

**2004 Municipal Act Review:
Financial Issues for Consideration**

**Prepared by:
Municipal Finance Officers' Association**

October 2004



Table of Contents

1.	INTRODUCTION.....	3
2.	NEW MUNICIPAL ACT REVIEW LAUNCHED	3
3.	AMO PRINCIPLES FOR MUNICIPAL ACT REVIEW	5
4.	MUNICIPAL ACT 2001	6
A.	CONTEXT.....	6
B.	NATURAL PERSON POWERS	7
C.	STREAMLINED AND CONSOLIDATED	7
D.	RECOGNITION OF CONSULTATION (MOU).....	7
E.	ENHANCED ACCOUNTABILITY	8
5.	MUNICIPAL FINANCE AND NATURAL PERSONS POWERS	8
6.	WHAT WAS NOT IN MA 2001	9
A.	NO NEW REVENUE SOURCES	9
B.	NO INNOVATIVE OR EXPANDED USE OF EXISTING REVENUE SOURCES.....	9
C.	CONTINUATION OF DOCTRINE OF EXPRESS AUTHORITY.....	9
7.	MOVING TOWARD A MATURE RELATIONSHIP.....	9
A.	COMPLETING THE UNFINISHED BUSINESS WITH REGARD TO MA 2001	10
B.	EXPANDING ON INITIATIVES UNDERTAKEN WITH REGARD TO MA 2001	12
C.	CREATION OF NEW FINANCIAL TOOLS	15
i.	<i>Revenue Sharing</i>	16
ii.	<i>New Revenue Sources</i>	17
iii.	<i>Other Options</i>	17
iv.	<i>Conclusion</i>	18
8.	APPENDIX A: SUMMARY OF RECOMMENDATIONS.....	19
9.	APPENDIX B: FINANCIAL CHANGES MADE IN MA 2001	20
A.	ELIGIBLE INVESTMENT REGULATION (O. REG. 265/02 AMENDING O. REG. 438/97)	20
B.	AREA RATING REGULATION (O. REG. 305/02).....	20
C.	LEASING REGULATION (O. REG. 266/02 AMENDING (O. REG. 46/94).....	21
D.	CROSS BORDER LEASING, TORONTO (O. REG. 157/03)	22
E.	USER FEE REGULATION (O. REG. 61/01; O. REG. 244/02)	22
F.	CORPORATIONS REGULATION (O. REG. 168/03)	23
G.	BANK LOANS (O. REG. 276/02)	24
H.	CONSTRUCTION FINANCE (O. REG. 278/02).....	26
I.	LOCAL IMPROVEMENTS (O. REG. 119/03).....	26
J.	TAX SALE (O. REG. 181/03).....	26

2004 Municipal Act Review: Financial Issues for Consideration

1. Introduction

In June, the Honourable John Gerretsen, Minister of Municipal Affairs and Housing, announced a new consultation process to review the Municipal Act. MFOA worked with the Association of Municipalities of Ontario (AMO) and other staff associations to identify issues and develop municipal positions with respect to various aspects of the proposed review. This report was prepared as part of that exercise. For the benefit of members, this report provides background information with regard to the process of review, what was achieved with the 2001 Municipal Act, and what issues should be addressed in this round of discussions.¹

Drafts of this report have been reviewed by MFOA's Board of Directors and shared with colleagues of other associations. It will be submitted to the Minister by the deadline for Municipal Act submissions which is October 15, 2004. Members having comments or concerns are invited to send them to us even after the deadline as we can raise your issues as part of the discussions which are expected to follow once formal submissions are received.

2. New Municipal Act Review Launched

The Municipal Act, 2001 (MA 2001), came into force on January 1, 2003. The new Act was the result of a good deal of work by Ministry staff, municipal associations, business groups and other interests. It was always intended that the new Municipal Act would be reviewed in a timely fashion. The Act contains provisions requiring a review by the end of 2007.²

In a speech to the Toronto Board of Trade on June 22, 2004, the Honourable John Gerretsen, Minister of Municipal Affairs and Housing, announced a new consultation process to begin a review of the Municipal Act in 2004. The Minister has given the following reasons for undertaking a review of the Act at this time.

- To ensure municipalities have the power and flexibility needed to effectively and creatively serve the needs of the people in their communities.
- To enable Ministry staff to provide sound advice to the Minister regarding potential amendments.
- To help facilitate the maintenance of a strong, positive, productive relationship between the Province and its municipal and business stakeholders.
- To accommodate/facilitate other Government initiatives by ensuring that the MA2001 does not inhibit municipal tools, flexibility, and discretion.

In his speech, the Minister indicated that his vision for building stronger communities comes down to three things:

¹ See Appendix A for a summary of recommendations.

² Subsection 3 (2) of the Act states that: "The Ministry of Municipal Affairs and Housing shall initiate a review of this Act before the end of 2007 and thereafter within five years of the end of the previous review. 2001, c. 25, s. 3 (2)." See [background](#) from October 18, 2001 regarding the new Act.

