From: Karrina Jung <Karrina@rmalberta.com>
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Subject: Bill 20 Further Analysis

Good morning RMA Mayors/Reeves and CAOs,

Please forward to relevant staff

As promised, RMA has conducted a further analysis into Bill 20 as it stands today. Minister McIver did make an announcement on May 2 that changes to the bill were coming, however we wanted to provide an analysis for the current version.

RMA will continue to provide updates to members as necessary on this bill. If you have any questions, pleas feel free to reach out!

Thank you,

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Bill 20: Further Analysis

May 2024

Bill 20: Municipal Affairs Statutes Amendment Act, 2024 was introduced to the Legislative Assembly on April 25, 2024. The bill makes a wide range of changes to both the *Municipal Government Act* (MGA) and the *Local Authorities Elections Act* (LAEA), several of which would significantly reduce municipal autonomy and allow the province with significantly more direct control over municipal decision-making and the removal of councillors.

While the most controversial aspects of the bill (Cabinet power to repeal bylaws and remove councillors) have received the bulk of attention, it makes many changes to other aspects of municipal governance and local elections that RMA members should be aware of. This document provides answers, based on RMA's research, to common questions about both high-profile and other changes made through Bill 20. The analysis is broken up into each piece of legislation that will be amended, the MGA and the LAEA, with several questions under each. There are many changes not covered in this document. Questions about other changes in Bill 20 can be directed to RMA's External Relations and Advocacy team.

Municipal Government Act

Councillor Conflict of Interest

How is "conflict of interest" defined or explained in relation to councillor recusal from council discussions or votes?

Bill 20 amends Section 170 of the *Municipal Government Act* ("MGA"), repealing subsections **(1)** and **(2)** and rewriting them to include pecuniary interests and broader conflicts of interest as valid reasons for councillors to recuse themselves from a council discussion or vote. The language and sections around pecuniary interests remain unchanged and are applied similarly for the new conflicts of interest sections; however, a notable broad change in this section is the shift in wording from "the matter could monetarily affect" to "the matter could affect a private interest" in relation to the scope for which recusal is permitted.

Section 169 does not define a "private interest", but it does provide *exceptions* to it. Private interests of councillors do not include **(i)** interests in matters that are of general application, affect the councillor as one of a broad class of the public, or concern the remuneration and benefits of a councillor, or **(ii)** interests that are trivial. "General application" and "trivial" are undefined terms, which means they would be open to the court's interpretation. The concept of "private interest" is used to determine whether a councillor is entitled to recuse themselves due to a conflict of interest.

S. 170(2)(b) explains that a councillor's private interests are affected by a matter if it affects **(i)** the person directly, **(ii)** a corporation, other than a distributing corporation, in which the person is a shareholder, director, or officer, **(iii)** a distributing corporation in which the person beneficially owns voting shares carrying at least 10% of the voting rights attached to the voting shares of the corporation or of which the person is a director or officer, or **(iv)** a partnership or firm of which the person is a member. This is identical language as used for pecuniary interests under the MGA currently, only modified for private interests.

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Is there any formal requirement for a councillor to report their conflict of interest?

No. One key aspect of this amendment is that a councillor is not *required* to do anything if they self-identify a conflict of interest. Section **172.1** states at **(1)** that when a councillor believes that they may have a conflict or a perceived conflict, they may disclose the general nature of the real/perceived conflict before any discussion on the matter. Further, at **(2)**, the councillor may abstain from voting on questions related to the matter or discussing the matter, or they may leave the room until voting/discussion is over. In short, it gives councillors the option to recuse themselves if they see fit. The requirements associated with declaring a conflict of interest are much less stringent than existing requirements related to pecuniary interests.

Section **172.2** explains that there is to be no review of a councillor's decision to take the actions related to conflicts of interest. The councillor's decision is not to be considered during **(a)** any hearing respecting the potential disqualification of the councillor, or **(b)** the bylaw process per s. 146.1 to determine the validity of code of conduct complaints against the councillor.

However, **s. 174** of the *MGA* provides the reasons that a councillor could be disqualified from council which includes a list with disclosure of pecuniary interests (**s.172**). This list expressly does not refer to the contravention of **s. 172.1**, disclosure of conflict of interest or perceived conflict of interest, nor is the list amended by Bill 20. Therefore, councillors who fail to disclose their pecuniary interests could be disqualified from council under **s. 174(g)**.

