COMPENDIUM

Putting Students First Act, 2012

General Overview

The Putting Students First Act, 2012 (the “Act”) would require employment contracts and collective agreements in the education sector to include terms (“required terms”) implementing the fiscal constraints announced in the 2012 Budget. A Memorandum of Understanding (“MOU”) between the government and the Ontario Catholic Teachers’ Association (“OECTA”) would be used as a template for these terms. These terms govern such items as compensation, sick leave credits, and sick leave and service retirement gratuities. Other MOUs would be permitted if they contain terms that are substantially similar in all relevant respects to the terms in the OECTA MOU. The Act would permit collective bargaining but would require that before the collective agreements come into operation they are reviewed by the Minister of Education (“Minister”) to ensure that they contain the required terms.

The Act would provide the Lieutenant Governor in Council (“LGIC”) with authority to issue orders in council or make regulations imposing collective agreements, amending their terms or adding terms and to address any other matters needed to implement the restraint measures in the education sector.

Reviews by the Ontario Labour Relations Board and courts of the legislation and actions undertaken under the Act would be limited.

Specific Provisions

Preamble

The preamble describes the government’s initiatives over the last several years to improve the quality of education and the level of funding for the education sector. It describes a process, the Provincial Discussion Table, by which the government has attempted to demonstrate to the parties in the education sector the need for compensation restraints.

Interpretation and Application

Subsection 1 (1) would define key concepts such as “compensation”, “employee bargaining agents”, “employment contract” and “restraint period.” “Compensation” includes any direct and indirect forms of payment and benefits paid or provided in
respect of a person’s employment. The definition may be expanded by regulation. The definition of “restraint period” would establish a two year restraint period of two years and be extended by regulation for a further year.

The restraint period for all teachers employed and support staff employed by boards and teachers employed by the Provincial School Authority would commence on September 1, 2012 and for other groups of employees on the day after the expiry date of their current collective agreements or the day their bargaining agent is certified or recognized (ss. 1 (2), (3) and (4)).

Subsection 1 (5) would enable the restraint period to start on a day before the Act comes into force. Subsection 1 (6) would define the concept of “settled collective agreement” by describing various formalities that would render a collective agreement a binding contract. Subsection 1 (7) would render the Act applicable to the Provincial School Authority and to teachers employed by the Provincial School Authority. Subsection 1 (8) directs that the Act should not be interpreted as interfering or controlling constitutionally protected denominational and minority linguistic rights in the education sector.

Employees Who Do Not Bargain Collectively

Section 2 would govern the operation of employment contracts whether they were entered into before or after the Act came into force (s. 2 (6)).

Subsection 2 (1) would require such contracts to include terms consistent with those itemized in paragraphs 1 to 10 and that may be prescribed by regulation: freezes on compensation; no further accumulation of service or sick credits for purposes of a retirement gratuity; payment of any vested gratuities must be at the rate of pay on August 31, 2012; annual sick leave credits of 10 days paid at 100 per cent of salary; an additional 120 days of sick leave credits paid at 66.67 per cent of salary or 90 per cent of salary if the entitlement to that rate has been adjudicated.

Subsection 2 (2) would provide that any attempt to change, nullify or limit the operation of the terms described in subsection 2 (1) would render an employment contract inconsistent with those terms. Subsection 2 (3) would deem that from the first day of the restraint period contracts provide for terms consistent with those set out in subsection 2 (1) and subsection 2 (4) would render any inconsistent terms inoperative. Subsection 2 (5) would prohibit any attempts to recover compensation forgone as a result of the Act. If the compensation of an employee is limited by the operation of the Broader Public Sector Accountability Act, 2010 their employment contract would not be governed by this Act (s. 2 (7)).

Section 3 would require boards to submit a report to the Minister that its employment contracts comply with the Act.
Employees Who Bargain Collectively

**Subsection 4 (1)** would provide boards that employ teachers represented by the Ontario Catholic Teachers’ Association (“OECTA”) with a mandate to negotiate collective agreements consistent with the terms set out in a Memorandum of Understanding (“MOU”) between the OECTA and the Ministry of Education (“required terms”). Collective agreements between other boards and their unionized employees could be based on a MOU that is substantially similar to OECTA’s if the MOU is concluded by August 31, 2012. Otherwise, the terms of their collective agreements would have to be substantively identical to the terms set out in the OECTA MOU. The provision would also enable making regulations prescribing terms to be included in collective agreements. Such regulations could modify or replace terms required by MOUs ([s. 19 (1) (c) and 19 (2)]. Subsection 4 (2) would make such modifications effective as of the date specified in the regulation.