- Power — Giving councils greater decision-making power so that they can protect the best interests of their communities;
- A solid foundation — Helping them rebuild and redevelop the building blocks of their communities. I'm talking here about rebuilding transit...encouraging affordable housing...and better planning, including redeveloping brownfields. Finally,
- Tools — **working with municipalities and the federal government to determine what financial and fiscal tools they need to succeed.** (*emphasis added*)

The Minister set out a process for the review. It would take place in three stages of approximately 3 months each.

- Phase I (Summer 2004): Collection and cataloguing of requests for amendments to the Act.
- Phase II (Fall 2004): This phase includes meetings and working groups of municipal and business stakeholders, meetings with Caucus and Academics to discuss issues and solicit submissions. Analysis of requests for amendments. Development of recommendations for the Minister's consideration.
- Phase III (Winter/Spring 2005): Legislative Phase (Goal: Introduction of Legislation in Spring 2005)

With regard to Phase I, municipal associations have collected information about the overall direction of change required in an amended Municipal Act. The broad areas of reform identified in this phase will set the stage for discussions in Phase II.

Phase II will see the establishment of a number of working groups to look at various issues in detail. Working groups are expected to be established in a number of areas, including:³

- New spheres or broad grants of authority that might be added to the Act.
- Ethics and accountability: This might include relations with the auditor general, the integrity commissioner, codes of conduct and lobbyist registries. Do municipalities need additional authority to make these work effectively?
- Licensing: Are the rules around when municipalities can issue a license appropriate?
- User fees: We need to examine the conditions under which municipalities can charge a fee, and how the fee is determined.
- Municipal Corporations: We have heard that the authority provided in the first municipal corporations regulation is not sufficient. We should look at the scope of eligible purposes; examine what is appropriate for a municipal corporation; and determine if the possibilities should be expanded. For example, enhanced corporation powers could assist in redeveloping brownfields or supporting transit infrastructure.
- Large urban issues: We'll examine whether Ontario needs specific legislation for its urban centres.

The Minister will meet with stakeholders from both the municipal and business sectors on two occasions:

- The first meeting will be held in late summer/early fall to update stakeholders on the early findings of the consultation and to determine issues for working groups.

³ Taken from the [Minister's speech to the Toronto Board of Trade, June 22, 2004](#).
Municipal Finance Officers' Association
October 2004

- The second will be held in the winter to provide an update on the consultation and to wrap up the working groups.

MFOA believes that this review is important. We understand that some members are wondering why we are reviewing the Act in 2004 when MA 2001 has been in force for less than two years. While there is a good deal of truth in this, municipal associations are nevertheless viewing this review as a significant opportunity to make important improvements by crafting an Act that more accurately reflects the position of municipalities as responsible levels of government. It is a chance to add what was not included in the last review or to remove unnecessary restrictions introduced into MA 2001.

The government has presented us with an opportunity to make progress toward a more mature relationship with the Province. Minister Gerretsen has stated that **“It is my view, and the vision of the McGuinty government, that we no longer want to micro-manage municipal governments. They are a level of government, duly elected just like the provincial and federal levels. That’s why I am announcing today that we will be reviewing the *Municipal Act* ahead of schedule.”**⁴

The Minister noted in his speech to the Board of Trade, I want “to hear from municipal governments, boards of trade and other sectors about how the act could be improved. At the end of the day, I want to see a *Municipal Act* that is more permissive in tone. **At the end of the day, I will ask myself “what is the provincial interest in regulating this aspect of municipal jurisdiction?” If there is no provincial interest being served, we will stop regulating it.**”⁵

MFOA anticipates being significantly involved in this process. We will require the support and assistance of the membership in a number of key areas:

Phase I: members should consider the broad areas of reform that should be the focus of the overall review. This should go beyond “clean up” and “housekeeping” type of amendments to include such things as revised accountability regimes, new revenue sources, new revenue sharing arrangement, revised service alignment between the Province and municipal sector, new or expanded spheres of jurisdictions, etc.

Phase II: Once working groups are established, we may organize committees of members to mirror these working groups and provide advice to MFOA as the working groups begin to meet. We also anticipate that MFOA will use other venues to keep members informed of what is happening and to elicit response from our members on various issues. In particular, we will sound out members of our Finance Policy Committee, GTA Treasurers, Regional and Large Single Tier Treasurers and encourage individual responses to issues through our e-communicués.

3. AMO Principles for Municipal Act Review

At its meeting in August of 2004, the Board of Directors of AMO approved the following principles to serve as a foundation for discussions with the Province with regard to reforming the Municipal Act. Both AMO and MFOA seek to build a more mature relationship with the province based on the view of municipalities as “responsible and accountable governments.”⁶ The principles approved by the AMO Board recognize and build on this view of municipal government:

1. Municipalities are responsible and accountable governments.

⁴ Ibid.

⁵ Ibid.

⁶ These words are taken from section 2 of the current [Municipal Act](#).

