



Rural Municipalities of Alberta

Local Authorities Election

Act Review

Written Submission

March 4, 2020



The Rural Municipalities of Alberta (RMA) advocates on behalf of Alberta's rural municipalities. RMA members include sixty-three municipal districts and counties, five specialized municipalities, and the Special Areas Board. Collectively, RMA members provide municipal governance to approximately 85% of Alberta's land mass. Rural municipalities are characterized by large areas, sparse population, a high level of industrial development, and limited services.

The information below reflects RMA's positions on the aspects of the *Local Authorities Election Act* (LAEA) that is currently within scope for review based on the Government of Alberta's public survey. The submission also includes a section intended to highlight RMA's position on the high-level principles that the LAEA should support, as well as comments on the need for and structure of the current consultation.

General Feedback

Guiding Principles

A fair, accessible and consistent election process is at the heart of a healthy democracy. In Alberta, with over 350 municipalities of varying types and sizes and over 60 school boards also governed by the LAEA, it is challenging to create a single process and set of rules for local elections that meets the needs of all organizations while also being straightforward to administer. The principles below are intended to supplement the specific input in this submission. Even if the Government of Alberta chooses not to follow RMA's specific recommendations related to the LAEA, it is critical that municipal and school board elections abide by these principles.

- *Principle 1: Inclusive and accessible* – all those meeting eligibility requirements should have reasonable means to participate as candidates, as well as to vote in an election.
- *Principle 2: Fair and equitable* – all candidates should have comparable opportunities to participate in an election, including through campaigning and participating in the nomination process.
- *Principle 3: Transparent and accountable* – all candidates should be required to disclose contributions received to ensure adherence to applicable campaign finance requirements.
- *Principle 4: Nonpartisan and municipally-focused* – the campaigning and election process should be designed in such a way as to ensure that candidates are focused on and accountable to the interests of their municipality as opposed to a political party or broader ideology.

Need for Current Consultation

While RMA appreciates the opportunity to provide input into all provincial legislative, policy or programming changes, it is concerning that the Government of Alberta is reviewing (and likely amending) the LAEA so soon after significant revisions took place following the last local authority elections in 2018. RMA participated in the 2018 review, and although RMA did not support all changes made to the LAEA following the review, it is premature to make further amendments before allowing even a single municipal/school board election to occur under the amended legislation.

Additionally, the 2018 review was much more wide-ranging in scope, and included nearly all aspects of the campaign, nomination and election processes governed by the LAEA. In contrast, the current review

is much more limited in scope, with no information provided as to why some aspects of the LAEA are under further review while others are not.

Structure of Current Consultation

RMA is concerned that the items selected by the Government of Alberta as “in scope” for the current LAEA review, combined with the structure of several of the questions in the public survey, suggest that provincial leaders are focused on specific outcomes and changes to the Act, rather than in basing decisions on the input received from the public and stakeholders. For example, several survey questions related to campaign contribution limits allow respondents to only select amounts that are greater than the current contribution limit amount and require respondents to submit a write-in response to support the status quo or a lower contribution limit. A more impartial approach would allow respondents to support the status quo, a lower amount, or a higher amount with an option to provide feedback on a specific dollar amount. In the future, RMA recommends that the Government of Alberta develop surveys and other consultation documents to minimize bias and provide an adequate and fair range of options.

Specific Feedback

The following input is based on the topics that the Government of Alberta has determined as “in scope” for this review.

Campaign Period

The current state in which the campaign period begins on January 1 of an election year is administratively straightforward and fairly balances the ability of incumbents and newcomers to raise money and campaign. Additionally, it reduces the ability of candidates to collect large sums of money over the course of the entire four years between elections.

However, RMA does not support the extension of the campaign period until December 31 of the election year, as this technically provides a candidate the opportunity to continue to solicit funds that would be deemed excess and held with the municipality until the next election. However, RMA does appreciate that in some cases, payment for expenses incurred prior to or on election day may not be paid until after the election. Closing the election period four weeks following election day would allow for payment of pre-election day costs while limiting the ability of the post-election period to be misused.

