

**Changes in the *City of Toronto Act, 2006*
and the *Municipal Statute Law Amendment
Act, 2006* for Business Improvement Areas**

April 3, 2007



Presentation Overview and Scope

1. General Objectives of the *City of Toronto Act, 2006* and the *Municipal Statute Law Amendment Act, 2006* (Bill 130)
2. Consultations on Business Improvement Sections of both Acts
3. New Provisions related to Business Improvement Areas
4. Expanded Provisions to create Municipal Services Corporations
5. Changes to other Economic Development Tools

These materials are general and for information only. Local facts and circumstances are variable, and the statutes and regulations referred to or discussed are subject to change. Accordingly, municipalities and other users should not rely on these materials. Users should consult the statutes or regulations directly, and consider obtaining their own legal advice when particular legal issues or decisions arise.

City of Toronto Act, 2006 – General Objectives

- Creates a framework of broad and enabling powers for the City which:
 - gives the City broad permissive powers commensurate with its size, responsibility and significance to the Province
 - recognizes that in order for the City to provide good government the City must be appropriately empowered
 - fosters a strong consultative relationship with the City that respects and advances the interests of both governments
 - is less prescriptive

***Municipal Statute Law Amendment Act, 2006* – Revisions to the *Municipal Act, 2001* - General Objectives**

- Gives municipalities new powers and autonomy
- Flexibility to meet local expectations and fulfill responsibilities
- Builds on the Ministry's relationship with municipalities
- Extensive discussions with AMO and other municipal partners, plus submissions
- Informed by the policy approach taken for the *City of Toronto Act, 2006*
- General structure of the *Municipal Act, 2001* is maintained
- Powers of a municipality under the *Municipal Act, 2001* or any other Act to be interpreted broadly
- Natural person powers continue

Consultation Group on Business Improvement Areas

- A stakeholder focus group was formed in Fall 2004 to assist with the identification and resolution of issues raised since the the *Municipal Act 2001* came into being. This group met four times.

- The focus group represented a broad range of stakeholders including:
 - The Association of Municipal Managers, Treasurers and Clerks of Ontario
 - The City of Hamilton
 - The Ontario Business Improvement Areas Association
 - The City of Toronto
 - The Toronto Association of Business Improvement Areas
 - MMAH – Central Municipal Services Office
 - OMAFRA - Rural Programs Branch

- Direction which followed the consultations focused on ensuring that rules and conditions for Business Improvement Areas provided flexibility to meet local expectations and fulfill responsibilities in keeping with the general directions taken with both the *City of Toronto Act, 2006* and the *Municipal Statute Law Amendment Act, 2006*.

Business Improvement Areas Provisions under the *City of Toronto Act, 2006*

- Business Improvement Areas (boards of management) that existed prior to the Act coming into force continue as local boards until they are dissolved by the City. (See COTA Section 429 (1))
- The sections of the *Municipal Act, 2001* that apply to those BIAs are continued. (See COTA Section 429 (2))
- The City could now consider setting up new City boards to perform functions similar to those of traditional BIAs. (See COTA Sections 141-147)

Business Improvement Areas Authority under the *Municipal Act, 2001*

- The *Municipal Act, 2001* (after Bill 130) continues most sections pertaining to BIAs without change. However, there is now a new subsection that states the BIA board of management is a local board. (See MA Section 204 (2.1))
- The *Municipal Act, 2001* includes provisions for municipalities to make changes to their local boards. Municipalities could consider putting in place new rules and requirements for BIAs to address local concerns. (See MA Section 216)
- Municipalities could consider creating municipal service boards with similar functions to BIAs, and the rules for them. (See MA Sections 194 to 202)

Rules and Conditions for City and Local Boards

- The City of Toronto and Municipal Acts contain a number of provisions relating to the relationship between municipalities and their City or local boards. BIAs may wish to review the applicable legislation to find out how it applies, particularly in light of the new provision deeming BIAs to be local boards (see ss. 201(2.1) of the Municipal Act, 2001 and s. 409 of COTA)
- The Acts provide for the following which may be of interest to local boards (among other items):
 - Ability for the municipality to determine measures for accountability and transparency (MA Sections 10 (2) and 11 (2), COTA Section 8 (2))
 - Ability for the municipality to determine measures for financial management (MA Sections 10 (2) and 11 (2), COTA Section 8 (2))
 - Ability for municipalities to delegate authority (MA Sections 23.1-23.5, COTA Sections 20-24)
 - The role of the Auditor General, Integrity Commissioner and Ombudsman if a municipality chooses to create them* (MA Sections 223.3-223.8, 223.13-223.18 and 223.19-223.23, COTA Sections 158-164, 170-176 and 177-182)
 - Procedures, public meetings and access to records (MA Sections 238, 239 and 253-255, COTA Section 189, 190 and 199-201)
 - Policies on land sales, hiring of employees and procurement (MA Section 270 (2)**, COTA 212 (2))
 - Rules on insurance (MA Sections 278-280, COTA Sections 217-219)

* Toronto is required to have these positions

** To be proclaimed

Fees and Charges Provisions

See for reference MA Sections 390-400, COTA Sections 258-266, and the regulations

- Municipalities can consider creating municipal service boards with BIA type functions. Further, municipalities or those boards can consider use of fees and charges instead of the traditional BIA levy.
- Municipal and local board powers to charge fees are broad. When establishing their fees, it is up to the municipality or local board to determine the basis of the fee and how to describe it in their by-law.
- Costs included in a fee or charge could include capital costs related to a service on persons not immediately benefiting but who will receive a benefit in the future. As has been past practice, municipalities and local boards may wish to keep in mind how they are going to explain to any ratepayer how they will be 'benefiting' at some later point in time.
- Pre Bill 130, most local board fee by-laws did not come into force until approved by the municipality. Municipalities now have the option to require most local board fee by-laws to be approved by the municipality (see s. 397).
- Generally, fees or charges for BIA or similar functions are stated in the legislation to be a tax for charitable rebates (MA Section 361 (12), COTA Section 329 (13)) and for vacant unit rebates (MA Section 364, COTA Section 331)). BIA fees or fees for similar purposes that meet the requirements in the regulations have priority lien status (see O.R. 581/06 MA and 594/06 COTA).

