



# The Fewer School Boards Act, 1997: First stage in Ontario's overhaul of education governance

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On January 13, 1997, the Ontario government introduced Bill 104, the *Fewer School Boards Act, 1997*. The Bill, which amends the *Education Act* and sets up a transitional regime of controls on school boards' authority, will be followed later in the year by other measures removing education from the residential tax base, and placing control of education funding with the province (see "[School boards to lose control over funding in Crombie panel proposals](#)" on our What's New page). The government indicates that its new education funding model will be preceded by broad public consultations.

## DISTRICT SCHOOL BOARDS ESTABLISHED

The government has announced its intention to reduce the number of school boards from 129 to 66. The current number of English-language boards will be reduced from 125 to 55 (29 public and 26 separate). Eleven French-language boards (four public and seven separate) will be formed from the four existing French-language boards, 59 sections of boards and eight advisory committees. The government claims that these changes will allow all Ontario Francophones to govern their schools through their own boards for the first time. Some 37 small, rural boards which consist mostly of one school are being retained and will be referred to as "school authorities". The 66 new boards will be known as District School Boards (DSBs).

The Bill accomplishes the transition to fewer, larger boards by empowering Cabinet to make regulations setting up the four categories of DSBs: English-language public and separate DSBs and French-language public and separate DSBs. These regulations will also set the area of jurisdiction of the DSBs, and determine matters relating to elections and representation. **327(3)** (Note: all section numbers refer to the amended *Education Act*.)

The government has announced that the number of trustees of major boards will be reduced from almost 1,900 to about 700. The Bill establishes that a DSB may have no more than 22 trustees, or members, and no fewer than five. **327(6)** In fact, the government has indicated that the figure of 22 refers to the membership of the newly consolidated Metropolitan Toronto District Public School Board, and that the upper limit for other DSBs will be 12 members. The government has also stipulated a maximum honorarium of \$5,000 as remuneration for DSB members.

The Bill provides that, to qualify for election as a member of a DSB or school authority, a person must be entitled to vote for members of that DSB or authority, and must reside in its area of jurisdiction.



**333(1)** The Bill also imposes a new residency requirement on voters: now a person may not vote in DSB or school authority elections unless he or she resides in the area at some time during the qualification period under the *Municipal Elections Act, 1996*. **1(8)** The rationale for this new requirement appears to be related to the removal of education from the residential property tax base.

Board employees and their spouses will now be disqualified from being members of any DSB or school authority. They may be candidates in elections for board or authority membership, but only if the employees take an unpaid leave of absence during the campaign and, if successful, resign their employment. **333(4), (5)** The government contends that these measures will reduce the potential for conflicts of interest in board decision making. Where a person is disqualified from acting as a member of a DSB or school authority, his or her seat must be vacated. **333(11)**

### **EDUCATION IMPROVEMENT COMMISSION CREATED**

The transition to the new system of education governance will be overseen by a newly created Education Improvement Commission, consisting of between five and seven members appointed by Cabinet. It must issue an annual report to be submitted to the Minister and placed before the legislature. **334**

The Commission will consider and make recommendations to the Minister on a variety of issues, including:

- the distribution of the assets and liabilities of existing boards and the transfer of their staff;
- the promotion and facilitation of out-sourcing of non-instructional services by DSBs;
- the feasibility of strengthening the role of school councils;
- the feasibility of increasing parental involvement in education governance;
- measures to be taken to strengthen the financial accountability of existing boards. **335(3)**

As well, the Commission will have the power to appoint an auditor to audit a board's affairs, and make recommendations to the Minister about any measures to be taken as a result of the auditor's report.

**335(3)**

The Commission may also order existing boards to provide reports and information relevant to its work. A board ordered to provide a report or information may be required to retain an auditor to review the information, even before it is given to the Commission. These orders may be filed in court and will be enforceable as if they were court orders. **335(3), 336**

Auditors retained for this purpose will have extensive powers to require production of board records and evidence given under oath. Obstructing the work of an auditor may result in a fine of up to \$2,000. and disqualification from board membership for two years. **337**



## **EDUCATION IMPROVEMENT COMMITTEES TO BE SET UP**

The Commission must set up “education improvement committees”, and may refer any issue relating to the transition to the new system of education governance to them. These committees will be obliged to consider any matters referred to them and, where directed by the Commission, to develop plans or make recommendations for managing those matters.

