of the room.

Just as a reminder, 20 copies of your presentation are required. If you require assistance with photocopying, please see the Clerk of this committee.

I would like to inform presenters that, in accordance with our rules, a time limit of 10 minutes has been allotted for presentations, and 5 minutes for questions from committee members. As well, in accordance with our rules, if a presenter is not in attendance, their name will be dropped to the bottom of the list. If the presenter is not in attendance when their name is called a second time, their name will be removed from the presenters' list.

At this time, I would like to call the presenter forward, David Sanders from Deloitte & Touche. Did you want to have somebody distribute your—

Mr. David Sanders (Deloitte & Touche LLP): I believe that the members already have it.

Madam Chairperson: Okay. Thank you. Please proceed whenever you are ready.

Mr. Sanders: Madam Chairperson, Mr. Minister, members of the committee, some members of the committee will be aware of the fact that I have been engaged in representing property and business taxpayers in the appeal of their assessments during the past 10 years, previously as Director of Real Estate Advisory Services for Colliers, Pratt McGarry, and now as a senior manager of Property Tax Services for Deloitte & Touche LLP.

I suspect that few of the present members of the committee will be aware of the fact that I did serve the Province as Deputy Minister of Urban Affairs, now more than a quarter century ago. In any event, I am very familiar with both the law and the practice of business assessment and taxation in Manitoba. I am appearing this morning to provide you with my understanding of the effects of Bill 4 as presented in the hope that you will reconsider and then amend this legislation appropriately.

First of all, why is Bill 4 being introduced now? The campaign platform of His Worship Mayor Sam Katz, included the following proposed action plans. I provided a copy of this document. He proposed to phase in a complete elimination of the business tax and, more importantly, to phase out the business tax—this is in the city of Winnipeg—beginning in the downtown and core area.

His proposition was that business in the area would see their business tax reduced from its current rate of 9.75 percent of their business assessment to

7.75 percent, which is a reduction of approximately one third for those in that category. That would be effective in 2005, coming up effective January 1 next month.

According to the mayor's platform, all other business in the city would see their business tax also reduced to 7.75 percent, two years later in 2007, and thereafter, there would be a one half percent reduction for all businesses equally each year thereafter. I have checked, and I have been advised, that there has been no public debate or resolution by City Council or any of its standing committees on this matter so far. Therefore, we could only assume that Bill 4 has been introduced to enable City Council to implement the mayor's proposed differential business tax rate for business in the downtown and core area during the next two years, 2005 and 2006.

Apart from that, there has been no public proposal to divide business premises into different classes nor to tax such classes at different rates. The mayor's plan does state that the differential rate for downtown and the core area would apply only in 2005 and 2006, just those two years, and that thereafter all businesses in the city would be taxed at the same but steadily reducing rate. The total business assessment in the city of Winnipeg, which is known in the legislation as the annual rental value, or ARV, is about \$600 million, and it produces approximately \$62 million in business taxes and business improvement zone, or BIZ, levies annually.

Depending on one's definition, the core area of Winnipeg is very much larger than downtown. However, if the expected annual cost of the mayor's plan is only \$2 million, which was quoted in the newspaper last week—a copy of the newspaper story is attached—then it appears that the reduction may be directed only to businesses located in the immediate downtown area. The total business assessment located within the boundaries of the downtown BIZ and the Exchange District BIZ is about 100 million, and reduction of 2 percent in the tax rate for those businesses would cost 2 million for those two areas alone.

* (10:10)

At present, section 334(1)(b) of The City of Winnipeg Charter Act allows City Council to impose only a single rate of business tax for the year, which must not be more than 15 percent of the business

assessment of any premises. Council can certainly choose what that rate is, but it is a single rate. This is consistent with the rest of that section 334 which requires the City to apply a single tax rate for both real property tax and personal property tax as well. It is also consistent with similar provisions in section 306 of the The Municipal Act and sections 28 to 30 and 34 of The Municipal Assessment Act, which govern the imposition of business taxes in other Manitoba municipalities.

