



Staff Report

Administration

Report To: Committee of the Whole
Meeting Date: December 4, 2017
Report Number: FAF.17.138
Subject: Bill 68 – Modernizing Ontario’s Municipal Legislation Act
Prepared by: Corrina Giles, Town Clerk

A. Recommendations

THAT Council receive Staff Report FAF.17.138 “Bill 68 – Modernizing Ontario’s Municipal Legislation Act” for information.

B. Overview

This report provides Council with information regarding Bill 68, the Modernizing Ontario’s Municipal Legislation Act, and information regarding the changes Bill 68 made to the *Municipal Act*, *Municipal Elections Act* and *Municipal Conflict of Interest Act*.

C. Background

Bill 68 was introduced for first reading in November 2016, and was revised numerous times before it received third reading and Royal Assent on May 30, 2017. Bill 68 has significant impacts on municipal government.

It should be noted that all amendments resulting from the Bill have not yet been proclaimed. Some amendments were proclaimed on Royal Assent, some will come into effect in 2018 and into 2019, and some proclamation dates are yet to be set.

Attached to this report is the AMO document “Summary of Key Provincial Proposals” stemming from Bill 68 (Attachment #1). Provided below is a brief summary of the changes to the three main pieces of legislation impacting the Town of The Blue Mountains as a lower tier municipality. Bill 68 can be accessed via Legislative Assembly of Ontario [Bill 68, Modernizing Ontario's Municipal Legislation Act, 2017](#)

Staff will take advantage of training opportunities for more understanding of the changes, and will continue to monitor communications from the Ministry and seek clarification on new and revised sections of the legislation. Staff will report back to Council for direction and decisions, as required.

D. Analysis

1. *Municipal Act, 2001*

a) **Mandatory Codes of Conduct**

Bill 68 requires municipalities to establish codes of conduct for members of Council and local boards. The Town previously adopted a Council Code of Conduct.

b) **Integrity Commissioners**

Effective March 1, 2019, the scope of responsibilities for the Integrity Commissioner is widened, and includes a requirement to indemnify Integrity Commissioners and rules related to inquiries and reporting during regular elections.

Effective March 1, 2019, specific rules apply to Integrity Commissioners regarding inquiries around regular municipal elections (s.223.4(7)(8)(9):

- 1) If the Commissioner has not completed an inquiry before nomination day for a regular election, the Commissioner shall terminate the inquiry on that day.
- 2) If the Integrity Commissioner has terminated an inquiry, the Commissioner shall not commence another inquiry in respect of the matter unless within six (6) weeks after voting day in a regular election, the applicant or Member whose conduct is concerned, makes a written request that the inquiry can be commenced.
- 3) Commencing on nomination day for a regular election;
 - a. there shall be no requests for an inquiry about whether a member of council or of a local board has contravened the code of conduct applicable to the member
 - b. the Commissioner shall not report to the municipality or local board about whether, in his or her opinion, a member of Council or of a local board has contravened the code of conduct applicable to the member
 - c. the municipality or local board shall not consider whether to impose penalties on a member of council or of a local board

Effective March 1, 2019, (section 223.4.1(15) to (18) when an investigation into a violation of the Municipal Conflict of Interest Act is complete, an Integrity Commissioner may decide to apply to a judge for determination as to whether the member contravened the Municipal Conflict of Interest Act.

Effective March 1, 2019, any investigation regarding the Municipal Conflict of Interest Act must be made within six (6) weeks of the applicant becoming aware of the alleged contravention, unless both of the following are satisfied:

- 1) The applicant became aware of the alleged contravention within the period of time starting six weeks before nomination day for a regular election, as set out in section 31 of the *Municipal Elections Act*, and ending on voting day in a regular election;
and,

- 2) The applicant applies to the Integrity Commissioner within six (6) weeks following voting day in a regular election, as set out in section 5 of the *Municipal Elections Act*.

c) Council Meetings

Effective January 1, 2018, (section 238(1)) the definition of “meeting” has been amended to mean any regular, special or other meeting of a Council, or a local board or of a committee of either of them, where:

- 1) A quorum of Members is present; and
- 2) Members discuss or otherwise deal with any matter in a way that materially advances the business or decision-making of the Council, local board or committee.

