

Modernizing the Municipal Act ³

Legislative Action Program

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1. INTRODUCTION

Local government in British Columbia is a product of provincial legislation. The degree to which the statutes allow local government to respond to local needs is the measure of the effectiveness of local government.

UBCM recognizes this in its Statement of General Policies:

The powers of local government should be adequate to meet local needs. The legislation that sets out local government responsibilities should be reviewed regularly and amended so it continues to meet those needs. When local government is empowered to carry out a responsibility, it should be done in a clearly written statute.

Without an adequate and effective legislative framework, local government and the communities it serves will suffer.

2. SITUATION AND STATUS

The Modernizing the Municipal Act process was launched at the 1991 Convention with the adoption of the Modernizing the Municipal Act - Legislative Action Program. It indicated five key legislative priorities:

1. action to restore the balance of public liability;
2. action to provide fair legislation on indemnities and expenses;
3. action to provide for better management of development and affordable housing;
4. action to modernize fees and charges;
5. action to deregulate outdated provincial supervision of local government.

Response by the provincial government has been very positive with for instance in 1992 legislation, virtually all 21 of the recommendations on fees and interest rates being addressed (Action to Modernize fees and charges). Consequently, this Action Program was considered complete. Some of the other 1992 modernizing amendments included:

- changes to the *Electrical Safety Act* and *Fire Services Act* as recommended by the liability action program;
- tree cutting and retention powers as recommended in the “better management of development” action program;
- drawing on recommendations in the “deregulation” action plan were a variety of amendments including regulation of bows and crossbows, false alarms, commutation of local services and alternate means of service for a range of notices.

Based on this fruitful foundation UBCM recommended a further phase at the 1992 UBCM Convention: Modernizing the Municipal Act ². It too can report good success during 1993. Action taken to provide fair legislation on indemnities and expenses recognized the requests for per diem payments, expenses within the municipality, acting or deputy mayor indemnities, unanticipated meeting expenses, “in-town” mileage charges and better access to insurance. As a consequence, this Action Program has been considered completed.

Legislative action was also taken under the heading “better management of development and affordable housing”:

To respond to the needs for affordable housing:

- allowing bonus density in exchange for affordable housing or public amenities.

To respond to the need to protect public safety and the environment in advance of development or redevelopment process.

- protection of environmentally sensitive areas.

In 1992, the proposed “Action to Modernize the Municipal Statutes” was added to the Modernizing program and responses were:

- in the Land Title Act to give local government control of the transfer of un-opened road ends.
- to introduce new Heritage Conservation legislation (as an exposure bill).

Since the renewal process of the elections sections of the Municipal Act predated the Modernizing process that legislation was not a formal part of the “Modernization” proposals yet the elections legislation is part of a staged process of Part by Part review of the Municipal Act.

This year we propose to continue the Modernization process.

3. ACTION PROGRAMS

Within the context of the broad constitutional and legislative directions outlined and adopted in the UBCM policy papers *Local Government and the Constitutions* (1991 and 1992), UBCM is recommending a continuation of the modernization process.

These proposals continue to draw on existing policy and resolutions. The 1993 program will introduce a process to signal of the next priority for general Municipal Act renewal, signal priorities within the Liability Action Program and continue with the remaining components. The 1993 legislative action plans of local government are:

1. Action to continue the general Municipal Act renewal process;
2. Action priorities to restore the balance of public liability;
3. Action to provide better management of development and affordable housing;
4. Action to deregulate provincial controls of community commerce;
5. Action to deregulate outdated provincial supervision of local government;
6. Action to modernize the municipal statutes.

Given that 10% of the resolutions received by UBCM in 1993 were related to ongoing thrusts of Modernizing the Municipal Act (eg. ten liability and nine other - see C8 to C26 in the 1993 Resolutions Book) the need for continued efforts is evident.

A brief description of each of the action programs follows. To complement these proposals additional information is appended.

1. ACTION TO CONTINUE THE GENERAL MUNICIPAL ACT RENEWAL PROCESS

1. The Background

Local Governments and Ministry of Municipal Affairs, Recreation and Housing have jointly been working toward a complete “re-write” of the Municipal Act on a staged process focusing on agreed priorities.

In 1985, work was completed and a revised Part 29 “Management of Development” was enacted. In 1989, a completely revised Part 24 - “Regional Districts” was re-enacted.