It should be noted that nothing in the present law prevents the City Council from reducing or eliminating the business tax now, provided that the council reduces or eliminates the business tax at the same rate and at the same time for all businesses, subject to tax. Operating under present legislation, only a few other municipalities in Manitoba have chosen to continue to levy business taxes. Most simply declined to pass by-laws authorizing the taxation of business assessment. So if the Legislature does wish to accommodate the mayor's plan to tax the downtown and core area businesses at a different or lower rate than for other business in the city for those two taxation years 2005 and 2006 then some legislative change is required.

But what does Bill 4 actually do? Rather than authorize the quite specific and only temporary differential business tax rate proposed by the mayor, Bill 4 would actually give permanent and ongoing authority to a majority of City Council to set any number of different rates ranging from zero to 15 percent for any number of classes of business, and I quote, "differentiated in any way and on any basis that Council considers appropriate."

This takes me back, because a long time ago, The City of Winnipeg Act did set out different rates of business tax for specific types of business, and, just for an example, for many years banks were required to pay a higher rate of business tax than tailors, for example. These differential rates were all done away with when the present wording of the legislation was approved, and this was quite some time ago now. I wonder whether the Legislature really wants to authorize the return to such a patchwork quilt of possibly highly discriminatory, arbitrary and unpredictable taxation of different types of business located in different parts of the city and subject to change every year.

The wording of the proposed new section 334.1(1) would actually authorize discrimination

among business premises, and I quote, "on any basis the Council considers appropriate," which is a rather broad discretion indeed. I wondered whether the Legislature would be willing to grant City Council a similar power to apply differential realty tax rates. The reason for unifying the city sometime ago was to produce a single rate of taxation throughout the city which we do have, for realty taxes certainly.

With respect, I would suggest that the proposed new section 334.1 in the Bill 4 should be revised to limit the nature and term of the differential rate for business taxes, if any, to no more than what the mayor and council may intend at this time and certainly not to open it up as broadly as the present bill allows.

A second and different point relates to the matter of corrections and appeals. I would ask the committee to note carefully the proposed new sections 334.1(3) to (5) make special provision for correcting and appealing the application of a particular tax rate set and imposed under the proposed new law, or really to appeal the class of premises in which a business has found itself to be taxed under the proposed law.

I would suggest that there are two problems with that wording. First of all, the proposed section 334.1(3) does not mirror the present provisions of section 340 to 343 of The City of Winnipeg Charter Act, which it clearly should do to be fair. Using different provisions for this case will open the door to, I suspect, much mischief and unnecessary court proceedings which could easily be avoided by placing the issue of the class of business premises and the applicable business tax rate squarely within the existing provisions for changing tax bills and permitting taxpayer appeals of those changes.

Just for example, this proposed section 334.1(3)(a)(b) does not require the tax collector to advise the taxpayer of his or her right to appeal the corrected tax roll. That is the case for other changes. Section 334.1(4) does not limit the retroactivity of the correction to January 1 of the previous year, which is the case for all other changes throughout the province. Nor does it require even the tax collector to amend the tax roll to conform with the final decision in any appeal, although I trust the latter would happen.

I would suggest that the proper way to deal with these matters if you are to proceed with it would be

to include the class of business premises within the list of matters which are already dealt with in the existing sections 325 to 343 of The City of Winnipeg Charter Act, which is a full procedure for dealing with these matters. The result would be to provide for the processing and appeal of any changes in class of business premises in the same manner as all other aspects of realty and business assessment and taxation, for which we have a significant system in place.

Further to the above, the second problem relates to the proposed section 334.1(5) which appears to take the new issue of the class of business premises and any correction, and provide for an appeal process which is entirely outside the present process administered by the Board of Revision, the Municipal Board and the courts. The proposed section assigns these matters to the procedure of section 189, appeals, which is to "a hearing body designated by council." Now, if you refer to section 189 of the City of Winnipeg Charter, you will find that it deals with appeals of various types of orders or decisions which may be issued by designated employees of the City, primarily in the field of housing—

Madam Chairperson: Mr. Sanders, you have 30 seconds remaining.

Mr. Sanders: Then, I would suggest, of course, if the final paragraphs could be added in, I will go very quickly through them.

None of the matters that go through section 189, hearing bodies, include business assessment of taxation matters and, more importantly, there is no appeal allowed further from that decision-making body, no appeal to the Municipal Board or to the courts. I would respectfully suggest that it would be far more efficient and fair to add the class of business premises to the matter as dealt with within the present procedures of the Board of Revision, the municipal boards and the courts, rather than set up a second, different and limited appeal process to an entirely different body.