Does Bill 20 use the term "perceived conflict of interest"?

The term "perceived conflict of interest" is used solely in the proposed **s. 172.1**; "perceived" is not used again in Bill 20 or the MGA. It is unclear how perception is used in this sense, and if that relates only to a councillor's perception of the conflict.

Allowing Cabinet to intervene with municipal bylaws

Does Bill 20 define the circumstances in which cabinet would be able to make changes to municipal bylaws?

No. Section **603.01** is proposed to be added directly after **s. 603**, which is the Lieutenant Governor in Council's (LGIC) current power to make regulations restricting the power or duty of a council to pass bylaws. The new section expressly states in subsection **(1)** that the LGIC may make regulations directing municipalities to amend or repeal a bylaw, with or without conditions. It goes on at subsection **(2)** to say that "a regulation made under this section may apply generally or specifically."

Allowing Cabinet to direct a municipality to take action to protect public health/safety:

Does Bill 20 define specific circumstances or criteria of protecting public health/safety where this would apply?

No, the circumstances or criteria where this might apply are not defined. Actions taken to protect public health or safety are specifically addressed in the newly added **s. 615.11**, which will be inserted into the MGA after **s. 615.1, Municipal emergency exemption**. Section **615.11(1)** provides that the LGIC can require, by order, a council to take "any action" that the LGIC considers necessary to protect public safety or health.

Should a council fail to carry out the LGIC's order to the LGIC's satisfaction, the LGIC may direct the Minister (of Municipal Affairs) to make either one or more orders referred to in either **s. 574(2)(a) to (g)**, which are:

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a) an order suspending the authority of the council to make bylaws in respect of any matter specified in the order;

- **a)** an order exercising bylaw-making authority in respect of all or any of the matters for which bylaw-making authority is suspended under clause (a);
- **b)** an order removing a suspension of bylaw-making authority, with or without conditions;
- **c)** an order withholding money otherwise payable by the Government to the municipal authority pending compliance with an order of the Minister;
- **d)** an order repealing, amending and making policies and procedures with respect to the municipal authority;
- **e)** an order suspending the authority of a development authority or subdivision authority and providing for a person to act in its place pending compliance with conditions specified in the order; or
- **f)** an order requiring or prohibiting any other action as necessary to ensure an order is complied with;

or 2) an order dismissing the council, or any member of it.

Interestingly, Bill 20 expressly states "an order dismissing the council or any member of it" separately at **s. 615.11(2)(b)**, despite it being the identical wording of **h)** in the list under **s. 574(2)**, which has been omitted from inclusion under *Bill 20*'s **s. 615.11(2)(a).**

Mandatory Training for Councillors

What are the parameters around mandatory training for councillors?

The language in **s. 201.1(1)** is repealed and more prescriptive language (i.e., "municipality must offer … *and each councillor must attend …"*) is added in its place. It goes on to explain at **s. 201.1(1)(a)(i-v)** and **(b)(i-iv)** the topics and the timeline.

Timeline and Required Topics:

In brief, the training is split out into topics, with training on certain topics to be held on different timelines. This is contained in **s. 201.1(1)(a) and (b).**

In **(a)**, prior to or on the same day as the first organizational meeting following a general election, or in the case of by-elections, on or before the day the councillor takes the oath of office, councillors must attend training on the following topics:

- the role of municipalities in Alberta;
- municipal organization and function;
- roles and responsibilities of council and councillors;
- the municipality's code of conduct; and
- the roles and responsibilities of the CAO and staff.

In **(b),** prior to or on the same day as the first regularly scheduled council meeting, or in the case of by-elections, within 90 days after taking the oath of office, councillors must attend training on the following topics:

- key municipal plans, policies, and projects;
- budgeting and financial information;
- public participation; and
- any other topic prescribed by the Regulations.

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Section 201.1(2) provides the ability for a council, by resolution, to extend the time for orientation training only under **list (b)** above by 90 days. There is no ability for council to extend the time for training under **list (a)** above.

Who Offers the Training:
The municipality is required to offer the training. *Bill 20* states at **s. 201.1(1)** that "a municipality … must offer … orientation training".