2. The Situation

The revisions to the elections sections, Parts 2 and 3 of the Municipal Act, were completed in 1993. This was the result of a three year joint work program. Now the elections work is complete, it is time to determine the next priority Part for complete renewal.

3. The Recommendation

That Executive set in motion a consultative process to identify next priority for a comprehensive rewrite of a Part of the Municipal Act.

2. ACTION PRIORITIES TO RESTORE THE BALANCE OF PUBLIC LIABILITY

1. UBCM Liability Action Program Launched in 1985

In July 1985, UBCM launched a three-point Liability Action Program to stem the then municipal liability crisis. The three points were:

- legislation;
- risk management; and
- insurance.

2. Program Results to date have addressed certain issues

The Liability Action Program results include:

- the investigations into self-insurance resulted in the Municipal Insurance Association of B.C.
- the risk management program begun by UBCM is now in the hands of MIA.
- the legislative objectives contained in Bill 30 (1987), that included:
 - indemnification of elected officials;
 - personal protection from liability;
 - protection for failure to enforce building bylaws;
 - protection for public works nuisance cases; and
 - provision to put notice on title.

Subsequent stages of legislative reform have resulted in:

- *Fire Service Act* amended removing Section 26(2) [the mandatory two-month inspection of public buildings]. (1989)
- *Municipal Act* Sections 699 and 700 amended to allow Fire Departments to undertake rescue initiatives without the threat of being liable. (1989)
- liability protection for building approvals where a professional had given assurances of Code compliance. (1990)
- amendments to the *Electrical Safety Act* and the *Fire Services Act* to remove unintended liability. (1992)

3. Priority Action needed to address Building Inspection

In 1993, UBCM received ten resolutions (see C17 to 26) and over 60 letters of support for the removal of what has become an unlimited, transferable warranty for building inspections.

While the UBCM Liability Action Program has been in existence since 1985 and sets out a range of actions, this year's Program sets as a priority to clearly establish that the purpose of building inspection is not to create a building warranty.

4. The Recommendation:

That legislation be introduced to restore the balance of public liability in terms of building inspections.

A summary of the full range of specific proposals UBCM has previously approved and advanced is set out in Appendix A.

3. ACTION TO PROVIDE FOR BETTER MANAGEMENT OF DEVELOPMENT AND AFFORDABLE HOUSING

1. The Background

When the new Management of Development part of the *Municipal Act* was enacted in 1985, a process to discuss land use legislation proposals was introduced. At the time, this was extremely beneficial. This process, while still relevant, does not fully ensure that the legislation is kept up to date so that it can respond to land use and housing needs in the province.

2. The Situation

The development pressures in this province are great and the need to respond to land use and housing issues needs a comprehensive range of legislative measures. So too is the need to protect the environment and the quality of life in our communities. We also need an efficient and timely development approval process. These are some of the main legislative needs within Part 29 of the *Municipal Act*.

Some of these specific needs using some examples include:

To provide for a more efficient development approval process:

- reintroduce Comprehensive Development Agreements.
- clarify the quorum rules for public hearings.
- allow councils to adopt procedures for the conduct of public hearings.
- allow for variable application fees.
- make the “late comer” provisions workable.

To respond to the needs for affordable housing.:

- zoning options for temporary dwelling units for elderly relatives.
- clarify the authority for local governments to charge DCCs for multi-unit developments on a square foot/ metre basis rather than on a per unit basis.
- controls on demolitions that may explicitly allow moratoriums on demolition of rental accommodation.

To respond to the need to protect public safety and the environment during development or redevelopment process.

- safety of an abandoned development site.

To maintain the existing housing structure

- to allow municipalities to enact standards of maintenance bylaws.

3. The Response

Elements of this action plan were endorsed by UBCM in 1991 and during 1992 one welcomed legislative response was made to provide tree cutting and retention powers. In 1993 legislation dealt with bonus density zoning, rental housing zoning variations and protection of environmental sensitive sites.

4. ACTION TO DEREGULATE PROVINCIAL CONTROLS OF COMMUNITY COMMERCE

1. The Situation

The *Municipal Act* contains a confusing and restrictive set of provincial controls over local government powers to regulate the commercial environment within municipalities. Provincial intervention over shop hours and licensing powers are out of step with the need to allow communities to manage their own affairs.