**Subsections 4 (3) and (4)** would provide that any terms in a collective agreement or terms and conditions of employment that change, nullify or limit the operation of the required terms would render the collective agreement or terms and conditions inconsistent with required terms.

**Subsections 4 (5) and (6)** would provide that the bargaining process that would apply during the restraint period would be subject to the terms of the process, if any, set out in the applicable MOU. If the MOU prohibits strikes and lock-outs, a strike or lock-out that contravenes the terms of the MOU would be unlawful for purpose of the Labour Relations Act, 1995.

**Subsection 5 (1)** would during negotiations for a collective agreement prohibit terms and conditions of employment that are inconsistent with the required terms. Any terms and conditions of employment applicable during a restraint period that commenced before the Act comes into operation and that are inconsistent with required terms would be rendered inoperative by **subsection 5 (2).**

**Subsection 6 (1)** requires collective agreements applicable during the restraint period to have a duration of two years and, if they do not, **subsection 6 (2)** would deem them to so provide. **Subsection 6 (3)** would override the rule in the Education Act that authorizes teacher collective agreements with four-year durations.

**Section 7** would in respect of collective agreements and required terms: require their inclusion in the collective agreement ([s. 7 (1)]) or otherwise deem their inclusion ([s. 7 (2)]); render agreements with inconsistent terms inoperative to the extent of the inconsistency ([s. 7 (3)]); limit parties’ ability under the Labour Relations Act, 1995 (“LRA”) to amend collective agreements if the terms would be inconsistent with or omit the required terms ([s. 7 (7)]). Similar measures would apply to arbitration awards in respect of terms and conditions of employment ([ss. 7 (4), (5)]).
and (6)). Subsection 7 (8) would prohibit any attempts to recover compensation forgone under the Act.

Section 8 would establish the following process for the Minister’s review of collective agreements to ensure their consistency with required terms: while under review, their operation is suspended or delayed (s. 8 (1)); a copy, and if required, a summary must be submitted (ss. 8 (2) and (3)); lockouts or strikes would be suspended for the review period and restored when the agreement comes into operation or while the parties are negotiating a new agreement if ordered to do so by the LGIC (ss. 8 (4) and (6)); strikes or lockouts during the review would be deemed unlawful and subject to enforcement measures under the LRA (s. 8 (5)); terms and conditions of employment that existed before the agreement would govern while it is under review (ss. 8 (7) and (8)); agreements come back into operation on the later of a day specified by the Minister or 3 months after the submission for review or a day specified by LGIC (ss. 8 (9), (12) and (13)); a report on when a collective agreement comes into operation under ss. (9) would be published within fourteen days and the Minister would deliver a copy of the report to the Speaker of the Assembly (ss. 8 (10) and (11)); and the date of the collective agreement would be as provided under Education Act or specified by the LGIC (ss. 8(14)).

Minister’s Advice and Orders and Powers of the Lieutenant Governor in Council

Section 9 would enable the LGIC, on the advice of the Minister, to issue orders in council in the following circumstances (s. 9 (1)):

- an agreement does not include required terms or the parties appear unable to conclude such an agreement or to do so by December 31, 2012; parties have implemented terms that are not consistent with the required terms; a board has made payments prohibited under the Act. The LGIC could order: the inclusion of required terms or the negotiation of a new collective agreement (para 1 of s. 9 (2)); the prohibition of strikes during negotiations (para 2 of s. 9 (2)); terms and conditions of employment whenever there is no collective agreement in operation (para 3 of s. 9 (2)); reimbursement by employees of monies paid contrary to the Act (para 4 of s. 9 (2)); and the establishment of a consultation process with boards and employee bargaining agents before making any of the foregoing orders (para 5 of s. 9 (2)), although consultation is not a duty (s. 9 (7)). If the LGIC orders negotiations, the LRA would govern the status of negotiations and the right to strike or lockout unless the LGIC ordered otherwise (s. 9 (3) (a) and (b)) and the renegotiated agreement would have to be resubmitted for review under section 8 (s. 9 (3) (c)). The prohibition in the Employment Standards Act, 2000 would be rendered inoperative in respect of orders by the LGIC for reimbursements (s. 9 (6)).

