

# Staff Report to Council

Financial Services

FILE: 05-1700-01/21

REPORT DATE: January 13, 2021      MEETING DATE: January 19, 2021  
TO: Mayor and Council  
FROM: Cheryl Harding, Director of Financial Services  
SUBJECT: Property Tax Classification – CP Rail and Golden Ears Business Park

CHIEF ADMINISTRATIVE OFFICER REVIEW/APPROVAL:



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RECOMMENDATION(S): THAT Council:

- A. Direct staff to develop a CP Rail property tax review communication plan; AND
- B. Direct staff to co-ordinate submission of a resolution to the Lower Mainland Local Government Association seeking a review of the Assessment Act property classification assigned to CP Rail activities; AND
- C. Direct staff to co-ordinate submission of a resolution to the Lower Mainland Local Government Association seeking a review of the Assessment Act property classification assigned to distribution tenants as it relates to Golden Ears Business Park; OR
- D. Other.

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## PURPOSE

To seek Council direction in pursuing a review of the BC Assessment property classification system as it relates to railway infrastructure and the Golden Ears Business Park tenancy.

Information Report

Decision Report

Direction Report

## **DISCUSSION**

### **Background:**

At the December 15<sup>th</sup> Closed Council meeting Council directed staff to review the property assessment classification as assigned by BC Assessment to the Canadian Pacific Railway property. Subsequent discussions also requested the addition of a review of the Golden Ears Business Park property assessment classifications.

### **Relevant Policy, Bylaw or Legislation:**

BC's Assessment Act as well as the Prescribed Classes of Property Regulation 438/81 are the legislation applicable to BC Assessment assigning property classifications. The Community Charter Section 197 sets out the requirements of the annual property tax bylaw which establishes the mill rates applied to the assessment values as needed to generate the municipal revenue required to balance the budget.

### **Analysis:**

#### CP Railway Property Taxation

The following table displays the properties, as per the assessment roll, which CP Rail owns within the City of Pitt Meadows. The assessment values, assessment property class and taxation revenues are also presented.

Additionally, an estimate has been provided in column 9 as to what the property tax revenue increase might be if the proposed Logistics Park development proceeded and re-classed as Class 6 Business which is consistent with the other commercial property owned by CP Rail. This is estimated at approximately \$2.5 million for the 2 applicable properties.

Also, the question has been raised as to what the additional property tax revenue might be if the Class 6 Business properties were re-classed as Class 5 Light Industry. This is shown in column 10 and is estimated at approximately \$1.1 million. BC Assessment has verified the CP Rail property is currently assigned the correct classification as per the Assessment Act. If Council wishes to pursue a review of the classification assignment an avenue available is to submit a resolution to the Lower Mainland Local Government Association (LMLGA) for consideration. If the resolution is endorsed by the LMLGA it is automatically forwarded to the Union of BC Municipalities (UBCM) for consideration. Further details regarding the process and timeframe can be found in Attachment A – Email titled: UBMC Resolution Process.

		2020 Assessment Roll and Taxation						Estimates	
1	2	3	4	5	6	7	8	9	10
Folio	Address	Class	Class Description	Assessed Value	Sq Mtrs	Acres	City Tax Portion incl utilities	Logistics Park Incremental Tax Estimate at Class 6*	Estimate of potential additional tax revenue if Class 6 Business was reclassified as Class 5 Light Industry**
0445.002	17858 Ferry Slip Road	6	Business	3,608,000	7,047	1.7	29,053	-	8,762
0505.000	17714 Kennedy Road	1 & 9	Residential & Farm	226,464	177,101	43.8	7,332	1,060,072	303,040
0792.000	13090 Kennedy Road	1 & 9	Residential & Farm	437,640	232,220	57.4	7,877	1,389,997	398,270
0795.002	17900 Kennedy Road	6	Business	10,996,000	24,219	6.0	90,978	-	26,704
0884.000	17900 Kennedy Road	6	Business	131,528,000	140,912	34.8	1,134,573	-	319,416
0884.001	Mile 107.99-109.10	6	Business	37,300	n/a	n/a	286	-	91
0884.002	Mile 108.16 - 109.46	6	Business	1,600	n/a	n/a	12	-	4
0884.102	18750 Loughheed Highway	6	Business	35,027,000	84,447	20.9	291,008	-	85,063
1063.100	Mile 106.26-109.74	2	Utility	1,209,340	n/a	n/a	48,394	-	-
1072.000	no address - single track main line	2	Utility	1,251,800	n/a	n/a	50,092	-	-
1073.000	no address - sidings & spur tracks	2	Utility	1,225,400	n/a	n/a	49,036	-	-
Totals				185,548,544	665,945	165	1,708,641	2,450,069	1,141,349
*	Uses existing CP Class 6 properties as a proxy to provide a highly estimated new assessed value at an average assessed value of 2.9M per acre and \$24K tax revenue per acre								
**	Class 6 Business Assessed values x difference in Class 5 Light Industry vs Class 6 Business mill rates								

### Golden Ears Business Park Property Taxation

The actual activities of the tenants determines the property class BC Assessment assigns to the properties.