2. New legislation shall enhance existing municipal powers.
3. The province shall stop micromanaging municipal governments.
4. Where there is a compelling provincial interest the province shall, when regulating municipal government, define at the outset that interest.
5. Provincial legislation shall be drafted with the expectation of responsible municipal behaviour and not as a remedial tool.
6. Accountability means mutual respect between municipal government, the province and other public agencies.
7. Resources for municipal governments shall be sustainable and commensurate with the level of responsibility.
8. The Municipal Act shall include principles that will protect the Municipal Act and municipal powers from all provincial legislation.
9. The province shall commit to increasing the understanding and awareness of municipal government within all ministries.

MFOA endorses these principles and the goal of redefining the provincial-municipal relationship to eliminate provincial “micro-management” and to foster a government-to-government approach to municipal issues, including municipal finance issues.

4. Municipal Act 2001

a. Context

It is worth remembering that the reform of the Municipal Act did not occur in isolation. A number of other initiatives occurred or were underway which also affected municipal finance. These include:

- Municipal restructuring. The number of municipalities fell from approximately 832 to the current 445.
- Updating of the property tax base across the province and introduction of property tax reform, including a mandatory regime of tax capping for the multi-residential, commercial and industrial tax classes.
- Local services realignment/property tax room/creation of the Community Reinvestment Fund (CRF).
- Reduction in conditional provincial transfers as well as the elimination of the Ontario Unconditional Grants Program.

No review has been undertaken of the cumulative effect of these reforms on municipalities and their finances. As we will argue below, a review of powers and tools under the Municipal Act is inadequate if it is not accompanied by an effort to understand the financial position of municipalities as a result of these cumulative changes. Most municipalities argue that the various reforms since the mid-1990's have reduced the capacity of municipalities to provide services and sustain infrastructure at reasonable levels of taxation or user rates.

In addition to the changes noted above, the Province undertook a comprehensive updating of the Municipal Act. The new MA 2001 is generally thought to have numerous benefits when compared to the previous Act, such as:

- A move to a natural persons power approach.
- Streamlining and consolidation of existing municipal legislation
- Recognition of principle of prior consultation with municipal sector
- Enhanced accountability

b. Natural Person Powers

Natural person powers give councils much the same authority and flexibility as individuals and business corporations to manage their organizational and administrative affairs. These powers enable municipalities to hire staff, pay staff, enter into agreements with third parties, acquire land and equipment, etc. Natural person powers replace numerous specific and prescriptive provisions about administrative matters found in the old Act.⁷ Natural person powers are specified in section 8 of MA 2001, which states that:

8. A municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act. 2001, c. 25, s. 8.⁸

In addition to granting natural person powers, the Act also makes provision for the broad interpretation of natural person powers in section 9.⁹

Interpretation

9. (1) Sections 8 and 11 shall be interpreted broadly so as to confer broad authority on municipalities,
 - (a) to enable them to govern their affairs as they consider appropriate; and
 - (b) to enhance their ability to respond to municipal issues

While there was a move to natural person powers in many of the spheres of jurisdiction defined in the Act, it will be argued here that the doctrine of express authority continues to define many municipal powers related to municipal finance.

c. Streamlined and Consolidated

MA 2001 was also said to be more understandable and user-friendly statute. Some 1,100 pages of legislation governing municipalities were reduced to just over 300. MA 2001 consolidates in a single Act provisions from some 30 other pieces of legislation, including acts for individual regional municipalities.

d. Recognition of Consultation (MOU)

Section 3 of MA 2001 provides for ongoing consultation between the Province and AMO on issues affecting municipalities. On December 19, 2001, the Province and AMO signed a

⁷ See “What’s New in the Municipal Act” in the [Municipal Act E-Guide](#).

⁸ Section 8, [Municipal Act, 2001](#).

⁹ Section 9, [Municipal Act, 2001](#)

Memorandum of Understanding (MOU) with regard to consultation.¹⁰ The MOU, which was due to expire on December 31, 2004, has been replaced by a new agreement signed August 23, 2004.¹¹ The new MOU will be recognized in statute if the Legislature passes Bill 92, which was introduced for first reading on June 8, 2004.¹²

e. Enhanced Accountability

MA 2001 was said to contain numerous measures to enhance the accountability of municipalities to their citizens. A useful summary of some of the more important of these measures can be found in the Municipal Act E-guide.¹³

5. Municipal Finance and Natural Persons Powers

Authority governing municipal finance is a combination of natural person powers and express legislative authority (concept of ultra vires). Municipalities rely on natural person powers to hire and pay employees, to procure materials and to do many of the things that municipalities undertake in their day to day operations.

Obviously, a natural person does not have the right to levy taxes. Governmental powers such as this must be dealt with through express and clear legislation. Nevertheless, the limits on natural person powers for financial matters extend beyond matters related to taxation. Section 17 of the Act lists all of the financial areas where natural person powers do not apply.

