

MGA Review Discussion Paper

Provincial Powers

This technical document is part of a series of draft discussion papers created by Municipal Affairs staff and stakeholders to prepare for the Municipal Government Act Review. It does not reflect existing or potential Government of Alberta policy directions. This document is the result of a careful review of what is currently included in the Municipal Government Act (MGA) and regulations, definitions of terms and processes, changes requested by stakeholders over the last 18 years, some highlights from other jurisdictions, and identification of potential topics for discussion during the MGA Review. This information will be used to prepare consultation materials as the MGA Review proceeds.

These discussion papers have been reviewed and approved by the MGA Stakeholder Advisory Committee, comprised of representatives from major stakeholder organizations: Alberta Association of Municipal and Counties, Alberta Association of Urban Municipalities, Alberta Rural Municipal Administrators Association, Alberta Chambers of Commerce, City of Calgary, City of Edmonton, and Local Government Association of Alberta.

The Government of Alberta is asking all Albertans to directly contribute to the MGA Review during online consultation in late 2013 and consultation sessions throughout Alberta in early 2014. This technical document is not intended for gathering stakeholder feedback, but to generate thought and discussion to prepare for the upcoming consultation. Public engagement materials will be available in early 2014. To learn more about how you can join the discussion on how we can build better communities, please visit mqareview.alberta.ca/get-involved.

Preamble



The *Municipal Government Act (MGA)* provides the legislative framework to guide the operations of municipalities in Alberta. The current *MGA* empowers municipalities with the authority and flexibility to provide services in the best interests of the community. The *MGA* Review will proceed along three major themes: *governance*; *assessment and taxation*; and *planning and development*.

This paper is one of 12 discussion papers exploring aspects related to the *governance* theme. It focuses on the Province's legislated powers under the *MGA*. The objective of each discussion paper is to

- 1) Outline the existing legislation,
- 2) Identify issues with specific aspects based on stakeholder requests
- 3) Look at how other jurisdictions are approaching these issues; and
- 4) Pose questions to help formulate future analysis of, as well as public and stakeholder engagement on the *MGA*.

Below is a list of the papers that relate to the governance theme.

- Municipal Powers
- Provincial Powers
- Municipal Structures
- Municipal Governance
- Municipal Administration
- Financial Administration
- Liability and Risk Management
- Service Provisions
- Controlled Corporations
- Regional Service Commissions
- Compliance and Accountability
- Special Areas and Improvement Districts

Provincial Powers

The *MGA* provides the Minister of Municipal Affairs and Cabinet with broad mandatory and discretionary power to ensure municipal accountability and transparency to the public. Some of these powers reflect the Province's role in ensuring municipal accountability and transparency on municipal matters, while other powers allow for the making of regulations to address matters of provincial interest or emerging issues not contemplated in the existing *MGA*. The *MGA* also allows for delegation of some ministerial powers and roles, in limited circumstances, to other provincial and municipally operated entities. If a municipality or citizen disagrees with the Province's application of these powers, they may issue a court challenge.

The Province's powers can be grouped into four broad categories:

- 1) *Accountability and Transparency* – The Province has authority to monitor municipal operations, to require municipal compliance with legislation and, if necessary in specific circumstances, dismiss councillors or replace members of municipal administrations. The Province also appoints members to some types of boards and administrative tribunals.¹
- 2) *Formation of Municipalities*² – The Province has authority to create and dissolve municipalities, as well as alter municipal boundaries.
- 3) *Assessment*³ – The Province has assessment responsibilities for equalized and linear property assessment.
- 4) *Law-making Powers* – these powers are derived from the constitution and establish the Province's authority to adopt and amend legislation.

This paper is primarily concerned with the Minister and Cabinet's powers of law-making and oversight as they relate to public accountability and transparency. These two powers allow the Province to exert a degree of control and supervision over municipalities in order to carry out its responsibilities in ensuring Albertans are provided with fair and well-managed local governance.

¹ The appointment process is addressed in the Planning and Intermunicipal Appeals paper

² These powers are addressed in the Municipal Structures paper.

³ These powers are addressed in a number of papers under the *assessment and taxation* theme.

Discussion Points

Below are some discussion topics and questions identified through a review of requested amendments, cross jurisdictional research and issues raised by stakeholders.

The requested amendments discussed below draw upon an inventory of requests received by the Province over the past 18 years. It important to note these requests:

- i) do not include all the requests Municipal Affairs has received in the past 18 years;
- ii) do not necessarily represent the views of most Albertans;
- iii) do not necessarily apply to all municipalities; and
- iv) are categorized by policy topic, and have not been evaluated or ranked by number of requests received.

1. Public Accountability and Transparency

Background

The Province's role in municipal accountability and transparency to the public includes oversight to ensure compliance. Monitoring occurs through reporting requirements and inspections while compliance is sought through enforcement measures.

Several provisions in the *MGA* establish the Province's monitoring role. These range in scope from requirements for regular reporting by municipalities (e.g. reporting on finances, property assessment and population growth) to inspections of a municipality's operations.

In order to ensure municipal compliance with legislation, Provincial powers are definite but not always appropriate for addressing issues under the broad powers granted to municipalities. This can create situations where the Province's ability to respond is limited to measures that may be too severe for the issue. Consequently, it is challenging to ensure the legislation lays a solid basis for municipal autonomy, while also affording the Province flexibility to undertake supervisory and compliance actions where appropriate.

Cross-Jurisdictional Research

- Ontario requires municipalities to submit reports on how they are performing in light of provincially legislated municipal performance measures and Prince Edward Island requires municipal reporting on planning and development matters. Newfoundland, Manitoba, and Saskatchewan allow the Minister to withhold some moneys intended for a municipality as a compliance mechanism.
- New Brunswick, Nunavut and in certain cases Newfoundland, require provincial approval of municipal budgets.

Stakeholder and Legislative Amendment Requests

- Some stakeholders have requested that Municipal Affairs perform random or periodic audits of municipal subdivision and development processes and policies to determine non-compliance with the *MGA*.
- A Municipal Association has passed a resolution suggesting the *MGA* be amended to recognize a municipality as an order of government entitled to the same provisions and exemptions as the provincial government. This may require amendments to the federal *Constitution Act*.
- Municipal Affairs receives numerous calls from citizens asking the Minister to monitor council actions with respect to legislative compliance, overturn council decisions, and solve local land-use issues.

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Discussion Questions

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1. *What provincial oversight, powers, and tools, if any will help ensure municipal transparency and accountability to the public?*
 - a) To what extent (e.g. legislation vs. good practice) should approaches such as those taken in Ontario or Prince Edward Island (e.g. municipal reporting on planning and development, performance measures), or suggestions from stakeholders (e.g. random audits of municipal processes) be considered in Alberta?
 2. What issues should be addressed by the Legislature, Order in Council, or Ministerial Guidelines.
 3. To what extent should the Minister have powers to direct municipalities in areas other than transparency and accountability (e.g. to address areas of public interest and consistency across the province)?