

Ontario Proposes Amendments to a Number of Statutes Affecting Municipalities and the Development Industry

Jul 13, 2020

By Laura Dean

Bill 197, the *COVID-19 Economic Recovery Act, 2020*, was introduced by the provincial government on July 8, 2020. As stated by the Minister of Municipal Affairs and Housing, “the first priority of the [Act] is to restart jobs and development.” This omnibus bill proposes to amend 20 statutes. Many of these proposed changes could have a significant impact on municipalities and the development industry.

Below is a brief summary of the proposed amendments to the *Planning Act*, the *Development Charges Act, 1997*, the *Building Code Act, 1992* and the *Ministry of Municipal Affairs and Housing Act*. Amendments to other statutes, including the *Environmental Assessment Act*, the *Drainage Act* and the *Public Transportation and Highway Improvement Act*, will likely be of interest to those in the municipal and land development sector, but are not discussed below.

For a summary of proposed amendments to the *Municipal Act, 2001* and the *City of Toronto Act, 2006*, please refer to this article prepared by my colleagues Rebecca Hines and John Mascarin.

Building Code Act, 1992

A proposed amendment to the *Building Code Act, 1992* would provide the Minister of Municipal Affairs and Housing with the authority to make regulations setting out desirable governing standards for the construction and demolition of buildings. An additional amendment would provide the Minister with the authority to make regulations adopting certain documents by reference and requiring compliance with any provision of a document so adopted. These changes are intended, in part, to make it easier to harmonize parts of building codes across different provinces.

Planning Act

The key proposed amendments to the *Planning Act* relate to the not-yet-in-force provisions introduced by Bill 108, *More Homes, More Choice Act*, dealing with the community benefits charge (“CBC”). It is still contemplated that a CBC would replace the current height and density provisions contained in section 37 of the *Planning Act*. Amendments are proposed to:

- provide that CBCs will not apply to developments of less than five storeys or under 10 units, or redevelopment that proposes to add fewer than 10 residential units to an existing building or structure;
- clarify that CBCs may only be imposed by a local municipality;
- maintain the current system through which municipalities obtain parkland for those municipalities that opt not to include provisions for this purpose in their CBC by-laws. Whereas Bill 108 proposed to incorporate parkland dedication into the CBC, Bill 197 would maintain the standard and alternative rates for the calculation of payment in lieu of parkland set out in section 42 of the *Planning Act*. A municipality would only be permitted to exercise its authority under section 42 if neither its CBC by-law nor its development charge by-law included provisions dealing with the funding of capital costs for these purposes; and
- introduce various procedural provisions related to the passing of a by-law with respect to the alternative parkland rate and provide for a process to appeal an alternative parkland rate by-law to the Local Planning Appeal Tribunal.

Other significant proposed amendments to the *Planning Act* relate to Ministers' zoning orders. Currently, under section 47 of the *Planning Act*, the Minister may make orders exercising zoning powers. Bill 197 proposes to amend section 47 of the *Planning Act* to:

- give the Minister enhanced order-making powers relating to specified land. "Specified land" is defined as land other than land in the Greenbelt Area within the meaning of the *Greenbelt Act, 2005* (which includes areas covered by the Oak Ridges Moraine Conservation Plan, areas covered by the Niagara Escarpment Plan and areas described in the regulations made under the *Greenbelt Act, 2005*);
- enhanced order-making powers include:
 - the addition of site plan control powers and the authority to provide that site plan control does not apply in respect of all or part of the specified land; and
 - the ability to exercise the powers granted to municipal councils with respect to inclusionary zoning, including the ability to require the inclusion of affordable housing units in the development or redevelopment of specified lands, buildings or structures; and
- provide that a Minister's order relating to specified land may require that the owner of the specified land enter into an agreement with the relevant municipality respecting specified matters related to development on the land and conditions required for the approval of plans and drawings in a site plan control area.

Development Charges Act, 1997

Bill 197 proposes to make the following changes and additions to the *Development Charges Act, 1997*.

- the list of services in subsection 2(4) of the Act for which a development charge can be imposed is expanded from the list that was included in Bill 108. The list now includes services provided by a library board, services related to long-term care, parks and recreation services (but not the acquisition of land for parks), services related to public health, child care and early years programs, and housing services, among others;
- a provision is proposed to clarify that a CBC may be imposed with respect to the services listed in subsection 2(4) provided that the capital costs that are intended to be funded by the CBC are not capital costs that are intended to be funded under a development charge by-law;
- section 7 of the Act, which currently provides for services to be grouped into categories within a development charge by-law, is repealed and replaced to provide for services to be included in classes. The amendment proposes that classes can be composed of any number or combination of services, including parts or portions of the services listed in subsection 2(4) of the Act or parts or portions of the capital costs listed in subsection 5(3) in respect of those services. A class set out in a by-law is deemed to be a single service for the purposes of the Act in relation to reserve funds, the use of money from reserve funds and credits.

Bill 197 maintains the Bill 108 amendment, which eliminates the requirement for DC eligible costs to be subject to a 10 per cent discount.

Ministry of Municipal Affairs and Housing Act

Bill 197 would formalize the office of the Provincial Land Facilitator and would provide it with a statutory basis. The proposed function of the Facilitator would be to make recommendations to the Minister in respect of growth, land use and other matters including Provincial interests and to perform other functions as the Minister may specify.

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