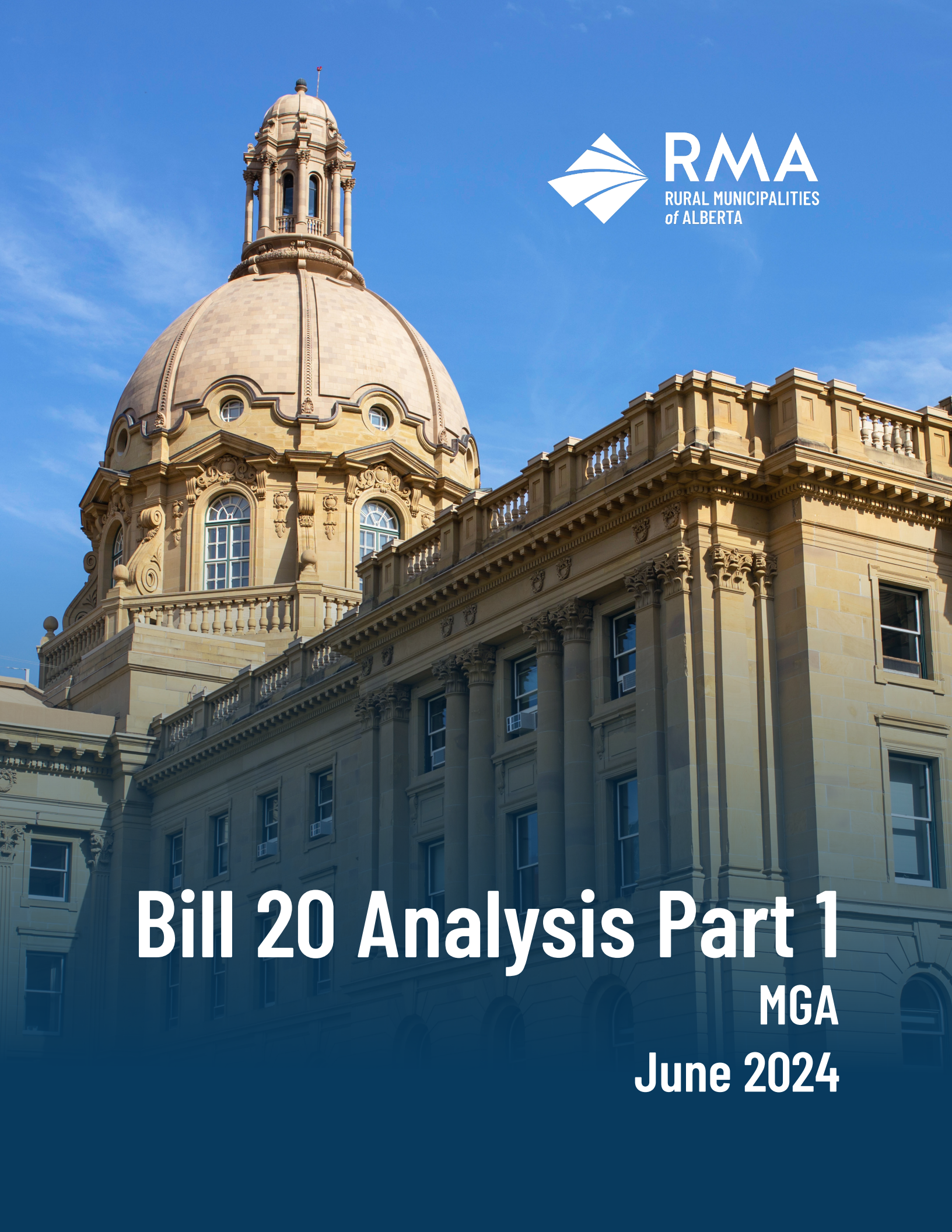

RMA
RURAL MUNICIPALITIES *of* ALBERTA

Bill 20 Analysis Part 1

MGA

June 2024

Introduction

Bill 20: *Municipal Affairs Statutes Amendment Act, 2024* received royal assent on May 30, 2024. Bill 20 makes dozens of changes to the *Municipal Government Act* and the *Local Authorities Election Act.* While a small number of Bill 20 changes are especially contentious and have led to a strong reaction from RMA, many others are smaller scale, more subtle, or mainly administrative. While these smaller Bill 20 changes may not have transformative impacts on municipal governance or local elections, they are still significant and require analysis. To assist member awareness and interpretation of Bill 20, RMA has prepared a two-part *Bill 20 Analysis* document.