If you have any questions, I would be happy to answer them about the bill in particular, or business assessment generally. I would like to thank the committee for coming this morning and for listening to me.

Madam Chairperson: Thank you.

Mr. Jack Reimer (Southdale): I want to thank you, Mr. Sanders, for your presentation.

Would you give us your opinion as to whether the business-tax reduction that is being proposed by the mayor should be a broader appeal right across Winnipeg, instead of just in a particular area of the downtown core as indicated with the discussions?

Mr. Sanders: As you will note in my presentation, I did not comment on that matter, which is a matter of political judgment, I suppose, and I am not commenting on that. The committee may or may not be aware that the Canadian Federation of Independent Business has expressed the view that if there is to be a change, there should be a change equally to all businesses, and not just a certain category. That is the position of the CFIB, which the committee may be aware of.

I have pointed out the principle, which is in the charter and has been, certainly, since 1972, that the single tax rates would be applied throughout the city of Winnipeg, and this would be a divergence from that. Since the mayor's plan is the only matter on the table, and it would appear that no one is appearing here on behalf of the City to explain it, all I can assume is that is what is intended. Then we are talking about a very temporary change.

I really would caution against this amendment, which allows for much mischief, which would have a significant negative impact, I would submit, on business. I would underline the question of predictability. With this amendment Council, every year, who must set rates, could conceivably change business-tax rates for particular categories of business on an annual basis. Certainty is very important. Thank you.

Mr. Reimer: Do you not see merit in letting the City have the ability to make its decision as to how and when it should adjust the business tax or taxes without having to come to the Province for this?

Mr. Sanders: The City already has the ability to change the rate any time, to increase it or to reduce it. The only question is whether or not the City should be authorized to have a different rate for different classes of businesses. The Legislature previously changed that to require a single rate as they do for realty taxation and personal property, and while I do not have the benefit of any further

explanation from the mayor, I presume the reason for making a change for only part of the city for only two years is a question of the dollars involved, apparently, \$2 million for the intended difference per year, as opposed to \$12 million a year to do a 2% reduction for the whole city.

* (10:20)

Frankly, I would caution against authorizing the City to do much more than that, which is what the present wording does. The way I worded my brief was to suggest that if the Legislature wished to authorize the City to do precisely what the mayor has proposed, then perhaps that is what should be done, which would be a specific purpose and for two years.

Hon. Scott Smith (Minister of Intergovernmental Affairs and Trade): Just a quick comment. Thank you very much, Mr. Sanders.

In particular to some of the detail that you laid out in 334.1(5), certainly we have taken some consideration and will be amending part of that process. We appreciate your views on it.

Madam Chairperson: Thank you very much, Mr. Sanders.

Mr. Sanders: Thanks, too, to the minister for his remarks.

Madam Chairperson: Before we go clause by clause, are there any other presenters in the audience who wish to make a presentation?

That concludes the list of presenters that I have before me this morning. At this point, we will be going clause by clause through the bill.

Does the minister responsible for Bill 4 have an opening statement?

Mr. Smith: I just have a short statement. I think Bill 4 proposes amendments to the City of Winnipeg Charter, and the charter provides legal framework to the City of Winnipeg to manage its own affairs, something that we all feel is very important.

Requested by the City of Winnipeg, it will provide the authority to apply differential tax rates as they see fit. It builds on the successful partnership between the Province and the City that has resulted

in a great progress in downtown Winnipeg. We have all seen this in examples with Red River College, Millennium Library, MTS Centre, Waterfront Drive. Its progress is also demonstrated through numerous private-sector developments that we are seeing over and over and over.

It builds on the great strides we have made in the city's legislative framework. In 2002, after extensive consultations with the City of Winnipeg, we enacted the new City of Winnipeg Charter, which replaces the outdated City of Winnipeg Act. It reduced the former act by half and gave the City new powers and authorities. The former act required numerous provincial approvals which limited the City's flexibility to meet their objectives. For example, in the nineties the City of Winnipeg was provided the authority to provide tax credits on heritage buildings only. In 2002, the act provided them broader authority for any kind of tax credit so that they could be an active player in economic development. That legislation also made Manitoba the first jurisdiction in Canada to provide a municipality with tax increment financing. This legislation will provide further authority and flexibility for the City of Winnipeg to determine how best to participate in economic development in their city.

