

Backgrounder: - Local Governance Act

In the 1960s, New Brunswick (“NB”) was a leader in municipal reform in Canada. Flowing from this was the creation of the current *Municipalities Act* (the “Act”), which has been in effect since the late 1960s.

The Act is 210 pages long and has 31 associated regulations. It sets out the powers and responsibilities of NB’s various local government entities. The Act also provides for the general operation of municipalities, Rural Communities, Regional Municipalities; and the administration of the Province’s unincorporated areas, known as Local Service Districts (“LSDs”).

While the Act was forward thinking in the late 1960s, communities in NB have dramatically changed over the last 50 years. Municipalities are facing new challenges, such as aging and declining populations, and the effects of climate change. Compounding these problems is the very prescriptive nature of the Act, which restricts flexibility and the ability to address these growing challenges. In contrast, modern local governance legislation (municipal laws) across Canada has grown to be much more flexible and empowering. The majority of municipalities across Canada have been provided with broad powers, which increase flexibility and the authority to administer local matters.

Over the last twenty years, there have been many reports calling on successive provincial governments to make much needed changes to the Act. Despite this, there have been no wide-ranging changes made to the Act since it was enacted. NB is one of the last provinces to undertake a complete review and modernization (updating) of its local governance legislation.

In its 2014 Platform document, Government committed to modernizing the Act and the *Community Planning Act* “to give municipalities the powers they need to promote development and become hubs of job creation.”

To achieve this objective, Government has conducted extensive consultations and undertaken significant research, including:

- Engaged early and often with stakeholders
- Reached out to First Nations prior to and after developing recommended changes;
- Conducted cross-jurisdictional legislative research;
- Reviewed previous/historical input and reports related to the Act;
- Identified and moved forward with areas of general modernization (general updating) for the Act;
- Identified and moved forward with areas of substantive (wide-ranging) change with respect to the Act;
- Consulted impacted government departments with respect to the recommendations;
- Consulted with a Working Group of Expert Users from across the Province in respect of the recommendations;
- Consulted with various key stakeholder groups in relation to the recommendations; and
- Held a Workshop for representatives from key stakeholder groups where recommendations were presented.

The new *Local Governance Act* will recognize all local governments as a separate, responsible, and accountable level of government. The new Act will provide local governments with broad powers, natural person powers and economic development powers. These powers provide local governments with increased flexibility, autonomy, and the authority to administer local matters. The new Act provides increased efficiency in service provision and public safety in local service districts.

Areas of Substantive Change:	New <i>Local Governance Act</i>	Current <i>Municipalities Act</i>
<p>The new Act will provide local governments (municipalities, rural communities & regional municipalities) with natural person powers (authority granted to a corporate body to act like a human being). Natural person powers are provided in most local governance legislation across Canada. Natural person powers will allow local governments to conduct their day-to-day business without having each specific power set out in the Act. In general, natural person powers will be limited to the inherent local legal jurisdiction. They may not be used to expand municipal powers beyond those provided in the new Act or any other Act.</p> <ul style="list-style-type: none"> • Example: the ability to enter into contracts, sue and be sued, etc. 	Sections 4 and 6	N/A Sections 3 to 6 subsumed
<p>The new Act will provide local governments with broad powers (authority to act and enact by-laws for a broad range of matters within local jurisdiction). The provision of broad powers will bring NB in line with most other provinces.</p> <ul style="list-style-type: none"> • Example: the authority to act and enact by-laws for the safety, health and welfare of people, and the protection of people and property. 	Sections 10 through 14, 16 to 19 – Subsection 10(1) sets out the list of broad powers	Existing by-law making authorities: Sections 7, 7.1, 11, 91, 91.1, 91.2, 92, 93, 94, 94.2, 95, 96, 97, 98, 99, 100.1, 112, 122, 123, 124, 125, 127, 129, 142, 144, 164, 165, 168, 183, 187, 188, 190, and 190.079
<p>The new Act will define municipal purposes, which are used to interpret the scope of broad powers.</p> <ul style="list-style-type: none"> • Municipalities (local governments) will be recognized as a responsible and accountable level of government. • Local governments will be tasked with: <ul style="list-style-type: none"> ➤ providing good government; ➤ services, facilities, or things the local government considers necessary or desirable for all or part of its community; ➤ developing and maintaining safe and viable 	Sections 5 and 7	N/A