Previous Legislation

Upon disqualification, if a councillor chooses not to resign immediately, the council must apply to the Court of King's Bench for an order declaring the councillor is disqualified.

The councillor is not required to vacate their seat until the Court decision is finalized.

Amended Legislation

Upon disqualification, the council may declare the disqualified councillor's seat vacant. The councillor may apply to the Court of King's Bench for an order determining whether the councillor is qualified or disqualified from council.

The municipality may not hold a byelection to fill the vacant seat until the Court application has expired or at least 60 days has passed since the disqualification occurred.

RMA Analysis:

This change shifts the onus for judicial confirmation of disqualification from the municipality to the disqualified councillor.

Previously, if a councillor refused to vacate their seat when disqualified, they could remain on council until the Court reached a decision. Under the change, the council seat becomes vacant until the Court reaches a decision, upon which the councillor returns or a by-election is called, depending on the decision.

This change should mitigate risks of council disfunction by requiring a disqualified councillor to vacate their seat until their status is confirmed. It is important that timelines were amended in section 162 to ensure no action can be taken to fill the vacant seat until the disqualified councillor's status is confirmed in the Courts.

Conflicts of Interest and Pecuniary Interests (S. 169 (b.1), 170, 172.1)

Previous Legislation

Elected officials are only able to recuse themselves from votes and discussions on matters in which they have a pecuniary (financial) interest.

A councillor has a pecuniary interest in a matter if the matter could monetarily affect the councillor or their employer, or if the councillor knows or should know that the matter could monetarily affect their family

Amended Legislation

An elected official may recuse themselves from matters in which they have pecuniary interests, as before, but may also recuse themselves from matters that will affect a "private interest" of the councillor, their employer, or their family.

Private interests have been defined as interests in matters that are of general application, matters that affect a councillor as one of a broad class of the public, or matters that concern the remuneration and benefits of a councillor.

These private interests are determined to be affected by a matter if the matter impacts:

- the councillor directly,
- a non-distributing corporation in which the councillor is a shareholder, director, or officer;
- a distributing corporation where the councillor beneficially owns voting shares carrying 10%+ of the voting rights; or
- a partnership or firm of which the councillor is a member.

When a councillor believes they may have a conflict of interest, they may choose to (but are not obligated to) disclose the conflict; if they do, then they may (but again, are not obligated to) abstain from voting or discussing the matter, or leave the room until after voting/discussion has concluded.

There is no review or consideration of the councillor's decision to recuse themselves during a disqualification hearing or the code of conduct complaint process.

RMA Analysis:

At a high level, the RMA understands the rationale behind widening the scope in which councillors may recuse themselves for non-financial conflicts of interest. However, the RMA also believes that as written, this change does little to assist with governance, councillor accountability, or local democracy, and instead creates more ambiguity around the recusal process.

This change gives councillors the choice to recuse themselves from a matter for which they believe they may have a conflict of interest. In municipalities with smaller populations, this could lead to issues where the council is unable to meet quorum for certain decisions, as multiple councillors could have a conflict on the same matter. This could lead to delays, or even the inability for the council to vote on issues.

Further, this widening of scope could lead to an increase in "gray areas" in which a councillor is unsure of whether to declare a conflict and, if so, recuse themselves. This could lead to more public criticism of a councillor if they make what the public perceives as the wrong decision on a "debatable" conflict of interest scenario.

The RMA is also unclear as to why councillors are not required to disclose a self-identified conflict of interest, and why disclosure does not automatically trigger a recusal. This seems like an arbitrarily different process from that which is followed for pecuniary interest. The RMA plans to follow up with Municipal Affairs to clarify the rationale for the different processes.