Since the development is not complete, in order to provide highly estimated potential property tax revenue for Phases 3 and 4, the values from Phases 1 and 2 have been used as a proxy.

Phases 1 and 2 actual tenant uses have resulted in a mixture of Class 5 Light Industry and Class 6 Business property classifications with 41% to 46% of the land being occupied by buildings.

Phase	Bldgs % of Total	2020 Assessment Classification		Acres	Assessed Value Per Acre
		Class 5	Class 6		
1	41%	61%	39%	35.60	3,312,584
2	46%	1%	99%	57.60	3,654,722

Referring to the above table, it is important to note the Light Industrial Property Classification (Class 5) and resulting property taxes the City collects is 61% for Phase 1 and only 1% for Phase 2. The remainder of the tenants are classified as Business (Class 6). While the tenants for Phases 3 and 4 are yet to be determined, we can anticipate a large component of the tenants will also be assessed at Business Class 6, including Distributors. For your information, the amount of taxation dollars collected for every \$1,000 of assessed value is: \$10,000 for Light Industrial Class 5 and \$7,700 for Business Class 6.

If we were to use the lower average assessed value per acre from Phase 1 the estimated property tax revenue for Phases 3 and 4 would extrapolate to the highly estimated values shown in the following table. This results in total revenue of \$2.4 million under Class 6 Business or \$3.2 million under Class 5 Light Industry. Actual usage will be varied and produce different results once the development is complete but this approach provides a ballpark estimate of taxation revenue and displays the additional \$743,000 revenue that Class 5 Light Industry might produce as shown below.

Phase	Acres	Estimated Assessed Value	Class 6 Business Tax Revenue	Class 5 Light Ind. Tax Revenue	Class 5 vs Class 6
3	48.1	159,335,290	1,221,703	1,596,699	374,996
4	47.3	156,685,223	1,201,384	1,570,143	368,759
		316,020,514	2,423,087	3,166,842	743,754

Note: The purpose of the above table is to display the potential difference in Class 6 vs Class 5 taxation revenue and does not take into account existing 2020 taxation on these properties in their unfinished development stage. Taxation revenue from the 2020 assessment roll was approximately \$527,000 for Phases 3 and 4.

### Assessment Review

There is some question as to the definition of which properties would fall under Business versus Light Industry under the property assessment system which is the basis of the request for the assessment review as recommended in this report.

In particular, most distribution tenants are considered to be Business Class 6. Light Industrial Class 5 is not common in these situations unless the activity is a 'cross dock' situation. A cross dock is where a trailer pulls up, gets unloaded right onto another trailer, and then leaves for another facility. However, if the amount of time the product is stored at the facility is really short, it might be considered Light Industrial Class 5.

The Assessment Act and the Prescribed Classes of Property Regulation 438/81 regulate the BC Assessment Authority tax classification system.

### CP Rail Taxation History

For additional context, very briefly, in the '80s & '90s the provincial government embarked on a change to property taxation in order to reduce and stabilize escalating taxes paid by rail companies. The objective was to support new rail investment needed to facilitate the increasing movement of goods being driven by growing populations. The end result is referred to as Bill 55.

Railway right of way assessments were reduced, bridges were no longer assessed, the railyard was changed from Class 2 Utilities to the lower taxation of Class 6 Business. Class 2 Utilities mill rates were also capped.

A sampling of additional information on this topic is provided in the UBCM public document from 1996 (Attachment B). As per the attachment, Bill 55 resulted in a 6% reduction of CP Rail taxation revenue for Pitt Meadows. The dollar amount is not quantified.

### **COUNCIL STRATEGIC PLAN ALIGNMENT**

- Principled Governance    Balanced Economic Prosperity    Corporate Excellence  
 Community Spirit & Wellbeing    Transportation & Infrastructure Initiatives  
 Not Applicable
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### **FINANCIAL IMPLICATIONS**

- None    Budget Previously Approved    Referral to Business Planning  
 Other

As described in the report.

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### **PUBLIC PARTICIPATION**

- Inform    Consult    Involve    Collaborate    Empower

The City's Communications department will develop a communication plan providing the community with ongoing updates to this situation.

