



Submission to the Standing Committee on Finance and Economic Affairs

**Regarding Bill 163**

**An Act to amend the Greater Toronto Transportation Authority Act, 2006**

By the

Residential and Civil Construction Alliance of Ontario

April 23, 2009

**Introduction**

The Residential and Civil Construction Alliance of Ontario (RCCAO) has been a strong advocate for the establishment of a transportation authority responsible for development of a regional transportation system. Queen's Park took a bold step in 2006 by creating this authority. The progress achieved by *Metrolinx* to date would not have been possible without the steadfast support of Queen's Park and many other organizations throughout this region. We applaud the funding commitments in recent budgets that have been made in order to begin work on implementing the regional transportation plan that was approved by *Metrolinx* in November 2008.

Parts of Bill 163, *An Act to amend the Greater Toronto Transportation Authority Act, 2006*, deal with corporate governance amendments and point to the necessity to improve the ability of the *Metrolinx* board to implement the RTP. Our labour-management construction alliance welcomes this evolution in *Metrolinx's* governance structure.

**Background**

A 2006 report prepared for RCCAO stressed the importance of effective governance for the proposed Greater Toronto Transportation Authority (GTTA).<sup>1</sup> That report concluded that, consistent with the principles of Ontario's *Places to Grow Act 2005*, both the development and implementation of a cost-effective, sustainable, and

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<sup>1</sup> Richard Soberman et al., *Transportation Challenges in the Greater Toronto Area*, Toronto: Residential and Civil Construction Alliance of Ontario, November 2006.

comprehensive transportation and land use plan for the Greater Toronto and Hamilton Area (GTHA) can only be achieved through the application of the principles of good governance.

The RCCAO *Challenges* report defined the elements of good governance as an Authority comprised of individuals who:

- First and foremost, recognize a fiduciary responsibility to act individually in the best interests of the entity which they govern,
- Are capable of taking a long term and comprehensive view of major policy and financial alternatives,
- Can distance themselves sufficiently from any personal conflicts of interest,
- Represent a broad range of experience and expertise in a variety of relevant disciplines to ensure that executive oversight is provided as objectively as possible, and
- Accept that as members of an executive oversight body, they essentially have only one employee, namely, the chief executive officer of the Authority.

A follow-up report in January 2008 reaffirmed the need for proper governance with a few caveats regarding funding mechanisms.<sup>2</sup> In particular, although the *Challenges* report suggested that most provincial funding be channelled through the proposed GTTA (subsequently renamed *Metrolinx*), that recommendation preceded the final governance model that emerged.

For this reason, the RCCAO *Opportunities* report suggested that the flow of funds should probably be revisited once *Metrolinx* had been able to point to meaningful achievements on the ground.

The *Challenges* report also suggested that as long as independent municipal transit operators continue to function in the present manner, a large component of all provincial funding should flow directly to municipalities and their transit agencies, as should all federal funding under the Gas Tax Transfer program.

Probably the simplest and most equitable method of allocating these provincial and federal funds should be based on population as *entitlements*, rather than on the basis of *applications*. Thus, an entitlements-based approach ensures that funds are allocated based on a formula. We recommend that *Metrolinx* develop appropriate funding formulae as part of its Investment Strategy review.

Over time, and with a regionally-based entity such as *Metrolinx*, an approach that recognizes regional population and ridership benchmarking criteria might be preferable compared to one that directs funds to individual municipalities and its transit agencies. This comment is predicated on the ability of *Metrolinx* to successfully manage both planning and operating functions, as is envisioned in the merger with GO Transit (more on this aspect below).

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<sup>2</sup> Richard Soberman, *Transportation Opportunities in the Greater Toronto Area*, Toronto: Residential and Civil Construction Alliance of Ontario, January 2008.

## Commentary

For effective regional transportation, governance is the single most important issue that affects the decision-making process and the subsequent implementation of adopted investment and policies. Governance influences all aspects of the performance of various elements of a regional transportation system including the delivery of public transit, parking policies, priorities for pedestrians and bicycles, labour relations and traffic engineering.

Governance and decision making, of course, are almost two sides of the same coin. They are highly inter-related and affect not only what decisions are actually made, but how and when they are implemented, as well. With expansion in population and the size of the urbanized area, models of governance that were appropriate at one time may well be outdated in relation to today's problems, let alone those of tomorrow.

For several reasons, existing governance models typical of most urban transportation agencies present serious challenges for comprehensive transportation planning and decision making in response to changing goals and objectives.