Dismissal of Councillor by Cabinet (S. 179.1)

Previous Legislation

Sitting councillors may only be removed by the Minister of Municipal affairs through the municipal inspection process, and only under very specific circumstances

Amended Legislation

As amended, Bill 20 provides that Cabinet may remove a councillor by ordering that municipality's chief administrative officer to conduct a vote of the electors (essentially, a recall vote) to determine if that councillor should be dismissed.

Further, Cabinet's power will be limited to councillors who Cabinet considers to be "unwilling, unable, or refusing" to do the job they were elected to do, or if Cabinet believes that the vote is in the "public interest." When evaluating public interest considerations, Cabinet may (but is not obligated to) consider illegal or unethical behaviour by the councillor.

If the electors vote to dismiss the councillor, their seat is automatically vacated as of the date of the vote, and the council must hold a by-election to fill the vacant.

RMA Analysis:

The RMA is concerned that this power, if unchecked, will lead to the province ordering CAOs to hold recall votes to remove councillors without a process to ensure fairness and due diligence. Further, with no definition of "public interest" or guidelines for what might lead to dismissal, the province is creating a situation in which democratically elected councillors can be dismissed without cause.

While the RMA appreciates that this power was somewhat scaled back through amendments from an immediate dismissal of a councillor to ordering a vote of the electors, the amendments still fail to adequately define the "public interest" and leaves the term open for Cabinet's interpretation and politicization. Even the act of ordering a vote for dismissal will have major implications on the credibility of the impacted councillor, and potentially the council more broadly.

This change allows the Government of Alberta to wield a constant "hammer" over councillors that speak out against provincial policy, or potentially that disagree with their council colleagues on issues with provincial significance.

On a more practical level, the RMA is concerned that municipalities will be responsible for covering the costs of recall votes ordered by the Minister or by-elections that come as a result of the electors' vote.

Previous Legislation

There are no requirements in place for councils to offer digital options for public hearings on planning and development; councils may choose to hold electronic hearings for council or council committee meetings and hearings.

Amended Legislation

Every municipal council must, by bylaw, provide for public planning and development hearings to be held by electronic means. This bylaw must be passed within six months of the coming into force of these amendments.

RMA Analysis:

While the RMA supports public involvement in the democratic process and transparency in decision making, this amendment will disproportionately impact small and rural municipalities with relatively limited staff, resources, and technological capabilities, many of which also face issues with access to reliable broadband.

The costs associated with hosting electronic public hearings can be quite high, and were likely not accounted for in the current budget. The timelines to have this amendment in place, with no confirmation of financial support for this amendment is concerning.

Previous Legislation

Municipalities can hold "extra" planning and development hearings beyond the legislated requirements.

Amended Legislation

Unless otherwise specified in the MGA or another enactment, councils are only able to hold a single public planning and development hearing on each proposed bylaw, resolution, or any part thereof, as they relate to residential developments or developments with residential and non-residential developments.

RMA Analysis:

The RMA recognizes that the housing crisis affects both urban and rural municipalities, and that swift action is needed to build more housing. With that said, the RMA also recognizes that this change reduces local autonomy and decision-making by preventing additional public planning and development hearings at the local municipal level, even if the electors or local council believes it to be in the public interest, and may lead to certain developments being rushed through the approval process without proper consultation.

The RMA's other concern is the fact that this amendment applies to both individual residential developments and to developments with both residential and non-residential elements together. This change effectively bars a municipality from holding additional non-statutory hearings on the impact of a shopping centre or other non-residential development, simply because there are residential elements within the development. This derails local autonomy and decision making and hands developers a loophole: the power to have their various non-residential developments face less public scrutiny, purely because there are some residential elements in their development.

Previous Legislation

Municipalities must offer training for councillors, but there are no requirements for the incoming councillors to attend that training.

Amended Legislation

Councillors will now be required to attend orientation training. Further, the training is to be broken out into two sections, with two separate deadlines:

Part "A" must be offered prior to or the same day as the first organizational meeting after a general election, or the day a councillor elected through a by-election takes the oath of office. Part "A" must include:

- Role of municipalities in AB;
- municipal organization and function;
- council and councillor roles and responsibilities;
- the municipality's code of conduct; and
- the roles and responsibilities of the CAO and staff;

Part "B" must be offered prior to or on the same day as the first regularly scheduled council meeting, or 90 days from the day a councillor elected through a by-election takes the oath of office. Part "B" must include:

- Key municipal plans, policies and projects;
- budgeting and financial administration;
- public participation; and
- any other topic prescribed by the regulations.