Restrictions, corporate and financial matters

- 17.** (1) Sections 8 and 11 do not authorize a municipality to,
- (a) incorporate a corporation or nominate or authorize a person to act as an incorporator, director, officer or member of a corporation;
 - (b) exercise any power as a member of a corporation;
 - (c) acquire any interest in, or guarantee or exercise any power as a holder of, a security of a corporation;
 - (d) impose taxes, fees or charges;
 - (e) borrow or invest money or sell debt;
 - (e.1) incur debt without borrowing money for the purpose of obtaining long-term financing of any capital undertaking;
 - (f) enter into agreements for the purpose of minimizing costs or financial risk associated with the incurring of debt;
 - (g) make a grant or a loan;
 - (h) provide or make contributions for pensions;
 - (h.1) delegate to any person the powers and duties with respect to the matters described in clauses (d), (e), (e.1) and (f) and any other prescribed powers and duties;
 - (h.2) take any other prescribed financial action;

¹⁰ See the signed copy of the [MOU](#) for details.

¹¹ Follow the link to view the [new MOU](#) with the Province.

¹² [Bill 92](#) was introduced for first reading on June 8, 2004, by the Honourable John Gerretsen, Minister of Municipal Affairs and Housing.

¹³ See "[Accountability Components](#)" in the Municipal Act E-Guide published by the Ministry of Municipal Affairs and Housing.

- (i) become a bankrupt under the *Bankruptcy and Insolvency Act* (Canada); or
- (j) as an insolvent person, make an assignment for the general benefit of creditors under section 49 of the *Bankruptcy and Insolvency Act* (Canada) or make a proposal under section 50 of that Act. 2001, c. 25, s. 17 (1); 2002, c. 17, Sched. A, s. 6 (1, 2).

Section 17 makes it clear that municipalities are subject to the relevant regulations with regard to:

- incurring/selling debt
- leasing
- investment
- imposing user fees and charges

6. What Was Not in MA 2001

A significant number of regulations dealing with municipal finance were passed as part of the exercise to update the Municipal Act. However, the new Act did not significantly expand municipal powers with respect to municipal finance.

a. No New Revenue Sources

The new Municipal Act was not accompanied by a new provincial-municipal financial relationship that might have included new long-term revenue sharing agreements. MA 2001 did not include significant new municipal revenue sources.

Regulations were passed dealing with municipal revenue sources related to user fees and property taxation. These regulations did not create new revenue sources or significantly enhance existing revenue sources. Property taxation and user fees were already established municipal revenues. In some instances, new regulations introduced new restrictions on these revenue sources.

b. No Innovative or Expanded Use of Existing Revenue Sources

While some innovative measures were introduced in MA 2001, in several cases no regulations have been passed to give these new tools legal force. This includes provisions related to toll roads and sale of debt. Sections of the Act dealing with tax assistance for brownfield redevelopment were only proclaimed on October 1, 2004. In addition, initial regulations for municipal business corporations are generally regarded as overly restrictive.

c. Continuation of Doctrine of Express Authority

MA 2001 could have extended the doctrine of natural person powers in some areas of municipal finance that do not involve explicit governmental powers. For example, a natural person has the power to borrow money and to invest funds. Under MA 2001, these functions continue to be dealt with by the doctrine of express authority and are subject to very detailed legislative prescription.

7. Moving Toward a Mature Relationship

MFOA believes that it is time that a more mature relationship between the Province and municipal sector was reflected in the state of municipal finance. As noted above, MA 2001 did not depart significantly from the doctrine of express authority in many instances. A move to a more mature

relationship should be reflected in revisions to the provincial municipal financial relationship. One useful place to begin the process of defining a new relationship is to conclude the business started under MA 2001.

a. Completing The Unfinished Business With Regard To MA 2001

Several provisions found in the existing MA 2001 provide a framework for new or expanded financial powers. However, in each case, regulations are required in order for these powers to be available. Interestingly, regulations have never been passed to allow municipalities to access new powers already provided in the legislation. Examples include:

Municipal toll roads (section 40): Subsection 40(1) permits municipalities to designate a road as a toll highway and to operate and maintain the highway as a toll road. Subsection 40(3) gives the Lieutenant Governor in Council broad power to pass regulations that include the following:

- (a) requiring a municipality to obtain the approval of any person or body before designating, operating or maintaining a highway as a toll highway;
- (b) providing for criteria which must be met before a municipality can designate, operate or maintain a highway as a toll highway;
- (c) imposing conditions and limitations on the powers of the municipality to designate, operate or maintain a highway as a toll highway;
- (d) granting municipalities powers with respect to the operation and maintenance of a toll highway, including powers with respect to the collection and enforcement of tolls imposed for the use of a toll highway;
- (e) without limiting clause (d), providing that the provisions of the *Capital Investment Plan Act, 1993* and the regulations under that Act which relate to toll highways apply to municipalities with such changes as are prescribed;
- (f) establishing process requirements with respect to the designation, operation and maintenance of a highway as a toll highway, including requiring a municipality to provide notice to the Minister or any other person or body of its intention to designate a highway as a toll highway;
- (g) providing that the Minister or any other person or body who receives notice under clause (f) may prohibit the municipality from making the designation even though the designation is otherwise authorized under the regulation. 2001, c. 25, s. 40 (3).