What is the penalty for not participating in mandatory training?
The MGA and Bill 20 are silent on penalties, both for councillors who refuse to attend training and for councils that refuse to offer the training. These may be addressed in upcoming regulations, but currently there is no statutory penalty for a councillor who fails to attend the orientation training in either the MGA or the amendments proposed by Bill 20.

Councillor Vacancy After Disqualification

Can a councillor remain in their seat after being disqualified?
No. Currently, **s. 175** of the *MGA* provides that a disqualified councillor must resign immediately and vacate their seat on council; however, a councillor may choose to not resign or vacate their seat. If they remain in their seat after being disqualified, then either the council or an elector may apply to a judge of the Court of King's Bench for an order declaring the person be disqualified from council. The judge's order disqualifying the councillor would also provide that their seat on council declared to be vacant.

However, Bill 20 adds **s. 175.1** and its subsections to the MGA, which provides at subsection **(1)** that council themselves would have the power to declare the disqualified councillor's seat as being vacant from the date of the declaration. Subsection **(2)** provides the disqualified councillor the ability to apply to a judge of the Court of King's Bench for an order determining whether they are qualified or have ceased to be qualified to remain a councillor, and per **(3)** of the same, this application must be made within 30 days of the declaration by council.

Does "vacant" mean that a by-election can be held?
Yes. The MGA's existing **s. 162** outlines when a council must hold a by-election to fill a vacancy. Currently, this section states that councils must hold by-elections to fill vacant seats in certain circumstances, including the timing of the vacancy in relation to a general election and the number of councillors remaining on council.

Section **162(a.1)** adds another requirement to the existing by-election rules. A by-election must be held by council if the vacancy came about because of a declaration made by council under **s. 175.1(1)** above, and:

(i) the application period under **s. 175.1(3)** has not expired, or
(ii) less than 60 days have passed since an application under **s. 175.1(2)** has been filed.

What if the disqualified councillor successfully appeals?
Based on how the bill is drafted, the councillor who applies to the Court of King's Bench under Bill 20's **s. 175.1(2)** is not "appealing" the council's declaration; they are instead applying for a court order from a judge which determines whether they are qualified to be, or have ceased being qualified to be, a councillor.

The judge hearing the application has three options under **s. 176(1)** of the MGA, which is untouched by Bill 20:

a) declare the person to be disqualified and a position on council to be vacant;
b) declare the person able to remain a councillor; or

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c) dismiss the person's application.

Once the Order from the Court of King's Bench is given, the appeal process to the Court of Appeal starts. This is covered by **s. 178**, also untouched by Bill 20. At subsection **(2)**, the declaration of disqualification remains in force until the final decision of the appeal.

At **s. 178(3)**, the MGA discusses the declaration of disqualification being set aside by the Court of Appeal. If that occurs, then:

a) the Court must reinstate the person as a councillor for the balance of their elected term, and requires their replacement to vacate the office; **and**
b) the Court may order that any money paid to the municipality in damages (per **s. 176(2)**) be repaid to the councillor.

However, at **(4)**, if the councillor's disqualification is set aside but the term of office for which they were elected has expired, the councillor is eligible to be elected at the next election in the municipality (unless they are no longer qualified for some other reason).

Local Authorities Election Act

Political Parties

Is there any detail as to how political parties will be defined, held accountable, impacts on financial management, etc. or will this be entirely through a resolution?

"Local political party" is a defined term in Bill 20 at **s. 158.3(1)(a**) as "an organization one of whose fundamental purposes is to participate in public affairs by endorsing one or more candidates in a local jurisdiction and supporting their election."

Subsection (1)(b) clarifies that a local political party **cannot** be **a)** a registered party under the *Election Finances and Contributions Disclosure Act,* **b)** a registered party as defined in the *Canada Elections Act* (Canada), **(c)** a political party or organization **affiliated with** a registered party referred to in clause (a) or (b), **(d)** a slate, or **(e)** a person or organization prescribed in the regulations.

However, **subsection (3)** then goes on to refer to the unseen regulations and discusses the potential for them to authorize the involvement of local political parties and/or slates in local elections. Subject to these regulations, a municipality **cannot prohibit** local parties or slates from election activities, **and** the municipality's ballot **must** list the local parties that officially endorse candidates, and any slates of which a candidate is a part.

Local candidates can run as an independent, as part of a slate, or be selected for endorsement as an official candidate of a local party.