Effective January 1, 2018, section 239, provides the following exceptions which allow Council or a local board to go into Closed Session:

- 1) Information explicitly supplied in confidence to the municipality or local board by Canada, a province or territory or a Crown agency of any of them;
- 2) a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the municipality or local board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- 3) a trade secret or scientific, technical, commercial or financial information that belongs to the municipality or local board and has monetary value or potential monetary value; or
- 4) a position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board.

Effective January 1, 2018, section 238(3.1) provides that members may electronically participate in meetings that are open to the public, but cannot be counted towards quorum. Council would have to amend the Procedural By-law to allow this. It should be noted that the Procedural By-law shall **not** provide that a member of Council, of a local board or of a committee of either of them, can participate electronically in a meeting that is closed to the public.

Effective January 1, 2018, (section 237(1)) lower-tier municipalities may also now appoint one of its members (per term) of Council to replace an upper-tier Member of Council if they are not able to attend a meeting of the upper tier.

d) Treasury and Taxation

Bill 68 amendments are intended to ensure that municipalities are able to build more diversified portfolios and potentially improve their investment returns. The following tools will be available for municipalities:

- 1) When a corporation dissolves, if any property taxes are in arrears on property that was owned by the corporation and that was forfeited to the Crown, the municipality can register a tax arrears certificate against the title to that land, and after 90 days from registering the certificate, can sell the land if the taxes remain unpaid.
- 2) Fees and charges for the supply of a service or matter can be added to the tax roll for the property to which the service or matter was supplied.

- 3) Tax bills can be sent electronically, should the taxpayer choose to receive it in that manner.

e) Policies

In addition to the current policies required by the Municipal Act, the following have been added as policies that the municipality must adopt and maintain:

- 1) Municipalities are now required to establish Council-municipal staff relationship policies.
- 2) Municipalities are required to develop policies on pregnancy and parental leave for Council Members, and the offices of Council Members would not become vacant because of an absence related to pregnancy or parental leave for 20 consecutive weeks or less.

f) Administrative Penalties

Municipalities may now impose an administrative penalty for failure to comply with a by-law passed under the Municipal Act.

2. The *Municipal Conflict of Interest Act, 1990* ("MCIA")

Effective March 1, 2019, (section 1.1) the MCIA provides that the following principles are added in relation to the duties of members of Council and local boards, including the importance of integrity, independence, and accountability in decision making, the importance of certainty in reconciling public duties and the pecuniary interest of members, an expectation that members will perform their duties of office with integrity and impartiality in a manner that will bear the closest scrutiny, and an understanding that there is a benefit to municipalities and local boards when members have a broad range of knowledge and continue to be active in their own communities.

Effective March 1, 2019, the MCIA has been updated to include the requirement that at a meeting, or as soon as possible afterwards, the member shall file a written statement of the interest and its general nature with the clerk of the municipality or the secretary of the committee or local board. Where the member has a pecuniary interest, either direct or indirect, in any matter being considered by an officer or employee of the municipality or local board, or by a person to which the municipality or local board has delegated a power or duty, the member shall not use his or her office to attempt to influence any decision or recommendation that results from consideration of the matter.

However, an exception to the above rules is made for a member to influence a decision, with regard to the suspension of remuneration.

Municipalities and local boards must now establish and maintain a registry of statements and declarations of pecuniary interests of Council Members and make it available for public inspection.

Effective March 1, 2019, the range of penalties for contraventions of the MCIA has been broadened, and a judge may impose any or all of the following:

- 1) Reprimand the member or former member;
- 2) Suspend the remuneration paid to the member for a period of up to 90 days;
- 3) Declare the member's seat vacant;
- 4) Disqualify the member or former member from being a member during a period of not more than seven years after the date of the order;
- 5) If the contravention has resulted in personal financial gain, require the member or former member to make restitution to the party suffering the loss, or, if the party's identity is not readily ascertainable, to the municipality or local board, as the case may be.