Some UBCM resolutions have highlighted specific problems or needs such as:

- what is the ongoing interest of the province in setting special hours for the operation of service stations?
- why can't a local government set closing hours on a zone by zone basis and permit late-night and special-event shopping if it chooses?
- why can't local government be given the powers to deal with non-residential business in ways that are appropriate to the community?
- why are regional districts not allowed to deal with business licensing-type issues in rural areas?

2. The Direction

A new approach to municipal legislation has been endorsed by UBCM. This would be a useful area in which to implement the principle that local government should have wide enabling authority to manage their communities and that the provincial government should only restrict that authority where there is a specific identifiable provincial interest. Rather than set out specific narrow powers as is now the case, the *Municipal Act* would simply provide the basis for local government to determine by bylaw what was needed in each community.

3. The Recommendation

The *Municipal Act* be amended to provide local government the full scope of authority to regulate shopping hours, business licensing and regulation.

A sample of issues extracted from the "Consolidated Statement" appears in Appendix B.

5. ACTION TO DEREGULATE OUTDATED PROVINCIAL SUPERVISION OF LOCAL GOVERNMENT

ACTIONS THAT WILL MAKE LOCAL GOVERNMENT MORE EFFECTIVE AND RESPONSIVE

1. Background

Almost ten years ago, UBCM began to compile in a "UBCM Consolidated Statement Proposed Legislative Changes"¹ those resolutions that called for changes to provincial legislation affecting local government. Most often, these requests were straightforward, common sense requests that would improve local governance.

2. The Situation

Some examples of the situations these resolutions have attempted to resolve include:

- permitting tax sale notices to be sent by certified mail (on books 7 years).
- sending orders or notices by any means that provides proof of service (on books 8 years).
- permitting local government to grant tax exemptions for churches under construction (3 years).
- allowing discretion for prepayment discounts on utility accounts (on books for at least 6 years).
- allowing local government to establish consolidated municipal codes for the convenience of the public.

From Financing Local Government (1989) study are these outstanding administrative items:

42. *Local governments be able to design their own tax forms.*
44. *If the revenue-sharing contribution of the provincial government is to be recognized, the current wording should be replaced with a statement such as: "The provincial government is contributing \$X in 1989 to help the municipality provide local services".*
56. *The consolidation of the assessment roll - so that there is only one roll for municipal, school and hospital purposes.*
69. *Municipalities be provided with the option of consolidating their water, sewer and general funds.*

In 1987 UBCM suggested these additional ways to remove unneeded provincial approvals:

- addition of roads to "Assent of electors - exceptions" (s.330b)
- rescind approvals for the transferring of surplus reserves or local improvement funds (s.382)
- replace "bylaw" with "resolution" in allowing gates across highways (s.583)
- rescind approvals for underground facilities (s.682(1)).
- rescind approvals for carrying out local improvements (s.650)

3. The Response and Recommendation

At the 1991 Convention a recommendation was approved that legislation be introduced to deregulate outdated provincial supervision of local government - actions that will make local government more effective and responsive.

¹**Note:** The "UBCM Consolidated Statement: Purposed Legislative Amendments" sets out those amendments to statutes that are required to provide local government with the tools needed to carry out its responsibilities.

During 1992 the following items were addressed:

- allowing a member of the public to pay all of a specified area charge “up front” at the time of development - instead of paying over time with added interest (on books 6 years).
- sending orders or notices by any means that provides proof of service (on books 8 years).
- responding to problems over intrusion and false alarms (going back to 1984).
- property tax exemptions to leaseholder-non-profit organizations.
- control use of bows and cross-bows.

While a number of Ministerial approvals were abolished in 1993 legislation (Bill 58), much remains to be done.

A sample of proposals extracted from the “Consolidated Statement” is contained in Appendix C.

6. ACTION TO MODERNIZE THE MUNICIPAL STATUTES

1. Background

The wide-spread legislative reforms of the *Municipal Act* in 1992 recognized the need to keep the *Municipal Act* up to date. This thrust must extend beyond the *Municipal Act* to the other 'municipal' statutes that provide authority to local governments.

Some significant progress can be reported with the introduction of legislature in 1993 that addressed the following concerns of the 1992 Action Program.:

- in the *Land Title Act* to eliminate the transfer of unopened road-ends;
- to introduce new *Heritage Conservation* Legislation (in "exposure bill" form).