To the best of our knowledge, no regulations have ever been passed dealing with these matters.

RECOMMENDATION 1: The province should work with municipalities to pass regulations related to municipal toll roads that are not restrictive.

Sale of Debt (section 305): Section 305 of MA 2001 added a new power for municipalities. Subsection 305(1) states that “A municipality may sell any prescribed debt payable to the municipality to any other person in accordance with the prescribed rules and conditions.” Subsection 305(2) grants the Minister of Municipal Affairs and Housing the authority to make regulations with regard to:

- prescribing debt for the purpose of this section; and
- prescribing rules and conditions for the purpose of subsection

We do not believe that any regulations have been prescribed under this section.

RECOMMENDATION 2: The province should work with municipalities to pass regulations related to the sale of debt.

Brownfields Tax Incentives: Provisions found in section 28 of the Planning Act, in conjunction with provisions under section 365.1 of MA 2001, provide a foundation for municipalities to pass by-laws to provide tax assistance with respect to brownfield properties and contaminated lands. The obvious goal of these provisions is to provide an incentive to owners to rehabilitate lands and return them to productive uses which, in turn, will enhance municipal tax receipts from these properties. Section 365.1 of the Act did not come into force until October 1, 2004.

Subsection 365.1(26) permits the Minister of Municipal Affairs and Housing to pass regulations with regards to municipal by-laws providing tax assistance to brownfields. To date, we do not believe that regulations relating to the tax assistance portions of this program have been passed. Many municipalities are anxious to put tax incentives in place to begin the process of revitalizing unproductive lands. It would be useful to know if regulations are forthcoming with regard to tax assistance by-laws.

RECOMMENDATION 3: The Province should indicate whether regulations under ss. 365.1(26) are forthcoming so that municipalities can begin to take advantage of the tax assistance tool to ameliorate contaminated lands.

Bonusing Provisions: Section 106 of MA 2001 states that “a municipality shall not assist directly or indirectly any manufacturing business or other industrial or commercial enterprise through the granting of bonuses for that purpose.” This prohibition has wide spread support in the municipal sector. However, exceptions to the anti-bonusing provisions can be found in sections 110 and 365.1 of MA 2001 as well as section 28 of the Planning Act. These are examples of well defined exceptions to promote social purposes (e.g. provision of capital facilities, remediation of brownfield properties). Several MFOA members are of the view that the current provisions in section 106 prohibit innovative approaches to attracting health care workers to their municipalities.

RECOMMENDATION 4: A review of the prohibition against bonusing should take place to determine whether modifications are required to allow municipalities more scope for innovation in attracting health care workers to their municipality. No wholesale review of section 106 is being proposed.

b. Expanding On Initiatives Undertaken With Regard To MA 2001

In addition to unfinished business related to MA 2001, there are also cases of positive initiatives under MA 2001 which represented a good start but need to be expanded.

Municipal Business Corporations (section 203): Section 203 of MA 2001 provided for a new power for municipalities to establish business corporations pursuant to regulations. O. Reg. 163/02 set out an initial framework for business corporations which proved to be quite restrictive. At the time, stakeholders were told that further negotiations to expand the initial regulation would be forthcoming. A change in government put further discussions on hold. Many municipalities are interested in using corporations to facilitate economic renewal in downtown cores while others are interested in using corporate structures to renovate existing “one of a kind” facilities, often with a private sector partner. In most cases, the existing regulation is not adequate. The legislation and regulation need to be modified to permit incorporation by municipalities for things that are within their jurisdiction with far fewer restrictions.

Some municipalities want to establish corporations to renovate and operate existing facilities. Corporations for existing facilities are problematic since current regulations deal only with new facilities.

Existing regulations make it difficult to create a corporation that is 100% municipally owned that provides services to the municipality on a sole sourced basis such as street lighting. Since the municipality is the only buyer and only the municipality benefits from the success of the corporation, there would be no bonusing of private sector interests and therefore the City should be able to save the costs of complex purchasing processes to engage the services of its own company. Such a company should also not have to pay income tax if its only buyer is the City and only the City benefits from its earnings.

Some municipalities have explored the corporate model for the provision of transit services. This is complicated by the limitations in the regulation regarding asset transfer. Under the regulation, only surplus land and equipment can be transferred to a corporation.

RECOMMENDATION 5: The Province should initiate a new round of discussions with the municipal sector with regard to municipal business corporations as part of the Municipal Act review.

Expanded Investment Powers: MFOA is of the view that the existing eligible investment regulation is overly narrow and prevents municipalities from realizing better returns on their investment portfolios. Currently, municipalities can only invest in the types of instruments allowed under O. Reg. 438/97, which provides for a very conservative range of investment vehicles.