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### **KATZIE FIRST NATION CONSIDERATIONS**

Referral    Yes    No

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### **SIGN-OFFS**

**Written by:**

Cheryl Harding, Director of Financial Services

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**ATTACHMENT(S):**

- A. UBCM Resolution Process
- B. BILL 55 - IMPLEMENTATION OF RAIL AND UTILITY TAXATION

**Tanya Barr**

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**Subject:** FW: UBCM Resolution Process**From:** Kate Barchard <[kbarchard@pittmeadows.ca](mailto:kbarchard@pittmeadows.ca)>**Sent:** Thursday, January 14, 2021 9:36 AM**To:** Mark Roberts <[MRoberts@pittmeadows.ca](mailto:MRoberts@pittmeadows.ca)>**Cc:** Tanya Barr <[tbarr@pittmeadows.ca](mailto:tbarr@pittmeadows.ca)>; Kerrie Dykeman <[KDykeman@pittmeadows.ca](mailto:KDykeman@pittmeadows.ca)>**Subject:** UBCM Resolution Process

Hi Mark – here's a quick overview of the UBCM resolution process:

- UBCM encourages all members to submit resolutions first to Area Associations for consideration. For us, that would be the LMLGA.
- Resolutions on province wide issues that are endorsed by the LMLGA at their annual conference in the spring are submitted automatically to UBCM for consideration at the UBCM Convention in the fall.
- Resolutions submitted to UBCM from the LMLGA, and supported by their membership as a whole, tend to hold more weight than those that are submitted directly to UBCM by individual communities.
- The LMLGA conference this year is scheduled for May 12-14 in Harrison; I assume it will transition to an online format. We will need council to introduce and endorse their resolutions in an open meeting and submit them to LMLGA by their deadline, which is typically mid-March. Still waiting for information on this year's conference details.
- A member of Council must attend LMLGA and introduce the motions when they're on the floor.
- The resolutions need to be in traditional format, with a maximum of 2 whereas clauses allowed.

**Kate Barchard** | Manager, Administrative Services

*Corporate Officer | Privacy Head*

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## APPENDIX J

TO: UBCM Members

FROM: UBCM Executive

DATE: September 16, 1996

RE: **BILL 55 - IMPLEMENTATION OF RAIL AND UTILITY TAXATION**

<p><i>ITEM #6(a)</i></p> <p>September 19, 1996</p> <p><i>BC COMMUNITIES AGENDA</i></p>
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### 1. DECISION REQUEST

This report will be considered at a Policy Session on Thursday, September 19, 1996 (9:00 a.m.) and recommends a deferral and eventual repeal of the provisions of Bill 55 respecting rail and utility assessment and tax reductions.

### 2. INTRODUCTION

Bill 55 was introduced and enacted at the July, 1995 legislative session. Its stated purpose was to reduce rail taxation in order to address the competitiveness of the railways.

### 3. 1995 UBCM CONVENTION

During the 1995 UBCM Convention, the following recommendation was endorsed:

1. *UBCM concurs with the provincial government that it is in both the provincial and national interest to maintain the competitiveness of our rail and port systems.*
2. *That the provincial government provide clear assurance of their commitment to:*
  - *protecting the integrity of the assessment system;*
  - *preserving local autonomy to establish tax rates; and*
  - *ensuring consultation and notice.*
3. *That UBCM wishes to continue to consult with the provincial government and the railways as suggested in the 1995 Provincial Budget, with the objective of seeking solutions that balance the economic needs of the railways and with the costs of the rail system to individual local governments and other local taxpayers.*
4. *That the provincial government not proceed with implementing the railway assessment and utility taxation measures enabled by Bill 55 and that alternative means of addressing both the concerns of railways and local government be investigated.*

### 4. MEASURES

The Bill 55 measures provide for:

- **Reducing Utility Class Tax Rates** – class 2 tax rates will be capped; the type of “cap” and its amount were to be determined after consultation. The proposal now is that by the year 2000, the utilities class tax rate will not exceed the greater of \$32 per \$1,000 of assessed value and 2.5 times the municipality’s business class tax rate. The \$32 limit may be dropped after the phase-in period is over. The government’s policy paper states that: “The ratio of 2.5 is proposed because any utilities class tax rate in excess of this ratio can reasonably be considered discriminatory.”
- **Exempting Bridges** – bridges will not be assessed or taxed (except as provided for through Impact Management Measures)
- **Reducing Railway Assessments** – assessments on rail properties will be reduced by a set of standard province-wide factors. There will be different factors applied to different types of property (e.g., track,



right-of-way, yards, etc.); the amount of the factor was to be decided after consultations. The standard assessment reduction factors may be varied in an approved impact management plan.

- **Revaluing Non-Linear Property and Moving Market Valued Property to Class 6** – railway yards are to be valued at market value (“across the fence” valuation). It is being proposed that property which is assessed at market value (not Commissioner’s rates) but falls in class 2 (includes for example, BC Tel warehouses, rail yards, pipelines) will be moved to class 6 for assessment and taxation purposes.

#### THE PURPORTED BENEFITS

We were told that this initiative would lead to \$100 million in new rail investment. Since the introduction of Bill 55 over a year ago we have repeatedly requested details of this investment from the Ministry of Employment and Investment. The Ministry has been slow to produce the information, at least in part because of the railways’ reluctance to produce detailed investment plans and projections for fear it will harm their competitive advantage.

What we have evidence of in the last year is, for instance:

- CP Rail, as part of its corporate restructuring last year, drastically reduced the size of its regional office in Vancouver by moving some 100 staff to Calgary and laying off at least another 250; and
- CP Rail’s recently announced three-year plan to downsize the system, which includes cryptic references to “transferring” some of the lines in the Kootenays. Inquiries yield an explanation that this initiative is to create an “internal shortline” and not to sell off the lines. More definitive public announcements have not been made because negotiations are ongoing with unionized staff. The corresponding three-year plan for CN does not, for the moment, include any changes to the system in B.C.