Municipal Services Corporations – Previous Regulation (O.R. 168/03)

- Regulation outlined eligible services, general rules and accountability provisions.
- Municipality was required to undertake a detailed up front business case and public participation process with very specific requirements.
- No power included to create subsidiaries.
- Could only acquire a private corporation if it has same eligible services and is fully merged.
- Generally, was a competitive bidding/process for corporations that were not wholly owned.
- Included provisions to state municipalities could inspect financial records and ask for audited financial statements.
- Were limitations on municipal financing of the corporation. However, were certain exceptions to the bonusing rule, including for certain kinds of services (e.g. public transit) provided by the corporations.
- Generally, municipalities could only have created economic development corporations for limited 'economic development services' purposes, such as promotion of the municipality.
- City of Brampton could create a downtown development corporation with redevelopment powers and York Region could create a transit corporation which has redevelopment powers related to its transit system

New Corporations Regulations under the City of Toronto and Municipal Acts

MA Section 203 and Regulation 599/06, COTA Section 148 and Regulation 609/06

- Councils would determine how best to provide services and facilities for its citizens. Expanded powers to establish corporations
- Municipalities have been provided with an authority to create corporations for purposes of providing most services that the municipalities can provide, instead of a list of specific eligible purposes for corporations.
- Through regulation, the Province excluded certain types of businesses for which municipalities would not have the ability to create a corporation. No restrictive provision included in the area of economic development.

Municipal Corporations – Key New Rules and Conditions

- Business case and public consultations are still required but the municipality determines the details.
- Municipality required to produce a policy on asset transfers.
- Water and waste water corporation and corporations for youth (i.e. under 18 years of age) recreation programs possible with public ownership or control requirement.
- Generally, municipal services corporations are deemed not to be local boards. However, corporations are deemed to be a local board for specific Acts. These now include, among others, the *Emergency Management and Civil Protection Act* and *Capital Investment Plan Act, 1993*.

Municipal Corporations – Rules and Conditions that remain similar

- Required contact with provincial Ministries before transferring assets for which a direct grant was received.
- Municipality can provide financial incentives to the corporation only in special circumstances.
- Investment authority for corporations is the same as exists for the municipality
- Corporations could consider borrowing and securing it with specific corporate assets (sometimes called issuing 'revenue bonds').
- Municipal corporations cannot operate in another municipality without consent.
- Continued ban on subsidiaries.
- Directors and officers continue to be subject to the *Municipal Conflict of Interest Act* and corporations are deemed institutions for the purposes of the *Municipal Freedom of Information and Protection of Privacy Act*

Unique Provisions for Economic Development Corporations

- Municipality can collect a levy for a corporation undertaking defined “economic development services” using the municipality’s area rate levy authority
- Economic development corporations do not necessarily have to use money from the municipality (including from the levy) to pay for the services that they provide
- Defined “economic development services” includes, among other things:
 - Public Transportation
 - Site acquisition and development for certain purposes including residential housing
 - Parking
 - BIA type services
 - Facilities for culture and heritage

Unique Provisions for Economic Development Corporations

- These provisions are based on the provisions in the former regulation for the City of Brampton economic development corporation. However, there are differences, some of which are:
 - The special levy is not restricted only to a prescribed business property class
 - The regulation does not restrict corporation operations to the boundaries of a downtown core
 - A corporation could provide a broad category of ‘provision of culture and heritage systems’ facilities, (instead of being restricted to a list of more specific matters such as ‘performing arts facilities’)
 - There are no specific board composition or corporation membership provisions

Municipal Act Area Rating Authority – General Summary

MA Section 326 and Regulation 585/06 and COTA Section 287 and Regulation 591/06

- Provisions so that municipalities may levy property in a special designated area of the municipality, to fund all or part of the cost of providing a special service except those identified under Regulation
- Regulations identify mandatory public health programs as those services that cannot be area rated.
- Generally, a municipality would use this area rating power when it is providing a service only to part of the municipality.
- Once the need and area are identified, the municipality would likely consider, among other things, the special benefit to the area, the associated costs and a method to determine them. The municipality must then decide whether to levy for all or a portion of the costs.
- Within the identified area benefiting from the special service, a number of factors would be likely be considered when designing the special levy. The end result is that taxpayers benefiting from the special service in the defined area pay a higher levy than the general levy paid by taxpayers outside the defined area.

Other Economic Development Tools Impacted by Changes to the City of Toronto and Municipal Acts

- The current Municipal Act general prohibition on “bonusing” would continue to apply to all municipalities including Toronto (MA Section 106, COTA Section 82)
- Current exceptions to the general prohibition continue or change as generally outlined below:
 - Municipal capital facilities exemption would continue to apply for all municipalities (See MA Section 110 and Regulation 603/06, COTA Section 252 and Regulation 598/06)
 - Municipalities do not need approval of the Minister to provide certain financial incentives in the context of a Community Improvement Plan. (See Planning Act Section 28 and s. 106 or s. 82)
 - Municipalities would also be permitted provide financial incentives to establish business incubators in order to facilitate the start-up and growth of small and medium sized businesses subject to Ministerial approval of the municipal program, rather than the previous requirement for Cabinet approval. The City of Toronto can approve the use of financial incentives with Council approval. (MA Section 108, COTA Section 84)