3. *Municipal Elections Act*

- 1) The commencement date of the term of office has been amended from December 1st to November 15, however, the change does not take effect until the end of the next term of council, on November 14, 2022.
- 2) Campaign contribution limits have been increased from \$750 to \$1200
- 3) A candidate or their spouse shall not make contributions that exceed the following:
 - a. For head of council - \$7500 plus \$0.20 per elector
 - b. For member of council - \$5000 plus \$0.20 per elector
- 4) Changes to the deadlines for filing requirements
- 5) Clarification to rules around campaigning and advertising
- 6) New rules that permit registered third parties to incur expenses for third party advertising within the election period
- 7) Increased areas of responsibility for compliance audit committees

E. The Blue Mountains Strategic Plan

Goal #2:	Engage our Communities and Partners
Objective #1:	Improve External Communication With Our Constituents
Goal #4:	Promote a Culture of Organizational and Operational Excellence
Objective #5:	Constantly Identify Opportunities To Improve Efficiencies and Effectiveness

F. Environmental Impacts

None

G. Financial Impact

None

H. In consultation with

Senior Management Team

I. Attached

1. AMO – Bill 68, Modernizing Ontario’s Municipal Legislation Act, 2016, Summary of Key Provincial Proposals

Respectfully Submitted,

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ATTACHMENT #1

BILL 68, MODERNIZING ONTARIO'S MUNICIPAL LEGISLATION ACT, 2016

SUMMARY OF KEY PROVINCIAL PROPOSALS

LINK

 Municipal Act Review Resources



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The key proposals of the *Municipal Act* and *Conflict of Interest Act* are captured below by themes. The changes are also in the *City of Toronto Act*.

Accountability and Transparency Proposals: Part 5.1 of *Municipal Act* (Section 223)

A. Codes of Conduct

- Codes of conduct for members of council and local boards would be no longer discretionary. (There is no proposed change to Local Board definition for this Part.)
- Municipal Affairs Minister given authority if he/she chooses to issue a regulation containing subject matter (s) required to be included in a Code.

B. Integrity Commissioners

- Require all municipal governments provide access to an integrity commissioner (IC); must ensure that all the functions of the IC are being provided by an IC; to have the flexibility to appoint or make arrangements for the functions to be provided by an IC of another municipality.
- Expand current IC role to:
 - Conduct inquiries upon complaint or on own initiative for *Municipal Conflict of Interest Act* (MCIA) matters and code of conduct matters;
 - Provide advice in writing to members of councils and local boards respecting their obligations under the code of conduct; ethical behavior procedures, rules or policies; and the MCIA;
 - Provide educational information in writing to the public, municipality and members of council and local boards about the code of conduct and MCIA.
- New IC powers to allow any person to apply in writing to IC asking for an investigation concerning an alleged contravention of the MCIA; any application must be within 6 weeks that applicant aware of alleged contravention; IC has 180 days to complete inquiry; IC may apply to judge under MCIA if IC considers appropriate for determination of contravention; IC costs paid by alleged member if matter goes to judge.

C. *Municipal Conflict of Interest Act*

- Local Board definition is unchanged (is broader list than Part 5 list).
- Sets out principles (e.g. act with integrity, impartiality).
- Member can speak but not vote where Council or Board is meeting to consider an imposition of the code of conduct penalty to suspend member's pay for up to 90 days.
- File written statement of member's interest after disclosed at meeting.
- Where pecuniary interest a member cannot use office in any way to influence any person/employee who is acting on delegated authority from council.
- Public, accessible registry of written statements or declarations of interests of members. The registry would be available for public inspection.
- Penalties broader; if judge finds a contravention, can: i) reprimand the member or former member, ii) suspend the member's remuneration for a period up to 90 days, iii) declare the member's seat vacant, iv) disqualify the member or former member during a period of not more than seven years, and/or v) require the member or former member to make restitution.

D. Open Meetings

- Definition changed to require an open meeting (council, committee or board) where a quorum of members is present and they discuss or otherwise deal with a matter in a way that materially advances the business or decision-making of the relevant council, local board or committee.
- Four additional discretionary open meeting exceptions proposed:
 - Confidential information supplied by Canada, a province or territory or a Crown agency;
 - Certain third party information supplied in confidence to a municipality or local board;
 - Trade secret or financial, commercial, scientific or technical information that belongs to the municipality or local board and has monetary value or potential monetary value; or
 - A position, plan, procedure, criteria or instruction to be applied to any negotiations by or on behalf of the municipality or local board.
- Municipal procedure bylaw may provide for electronic participation by members at open meetings including the extent and manner but electronic participants are not counted for quorum.
- Require passage of a resolution stating how council/board intends to address an investigation report, where the investigator's opinion is that a meeting was closed contrary to the Act.