Under the *Municipal Act* it would not be possible to offer measures such a tax reduction as an inducement for an investment. Such an act would be unlawful. Section 292 reads:

*The council shall not, directly or indirectly, assist an industrial or commercial undertaking, and, without limiting this section’s generality, shall not grant assistance by ... granting an exemption from taxation.*

#### 5. IMPACTS

The Ministries have recently attempted to explain and model the impacts of Bill 55.

##### a) Overall impacts

Finally, the government revealed in August that the actual rail tax reductions from local governments were \$7.5 million. This clarifies the previous confusion about the various potential impacts.

What was not clearly identified is that approximately \$1 million additional tax reductions will flow to other utilities. Additional reductions in BC Hydro grants on buildings and structures not considered generating facilities were not initially identified or quantified. These amount to approximately \$350,000.

##### b) Municipal/regional district allocation

The portion to be borne by municipalities and regional districts is identified as \$6 million and \$1.5 million respectively. Since the regional district modeling is incomplete, these figures cannot be confirmed.

##### c) Effects on regional district apportionment

The effects of reduced rail assessment on regional district apportionment are not yet finalized although converted value tables have been produced.

##### d) On regional district functions

These impacts are still largely unknown at this time.

The Ministries have not yet been able to produce good analyses of the impacts for all regional districts.

The Ministry has indicated that the original approach to implementing Bill 55 for regional districts will not be achieved in 1997 and instead, regional districts will be provided cash transfers to mitigate the impacts in 1997 and the adjustment factors may be varied for the 1998 tax year.

There will have to be special measures for the regional districts that exceed tax rates set for service areas pursuant to referenda.

**f) On municipalities**

The Ministries' recent August, 1996 modeling finally began to shed some light on the impacts.

The initial estimated impacts on municipalities show that eight municipalities will lose 6% of their tax base as a result of Bill 55. These include Port Edward, Kent, Sicamous, Pitt Meadows, Revelstoke, New Hazelton, McBride, and Golden. Other communities such as Lytton will lose 5.9%, and Ashcroft will give up 5.7%.

The hardest hit in terms of absolute dollar loss was the District of North Vancouver, at \$812,000; followed by Port Coquitlam at \$588,000; Prince George at \$528,000; and Mission at \$446,000.

While the impact analysis may be the best available, several flaws have been uncovered since the model was released. These suggest that the impacts can only be better approximated if the full model is re-run. For instance, in doing its analysis, the City of Abbotsford discovered that the model applied Abbotsford tax rates to Matsqui assessment, and Matsqui rates to Abbotsford assessment. The new City of Abbotsford is maintaining two assessment jurisdictions for five years after amalgamation, and this lack of understanding of a local circumstance could result in substantially skewed calculations. While the model, using incorrect assumptions, projected a tax loss for Abbotsford at \$383,000, the City itself calculates the loss at \$538,289. Furthermore, the City notes that if the provincial government carries through with the potential to apply a 2.5:1 class 2 to class 6 tax rate ratio cap, the City will lose a further \$371,385 by the year 2000. If all measures are implemented, the total loss to the City of Abbotsford could be as high as \$909,674.

**g) On individual taxpayers**

Ministry modeling limited the tax base loss to 6% in the 1997 to 2000 period, or approximately 1.5% per year.

What such analysis obscures is the impact on individual taxpayers. The annual tax increases on individual taxpayers could be much larger.

The maximum 1.5% reduction in tax base each year makes it sound like this would equate to a 1.5% tax increase to make up the difference. However, it doesn't really mean that because the government doesn't know what, if any, of the reduction recovered from the Utility class is, and the larger that class is as a proportion of the tax base, the smaller is the remaining number of taxpayers to shoulder the burden. In other words, in order to maintain services, a municipality must make up the deficit in its revenues from other property classes. However, the additional tax burden cannot be borne evenly by all the classes, because it is now impossible to include class 2 in the redistribution. So the actual increase on the other classes is greater than 1.5%, to make up for the amount that can't now be collected from the taxpayers in class 2.