2. The Situation

Drawing on the 'UBCM Consolidated Statement: Proposed Legislative Changes' some examples of the situations member resolutions have attempted to resolve include:

- in the *Land Title Act*
 - allow regional district to assume the approving officer functions
- in the *Motor Vehicle (All-Terrain Act)* - require registration of ATV's;
- in the *Fire Act* - provide police powers to seize fireworks;
- in the *Condominium Act* – require referral to council and approving officers.

3. The Recommendation

That the Ministry of Municipal Affairs, Recreation and Housing in conjunction with UBCM, urge the Provincial Government and Ministers responsible, to continue a Modernizing the Municipal Statutes reform package at the 1994 legislative session which will include final Heritage Conservation legislation.

LIABILITY ACTION PROGRAM

The elements of the Liability Action Program legislative reform package contains:

Fire Department Act: Amend the Fire Department Act Section 2, 3, 5 and any other parts that require that a municipality has to maintain a two-platoon system.¹

All-Terrain Vehicles: Request the provincial government to amend the regulations and establish a registration and identification for off-highway vehicles.²

MUNICIPAL ACT

Nuisance Actions: Amend Section 755.3 to extend the nuisance provisions to the normal operation of a drainage system or natural water course.

Nuisance Actions: Add Section 755.5 to state that a municipality is not liable for damages in any way arising from the provision of any service or function or the exercise of any power authorized by this Act, unless the municipality is guilty of gross negligence, and willful and deliberate misconduct.

Limitation Periods: Amend the Municipal Act Section 754 to ensure that the following elements are included in the limitation section: (a) the period should be clear and reasonable as to time; (b) the beginning of the period should be stated; and (c) **there should be an "ultimate limitation" regardless of when the period starts and for building inspection claims the ultimate limitation period from the date of final inspection be five years.**

Limitation Periods: Defend Municipal Act Section 755 to ensure that the two-month limitation period is retained.³

Limitation Periods: Add to section 755 to clarify that the two month period begins on the first date on which the damage physically occurs, whether or not it is discovered and that lack of knowledge of the requirements of this section shall not constitute a reasonable excuse within the meaning of this section.

Bylaw Compliance: Ensure that responsibility for bylaw compliance remains with owners/builders and allow local government to establish a development compliance certification process for professionals (engineers and architects) as under the Vancouver Charter.

Good Samaritan Act: Amend to provide a defense against liability for fire service officers who render emergency rescue or medical services.

Federal Fisheries Act: Continue to press the Minister of Fisheries and Oceans to introduce a "dispute" resolutions process similar to that employed under the Environmental Protection Act, which would resolve conflicts between local government and the federal government without recourse to the Courts.

Other General Liability Issues: (part of the original legislative program)

Structured Settlements: Introduce legislation to provide for structured settlements for those who have suffered injury or incapacity.⁴

Joint and Several Liability: Abolish the principle of joint and several liability so that the co-defendant is liable only in proportion to their degree of responsibility.

Prejudgment Interest: Provide for interest for non-economic losses in personal injury cases only after sufficient medical information has been provided to the defendant.

¹ Status: proposal made and discussions have commenced.

²Some progress can be noted as part of a recent Motor Vehicle Act regulation requiring ATV drivers to be licensed.

³The Executive has developed a proposal and discussions will commence with the Law Reform Commission and continue with the Attorney General, Minister of Municipal Affairs, Recreation and Housing and the Benchers of the Law Society of B.C.

⁴Bill 66 that made such a provision was introduced but not passed at the 1989 legislative session.

**SAMPLE LEGISLATIVE PROPOSALS TO DEREGULATE PROVINCIAL
CONTROLS OF COMMUNITY COMMERCE**

LICENSING/REGULATION

SHOPS CLOSING	Regulation of Closing [s. 920, 921]	Grant unrestricted authority to regulate shop closing on a Monday through Saturday basis.	A44/83 A17/88
SHOPS CLOSING	Sunday Shopping [s. 921]	Provide local government with the option of regulating shopping days and hours.	A5/89 #51/79 #40/77
BUSINESS REGULATION	Non-Resident Businesses [s. 504(4), s. 506]	Permit local government to regulate the entry of non-resident businesses into the community and to impose a separate licence fee.	B10/89
	Second hand goods [s.527(g)]	Make the provision applicable to regional districts as well as municipalities.	B24/84
	Hours of Operation	Permit municipalities to set closing hours on a zone-by-zone basis and permit late-night and special-event shopping.	A2/85
	Service Stations [s.925]	Remove special provisions for establishing the hours of operation of service stations.	B4/91
	Security Bond for non-resident business [s. 501(2)]	Substantially increase the \$1,000 security bond.	A43/83
	Licence fees & periods for non-resident business [s.506, 504(4)]	Allow licences to be for one day, one week or one month and with different fees for non-resident business.	A43/83
REGIONAL DISTRICTS	Business Licenses	Allow regional districts to regulate and manage commercial development through the issuance of business licenses.	C4/92

