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Bill 75 – Significant Projects Steamlining Act

On November 3, 2004 Minister of State for Deregulation, Honourable Kevin Falcon, introduced Bill 75 – *Significant Projects Streamlining Act*. The Act authorizes the Lieutenant Governor in Council (Cabinet) to designate certain projects as “provincially significant”. Projects so designated may be fast-tracked by requiring that decisions relating to these projects be expedited. As well, if a project is to proceed, the legislation allows for any enactments or processes that might impede the prompt completion of the project to be overcome through negotiation or minister’s order, and be replaced with alternative measures that are more in keeping with the expeditious completion of the project.

OVERVIEW OF BILL 75

Bill 75 packs sweeping powers in a short 12 sections.

The bill applies to local governments by including them in the definition of an “approving authority”. The following are the main provisions of Bill 75:

A. RECOMMENDATIONS ON DESIGNATION

The Minister of Deregulation may recommend to Cabinet that a project be designated as a provincially significant project (projects are widely defined but there are no criteria in the legislation for what constitutes a provincially significant project). Minister Falcon has supplied a suggested list of criteria and some examples.

B. DESIGNATION BY CABINET

That recommendation is considered and Cabinet may designate a project as a provincially significant project.

Upon designation a local government that has any

jurisdiction over the project must then take all “reasonable actions” to:

- make all related decisions “expeditiously”, and
- if the project is “designated to proceed” – facilitate the expeditious completion of the project.

Open to interpretation will be what are considered “reasonable actions” and “expeditiously”. What is not clear is who, and at what point, it is decided to “designate the project to proceed”. It may be that this could be part of the Cabinet designation order.

The Cabinet designation order may initially, or at subsequent times, authorize the “responsible Minister” (who may be the Deregulation Minister or any other Minister named by Cabinet) to create measures to replace any or all of any “constraints” affecting the designated project.

(The scope again is wide – constraints could be anything local government is currently authorized to require or impose.)

C. REMOVAL OF CONSTRAINTS – LOCAL GOVERNMENT INVOLVEMENT

If the proponent of a designated project feels it is or will be impeded by a “constraint”, it must consult with the approving authority (includes local government) to try to arrive at a means to complete the project that is consistent with the reasonable requirements of the authority.

A facilitator may be appointed to the consultations. Consent to the appointment of the parties is not required and then the parties must provide information and cooperation.

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Implementation Agreement

If the proponent and the approving authority reach agreement on how a “constraint” can be overcome, they must enter into an Implementation Agreement that identifies:

- the constraint;
- the replacement measure(s); and
- an agreement that the approving authority accepts the replacement and that the proponent will perform the replacement measure(s).

If the agreement is fulfilled, all permits, approvals, etc. must be issued.

D. REMOVAL OF CONSTRAINTS BY MINISTER

At any time if the “responsible Minister” considers that the proponent and the approving authority are not able to reach an Implementation Agreement in relation to a constraint, the Minister may develop a replacement measure (if Cabinet has provided that authority – see step B). Before making a “Replacement Order” the Minister must consult with the local government (and the proponent and the facilitator).

Once a Replacement Order has been issued, the local government must treat the project as being fully complied with once the replaced measures are completed, and must issue any permits, approvals, etc.

Other sections of Bill 75 deal with:

- designated project performance;
- monitoring performance;
- appointment of experts;
- cost recovery; and
- non-compliance.

This Act takes precedence over all other Acts (e.g., *Local Government Act*, *Community Charter*) except the *Agricultural Land Commission Act* and *Environmental Assessment Act*.

Commentary

The Bill reverses many of the gains made since the 1991 *Local Government and the Constitutions* policy paper regarding local autonomy and independence.

In the late 1970’s the Social Credit government of the day enacted a land use override. (LGA, s.874)

- ◆ This goes well beyond that to include all bylaws – not just land use.
- ◆ It allows any Cabinet Minister to override, where previously only the Minister of CAWS had this power.
- ◆ It has the responsible Minister acting in place of local elected officials – without ratification by Cabinet of the substance of the override as is now the case.

The other significant provincial override powers are with respect to regulation of property tax rates by Cabinet. (LGA, s. 359.2)

It should be noted that Bill 75:

- ◆ Applies to everything local government can do – from a service (a proponent could say it was in the public interest to allow competition with exclusive municipal service provision) to a regulation.
- ◆ No notice to local government is required before a project is designated by Cabinet.
- ◆ Applies to everything a local government can approve – financial, land use, building permits. Examples of what could be overridden:
 - taxation
 - zoning
 - development cost charges
 - building bylaws
 - business regulation
 - noise or other nuisance regulation
 - other land use controls
 - signage
 - fees and charges
 - access requirements
 - subdivision requirements
- ◆ It may also indirectly affect local governments if they are considered a “constraint” because they are part of a referral process – referrals may be argued to be a “constraint”, and if accepted, the local government would have no notice of a project.
- ◆ We still cannot determine the full extent of bodies included or excluded. Cabinet can still add more bodies, but it is not clear whether commissions or approving officers are covered.