**6. THE CASE AGAINST BILL 55**

The problems with Bill 55 are numerous and become more evident every day. We have attempted to place these in four groupings:

- a) Basic Principles Violated
- b) Consultation Process Flawed
- c) Dangerous Precedents Established
- d) Unworkability and Other Concerns

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## BASIC PRINCIPLES VIOLATED

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The landmark 1989 joint provincial-local government study “Financing Local Government” included this important guiding philosophy:

*Property assessments and the taxing decisions of local government should be kept as distinct as possible. Changes in assessment practice should not be used to achieve the objectives of tax policy. Tax policy should be achieved through the instruments of:*

- *tax rates*
- *taxation exemptions*
- *tax deferral programs*
- *direct grants to offset taxes payable.*

Other principles of assessment and taxation identified include:

- *equity between different classes of taxpayer and within each class of taxpayer*
- *ease of understanding for taxpayers about the various causes of tax changes*
- *clear accountability for assessment and taxation decision.*

Equality and fairness are also principles that should apply to the treatment of local governments themselves.<sup>1</sup> Ease of understanding is also recognized to apply to administration.<sup>2</sup>

Bill 55 violates a wide range of these and other basic principles:

- it violates the long standing distinction between the assessment and taxation functions. In this case, lower rail taxes are desired, so values established by the BC Assessment Authority are reduced by factors to get the desired result. Why have an Assessment Authority since whatever it does will be adjusted by government to produce the desired tax result?

And what is to stop a future Cabinet from adjusting the factors on rail or other properties to achieve a higher or lower assessed value?

- Cabinet begins to exercise the power to limit council tax policy decisions. Local autonomy is compromised. The power to limit individual tax rates has existed since 1985 but has never been used.

Instead of looking at individual circumstances, the Cabinet will impose an overall policy.

- The approach finances the municipal mitigation to significantly affected municipalities from other rail communities. This is unfair in that it imposes higher burdens on local governments that are under the cap.
- Mitigation for municipalities is different (inequitable) from regional districts (at least for 1997). Municipalities must finance the mitigation amongst the group affected, while regional districts may get a cash grant from the provincial government. (unequal treatment)

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<sup>1</sup> For example, as stated in the joint local-provincial Technical Committee (March, 1996) report on BC Rail, the principle of equity of treatment implies that “*all local governments with BC Rail facilities could be treated in the same way*”.

<sup>2</sup> For example, the joint UBCM/Ministries report on Local Government Transfers stated that with respect to the ease of administration, “*programs should be comparatively easy to administer. They should also be easily understood and not create inordinate compliance requirements on the part of local governments.*”

- Simplicity and ease of understanding are desirable attributes of an assessment and tax system. This approach is unduly complex.

It is so complex that many impacts can not yet be determined. Complexity in regional districts is compounded by the layering of different services impacts and the different approaches to apportioning service costs. These have only just begun to be explored.

- The costs to establish this system have been significant and will continue for some time. For regional districts, they will have to undergo the analysis of adjustment factors again in 1997. Administrative costs are disproportionate to the amount of money under consideration.
- The approach obscures clear accountability for the decision. Local taxpayers facing tax increases as a result of Bill 55 will not know or be able to hold Cabinet to account. They will assume that the local government should be accountable for the increases.
- Mitigation measures introduce inequity of treatment between local governments. For instance, some municipalities may be allowed to tax a bridge while the neighboring municipality may not, even when it is the same bridge.
- It appears there will be a different definition of “significantly affected” for municipalities and regional districts. For municipalities, it is proposed to be 6% loss of tax base. It is suggested it might be a 6% tax increase for home owners in regional districts. These can have very different implications and raises the question if all local governments and taxpayers are being treated equitably.

#### CONCLUSION:

Bill 55 violates a wide range of long standing principles of property assessment and taxation.

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#### CONSULTATION

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The provincial government has recently agreed to a definition of consultation which is useful to measure this initiative against<sup>3</sup>:

*“consult” and “consultation” mean, provision to a Party of:*

- a. notice of a matter to be decided, in sufficient detail to permit the Party to prepare its views on the matter;*
- b. a reasonable period of time to permit the Party to prepare its views on the matter;*
- c. an opportunity for the Party to present its views on the matter; and*
- d. a full and fair consideration of any views on the matter so presented by the Party.*

The three tests most relevant here are:

- sufficient information
- reasonable time to consider
- full and fair consideration of any view on the matter.

#### a) SUFFICIENT INFORMATION

The materials on which the consultations are based are flawed in several respects:

- There were several material errors (e.g., BC Hydro excluded, regional district levies, Abbotsford) in the municipal model. The result of this is that original impacts are not correctly stated.

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<sup>3</sup> Nisga’a Treaty Negotiations, Agreement in Principle

- On September 10, the Finance Ministry announced errors in the first set of calculations and advised that new individual projections have been produced. It is doubtful that most local governments have had the opportunity to examine these revised impact statements.
- The assessment base for the 1997 impacts isn't the real base. For instance the model can only assume what the Commissioner's rates for right of way will be (unless the Commissioner has already informed the government but has not informed taxing jurisdictions). The additional right of way values for safe operating zones have also yet to be defined.
- There is precious little information for regional districts. In addition, the regional district component of the municipal model has underestimated the impacts in some cases, especially where values are shifting between rural and urban areas.

b) REASONABLE TIME TO CONSIDER THE INFORMATION

- The original commitment to begin the consultation in the Spring has been seriously compromised. A year ago, the provincial government promised a lengthy period of consultation, which included assurances that the database and model would be available to facilitate discussion "by early 1996".