First, governance bodies that are intended to provide executive oversight for management are almost always comprised of political appointees who, in many cases, are themselves elected officials. The fundamental problem with elected officials serving as 'directors' is that, typically, they are influenced by parochial views related to the interests of the constituencies they represent. This practice is a fundamental contradiction of the now widely accepted basic rules of any governing body, namely, that each member has a fiduciary responsibility to make decisions in the best interests of the body to which they are appointed.

Second, voting is highly influenced by too short a time horizon. Many decisions on important long-term issues are often postponed simply to avoid public discussion during a time when they could affect election outcomes. In other words, the short-term perspective of governance body members who must stand for re-election at a local level interferes with the potential for long-term, comprehensive planning on a region wide scale.

Third, because transit issues have such a high public profile, governing body members who periodically must stand for re-election, do not lose opportunities for publicity by engaging in matters that are the proper domain of management. Examples of the failure to distinguish between executive oversight and micro-management abound and the demarcation line between the two functions is, at best, blurred.

Fourth, elected officials who are transportation agency board members end up voting on matters twice – first as board members, and second, as elected officials responding to their own recommendations when presented to municipal councils.

In fact, it is not unheard of for a board member to vote one way on the governing body and the opposite way in council.

Fifth, board members who are also elected officials often reach down directly into the organization regarding matters that relate to individual constituents or, in some cases, to obtain support that may be helpful to their own election campaigns. Bypassing the chief executive and dealing directly with staff is contrary to any concept of effective management. It diverts staff attention from their main responsibilities and can place staff in awkward situations.

Some of these concerns can be eliminated if appointments to governing bodies are restricted to non-politicians as suggested in the current draft of Bill 163. Although the process for political appointments may well be imperfect, it does allow individuals to be appointed who actually have experience or expertise that is germane to the goals and objectives of *Metrolinx*.

In an era where the context for sustainable transportation planning is dominated by concerns about finance and efficiency, as well as concerns about sensitivity to community and environmental initiatives, effective governance requires bodies that include individuals with expertise and experience in relevant disciplines such as engineering, construction, finance, urban planning, environmental assessment, management of transportation organizations, information technology, and labour relations.

In short, good governance plays a crucial role in the delivery of effective solutions required for the economic well-being and liveability of the GTA, and suggests new models of governance.

The objective of good governance should be to make the right decisions. The objective of good management should be to do the right things right. There is an important distinction between the two, one that is rarely recognized in the governance of most public transportation authorities charged with developing sustainable urban transportation.

For these reasons, as noted above, an effective regional transportation authority should be comprised of individuals who:

- individually recognize a fiduciary responsibility to act in the best interests of the regional authority,
- can distance themselves sufficiently from any personal conflicts of interest, as well as the interests of the constituencies which they represent, and
- represent a broad range of experience and expertise in a variety of relevant disciplines.

To be as effective as possible in delivering its mandate, three additional characteristics of any new authority are important.

First, Board members should participate in an orientation program designed to provide a comprehensive understanding of the mission, goals and objectives, and operations of the authority, as well as the key issues facing the authority, so that they can participate effectively in discussions and decision-making on an informed basis.

Second, the Authority should be actively engaged with senior management in developing and periodically reviewing a strategic plan that includes a succinct mission statement, specific goals and objectives, a financial model, and benchmarking criteria for the assessment of performance.

Finally, regardless of how some appointments to the Authority are made, consistent with modern concepts of good governance, the Authority should be required to undertake self-assessment and should itself be empowered to solicit nominees and make appointments for Members-at-Large in order fill gaps in available expertise and experience.

With regard to integrating the existing GO Transit organization within the new authority proposed in Bill 163, a number of problems are likely to arise with regard to:

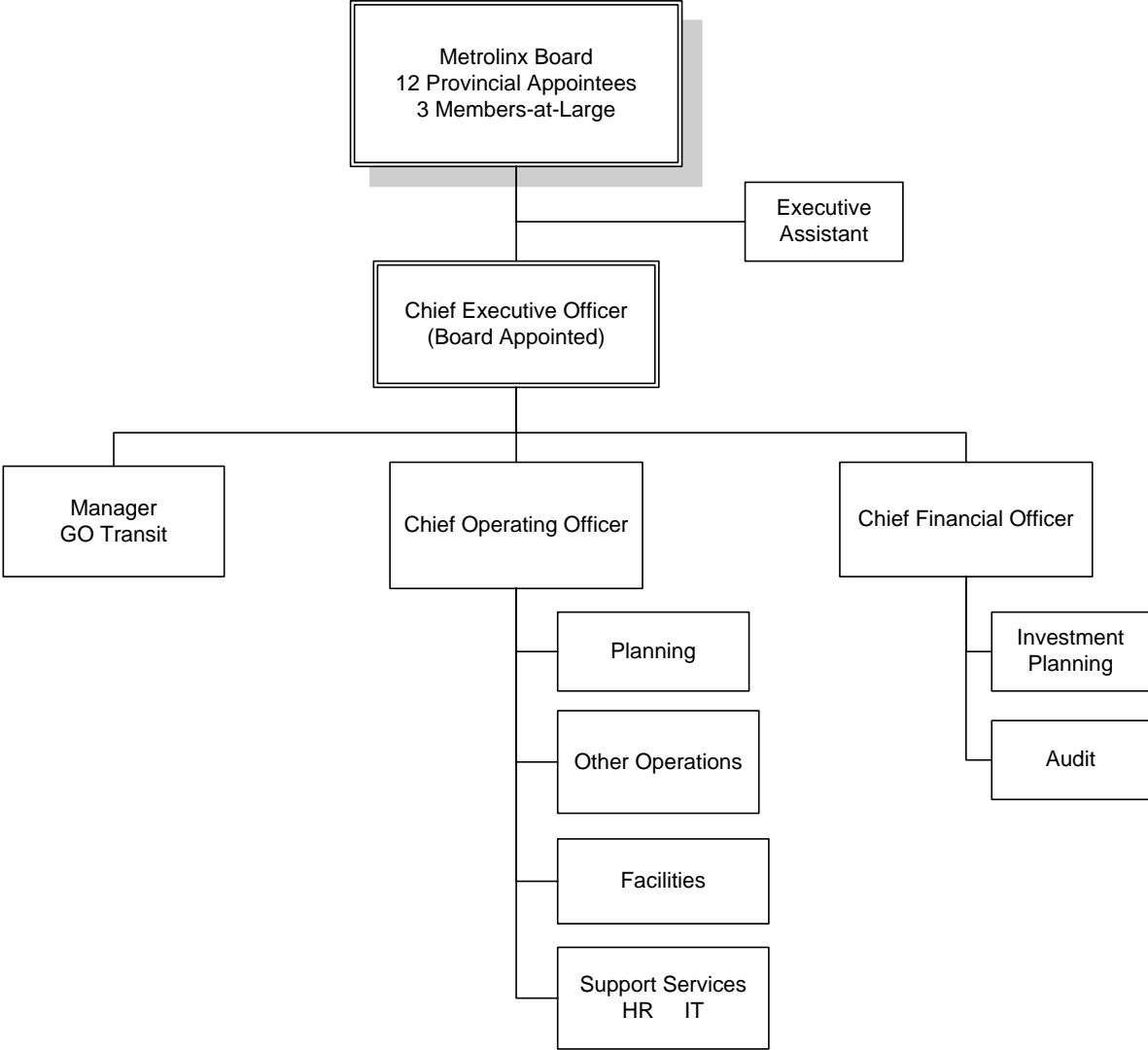
- the different skill sets required by an organization responsible both for operation of revenue services and long-range physical and financial planning,
- the possibility of day-to-day operating issues pre-empting planning and financial responsibilities that should be part of the Authority's regular agendas, and
- perceived conflicts and/or competition between the objectives of local planning and transit authorities and those of the Authority itself.

For these reasons, in the event GO Transit is subsumed under the umbrella of the new Metrolinx, the organizational structure should reflect the distinct nature of the service delivery functions of the Authority along the lines suggested in the general organization chart shown below.

A recommendation has also been made about the appointment of the chief executive officer. No board or authority can function effectively without the power to select and compensate its own CEO or where its CEO reports to a third party.

In this chart, 'facilities' refer to those functions involving assets that do not move whereas 'operations' refer to those activities involving movement.