In his 1999 annual report, the Provincial Auditor conducted a review of reserves held for the repair and rehabilitation of the non-profit housing stock. One of the issues dealt with in the review was whether non-profit housing providers were realizing adequate rates of return on their reserves. The Auditor concluded that the Ministry should “require greater pooling of capital reserve funds and other investment strategies to improve by millions of dollars the income earned on reserve funds and to reduce the incidence of borrowing from reserve funds for operating purposes.”¹⁴

Section 140 of the Social Housing Reform Act, 2000 established the Social Housing Services Corporation (SHSC) as a corporation without share capital. Among other things, the new corporation “coordinates an investment program for the pooling of capital reserve funds for prescribed housing providers, as legislated under the *Social Housing Reform Act, 2000.*”

¹⁴ Office of the Provincial Auditor, [1999 Annual Report, Non-Profit Housing](#), Capital Reserves, p. 198. Municipal Finance Officers' Association
October 2004

Section 142 sets out the powers of the Board of Directors:¹⁵

- 142.** (1) The board of directors of the corporation has the powers of a natural person and the powers necessary to carry out the objects of the corporation and for that purpose may,
- (a) make by-laws governing its proceedings;
 - (b) manage funds held by the corporation on behalf of prescribed housing providers or cause such funds to be managed;
 - (c) establish investment policies to be followed by prescribed housing providers for capital reserves pooled under clause 93 (2) (f);
 - (d) establish policies and processes for providing insurance to prescribed housing providers and tender for programs of insurance on behalf of prescribed housing providers;
 - (e) study the costs and processes used in the provision of housing to which this Act applies and advise service managers and prescribed housing providers how these costs could be reduced and processes improved;
 - (f) arrange for the provision of education and training programs to service managers and prescribed housing providers and their employees with respect to any of the above matters;
 - (g) enter into agreements that are directly related to the objects of the corporation with any person;
 - (h) undertake such other activities as are necessary to achieve the corporation's objects. 2000, c. 27, s. 142 (1).

In short, the SHSC has natural person powers to manage funds and establish investment policies for funds. The SHSC established the Social Housing Services Corporation Financial Inc. (SHSCFI) to develop the investment program. The funds are professionally managed by Philips, Hagar and North and include the:

- Social Housing Canadian Money Market Fund
- Social Housing Canadian Short-Term Bond Fund
- Social Housing Canadian Bond Fund
- Social Housing Canadian Equity Fund

The first three funds above mirror what is currently available to municipalities through the existing eligible investment regulation. However, the Equity Fund moves well past what is permitted for municipalities. It is not clear why a municipal investment pool, such as the ONE Funds, should be subjected to tighter investment rules than the Social Housing Investment Funds.¹⁶

As noted in Appendix B, as part of MA 2001, amendments were made to the eligible investment regulation to broaden the range of eligible investments available to municipalities. The new

¹⁵ See section 142 of the [Social Housing Reform Act, 2000](#).

¹⁶ For more information on the ONE Funds, see the website at: www.onefunds.net. For more information on AMO and LAS, visit their website at www.amo.on.ca. For more information on MFOA, see www.mfoa.on.ca.

instruments, asset back securities and commercial paper, were made eligible investments only for municipalities with credit ratings of at least AA minus. However, the regulation also provided that the ONE Fund could also invest in such instruments. Smaller municipalities or large unrated municipalities could access these new instruments through the ONE Funds.

The ONE Funds are provided jointly by wholly owned subsidiaries of the Association of Municipalities of Ontario (AMO) and the Municipal Finance Officers' Association (MFOA). Like the Social Housing Investment Funds, they are professionally managed by investment advisors who have billions of dollars under active management in addition to the ONE Funds. MFOA believes that municipalities, just like non-profit housing corporations, should have access to a variety of funds with different combinations of risk and reward that municipalities can tailor to their needs. This could be achieved simply by permitting the ONE Funds to invest in instruments using a "prudent investor" standard found in the Trustee Act as opposed to the doctrine of express authority which is the foundation of the existing eligible investment regulation.¹⁷

RECOMMENDATION 6: Broaden the range of eligible investment instruments available to municipalities by moving to a "prudent investor" standard for the sector or, if not for the sector, at least for the ONE Funds which is professionally managed and would provide access to greater returns for all municipalities.

Expanded User Fee Powers: Restrictions under the user fee section of the Act were introduced under MA 2001. In particular, fees were limited in some areas to "full cost recovery." This prohibits the use of creative and innovative pricing of services to promote socially desirable goals such as conservation or environmental protection.

RECOMMENDATION 7: Remove restrictions on the use of user fees in the Municipal Act and in other statutes (e.g. building permit fees under the Ontario Building Code Act) to facilitate the use of creative pricing regimes designed to promote council goals with regard to such things as conservation or environmental protection.

Rationalizing Accountability Requirements: The Municipal Act should contain an accountability regime for municipalities to their ratepayers that reflects the status of municipalities as stated in section 2 of MA 2001: "**Municipalities are ...responsible and accountable governments with respect to matters within their jurisdiction.**"

Currently, a number of sections are cited as enhancing the accountability of the Act. A small sample of such accountability measures could include:¹⁸

- Numerous provisions related to providing notice
- Section 270: must have a policy on hiring relatives
- Section 271: must have a procurement policy
- Section 291: must provide notice for amendment to a budget
- Section 299: municipal performance measurement program
- Section 300: reporting on barriers to improvements in efficiency and effectiveness
- Leasing regulation: must have a leasing policy to engage in leasing

¹⁷ See section 27 of the [Trustee Act](#).