The letter to municipalities accompanying the report was dated August 9, and the letter sent to UBCM was dated August 12, 1996. These contain a request for comments by September 12, 1996. Since many municipalities didn't receive the report until late in the week of August 19 (many of the more distant municipalities didn't receive it in the mail until August 26), they officially had three weeks to respond. The only technical briefing meeting on the model occurred on September 10th – two days before the deadline. A conference call for those unable to attend the September 10th meeting was arranged for September 12, the deadline date. Moreover, the rail tax information package received by municipal treasurers included a request to fax back a completed questionnaire by August 21, which in many cases, was earlier than the packages were received. The questionnaire requested treasurers to comment on the accuracy of the data supplied for the municipality by the model, which in some cases, was not a simple exercise.

- Regional districts are still not in a position to be adequately consulted or even to be advised of the impacts of the policies. The commitment to provide materials by end of August was not achieved.

c) FULL AND FAIR CONSIDERATION OF THEIR VIEWS

- How can views of local government adequately be considered if the regulations are to be put in place by the end of September? If, for instance, the provincial government could be persuaded to consider a 4% threshold rather than 6%, it would be forced to recalculate the entire model and there there does appear to be enough time to reconsider such key components of the approach before the regulation must be finalized.

CONCLUSION:

The consultation on Bill 55 does not meet the tests of adequate consultation.

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PRECEDENTS

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A precedent is defined as:



*Previous case taken as example for subsequent cases or as justification; decision, procedure, etc., serving as rule or pattern.*

Any initiative in public policy will be watched for its precedent-setting value.

Among the potential precedents established by Bill 55 are:

- it sets a 6% total or a 1.5% per year threshold at which it is acceptable for provincial policy to impact local revenues. This opens the door to all sorts of proposals to download or cut grants – and provided the cuts stay within 1.5% per annum, they can be justified as acceptable and manageable.
- it reinforces the arguments of the major industrial class to have similar tax rate and ratio limits.

It may also have some perverse precedents:

- is the provincial government, in defining the ratio and tax rate: setting a floor, a cap, or a preferred tax policy? The government must have chosen these rates and ratios for good reason including that they were defensible tax policy choices. Other taxpayers may now suggest municipalities with lower rates or ratios raise their rates to the provincially sanctioned levels. This could lead to a uniform utility tax rate and higher utility taxation.

CONCLUSION:

Bill 55 establishes precedents that will provide the rationale for the provincial government to justify similar actions in the future or for others to argue for similar treatment.

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## UNWORKABILITY AND OTHER CONCERNS

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Bill 55 raises numerous other concerns:

- an unintended (if we are to believe that the original rationale was rail tax relief) tax reduction to other utilities of approximately \$1 million or 13% of the total value of the reduction.
- two definitions of right of way are to be introduced, but the details are sketchy about the criteria and valuation for the additional right of way required for operational safety reasons.
- the impact on tax sharing agreements is complicated by the modeling.
- a single tax cap fails to provide for variations in local circumstances. For instance, the District of Kent relies heavily on its class 2 assessment base, which includes not only railway right of way, but also a substantial amount of pipeline and other non-rail assessment. The District also has very little other non-residential assessment to which the tax burden may be shifted to pay for the services that are being provided. The model is insensitive to the hardships it will cause and the lack of flexibility that is inherent in the fiscal situations of some local governments.
- an (intended/unintended) effect of the measures is to reduce the potential amount of BC Rail payments.

UNCERTAINTY

Three types of uncertainty can be identified:

- short term
- long term
- legal

### Short Term

- If the BC Assessment Authority cannot complete assessments by the time of the final roll in December, then adjustments will have to be made through the Court of Revision, and may be only

resolved after Assessment Appeal Board hearings. While the factors will be established in October, 1996, the assessed values may not be known until early 1997.

Local government cannot determine with certainty actual rail tax revenues for budgeting purposes.

- It is now also apparent that the regional district component of the municipal model significantly underestimated the impacts on certain municipalities. They evidently will be eligible for “cash mitigation” for 1997 but their regulated factors will be readjusted in 1997.
- The Ministry report suggests that if redefinition of right of way may initially increase municipal revenues, adjustment factors may be accelerated in early years. To our knowledge this level of analysis has not been undertaken. At this point, the actual impacts for 1997 in this respect alone are not known.
- it is still unclear if relief will be offered in 1997 for regional hospital districts, since there may be no mitigation by way of adjustments to rural assessments and no indication of cash transfers.

#### **Long Term**

- Bill 55 sets in place a system of artificial constraints for all time. It doesn't say what happens if assessed value of rail properties increases and the factors remain unchanged.
- after the year 2000, the policy paper proposed to just apply the tax ratio. This would mean municipalities that have tax rates of less than \$32 per thousand but exceeded the 2.5 ratio, might suffer additional tax losses.