Council may, by resolution, extend the time to complete part "B" by up to 90 days.

RMA Analysis:

The RMA supports mandatory training for councillors. However, the specific process outlined in Bill 20 is complex, logistically challenging, and may significantly increase municipal training costs by complicating or completely limiting the ability of councils to attend group training sessions.

The timelines involved are short and some municipal councils may face challenges in implementing the legislated changes to councillor training, especially if each municipality is required to have their own custom training. The language in section 201.1 is open to interpretation as to whether the training is intended to focus on the various topics at a general level or within the context of the specific municipality. For example, does “key municipal plans, policies and projects” refer to common examples across all municipalities, or those currently in place in the individual municipality conducting the training?

If each municipality is required to hold their own individualized, specific orientation program that touches on each of the required elements, the RMA is concerned that different municipalities (or instructors) will have inconsistent perspectives on what is the “correct” information for the training. This may also lead to situations where larger municipalities are able to afford much more comprehensive training than smaller municipalities.

The RMA has several outstanding questions on this issue, including:

1) Who will verify that a training course is “up to standard” and that councillors participated at an adequate level?
2) Is there a provincial standard to meet as it relates to content detail related to each of the legislated topics?
3) Will the training required be general (i.e., on the roles of municipalities in Alberta), or specific to the jurisdiction (the roles and responsibilities of the CAO and staff)?

Recall Petitions (S. 240.1(2), 240.2(4)(a), 240.3(a), 240.7-240.9, 240.91, 240.92, 240.941)

Previous Legislation

The municipality's chief administrative officer is responsible for validating recall petitions.

Amended Legislation

The Minister of Municipal Affairs is now responsible for validating recall petitions.

This change appears to come into effect on January 1, 2025; any recall petition commenced before January 1 will be dealt with using the previous CAO-led method.

RMA Analysis:

The RMA agrees that the current process puts a municipality's chief administrative officer in a difficult, conflicted position, and appreciates this amendment and this role being assumed by the Minister.

Previous Legislation

There is a lack of clarity regarding who should be assessed for electrical generation systems.

Amended Legislation

The person who is to be assessed for electrical generation systems is to be the operator of that system; the operator is not necessarily the owner of that system or facility.

RMA Analysis:

The RMA supports changes to the assessment of regulated property, including electrical generation stations, that improve clarity and make it easier for regulated assessment processes to be interpreted by ratepayers, municipalities, and assessors.

Property Tax on Non-Profit Subsidized Affordable Housing (S.317(d), 363, 364.1)

Previous Legislation

There are no provisions in place to permit the exemption of non-profit subsidized affordable housing from property taxation.

Amended Legislation

Affordable housing accommodation, as defined in the *Alberta Housing Act* and that is not already exempt from taxation under s. 361 of the MGA, will become exempt property that can be made taxable.

RMA Analysis:

The RMA appreciates action on the housing crisis and that rural municipalities have increased autonomy through the ability to grant tax breaks to developers.

However, the RMA believes this amendment to be a half-measure; it further downloads the cost of affordable housing onto municipalities without a corresponding action on the part of the province.

Previous Legislation

Municipalities are only able to offer multi-year property tax incentives on non-residential developments.

Amended Legislation

Municipalities may now offer multi-year property tax incentives for residential or non-residential developments, including deferring collection or offering partial or full exemptions of property tax.

RMA Analysis:

The RMA supports changes that lead to the mitigation of the housing crisis faced by Albertans. However, the RMA would like to see changes made at the provincial level to increase capital funding for rural municipal non-residential and residential development. Under the current property tax and grant regime, it is very challenging to expect municipalities to voluntarily forgo property tax revenue while still meeting increased service and infrastructure requirements associated with new development.