Areas of Substantive Change:	New Local Governance Act	Current Municipalities Act
<p>communities; and</p> <ul style="list-style-type: none"> ➤ fostering the economic, social and environmental well-being of their communities. 		
<p>The new Act will provide municipalities (local governments) with expanded by-law enforcement tools. Additional powers necessitate additional enforcement tools.</p> <ul style="list-style-type: none"> • Examples: additional ticketing/administrative penalty notices for by-law violations, differential treatment of individuals and corporations with respect to fine levels, and expansion of continuing (ongoing) offence provisions. 	<p>Sections 97, and 131 to 160</p>	<p>Sections 90.9, 91, 91.1, 92, 94.2, 95, 96, 98, 100 – 108, 115, 164(2)(g), 167(1), and 190.001 to 190.07</p>
<p>The new Act will slightly expand and update grant provisions.</p> <ul style="list-style-type: none"> • Example: allowing for in-kind grants, such as the sale or lease of local government property for below market value to an organization providing a benefit to the community or part thereof. 	<p>Section 102</p>	<p>Section 90.01</p>
<p>The new Act will, outside the list of broad powers, allow for a separate economic development power.</p> <ul style="list-style-type: none"> • Example: enabling municipalities (local governments) to provide funds (grants) to encourage local economic development programmes, and participate in regional economic development programmes. 	<p>Section 104</p>	<p>N/A</p>
<p>The new Act will impose increased accountability and transparency requirements. These requirements mandate increased accountability and transparency to residents of local governments, and are a necessary accompaniment to increased flexibility and authority.</p> <p>Example: additional annual reporting requirements.</p>	<p>Sections 10(2)(b), 105, and 191(1)(g)</p>	<p>N/A</p>
<p>The new Act will include updated meeting provisions that keep pace with current technology.</p> <ul style="list-style-type: none"> • Example: in instances where council members are outside the municipality (local government) or cannot attend a council meeting due to disability, they will be able to participate by videoconferencing and/or teleconferencing. 	<p>Sections 63 to 70</p>	<p>Sections 10 to 10.3</p>
<p>The new Act will address some specific legal matters (e.g., immunity).</p> <ul style="list-style-type: none"> • Example: protection for nuisance claims related to storm water and wastewater infrastructure and systems will be expanded to include water distributions systems. 	<p>Sections 78, 86, 177, 178, 179, and 181</p>	<p>Sections 6.1(1), 27.02, 79, 85.1, 190.04(3), 190.041(4), 190.078(5), and 193.3</p>
<p>The new Act will enable efficiencies in the administration of LSDs.</p>	<p>Sections 161 to 176,</p>	<p>Sections 23 to 27.7, and 193</p>

Areas of Substantive Change:	New Local Governance Act	Current Municipalities Act
<ul style="list-style-type: none"> • Examples: <ul style="list-style-type: none"> ○ The process for adding or removing services in LSDs will be streamlined. Under the new Act, services may be added or removed by Ministerial Order. ○ Services in LSDs are also being enhanced province-wide for emergency measures services, rescue services and dangerous or unsightly premises enforcement services. 	179, and 185	to 193.2

Other	New Local Governance Act	Current Municipalities Act
<p>General Modernization The new Act is:</p> <ul style="list-style-type: none"> ➤ generally permissive (flexible) in nature; ➤ written in plain language; ➤ organized so as to flow in a logical and user-friendly manner; ➤ updated to align with modern legislative approaches; and ➤ streamlined, with appropriate provisions contained in regulations. <p>Example: permissive legislation is generally less paternalistic (strict) and directive; provides increased flexibility; and contains less ministerial and governmental oversight, such as reviewing and approving certain by-laws.</p>	Various Sections Throughout	N/A
<p>Waiting Period Re Council Members In addition to not being able to be employed by a local government while holding office, a member of council will not be able to be employed by the local government for a period of one year after having been a member of a council. This restriction mirrors what is currently in place for board members of Regional Service Commissions.</p>	Section 85	N/A
<p>Dangerous or Unsightly Premises Regulation A new regulation will be added to the new Act to replace most of the current <i>Unsightly Premises Act</i>. The regulation will apply to all LSDs, and any local government without a dangerous or unsightly premises by-law. The service of dangerous or unsightly premises enforcement will be provided in LSDs and the former LSD areas of rural communities and regional</p>	Sections 129, 161, and 191(1)(ee)	N/A

Other	New <i>Local Governance Act</i>	Current <i>Municipalities Act</i>
municipalities.		
<p>Consequential Amendments The consequential amendments required as a result of the proposed new <i>Local Governance Act</i> and the repeal of the <i>Municipalities Act</i> are contained in a separate Act: “ <i>An Act Respecting Local Governance and Community Planning</i>” to be proclaimed at the same time as the new <i>Local Governance Act</i>.</p>	<p>N/A* *All consequential amendments are housed in the <i>Act Respecting Local Governance and Planning</i></p>	<p>N/A</p>

NOTE: the new *Local Governance Act* DOES NOT provide for structural reform (e.g. provincial government directed restructuring).