**Suggested Functional Organization for *Metrolinx***



## Specific Comments on Bill 163

Consistent with the preceding discussion, the following specific suggestions are made:

### Composition

Add under section 10: *“The Authority should establish its own subcommittees including but not limited to Governance and Audit Committees.”*

Current Wording of proposed section 10 (2): *“The board shall be composed of not more than 15 persons appointed by the Lieutenant Governor in Council on the recommendation of the Minister [of Transportation].”*

Suggested Wording for s. 10 (2): *“The board shall be composed of not more than 15 persons, with not more than 12 members being appointed by the Lieutenant Governor in Council on the recommendation the Minister, and not fewer than three persons being appointed by the Authority itself.”* [Note: the Authority appointments could be from a pool of community nominees solicited from NGOs such as professional organizations representing engineers (PEO), planners (OPPI), accountants, boards of trade, and others, as well as members of the Authority itself].

Suggested Wording for s. 10 (8): *“Despite subsection (2), the Minister shall appoint not more than 12 directors who shall serve until the Minister revokes their appointments ... with not fewer than three persons being appointed by the Authority itself.”*

### Staggered Terms [Terms of Office]

Current Wording of proposed section 10 (4): *“The term of office of the directors on the first board appointed by the Lieutenant Governor in Council under subsection (2) after the *Greater Toronto and Hamilton Area Transit Implementation Act, 2009* receives Royal Assent shall be staggered, as determined by the Lieutenant Governor in Council.”*

Suggested Wording for s. 10 (4): *“The term of office of the directors on the first board appointed by the Lieutenant Governor in Council under subsection (2) after the *Greater Toronto and Hamilton Area Transit Implementation Act, 2009* receives Royal Assent shall be staggered, as determined by the Lieutenant Governor in Council. Similarly, for persons being appointed by the Authority itself, subsequent appoints after the first appointment shall be staggered on a cyclical basis for 3 years in a manner that ensures adequate continuity.”*

### Chief executive officer

Current Wording of proposed section 13 (1): “The Lieutenant Governor in Council, on the recommendation of the Minister, shall appoint a chief executive officer of the Corporation who shall be an employee of the Corporation.”

Suggested Wording for s. 13 (1): *“The CEO should be appointed by the board [of Metrolinx] on the basis of recognized search procedures.”*

[Note also wording changes required to various subsections under s. 13].

### Corporation's Objects

Under section 5 (1), a number of changes are made to the Corporation's objects. Our alliance has no objections to these stated objectives but we do raise a cautionary flag with respect to the addition of the following proposed clause (c) “to be responsible for the operation of the regional transit system and the provision of other transit services.” In our view, the combination of planning and operating responsibilities is problematic inasmuch as:

- *day-to-day operating issues that require immediate action or response will dominate the Authority's agenda, leaving planning and other objects in a secondary position,*
- *the skill set required for long range planning and finance are significantly different from those required by an operating entity such as GO Transit, and*
- *local transit operators may perceive a lack of objectivity in assessing the need for provincial funds for their own services vis-à-vis those operated by the Authority.*

Obviously, we have reservations about the effective integration of *Metrolinx* and GO Transit. As noted above, in the event that GO Transit is subsumed under the umbrella of the new *Metrolinx*, the organizational structure should reflect the distinct nature of the service delivery functions of the Authority along the lines suggested in the general organization chart. Appropriate legislative wording will have to be drafted to facilitate this proposed organizational structure. Alternately, *Metrolinx* will have to be given the authority to implement such an organizational structure.

### Rolling five-year capital plan

We support the proposed new section 23.1 whereby “The Corporation's board of directors shall annually prepare a rolling five-year capital plan for the regional transportation area that includes ...”

Suggestion: An initial five-year capital plan should be developed as a component of the Authority's strategic plan, subject to approval by the Minister. Funding requirements, however, should be appropriated



(guaranteed) for this period since effective planning cannot be achieved without reasonably predictable cash flows.

### Investment Strategy

Current Wording of proposed section 32.1: “On or before June 1, 2013, the Corporation shall provide the Minister and the heads of the councils of the municipalities in the regional transportation area with a copy of the Corporation’s investment strategy, including proposals for revenue generation tools that may be sued by the province or the municipalities to support the implementation of the transportation plan for the regional transportation area.”

Recommendation: We strongly suggest that the timeframe should be accelerated by one year.

Suggested Wording for s. 32.1: “On or before June 1, 2012, the Corporation shall provide ...”

Note: As noted above under ‘Rolling five-year capital plan’, ensuring that the province provides sufficient appropriations to *Metrolinx* is important to the continuous funding and implementation of the regional transportation plan. As such, provincial funds that have been allocated to *Metrolinx* but unspent should be invested by *Metrolinx* until such time as projects are ready to begin.

Suggested wording would have to reflect the intent to implement a system of “continuous and stable funding allocations from the province to the Corporation.”