#### **Legal uncertainty**

- there is a good potential for a challenge of the 1997 assessment roll. Grounds could include:
  - two right of way definitions and valuation methodologies
  - calculation methodology for the commissioner's rates.
- There have been suggestions that the commissioner's rate for right of way may be higher than anticipated. This may be the result of the methodology for calculating the rate which might not account for the value of Crown and aboriginal lands. In so doing, the rate would no longer be representative of the average value of all lands through which the right of way runs. This would lead to a situation where right of way values were higher than anticipated, particularly in rural areas.

It could also lead to a situation where the commissioner's rate was challenged and produced considerable uncertainty and perhaps, if the rate was not upheld, potential tax refunds. This scenario would replay the confusion and upheaval that took place in the local government tax base as a result of court decisions in the late 1980s, and would not be a desirable outcome.

#### **CONCLUSION:**

There are numerous other good reasons to reject Bill 55. The implementation is behind schedule, far too complex, uncertain and unworkable. Too many questions remain unanswered.

#### **7. SUMMARY CONCLUSIONS**

The case against Bill 55 is clear cut:

- the Bill violates assessment and taxation principles that are widely accepted, including by provincial officials.
- the process for implementation does not meet the tests of consultation as set out by the provincial government, and asks officials to make decisions without knowing the full impacts.
- the Bill establishes precedents that the provincial government will undoubtedly be asked to extend to other taxpayers.
- the implementation process is full of other concerns, not that least of which are the legal and other uncertainties that have been created.

It has not been shown that the approach of a complex series of adjustment factors and mitigation measures can actually work.

Based on this analysis, it is clear that Bill 55 should not proceed.

UBCM offered to explore alternatives at its last Convention but the provincial government officials chose to proceed with the implementation. This has only served to highlight the problems of Bill 55.

Bill 55 should be repealed and a new process to reach the objective embraced.

## **8. RECOMMENDATIONS**

The case against Bill 55 is overwhelming and in light of the widespread problems, it is recommended by the UBCM Executive:

***That the provincial government immediately suspend implementation of Bill 55 with respect to rail and utility assessment and tax reductions and reconsider the resolution endorsed at the 1995 UBCM Convention:***

1. *UBCM concurs with the provincial government that it is in both the provincial and national interest to maintain the competitiveness of our rail and port systems.*
2. *That the provincial government provide clear assurance of their commitment to:*
  - *protecting the integrity of the assessment system;*
  - *preserving local autonomy to establish tax rates; and*
  - *ensuring consultation and notice.*
3. *That UBCM wishes to continue to consult with the provincial government and the railways as suggested in the 1995 Provincial Budget, with the objective of seeking solutions that balance the economic needs of the railways and with the costs of the rail system to individual local governments and other local taxpayers.*
4. *That the provincial government not proceed with implementing the railway assessment and utility taxation measures enabled by Bill 55 and that alternative means of addressing both the concerns of railways and local government be investigated.*

## A CLOSER EXAMINATION OF THE MINISTRY CONSULTATION PAPER

The joint Ministry consultation paper on close examination, appears to have been hurried to print since it contains so many inaccuracies and misleading statements.

p. 1 The opening statements make it clear that local officials are being asked to react to Ministry staff recommendations.

It is highly objectionable that local elected officials must react to staff proposals while provincial elected officials continue to remain in the background.

The first section also suggests these are just technical aspects.

How removing 25% of a municipality's tax base as is the case in Lytton (before mitigation) is a technical exercise totally ignores the human consequences on residences and small business.

The paper states that policy proposals for regional district mitigation will be addressed before the end of August, 1996.

This was not done.

The report states the policy rationale with respect to railways.

It doesn't provide a rationale as to why government decided to provide other utilities a 10-15% tax reduction.

The report references the viability of ports.

The provincial government ought to know that ports already set their own rules for grants-in-lieu.

p. 2 *Numerous studies demonstrate that railway property taxes in British Columbia put the province's railways, ports and some shippers at a significant competitive disadvantage compared to their American counterparts or operations in other provinces.*

UBCM has repeatedly asked for these studies but the Ministry of Employment and Investment has been unwilling or unable to provide them.

By 1995, railway property taxes in BC had risen to more than \$15,000 per track mile on average.

Just what does this statement mean?

p. 4 The report states that the municipal reduction will be \$6 million out of tax revenues of \$1.6 billion.

This is very misleading:

- firstly, there is an additional \$1 million in tax reductions going to other utilities; and
- the tax reduction comes from a small, limited tax base.

This shows a real attempt to gloss over the impacts of the tax reduction.

p. 6 *The new definition would limit right of way to a 100-foot strip along mainline track, plus any additional land that is required for the safe operation of the railway.*

There was never any discussion of second class of right of way nor how “another” commissioner’s rate would be established.

p. 6/7 Track will remain in Class 2.

Three rationales are put forward for reclassification of other property to Class 6 but not one for retaining rail track in Class 2.

p. 8 The report states with respect to tax rate and tax ratio:

*For the year 2000 and beyond, consideration may be given to applying only the second test.*

(Consideration is a poor standard for policy proposals.)

p. 9 The report states about discriminatory practices:

*The ratio of 2.5 is proposed because any utilities class tax rate in excess of this ratio can reasonable be considered discriminatory.*

But it does not offer any analysis.