E. Municipal Financial Sustainability Proposals:

- Prudent Investor Standard sets out framework for a municipality that meets certain requirements to invest money that it does not require immediately in any security in accordance with a prudent investor standard and a regulation.

Small Business Programs

- Remove the need for approval from MMA before a municipality establishes a small business program, but set out prescribed conditions that must be met before it establishes a program.

Forfeited Corporate Property

- Provide municipalities with authority initiate an expedited tax sale of properties that have vested in the Crown because of the dissolution of a corporation, to facilitate bringing such lands into productive use more quickly.

Municipal Tax Sales

- Reduce from 3 to 2 years of property taxes owing before a municipality can start a property tax sale.

Property Tax Collection and Administration

- Various amendments to improve property tax collection and administration provisions generally. For example, the proposed amendments address electronic delivery of property tax bills, broadening the range of fees and charges that can be added to the tax roll, and certain property tax relief processes.

F. Other Matters:

Climate Change

- Existing broad powers to clarify the power to pass by-laws respecting climate change; that municipalities may provide for or participate in long-term planning for energy use in the municipality.
- Provide additional powers to pass by-laws respecting the protection and conservation of the environment in accordance with regulations, including powers to require green roofs or alternative roof surfaces in circumstances specified by the Building Code (requires standards be established in the Building Code first).
- Require municipalities to adopt a policy with respect to the manner in which the municipality will protect and enhance the tree canopy and natural vegetation in the municipality.

Integrated Planning for Service Delivery

- MMA can prescribe actions that municipalities must take to support local integrated planning related to client services (Community Hubs).

Regional Council Composition

- Require regional municipal governments review the number of members of their council that represent their lower-tier municipalities at least once following every second municipal election, starting after the 2018 municipal election.
- MMA to have regulatory authority and could chose to change composition if a regional municipality is unable to come to a local decision within two years following every second municipal election starting after the 2018 election.

Temporary Replacements on Upper-tier Council

- Allow a lower-tier council to appoint an alternate member of lower-tier council to temporarily replace a person who is a member of both the lower-tier and upper-tier council if the member is unable to attend an upper-tier council meeting.

Council-Municipal Staff Relations Policies

- All municipal governments must have a policy on the relationship between members of council and the officers and employees of the municipality.

Administrative Penalties

- Provide municipalities with the authority to require a person to pay an administrative penalty if the person has failed to comply with a municipal by-law passed under the *Municipal Act* or the *City of Toronto Act*.

Pregnancy and Parental Leave

- Require a policy that supports pregnancy leaves and parental leaves for council members.
- Prevent a council members' seat from becoming vacant due to absences resulting from pregnancy, or the birth or the adoption of the member's child for a period of 20 consecutive weeks or less.

Advertising Devices (Signs)

- To no longer limit a municipality's ability to pass bylaws regulating existing advertising devices, such as signs and provide for transition respecting existing municipal by-laws.

Power of Entry

- Provide ability to enter private property adjoining municipal property to do maintenance on the municipal property, subject to certain conditions and limits.

Site Alteration

- Give municipal by-laws effect in areas under jurisdiction of conservation authorities.

Rental Housing

- New authority to register on title an agreement required as a condition of demolition permit or conversion of residential rental properties, and enforce agreement.

G. Proposals to Other Acts:

Amendments to the *Planning Act*

- Add climate change as a matter of provincial interest under the *Planning Act* so that decision-makers carrying out their responsibilities under the *Planning Act* shall have regard to it.

Amendments to the *Municipal Elections Act, 1996*

- Term of office for council and school board members to start November 15, in the year of a regular election (not December 1).
- Raise the contributions limit to a single candidate or third party advertiser to \$1,200, consistent with the proposed provincial limit under Bill 201. (Province's was lowered to \$1200 from \$1,550 during Bill 201 clause-by-clause).
- Impose a self-funding limit for municipal council candidates based on the number of electors voting for the office, to a maximum of \$25,000 per candidate.
- The formula for calculating the limit would be \$7500 + \$0.20 per elector for head of council, and \$5,000 + \$0.20 per elector for other council offices.

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