

HIGHLIGHTS OF BILL 68 - MODERNIZING MUNICIPAL LEGISLATION

March 8, 2017

Proposed Changes to Municipal Act (MA), Municipal Conflict of Interest Act (MCIA), Municipal Elections Act (MEE) and several other Acts.

Bill 68 Status:

With the legislature back in session, the House debate on the Bill has resumed. Timing for Standing Committee hearing could be this month, earlier than previously anticipated. AMO's will complete its request for amendments shortly. Some proposed changes are welcome and others are problematic from a policy or implementation lens. We will be asking legislators to make certain that any changes are clear, fair and do not generate unintended consequences.

Bill 68 Content: Some highlights follow:

Proposed Integrity Commissioner (IC) Regime:

The most significant proposal is to the authority and related provisions of a new and greatly expanded municipal integrity commissioner (IC) regime. It is to apply to all municipal councils and local boards in Ontario. This part of the Bill provides the most significant challenges.

The Bill's IC accountability framework treats municipal governments and its local boards in a manner that is in stark contrast to the provincial government's own integrity regime. The latter is narrower - limited to MPP complaints of another MPP, current and former public servants and staff in MPP offices. Like that regime, members of council and local boards can seek advice on a matter from a municipal integrity commissioner for matters related to the MCIA and municipal code of conduct. Codes of Conduct for all councils and local boards will be mandatory across Ontario.

AMO believes that the intent of providing other recourses besides the courts is worthy. However, the proposed IC regime goes too far, too fast. It brings an untried complexity that could result in unintended consequences and costs that will be difficult to determine let alone manage.

In making the IC regime mandatory for all municipal governments and local boards, following are some of the key challenges identified with the Bill:

- Its application to members of all local boards (even those without decision-making authority and those without a council representative on them) may dampen the interest of citizens willing to join local boards, which would be an unfortunate outcome. Educating and training these boards is no small task based on the experience of the introduction of closed meeting investigators.
- Any "person" anywhere can make a code of conduct or MCIA complaint whether they are an elector or not and whether or not they are doing business with the municipal government or its boards which makes the administration such as MFIPPA and budgeting extremely unpredictable;
- MCIA sets out principles of the duties of members councils and local boards and but it is silent on the duties of complainant nor is there any real onus on complainants;
- Where there are joint service boards, it is unclear which municipal IC has jurisdiction or how it is to be determined and the other rules applied;
- Are ICs in effect 'officers' of the municipal government - similar to provision that a municipal clerk is a designated position in the MA;
- It is unclear whether the authority to impose penalties could be delegated by council or local board to the IC and should there be a greater range of penalties at this stage of the process in light of the greater range of penalties

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available to a judge should a matter end up in the courts; and

- Determining how to have an IC (e.g., own, shared, functional relationships; budget requirements; administration set up; managing MFIPPA, etc.) is more complex than the mandatory closed meeting investigator system and will require at least 18 months before proclamation.

Meetings:

- The proposed definition of a meeting is welcome and should put to end the inconsistency that has been used by office of the Ontario Ombudsman and other closed meeting investigators;
- Three new exceptions to resolve some of the difficulties of the original framework but will require amendment. For example, the province or agencies of the Crown may supply confidential information and municipal governments and municipal share corporations should be added to that list as they can supply another municipal government or entity with confidential information;
- Proposed authority for each council to decide locally whether or not it wants to adopt a policy on electronic meetings and the related rules except that a person joining electronically cannot be counted for quorum; and
- Temporary replacement at an upper tier meeting where a lower tier councillor is to be absent is helpful but could benefit from the alternate being designated for a period of time rather than sporadically so there is some knowledge of the upper tier's procedures and other policies.

A few other matters:

- Working with the Municipal Finance Officers Association, we want to see that all municipal governments can benefit from improved investment authority offered by a prudent investor standard approach, done in a way that doesn't create new internal administration for municipal governments;
- Proposal to move council start of term to Nov. 15 to help manage some of the unintended consequences of a longer period between the now earlier election date of October and term of council;
- Proposal to put a limit on 'self funding' election campaigns;
- Clarifies that municipal bylaws can have effect in areas under conservation authorities and clear authority to regulate advertising devices; and
- All councils to develop policies related to council-employee relationships; also pregnancy and parental leave of council members.

LINKS



Bill 68, Modernizing Ontario's Municipal Legislation Summary of Key Proposals



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



Municipal Act Review Resources



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