



SUBJECT: Bill 68, Modernizing Ontario's Municipal Legislation Act, 2017

TO: Committee of the Whole

FROM: Legal Department

Report Number: L-5-17

Wards Affected: All

File Numbers: 110-03

Date to Committee: May 1, 2017

Date to Council: May 15, 2017

Recommendation:

Support the Association of Municipalities of Ontario (AMO) submission to the Standing Committee on Social Policy concerning Bill 68, Modernizing Ontario's Municipal Legislation Act, 2017 which is attached as Appendix "C" to this report; and

Direct the Clerk to forward a copy of the resolution attached as Appendix "D" supporting the AMO submissions as recommended in legal department report L-5-17 to the Clerk of the Provincial Standing Committee on Social Policy.

Purpose:

An Engaging City

- Good Governance

Background and Discussion:

In the fall of 2015, staff informed Council that there was a consultation process being conducted by the Provincial government as part of its five-year review of the *Municipal Act, 2001*. By way of participation, Council adopted, by resolution, the Association of Municipalities of Ontario's (AMO) submission to the Minister of Municipal Affairs and Housing.

Bill 68, *Modernizing Ontario's Municipal Legislation Act, 2017* was introduced in the Provincial legislature in November 2016 and has recently been referred to the Standing Committee on Social Policy. The Bill proposes amendments to various Acts affecting municipalities, including the *Municipal Act, 2001*, the *Municipal Conflict of Interest Act*, the *Municipal Elections Act* and the *Planning Act*.

Some of the key proposals of Bill 68 are outlined below:

- Codes of Conduct

The Bill requires codes of conduct for all members of council and local boards. The Minister of Municipal Affairs and Housing can prescribe, by regulation, the subject matter(s) to be included in the code.

- Integrity Commissioner

All municipal councils and local boards will be required to provide access to an Integrity Commissioner. Municipalities must also allow for the functions of an Integrity Commissioner to be provided by an Integrity Commissioner of another municipality if the municipality has not appointed an Integrity Commissioner.

The proposed legislation also expands the current role of an Integrity Commissioner to include:

- conducting investigations where there is a complaint or on his/her own initiative pursuant to the *Municipal Conflict of Interest Act*;
- providing advice to members of council and local boards on their obligations under the city's code of conduct, any policies, rules or procedures governing ethical behaviours as well as under the *Municipal Conflict of Interest Act*; and
- providing educational information to the municipality, councillors and local boards.

Additionally, any person can apply to the Integrity Commissioner to conduct an investigation of an alleged contravention of the *Municipal Conflict of Interest Act*.

- Meetings

Bill 68 changes the definition of a meeting to one where a quorum of members is present and the members discuss or deal with a matter in a way that materially advances the business or decision-making of the council, committee or local board. This definition is narrower than the definition in the current legislation.

Additional subject matters have been added to the list of when a meeting may be closed to the public, including:

- information supplied in confidence from the federal or provincial government or Crown agency;

- a trade secret or scientific, technical, commercial, financial or labour relations information supplied in confidence, which if disclosed, could prejudice the competitive position or interfere with contractual or other negotiations of a person or organization;
- a trade secret or scientific, technical, commercial or financial information that has monetary or potential monetary value; and
- a position, plan, procedure, criteria or instructions to be applied to any negotiations carried on or to be carried on by or on behalf of municipality or local board.

The proposed amendments also provide for changes to a municipality's procedural by-law to allow members of council to participate in meetings electronically which are open to the public, provided that "any such member shall not be counted in determining whether or not a quorum of members is present at any point in time."

As it pertains to closed meeting investigations, there is also now a requirement for a municipality to pass a resolution stating how it intends to address the report from the closed meeting investigator.

- Adoption of Policies

Municipalities are now responsible for adopting policies regarding the relationship between member of council and the officers and employees of the municipality; the protection and enhancement of tree canopy and natural vegetation; and pregnancy leaves and parental leaves of members of council.

- Administrative Penalties

Municipalities will be given broader powers to use Administrative Penalties to promote compliance with by-laws.

- Financial Matters

The proposed amendments allow the Minister to grant municipalities "prudent investor status" in circumstances where a municipal government has exercised the care, skill, diligence and judgment of a prudent investor. The Minister will pass regulations setting out what those standards will be. There is currently regulation pursuant to *City of Toronto Act* which outlines the conditions that are necessary for the prudent investment standard for Toronto.

There a number of amendments with respect to the tax sale of properties. One of those amendments deals with allowing a municipality to commence a tax sale after two years of property taxes being owed. Under current legislation, a municipality has to allow for 3 years of taxes to be owed before a sale can be initiated.