Cabinet to Require Municipality to Repeal Bylaw (S. 603.01)

Previous Legislation

The Lieutenant Governor can make regulations for any matter they consider is not sufficiently provided for or provided for at all in the *MGA*, or to restrict a council's power to pass bylaws.

Cabinet is only permitted to intervene with respect to a land use bylaw or statutory plan.

Lieutenant Governor in Council regulations (603(1)) state that the Lieutenant Governor in Council may make regulations (a) for any matter that the Minister considers is not provided for or is insufficiently provided for in this Act; (b) restricting the power or duty of a council to pass bylaws.

Amended Legislation

Enables the Lieutenant Governor to order a municipality to amend or repeal a bylaw if, in Cabinet's opinion, specific requirements are met that allow Cabinet to intervene.

The requirements listed are:

- the bylaw exceeds the scope of the MGA or otherwise exceeds the uthority granted to a municipality under the MGA o';r any other statute,
- conflicts with the MGA or any other statute,
- is contrary to provincial policy, or
- contravenes the Constitution of Canada.

RMA Analysis:

Bylaws are the backbone of a municipality's ability to operationalize its vision and are developed by a municipality to best serve their local community and guide all aspects of municipal operations, administration, and governance.

This section of Bill 20 challenges local autonomy and municipal decision making, and provincial intervention could create significant issues for rural municipalities if left unchecked. Giving the province the power to change or repeal bylaws that they disagree with is contrary to the grassroots, conservative, anti-red tape values that this provincial government claims to stand for; based on the RMA's interpretation, the clause allowing repeal based on misalignment with "provincial policy" allows for exactly this.

This power was somewhat limited by amendment to contain nearly the same limitations on municipal bylaws that are already contained within the MGA, but the additional term "contrary to provincial policy" concerns the RMA greatly. The lack of express definition for what constitutes a provincial policy leaves Cabinet wide latitude to interpret, politicize, and interfere with an otherwise sound local bylaw. Despite the amendments, this new section of the MGA remains an affront to local democracy.

Cabinet to Require Amendment or Repeal of Bylaws due to Public Health or Safety Concerns (S. 615.11)

Previous Legislation

No provisions currently exist in the MGA as it relates to requiring councils to amend bylaws around public health and safety.

Amended Legislation

Cabinet has the authority to order a municipality's council to take specific action to protect public health and/or public safety.

Should the council not carry out that order to Cabinet's satisfaction, then the Lieutenant Governor may direct the Minister to make one or more orders referred to in section 574(2)(a) to (g), and/or an order dismissing the council or any member of it.

The Minister, if making one of these orders, must give the municipality notice and at least 14 days to respond.

RMA Analysis:

The RMA would like to see more clarity on the definitions of "public health and public safety"; as with other sections, these terms remain virtually undefined and thus the section confers a very broad power. Further, the powers granted to Cabinet in the event that a council refuses Cabinet's order are very strong, permitting the revocation of a council's bylaw making authority or the dismissal of a council. This interference in local decision making is an affront to local autonomy and democracy.

The RMA understands that this change is in response to municipalities making bylaws which do not align with provincial mandates. However, such a broad, undefined enforcement mechanism should not be used to address an issue with one or a small number of municipalities.

The RMA's chief concern, aside from the intrusion on local autonomy, is that Cabinet has the power to direct the Minister to make orders suspending the authority of the council to make bylaws, or an order dismissing council or any member of it.

The RMA has several outstanding questions on this issue, including:

- What does "public health" encompass?
- What does "public safety" encompass?
- If an entire council is dismissed under this provision, what happens next?

Previous Legislation

All criteria for joint use and planning agreements are in the MGA. There are no related regulations.

Amended Legislation

The Minister will be allowed to make regulations respecting the criteria, requirements, exemptions, and any other matters related to joint use and planning agreements.

RMA Analysis:

The MGA requires municipalities to enter into joint use and planning agreements (JUPAs) with school boards to enable the integrated, long-term planning of school sites. These are intended to be reasonably straightforward agreements on how space is shared outside of school hours, dispute resolution practices, and timeframes for review.

It is the RMA's understanding that this change, and the subsequent regulations, are intended to reduce uncertainty for municipalities and school boards by providing scope around the JUPA process.