- RMA position – the campaign period should run from January 1 of the election year until four weeks following the date of the election.

Nomination Period

The current nomination period of January 1 of the election year until six weeks prior to the election is unnecessarily long. This nomination period places an administrative and financial burden on small municipalities to either have a designated secretary or a returning officer in place (as required under the LAEA) for nearly a full year. A preferred alternative would be to revert to a modified version of the

nomination period from the pre-2018 version of the LAEA, in which nominations are accepted only on a specific business day four weeks prior to the election.

This approach would require potential candidates to submit a notice of intent to the municipality should they begin to accept campaign contributions during the campaign period. A notice of intent could be a relatively straightforward process in which an individual that plans to incur campaign contributions write a letter to the municipality's chief administrative officer informing them of such, and thereafter following LAEA rules related to campaign contributions. This would be less burdensome for both the candidate and the municipality, and would allow the municipality to wait until much closer to the election date to hire a returning officer, which would reduce costs.

- RMA position – the nomination period be one full business day four weeks prior to the election date. Individuals planning to gather campaign contributions prior to the nomination period are required to file a notice of intent with the municipality and abide by LAEA rules for the campaign period.

Campaign Finances – Candidate Surplus

The current candidate surplus rules require a municipality to hold in trust any candidate's surplus campaign contributions, which the candidate can then access for the next election, donate to charity, or have revert to become property of the municipality. This approach does not support fairness and equitability among all candidates as it allows incumbents and/or those that previously ran unsuccessfully to access surplus funds from their previous campaign in addition to new funds. This can also be administratively burdensome, particularly for very small surplus amounts.

- RMA position – campaign surpluses should be required to be donated to charity and/or become the property of the municipality/school board upon the closing of the campaign period.

Campaign Finances – Campaign Contribution Limits

The LAEA's purpose is to ensure that elections for local government remain local in scope. As such, RMA does not support the current campaign contribution limits in which individuals are permitted to support candidates throughout the province, regardless of their municipality of residence. To ensure municipal and school board elections remain focused on local issues, RMA supports a residency requirement in which individuals may only provide campaign contributions to candidates running within their municipality or school board.

RMA does not have a specific position on a dollar limit for contributions and would support a continuation of the \$4000 status quo. Self-financed campaigns should be subject to the same contribution limit.

- RMA position – Individuals should only be permitted to make contributions to campaigns within their municipality of residence. The status quo of \$4000 is an acceptable contribution limit. Self-financed campaigns should be subject to the same contribution limit.

Campaign Finances – Campaign Expense Limits

Currently, the LAEA does not include campaign expense limits, although limits may be imposed through regulation. Assuming campaign contribution limits are logically determined and properly enforced, campaign expense limits are not necessary. An expense limit will increase the red tape and complexity of the campaign process and may unfairly penalize candidates who are successful in local grassroots fundraising and gather large amounts of campaign contributions.

It should be noted that RMA's position on campaign expense limits could potentially change based on how contribution limits are structured. For example, if a very high contribution limit is implemented, and/or if individuals are empowered to contribute large amounts to multiple campaigns throughout the province, expense limits may become necessary. However, based on RMA's preferred campaign contribution limit outlined earlier in this submission, an expense limit is unnecessary.

- RMA position – Campaign expense limits unnecessarily duplicate the purpose of effectively developed and implemented campaign contribution limits, and are not necessary based on RMA's proposed contribution limit approach.

Third-Party Advertising

Third-party advertising presents both an opportunity and a challenge in relation to local authority elections. On one hand, it allows formal organizations as well as informal collectives of like-minded individuals to have a say in the campaign process. However, it also has the potential to allow organizations with significant capacity and resources to unduly influence the narrative of a local authority election, and potentially target specific candidates with resources far beyond what the candidate can use in their own campaign.