SAMPLE LEGISLATIVE PROPOSALS TO MODERNIZE THE MUNICIPAL ACT

GENERAL TOPIC	SUBJECT OF AMENDMENT	AMENDMENT REQUIRED	SOURCE
GOVERNMENT PROCEDURE			
INCORPORATION	Classification of municipalities [s.20]	Give district municipalities the option to apply for incorporation as a city once a certain population is reached.	B 10/92
FINANCE			
COURT OF REVISION	Review of Process for frontage and parcel taxes [s.416]	Review the legislation with a view to introduce a less complex process.	A2/92
	Supplementary Roll [2.434, 420]	Amend the Municipal Act to no longer require Council approval of all supplementary rolls.	B13/92
LOAN AUTHORIZATION	Health related works [s.330]	Amend the Municipal Act to exempt loan authorization bylaws for works required pursuant to Ministerial orders under the Health Act from referendum and counter-petition requirements.	B18/92
TAXATION			
TAX SALE	Tax Sale procedures	Eliminate the annual tax sale of properties and provide instead that these properties automatically revert to the municipality.	A3/89
	Notice	Permit notices of tax sale to forwarded by certified mail.	B13/84
	Notice [s.466]	Clearly identify local government liability in providing notice.	B40/91
TAXES	Install Payment [s.442]	Remove the exemption to installment payment of taxes.	A4/92 B10/84 LR2/82
	Frontage Tax Notices [s.484(3)]	Require the mailing of a notice of frontage assessment only where there is a change in assessment.	B21/88
EXEMPTIONS	Churches [s. 398(h)]	Permit local government to grant tax exemptions to churches under construction.	B35/89

	Review [s.398]	Complete review of tax assessment exemptions.	A7/92
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LICENSING/REGULATION

PROCEDURES APPROVALS	ON Abandoned highways	Allow the stop up, closing and conveying of highways by bylaw subject to adequate public notice, without reference to the Ministry of Municipal Affairs.	B17/89 A53/82
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PUBLIC WORKS/UTILITIES

UTILITY RATES	Discounts	Permit municipalities to offer discounts on prepayment of annual utility accounts.	B9/85
	Unpaid	Allow penalties on all overdue accounts.	B14/86 B11/83
	Unpaid [s.636]	Provide the same rate of interest on unpaid accounts as for taxes in arrears and delinquent.	A15/82

RECREATION

LEASING	Municipal Leasing Agreements [s.679]	Extend the term by which a municipality may lease land to a community group.	A10/87
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REGIONAL DISTRICTS

REGULATION	Firearms Control	Allow regional districts to designate “no shooting areas” and the discharge of firearms in rural residential areas.	C4/90
TAXES	Tax Adjustments on Assessment Appeals	Allow RD’s to make adjustments similar to that employed in conjunction with hospital district levies.	C1/86
	Reserve Funds	Allow regional districts to establish reserve funds.	C2/91
	User Charges	Allow regional district to implement user charges to pay for regional district services.	C1/92

MUNICIPAL ACT: NEW PROVISIONS REQUIRED

LEGISLATIVE ROLE	Municipal Codes	Authorize the establishment of Municipal Codes for local government.	B11/89
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REGULATORY POWERS	Regulate use of fireworks [s. 933]	Permit municipalities to regulate or prohibit the possession of fireworks and authorize police to seize firecrackers or fireworks.	B29/88
	Vicious Dogs	Permit municipalities to regulate dogs or their owners.	B22/86 B42/82
	Regulate distribution of commercial advertising material [s.932(m)]	Permit local government to regulate or prohibit the posting, exhibiting or distribution or any commercial advertising material.	B6/91
COLLECTION FEES	Charge for collecting taxes.	Allow local government to charge a fee for the collection of taxes on behalf of other agencies.	A4/86 (LR10/91)
 MUNICIPAL AID ACT			
GRANTS IN LIEU	Frontage or Area Taxes	Grants in lieu to be made for a frontage or area tax.	B20/87 B7/85 B16/83 A21/82