Orders in council under section 9 would not be considered regulations and therefore would not need to follow the process for making regulations (s. 9 (14)).
Section 10 would authorize the LGIC to make regulations imposing collective agreements.

General – Enforcement Measures, Jurisdiction of Courts and Tribunals, Causes of Action, and Authority for Regulations

The proposed Act would deal with enforcement measures, the ability of courts and tribunals to review or consider civil claims in respect of the legislation and measures pursuant to the legislation as follows: enable the Minister to apply to the Ontario Labour Relations Board (“ORLB”) to address contraventions of the Act (s. 11) and entitle him or her to notice of and appear in any proceedings to interpret the Act (s. 12) without waiving the Crown’s immunity under the LRA (s. 13 (5)); limit the application of the LRA if it conflicts with the Act (s. 13), while preserving the ability to enforce the Act under the LRA (s. 13 (4)); in respect of the Act, regulation or decisions under the Act, prohibit review by the OLRB or an arbitrator of their constitutionality or conflict with the Human Rights Code (s. 14); limit review by courts, the OLRB and arbitrators of required terms in collective agreement and employment contracts, the Act and its regulations, and measures undertaken under the Act (s. 15); prohibit civil claims against the Crown and its agents and employees in respect of the enactment of the Act or regulations and actions done under their authority (s. 16); limit the ability to bring civil claims against boards and employee bargaining agent and their agents and employees for doing anything in compliance with the Act (s. 17); deem that nothing done pursuant to the Act, a regulation or order in council constitutes expropriation or injurious affection (s. 18).

Subsection 19 (1) would enable the LGIC to make regulations that: extend the restraint period for a year for employees whose bargaining agent has not entered into a MOU referenced in paragraph 1 or subparagraph 2i of s.4(1) on or before August 31, 2012; exempt parties, collective agreements and employment contracts from the application of the Act; modify the required terms for collective agreements; establish terms and conditions of employment when there are no collective agreements; impose terms in employment contracts and collective agreements dealing with the hiring of teachers and teachers’ use of diagnostic assessments of students; establish the date when the Minister is deemed to have received collective agreements under the Act; deal with dispute resolution mechanisms and the terms and conditions of employment when the LGIC issues an order in council dealing with situations where no agreement appears possible or one has not been concluded by December 31, 2012; deal with the amount of and the process for reimbursements of monies paid to employees contrary to Act; impose a collective agreement; deal with transitional matters and anything else necessary to implement the Act. The regulations may replace or modify “required terms” (s. 19 (2)) and apply them to a period before the Act comes into force if that time falls within a restraint period (s. 19 (4)).
Subsection 19 (3) would provide that a regulation under subsection 19(1) imposing terms in employment contracts dealing with the hiring of teachers and teachers’ use of diagnostic assessment of students would not apply unless the parties had entered into a MOU referred to in subsection 4(1) on or before August 31, 2012.

Section 20 would enable the LGIC to repeal the Act by proclamation.

Consequential Amendments to the Education Act (“EA”)

Subsection 21 (1) of the Act would amend the EA to provide the LGIC with authority to make regulations governing sick leave credit and sick leave credit gratuities, including the elimination of systems of sick leave credits and sick leave credit gratuities currently authorized by the EA. If a conflict were to arise between such regulations and the EA, the regulations would prevail. The regulations would apply to any period within a restraint period even if the period occurred before the Act comes into force. It would limit the ability of courts to review such regulations or the ability of parties to bring civil claims in respect of such regulations. Subsections 21 (2), (3), and (4) would amend sections in the EA dealing with teacher collective agreements by introducing a definition of “commencement date” for these agreements.

Commencement and Short Title

The Act would come into force on Proclamation (s. 22) and the title would be the Putting Students First Act, 2012 (s. 23).