I am very pleased to put forward this enabling legislation to provide the City of Winnipeg with tools for change and to address their priorities in a timely fashion.

Madam Chairperson: We thank the minister.

Does the critic from the Official Opposition have an opening statement?

Mr. Reimer: Just a short comment. The minister has indicated the willingness to bring forth this amendment to the charter as requested by the City of Winnipeg. I can only point out that I think that this is just an example of how the City Charter needs to be further amended and further reviewed because, if the city wants to make any changes in certain areas, they still have to come in a sense, cap in hand, to the Province for the changes. The City of Winnipeg Act is very prescriptive in nature in the sense of what the City can and cannot do. We have always been of the advocacy to make it more permissive so that the City has the ability to make its own decisions. The mayor, the councillors are elected to make decisions, given the ability to make decisions.

There was some movement, as the minister mentioned, in 2002. He referred to it as a revision of the City of Winnipeg Charter. There was some movement on it. It was not a movement in the sense of substantial changes to the Charter. I think that what it has done is it has just added some further frustrations by the City Council and the mayor as to try to get an agenda of what they feel they want to do for the City of Winnipeg.

I would recommend that there be a further review of the City of Winnipeg Charter. I believe that there was supposed to be some sort of indication of that, and we have not seen anything to date. I would just say that the direction that the mayor wants to take the City, in regard to being more competitive, to be more attractive in this particular area to the downtown area for development, is laudable.

I think that we as a party encourage any type of tax reduction. Whether it is with business tax, personal tax, corporate tax, payroll tax, all these taxes, education tax on property, these are all things that add to a quality of life that makes Manitoba and Winnipeg more of a have province and a have city, than a have-not city and have-not province as we are experiencing in comparison to other areas; in particular, even Saskatchewan now is ahead of us. I am saying that there has to be a lot of direction placed toward making not only Winnipeg competitive, to get good high-end performance jobs, but also Manitoba.

So this is a step. We are not opposed to this amendment to the City of Winnipeg Charter, but I think that it just shows that when some forms of government do want to make changes, that they are going in the right direction, and that is in tax reduction. So I would encourage this government to look very seriously, not only at further amending the City of Winnipeg act for more permissive legislation, but also to look within their own purview of tax reductions in the areas of responsibility that they have for jurisdiction here in Manitoba.

So, with those words, we are waiting to proceed.

Madam Chairperson: We thank the member.

During the consideration of a bill, the enacting clause and the title are postponed until all other clauses have been considered in their proper order.

Clause 1—pass; clause 2—pass. Clause 3.

Mr. Smith: In this clause, I would propose

THAT the proposed clause 334.1(5), as set out in Clause 3 of the Bill, be amended by adding the following at the end:

The tax collector must amend the business tax roll to conform with the hearing body's decision, and section 343 applies, with necessary changes, to the amendment.

Madam Chairperson: It has been moved by the honourable minister that Bill 4 be amended as follows:

THAT the proposed clause 334.1(5), as set out in Clause 3 of the Bill, be amended by adding the following at the end:

The tax collector must amend the business tax roll to conform with the hearing body's decision, and section 343 applies, with necessary changes, to the amendment.

The amendment is in order. Debate may proceed.

Mr. Smith: Madam Chair, this does provide the tax collector and makes it that he must amend for the hearing body's decision. It is a technical change that had to be added and increased to make those changes.

Madam Chairperson: Are there any other members wishing to speak to the amendment?

No? Seeing no other members, is the committee ready for the question?

An Honourable Member: Question.

Madam Chairperson: The question before the committee is the amendment moved by honourable Mr. Smith, which reads as follows:

THAT the proposed—

An Honourable Member: Dispense.

Madam Chairperson: Amendment—pass; clause 3 as amended—pass; clause 4—pass; enacting clause—pass; title—pass. Bill as amended be reported.

Seeing no other business before the committee, is it the will of the committee to rise?

Some Honourable Members: Committee rise.

Madam Chairperson: Committee rise.

COMMITTEE ROSE AT: 10:30 a.m.