What is magic about 2.5?!

p. 9 Regarding tax bases, the report states:

*There will be no distinction between the school, hospital and general tax bases for railway properties after full implementation - except as may be required to help cover the government's costs of annual cash transfers.*

The statements are less than clear about what are the impacts.

p. 10 *This paper only outlines the policy proposals for mitigation to significantly affected municipalities.*

Municipalities are forced to react to a set of staff proposals. Regional Districts are worse off.

The report says:

*Proposals for regional district mitigation will be mailed directly to regional district boards by the end of August 1996.*

Contact has only recently been made with a select group of Regional Districts to solicit assistance in reporting information, and concrete proposals have not yet been developed.

p. 10 The threshold impact policy is stated as 6% of municipal revenues not including regional district levies.

This is an important note that is not included in the modelling.

The report says that “*According to the municipal model, without any form of mitigation, fewer than 10 per cent of municipalities would face a loss greater than six per cent of their total property tax revenues.*”

It is great comfort to know the Ministry of Municipal Affairs and Housing sets this as their “standard of care” for their clients.



p. 11 The report goes on to offer this rationale for 6%:

- *it achieves the required reduction in railway property tax;*
- *it is felt that a total revenue loss of six per cent phased in over four years will be manageable; and*
- *the lower the threshold, the greater the number of municipalities requiring mitigation and the greater the burden of the overall tax reduction to other, less-affected municipalities. In other words, as the threshold is lowered, the burden increases on a greater number of municipalities in order to achieve the same overall reduction.*

This is no real rationale.

The first bullet point simply says the measure can be rationalized because it delivers its result.

The second statement employs the subjective rationale because “it is felt”.

So far, we know the only persons to judge this test so far are provincial bureaucrats. Their opinions will be very different than residential and small business taxpayers in the affected jurisdictions.

p. 11 The report states that “*Calculating the percentage revenue loss based on the impact on total municipal levies (not including regional district levies) is recommended so that municipalities which levy their regional district requisition using the hospital assessment base will not be disadvantaged.*”

This is admirable but what about those who don’t?

Under the scope of mitigation, the following statement is offered:

*No mitigation will be provided for hospital or school tax levies because the impact of the change in the railway property tax base will be distributed over either the entire regional hospital district or the province, or it will be offset by increases to other property classes in the normal manner or reduced expenditures.*

This is a very obtuse statement. For instance, what reduced expenditures are contemplated under these projects?

p. 12 The report states: “*The ability of municipalities to shift the burden of rail tax reform back onto class 2 properties will not be taken into consideration when determining mitigation measures. Municipalities will be expected to act responsibly and not target tax rate increases to utility-class or major industry class property owners.*”

This is a very arrogant statement because of its judgmental values. It implies that provincial staff know better local circumstances than locally elected officials. It also provides a veiled threat about the “expected” behavior of local elected officials.

It says not to target tax rate increases to utility-class or major industry class property owners.

This leaves the distinct impression that residential taxpayers and to a lesser extent, small business, are to be targeted for the increase.

p. 13 The proposed policy is that:

*Adjustment factors and mitigation measures for 1997 and subsequent years will, in effect, be calculated as though assessed values and relative tax rates in all future years will be as they are in 1996.*

This policy is hard to comprehend.

The rationale provided is:

*Forecasting future assessments or changing the measures every year would be impractical because of the difficulty of forecasting future market values or calculating a revenue loss attributable to railway assessment changes when other assessment variables are also changing.*

It provides some circular arguments such as:

Forecasting future assessments .... would be impractical because of the difficulty of forecasting future market values.

p. 13 Phase in.

*Instead these changes will be effective in 1997.*

So much for consultation. Government officials have spoken.

p. 14 The report says: *“Conversely, if the redefinition of right of way and the reclassifications initially increase municipal revenues, adjustment factor reductions may be accelerated in the early years to ensure a smooth transition of revenue impacts.”*

The modeling reveals only the case of Coquitlam which is projected to receive a minimal \$3,000 tax revenue increase.

The Ministry should identify any other such cases since they have highlighted this is as policy issue in the report.

p. 16 With respect to non-rail affected municipalities, the statement is offered that *“Preliminary analysis suggests that none of these “non-rail” municipalities will require mitigation measures.”*

They may not require mitigation but they will suffer tax reduction and transfers to the residential and other classes because of purported rail taxation measures.

p. 16 This table states that materials would be distributed in early August.

In actual fact, the letter accompanying the material was dated August 9 and distributed to municipalities during the following week. Letters were received between August 14 and August 26, depending on the distance from Victoria and the lower mainland.

p. 18 It says *“Based on this input, the government will make a final decision before the end of September, 1996.”*

And it sets a deadline of September 12.

Yet just pages earlier, the paper stated that:

- receipt of comments was open to mid-September; and
- that final consultation was open from September 16-20.

It is unclear how September 12th was chosen and why other parts of the report suggest different deadlines.