The remaining details (registration, endorsement, interaction, contribution, campaign expense, disclosure, and other rules) will be set out in the regulations, as well as the rules that a candidate must comply with in respect of a local political party or slate.

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Criminal Record Checks

What is the purpose of allowing municipalities to require this information? Is it publicly shared, is it linked to eligibility, etc.?

The amendments in Bill 20 around criminal record checks are added in **s. 21.1,** which immediately follows "Qualification of Candidates". It remains unclear if a criminal record check will impact a candidate's eligibility, however this could be the case. At **s. 28(6.2)**, also added by Bill 20, the results of a criminal record check that accompanies a candidate's nomination papers must not be withheld or redacted except to ensure the mailing addresses of the candidate and their official agent are not disclosed.

Bill 20 does **not** "require" a criminal record check for any candidate. It only gives an elected authority the power to require anyone seeking to be nominated as a candidate to provide – not "pass" – a criminal record check. However, this power is conditional on that same elected authority passing a bylaw requiring criminal record checks for candidates before December 31 of the year prior to a general election year.

Expanded Use of Ballots

How will special ballots be requested?

The current sections and processes around special ballots have been repealed, and the elector applying for the special ballot must be in the newly-required permanent electors register, or they face a different application process.

If they are in the register, then the amendments in Bill 20 say they "may apply to vote"; **s. 77.1(2.4)(a-f)** are the existing criteria in the *LAEA* for the special ballot application, and are not amended by Bill 20. The requirement in **s. 77.1(2.4)(g)** to provide "the reason why the special ballot is requested" is repealed.

If they are not in the register, the elector must 1) complete an application in the prescribed form, 2) make a statement in that form that they are eligible to vote as an elector, 3) include a copy of their ID that meets the requirements of **s. 53(1)(b),** and **4)** give that information to the returning officer of the elector's local jurisdiction.

Section 49 provides more details; at the proposed **subsection (3.2)**, a person can be added to the register when the municipality has the person's residential and mailing address(es), postal code(s), the person's surname, given name and middle initial, and the person's date of birth.

After receiving the application, the returning officer or deputy must 1) enter the elector's name, place of residence, and the name and number of the voting subdivision for that residence, and then 2) provide the appropriate (or prescribed) forms to the applicant.

What requirements will municipalities have to meet during election periods?

Most of the following are found in sections 77.1, 77.2, 77.21, and 77.3 in Bill 20 unless otherwise stated.

- Municipalities **must** comply with the new sections around **permanent electors registers**, or their special ballot voters will have a separate special ballot application process in the prescribed form.
- The municipality's returning officer **must** review special ballots no later than the close of the voting station, or by the time and date set out in the regulation.

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- Municipalities are now required to enter in the permanent electors register any information referred to in **s. 49(5)** that is collected during an election. This information includes the elector's telephone number, address, legal name, gender, and birthdate, as well as whether they are a public school or separate school resident.
- Municipalities **cannot** use a drop box or central collection point to collect completed special ballot packages.
- When the municipality **receives** the special ballot packages, the outside envelope **must** be opened by the returning officer in the presence of candidates, official agents, or scrutineers (if any), **and** they must determine if **1)** the person named is in the permanent elector's register, **2)** Part 1 of the certificate is properly completed, **3)** there is a copy of the elector's ID that meets the requirements of **s. 53(1)(b), and 4)** the signatures on the certificate match the ID, if there is a signature on the ID.
- After completing those steps and ensuring all the criteria are met by the electors special ballot package, the municipality's returning officer **must 1)** sign Part 2 of the certificate, **2)** write "special" beside the elector's name in the special ballot elector register **if** the person's name is on the "non-special" electors register, **3)** record the date and time the envelope was received, **4)** place the sealed ballot envelope in the "special ballot" box, and **5)** record "voted" on the special ballot elector register.
- The returning officer **must** deliver the special ballot box to the deputy of the voting station of the electors who voted under this section, **and** advise the deputy of their special ballot elector's names.

Election Postponement in an Emergency:

Are there any details in the bill or will this be specified through a regulation?

Bill 20 provides this power to the Minister, but does not detail how that power could be exercised. The "unusual or unforeseen circumstance" included in addition to disasters and emergencies also remains an undefined term.

Questions or Requests for Information on Other Changes

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