In setting up the education improvement committees, the Commission must consider the importance of achieving representation of the interests that, in its opinion, are likely to be affected by the transition to the new system of education governance. As examples, the Bill mentions the interests of persons represented by existing boards, minority language sections of existing boards and French-language advisory committees. **338**

## **CONTROLS AND PROHIBITIONS PLACED ON EXISTING BOARDS**

The Commission’s other main role is to preside over a system of controls and prohibitions placed on existing boards by the Bill. The exercise of this function may be delegated by the Commission to one or more of its own members. Alternatively, it may establish a committee composed of two or three persons, none of whom are required to be members of the Commission itself, and may delegate its powers to one or more members of that committee. **340, 339, 334(14)**

School board budgets for 1997 must be submitted to the Commission for its approval. Unless the Commission decides otherwise, these budgets must comply with two rules: appropriations from reserves cannot be included in planned spending unless this was provided for in an earlier budget, and operating expenditures must be forecast for each month of 1997. These forecasted monthly expenditure levels can be exceeded only with the Commission’s prior approval. Within 14 days of the end of each month following approval of their budgets, boards will be required to submit a report to the Commission comparing actual and forecasted operating expenditures, and identifying capital expenditures for the month. **342**

Once a budget has been approved by the Commission, boards cannot pass by-laws or resolutions relating to payments not provided for in the budget. **341(1)(a)** They are also prohibited from taking the following actions between January 13, 1997, the date the Bill was introduced, and the end of the year:

- conveying an interest in property whose original purchase price or current value exceeds \$50,000.;
- purchasing an interest in property for more than \$50,000.;
- transferring money between or among reserve funds, or changing the purpose or designation of a reserve fund;
- entering into a contract or incurring a financial obligation that extends beyond the end of 1997;
- making appointments, hiring new employees, or promoting existing employees;



- making or agreeing to make a payment related to termination of employment, except in compliance with a contract or collective agreement entered into before January 13, 1997.

### **341(1)**

These prohibitions do not apply in a number of cases, such as where the Commission has granted prior approval, where the actions conform to guidelines established by the Commission or where they have been taken under the *Labour Relations Act* or the *School Boards and Teachers Collective Negotiations Act*. **341(2), 340(2)** Nor do the prohibitions prevent boards from responding to emergencies or doing anything they are otherwise required to do by law. **341(4)**

## **COMMISSION DECISIONS FINAL**

Boards are obliged to cooperate with the Commission and the committees it sets up, and are responsible for all costs they incur in the course of complying with the transitional regime of controls.

**343** The Commission's decisions are final and cannot be reviewed or questioned by a court. **344**

Subject to the religious and language rights guaranteed by the Constitution, the provisions of the Bill establishing the DSBs and the Commission, and regulations made under these provisions, will prevail over any conflicting provisions in the *Education Act* or other legislation. **349** The provisions establishing the Commission will be deemed to have come into force on January 13, 1997.

## **IN OUR VIEW**

Many questions are raised by the *Fewer School Boards Act, 1997* (Bill 104) and by the province's plan to revamp education funding, expected later this year. Several features of this legislation raise issues of concern. These include:

- the broad discretion and powers of delegation given to the Education Improvement Commission, and the control it exercises over elected trustees;
- the extraordinary and, in the education context, unprecedented powers given to auditors to compel the production of documents and sworn evidence;
- the retroactivity issue. Commencing January 13, 1997, the Commission gained control over school boards' actions, despite the fact that the legislation establishing it has yet to be passed. This means that an action taken by a board after that date, but before the Commission is operational to set the appropriate guidelines or give prior approval, could be undone by the Commission. This will create a good deal of uncertainty as boards go about their day to day business.
- The retroactivity issue and the power of appointed officials over elected officials has been raised in court by the City of Scarborough in the context of the province's legislation setting up the Toronto megacity. As the relevant provisions of the two pieces of legislation are substantially identical, the outcome of the Scarborough case may well affect the validity of any decisions made by the Commission before Bill 104 is passed.



- the rules that will govern the distribution of assets and liabilities and transfer of staff of existing boards. With respect to staffing issues, while unionized non-teaching staff are governed by the successorship provisions in the *Labour Relations Act*, there are no similar provisions in the *School Boards and Teachers Collective Negotiations Act*. It appears that the government is considering introducing special legislation to determine these issues.

Lurking behind these concerns is the broader question of the constitutionality of the government's changes to education governance. As we mentioned in our last education supplement, an important case on these issues has gone to the Alberta Court of Appeal. While some have also suggested that a recent Supreme Court of Canada decision has established that the choice to attend a public or separate school is constitutionally entrenched, and that local control and taxing authority is the logical extension of this guarantee, in our view, a constitutional challenge to the new governance model should await the unveiling of the province's funding proposals.