¹⁸ For further examples, see "[Accountability Components](#)" in the Municipal E-Guide on the website of the Ministry of Municipal Affairs and Housing.

- Investment regulation: must have an investment policy to have an investment portfolio
- User fee regulation: must produce a list of all user charges and follow certain processes when setting certain types of user fees
- Tax bill regulation: must conform to a standard tax bill format

In many cases, provisions such as these merely add administrative burden without enhancing accountability to ratepayers. Requirements to produce exhaustive lists of all user fees and to provide notice when a user fee by-law is being passed to anyone who has left their name with the clerk in the prior 5 years do not seem, on the face of it, to contribute to efficient or effective service delivery.

In other cases, detailed requirements exist if a municipality decides to lease assets, but almost no accountability requirements if it chooses to pay cash or debenture finance the same assets. This seems inconsistent and suggests inherent limitations in an ad hoc approach to accountability.

MFOA believes that municipalities are elected and accountable and are in the best position to determine their own accountability regimes. MFOA supports efforts on the part of the Province to provide resources (e.g. Procurement Guide, Alternative Service Delivery Guide) for municipalities seeking to provide services more effectively and efficiently. Ad hoc attempts to legislate accountability measures are misplaced. The Act should encourage municipalities to adopt, on their own, overall accountability frameworks that could deal with a wide range of issues such as:

- Open and accessible decision-making processes
- Reasonable and workable policies on notice
- Policies, as appropriate, on key municipal activities such as procurement, investing, banking, leasing, debt management, reserve management, asset management, etc.
- Approaches to alternative service delivery, core services reviews, etc.
- Policies on citizen involvement in key policy areas
- Timely and meaningful financial reporting
- Reporting on the business of government in ways that allow for the measurement of efficiency and effectiveness of government action

RECOMMENDATION 8: Municipalities are accountable governments and should be able to determine their own accountability regimes to communicate performance and similar information to citizens. Onerous accountability requirements in MA 2001 and its regulations should be removed.

c. Creation of New Financial Tools

One of the most pressing issues facing municipalities across the country is how to finance the services for which they have responsibility at reasonable levels of taxation or user charges.¹⁹ A

¹⁹ Numerous studies have noted the need to augment resources for municipalities which drive economic growth. See: TD Economics, TD Bank Financial Group, A Choice Between Investing in Canada's Cities or Disinvesting in Canada's Future, April 22, 2002; Harry Kitchen, Enid Slack, "Special Report, New Finance Options for Municipal Governments" in Canadian Tax Journal, vol. 51, no. 6; Casey Vander Ploeg, Canada West Foundation, Dollars and Sense: Big City Finances in the West, 1990-2000, October 2001.

review of the Municipal Act should be accompanied by a review of the fiscal position of municipalities to determine their ability to deliver and sustain services that they have been assigned at reasonable levels of taxation. Ideally, municipalities need to have access to a range of revenue sources and powers sufficient to allow them to provide quality services in a sustainable fashion and finance them in a fair and equitable way with recourse to various forms of taxation, charges, transfers and other innovative funding approaches.

The fiscal challenge faced by municipalities is not merely about fiscal tools. There will be jurisdictions in Ontario for whom new tools will not generate significant revenues or will confer powers that may be beyond their capacity to exercise. No review of municipal fiscal capacity has been undertaken in recent years notwithstanding the very significant changes that have taken place in the provincial-municipal financial relationship. MFOA is of the view that a review of financial tools should be undertaken within the context of a broader review of municipal fiscal capacity so that new tools and a new deal are formulated with an understanding of the current financial pressures municipalities face.

RECOMMENDATION 9: The Municipal Act review should be accompanied by a review of new fiscal tools for enhancing own source municipal revenue. The review of new financial tools should take place within a broader review of the fiscal position of municipalities given the numerous and significant changes that have taken place to the provincial-municipal financial relationship since 1995.

i. Revenue Sharing

Much of the response to the fiscal crisis has focused on revenue sharing arrangements whereby municipalities receive some share of existing revenues from senior governments. Revenue sharing arrangements exist in other provinces, but do not exist in Ontario. The federal government has committed 5 cents/litre of the federal fuel tax to municipalities in Canada.²⁰ The Province of Ontario has committed to 2 cents/litre for transit purposes.²¹

In a report prepared for the Federation of Canadian Municipalities (FCM), Slack identifies a number of useful criteria to apply in considering revenue sharing arrangements.²²

- The revenue source should be based on benefits that are enjoyed locally.
- The alternative revenue source should provide adequate funds to the municipality.
- Locally set tax rates are important to match expenditures and revenues at local level and to ensure local accountability.
- The source of revenue should not unduly distort the allocation of resources.
- The revenue source needs to be easy and not too costly to administer at the local level.

