



New Public Health Act

The Minister of Health, the Honourable George Abbott, has introduced Bill 23 - a new *Public Health Act* that replaces a very outdated legislation.

The Act has been the subject of consultation for the past several years. It has been a matter of significant discussion between the UBCM and the Ministry since October 2007 and included a meeting between the UBCM President, Susan Gimse and the Minister of Health, in March; with Minister Ida Chong also attending. That meeting discussed the implications of the new Act for local government.

This is a significant and large piece of legislation. The Bill runs to over 126 sections (before Part 10) and some 92 pages. It has 10 parts, which include:

1. Definition and Interpretation
2. Health Planning and Reporting
3. Preventing Disease and Other Health Issues
4. Inspection Powers and Orders
5. Emergency Powers
6. Health Officials
7. Inquiry and Other Matters
8. Administrative Penalties, Offences and Sentencing
9. Regulations
10. Transitional Provisions, Repeals and Consequential Amendments

LOCAL GOVERNMENT INVOLVEMENTS IN THE NEW PUBLIC HEALTH ACT

Role of Local Government

Bill 23 sets out a new role for local governments in section 83, which is limited to three matters:

1. Acting on health hazards by taking one of the following three actions if the local government

become aware of a health hazard:

- reporting the hazard to the MHO; or
 - taking action if it has been delegated authority under the Act; or
 - taking action if it has authority under another Act such as the *Community Charter* or the *Local Government Act*.¹
2. Designate a liaison to the regional Health Authority.
 3. Requesting a MHO or provincial health officer to issue an order regarding a health hazard.

Local governments are to provide the MHO with information about local government issues and to consider advice and other information provided by health officers.

The Bill also provides a section on local governments acting cooperatively (s. 84) which is a purely enabling section.

LOCAL GOVERNMENT ROLE TO DEAL WITH PUBLIC HEALTH ISSUES

The legislation doesn't continue the explicit power of local government as "local boards of health" to make orders to remediate a health hazard. UBCM raised this issue during consultations and in light of a resolution passed at the 2007 Convention. The matter was one of two issues raised with Minister Abbott in March and the Minister was quite clear that this power should now be in the hands of Health Authorities. The legislation does however contain two ways for continued local government involvement:

¹ [Under the new legislation, if in any doubt about what constitutes a health hazard or who in the local government should determine what to do, the local government should call the MHO and document the call.]

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- local governments can request the MHO to take action on a health hazard and if the MHO fails to act the local government can request the Provincial MHO to act; [83(3)]
- the local government can request delegated authority from the Ministry to take on select public health functions. These are in addition to local government powers to enact public health bylaws under the *Community Charter*. [125(4)]

LIAISON AND CONSULTATION WITH HEALTH AUTHORITIES

Under this Bill:

- Medical Health Officers are required to consult local government if they intend to report on a public health issue affecting the local government. [73(4)]
- Cabinet can establish processes to resolve disputes between local governments and Health Authorities. [120(2)d]
- public bodies that are ordered to prepare a health plan are required consult with local government. [3(4)]

POWERS OF CABINET TO REGULATE LOCAL GOVERNMENT

The Bill sets out three instances where Cabinet may pass a regulation effecting local government [120(1)]:

- to promote or protect the health of the people within the jurisdiction of the local government;
- to address a condition, thing or activity that could adversely affect a health promotion or health protection initiative;
- to enforce a memorandum of understanding or other arrangement previously entered into by the local government and the Ministry.

For one or more of these purposes Cabinet may make a regulation that could:

- order a local government to do something; and
- constrain an approval authority or affect a portion of a local government bylaw, plan or planning process.

Before taking either of these actions the Minister must consult with local government. This would include a requirement to provide notice, provide information on

the proposals, give sufficient time to local government to respond. Following consultation the Minister must consider the response and must, if asked, provide comments back to the local government. [120 (4-8)]

Specifically, local government (or others) could be ordered by the Minister to prepare a health plan [3(1)] and by a Cabinet regulation to:

- monitor or respond to a health hazard [120 (2)a].
- deliver a public health function [120(2)b] - and also potentially, how to deliver it [63 (1)a].

As an alternative the Minister and the local government may enter into a MOU that establishes alternatives to what would be accomplished under the regulation [120(3)]

Cabinet also has the power to make regulations that affect local government approvals and planning. With respect to approvals Cabinet may require one or more of the following:

- require local decisions to consider public health plans;
- require conditions be attached to a local approval; and /or
- put conditions on the exercise of a power by local government under another enactment. 5(2)

If the Minister considers it the public interest a health plan may be submitted to Cabinet for approval [4 (2)] and upon approval may require one or more of the following actions:

- local government (and others) must consider a health plan when doing their planning;
- require the local plans to be consistent with a health plan, and/or
- prescribing that those plans, bylaws or other planning documents that are inconsistent are of no legal effect. [6(1)]

In the case of local governments, before such a health plan could have this effect the local government would have to have been consulted:

- during the preparation of the plan [3(4)] ; and on
- the proposal to have the health plan have one or more of the above effects. [120 (4-8)]

The Minister also has the ability to make an order modifying or exempting the effect of such a regulation on local government [6 (2)].