RMA appreciates that while third-party advertising presents both opportunities and challenges to democracy and the election process, it is a free speech issue and must have a place within the election process.

However, the LAEA could be amended to continue to support the inclusion of third-party advertising while limiting its influence. One such way is to continue to distinguish between "election advertising" and "political advertising," and extending the time frame for election advertising from May 1 of the election year (as is currently in the LAEA) to January 1 of the election year to align with the campaign period. This will allow expense or contribution limits (if applied through regulation to third-party advertisers) to be in effect for the entirety of the campaign period rather than only the second half.

The LAEA should also be amended to better address the use of new technology (such as social media) that allows for accountability related to third-party advertising that is not necessarily focused on or tied to a specific municipality. A third-party advertiser could conceivably spend over \$1000 to launch an online campaign on an issue that indirectly impacts elections in many municipalities and is broadcast through social media based on algorithms and user sharing that is not predictably tied to municipal boundaries. In such case, third-party advertisers should be required to register with a centralized provincial authority (in fact, centralized registration should be considered for all forms of third-party advertising, with a \$1000 province-wide threshold).

Another option to consider for limiting the influence of third-party advertisers is to place an expense limit on election advertising, or a contribution limit on the amount an individual may contribute to third-party advertiser. Implementing a contribution limit that aligns with the limits on candidate contributions may be an effective way to place candidates and third-party advertisers on a level playing field in terms of the financial support they can accrue.

Third-party advertisers should also be required to disclose their spending periodically throughout the campaign to municipalities and/or a central provincial body (depending on the approach taken). This supports transparency and allows the public and candidates to understand what third-party advertisers are most influential.

- RMA position – Third-party advertising should be closely regulated through the LAEA. Specific recommendations include:
 - Extend the “election advertising” period to begin January 1 of an election year.
 - Amend reporting and disclosure requirements to better reflect the use of new technology that may not conform to municipal boundaries.
 - Implement an expense or contribution limit for third-party advertisers. A contribution limit equivalent to candidate contribution limits may be most effective in creating a level playing field between candidates and third-party advertisers.
 - Require third-party advertisers to provide updated disclosure statements during the election advertising period.

Recall

Currently, the *Municipal Government Act* (MGA) contains several tools for both councillors and the public to raise concerns about a municipality, including that one or more councillors may not be abiding by proper processes as legislated in the MGA. Most significantly, section 571 of the MGA allows the electorate to submit a petition to the Minister of Municipal Affairs to trigger an inspection of the municipality. The items inspected may include the conduct of a councillor (s. 571(1.1)(b)). As a result of the inspection, the Minister may make an order dismissing a councillor. Therefore, mechanisms already exist that allow the electorate to report and expect action on perceived irregular councillor conduct, while ensuring that a thorough, provincially-led inspection takes place before any action is taken. Recall legislation would subvert the current investigative process and allow the electorate to initiate a recall process without any formal investigation taking place.

Not only does recall legislation duplicate (and potentially erode) the accountability mechanisms already in place in the MGA, it also adds an additional layer of complexity, red tape and costs to local government by opening the door to the electorate responding to unpopular council decisions that are made in accordance with the MGA, and forcing a costly by-election. Ultimately, the purpose of elections is to allow citizens to select representatives to act on their behalf, and if an electorate disagrees with such decisions, they are empowered to remove that councillor at the next election.

If the Government of Alberta chooses to implement recall legislation for local authority elections, it should be through a petition process requiring at least 20% of the electorate’s support, it should include time restrictions on when recall can occur to prevent recalls happening immediately before or after

municipal elections or having the same councillor be required to face multiple recall attempts within the same term, and any local authority recall requirements should also apply to provincial MLAs.

- RMA position – the MGA contains adequate councillor accountability mechanisms. Adding recall legislation is unnecessary and will duplicate or erode what is already in place.