- Changes to the *Municipal Elections Act*

The amendments allow for a term of office of council, in a regular election year, to commence on November 15th instead of December 1st. Contribution limits will also change whereby the maximum contribution that can be made to a candidate will be increased from \$750 to \$1,200. The same limit increase extends to a registered third party. There are also rules with respect to the maximum amount a candidate and the candidate's spouse can contribute to the candidate's campaign.

- Changes to the *Municipal Conflict of Interest Act*

Bill 68 allows for a member of council to participate in the discussion where the matter being discussed is whether to suspend remuneration paid to that member. The member will still not be allowed to vote, however, he/she can try to influence the voting with respect to that issue.

Another change to the *Municipal Conflict of Interest Act*, will require members of council to disclose a pecuniary interest by filing a statement of interest with the Clerk. The Clerk will be required to maintain a registry of written statements of interest as well as the minutes of those disclosed interests.

AMO's Submission before the Standing Committee on Social Policy

AMO has prepared summaries of these proposed legislative changes, an interim communication document providing analysis of the more substantive changes and their implications as well as a Submission document to the Standing Committee on Social Policy. These documents are attached to this report as Appendices "A", "B" and "C". AMO's submission largely focuses on the expanded role of the Integrity Commissioner and its impact on municipalities as well as the need to align a number of the new responsibilities of the Integrity Commissioner with the provincial *Members' Integrity Act* that governs conflict of interest issues related to provincial legislators.

Some of AMO's concerns regarding the role of the Integrity Commissioner include:

- The fact that "any person" can make a complaint to the Integrity Commissioner is too broad and should be limited to the municipality's ratepayers, people living and working in the municipality and anyone doing business with municipal government.
- AMO favours excluding local boards from the Integrity Commissioner's mandatory jurisdiction for codes of conduct and the *Municipal Conflict of Interest Act* because of its potential adverse impact on the public's willingness to volunteer to sit on these local boards as well as its complexity.
- Removing the jurisdiction from an Integrity Commissioner to conduct an inquiry on his/her own initiative about whether a member of council has

contravened certain sections of the *Municipal Conflict of Interest Act*, as the power is overly broad.

- There should be guidelines or regulations that prescribe how an investigative process conducted by an Integrity Commissioner should be carried out to ensure consistency among Integrity Commissioners.
- There is also the concern with respect to the effect that investigations that occur during the election season can have on reputations and therefore, AMO recommends that investigations be completed before nomination date and suspended during the nomination and the election period – similar to what obtains under the *Members' Integrity Act*.

Impact of the proposed changes on the City of Burlington

Should the legislation be enacted in its current form, the City will be required to make changes that align with the legislative requirements. Some of these changes will include:

- Appointing an Integrity Commissioner or that the City make arrangements for an Integrity Commissioner to be provided by another municipality;
- Establishing a code of conduct for members of council in accordance with the requirements of the legislation and any subsequent regulations;
- Amending the City's Procedural by-law to allow for:
 - the new definition of meeting;
 - how meetings can be conducted electronically;
 - what matters can be conducted in closed session;
 - changes to the *Municipal Conflict of Interest Act* whereby the Clerk will be required to maintain a registry of written statements of interest as well as the minutes of those disclosed interests.
- Enacting policies that will address the protection and enhancement of tree canopy and natural vegetation as well as pregnancy leaves and parental leaves for members of council. Although the City currently has a Council/Staff protocol, with the enactment of Bill 68, those policies might need to be revisited to ensure they are in compliance with the new legislation;

Reviewing current City by-laws to determine instances where the implementation of an administrative penalties regime would be appropriate.

Financial Matters:

N/A

Conclusion:

This report updates Council on the progress of Bill 68 as well as AMO's response to the expected changes to legislation. At the time of writing this report, Bill 68 has been referred to the Standing Committee on Social Policy and AMO in its advocacy role on behalf of municipalities has made submissions to this Committee. It is recommended that Council support the submission made by AMO and that the Clerk be directed to advise the Standing Committee of Council's resolution endorsing AMO's submission.

Respectfully submitted,

Lisa Shields

Assistant City Solicitor

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Appendices:

- A. AMO – Highlights of Bill 68 – Modernizing Municipal Legislation
- B. AMO- Bill 68, Modernizing Ontario's Municipal Legislation Act, 2017 – Summary of Key Provincial Proposals
- C. AMO's Submission to Standing Committee on Social Policy on Bill 68, Modernizing Municipal Legislation Act
- D. Resolution endorsing AMO submissions

Report Approval:

All reports are reviewed and/or approved by Department Director, Director of Finance and Director of Legal. Final approval is by the City Manager.