These criteria provide a useful set of starting principles for further dialogue with the Province on new revenue sharing agreements.

See also a presentation by James Knight, CEO, Federation of Canadian Municipalities, "Municipal Fiscal Crisis," delivered in Ottawa on December 3, 2001.

²⁰ See [AMO press release](#) on the appointment of John Godfrey as Minister of State for Infrastructure and Communities.

²¹ See the Ontario Provincial Budget, [Budget Paper A](#), p. 32, May 18, 2004.

²² Enid Slack, "[Intergovernmental Fiscal Relations and Canadian Municipalities: Current Situation and Prospects](#)" in a Report to the Federation Canadian Municipalities, May 8, 2002. Slack also provides a summary of revenue sharing arrangements in other provinces.

ii. New Revenue Sources

It is often noted that municipalities have a high and growing reliance on a single revenue source which tends not to grow in line with expenditure requirements and is generally considered to be regressive.²³ Municipalities require greater balance in the revenue tools they have.

Whether or not property taxes are now too high, a case can be made for a greater mix of taxes at the municipal level. Such a mix would give municipalities flexibility to meet local needs at the local level. It would reduce the pressure on the property tax base to fund services that would be more appropriately financed in other ways. For example, income taxes would be better for fund services of a redistribute nature; sales taxes might be better to fund services are used by commuters or visitors.²⁴

Slack and Kitchen discuss the merits of expanding municipal tax powers to include income taxes, sales taxes, fuel taxes and hotel occupancy taxes. The Canada West Foundation has examined revenue sources available to municipalities in western Canada compared to American cities. A 2002 study shows that American cities have a wider range of revenue tools than to western Canadian cities. For example, each of the tax sources shown in the table below is enjoyed by either Seattle or Denver, with the exception that they do not share state income taxes.²⁵ This list is more extensive than the powers exercised by Ontario municipalities.

Property Taxation	Sales Tax	Business Tax	Other	Tax Sharing
General Property	General Retail	Lodging	Real Estate Transfer	Income Taxes
Special Assessments		Restaurants	Motor Vehicles	General Sales Tax
Special Business		Liquor	All Others	Fuel Taxes
		Entertainment		Motor Vehicle Taxes
		Car Rentals		Lodging Sales Tax
		Gambling		Liquor Taxes
		Other		Tobacco Taxes
		Utilities/Franchise		Other Taxes
		Gross Receipts		
		Employee Tax		

iii. Other Options

Providing municipalities with new revenues is not the only mechanism available to deal with the municipal fiscal problem. Other options include migrating services from the municipal sector to the Province. Many commentators have noted that redistributive programs in particular should be funded from tax sources that are more progressive than property taxes. Moving responsibility for various social services to the Province would facilitate a better alignment with more progressive funding sources. Ontario is unusual in the degree to which social service funding is dependant on the property tax.

Conditional and unconditional grant regimes have fallen out of favour in recent years, in part because of issues related to accountability. When one jurisdiction spends money raised by another jurisdiction, there are concerns that such funds will not be spent appropriately or

²³ See a presentation by James Knight, CEO of the Federation of Canadian Municipalities, entitled "[Municipal Fiscal Crisis](#)" delivered to the CGA-Canada Economic News Luncheon in Ottawa on December 3, 2003.

²⁴ Enid Slack, Harry Kitchen, "[Special Study: New Finance Options for Municipal Governments](#)," in *Canadian Tax Journal*, vol. 51, issue 6, p. 2223.

²⁵ Casey G. Vander Ploeg, *Big City Revenue Sources: A Canada-U.S. Comparison of Municipal Tax Tools and Revenue Levers*, Canada West Foundation, September 2002, p. 6.

judiciously. While MFOA would not advocate a return to a myriad of grant regimes with confusing and overlapping purposes and formulas, there are nevertheless good and sound reasons for rethinking the not for a limited number of conditional grants (to deal with externalities) and unconditional grants (to deal with fiscal gap).

iv. Conclusion

There is a need to examine the financial relationship between the Province and municipalities. No such analysis has taken place following a period of radical change in the relationship that included amalgamations, service swaps, elimination of grant programs, and property tax reform. MFOA looks forward to contributing to the Municipal Act Review and thanks the Minister for the opportunity to contribute.

8. Appendix A: Summary of Recommendations

RECOMMENDATION 1: The province should work with municipalities to pass regulations related to municipal toll roads that are not restrictive.

RECOMMENDATION 2: The province should work with municipalities to pass regulations related to the sale of debt.

RECOMMENDATION 3: The Province should indicate whether regulations under ss. 365.1(26) are forthcoming so that municipalities can begin to take advantage of the tax assistance tool to ameliorate contaminated lands.

RECOMMENDATION 4: A review of the prohibition against bonusing should take place to determine whether modifications are required to allow municipalities more scope for innovation in attracting health care workers to their municipality. No wholesale review of section 106 is being proposed.

RECOMMENDATION 5: The Province should initiate a new round of discussions with the municipal sector with regard to municipal business corporations as part of the Municipal Act review.

RECOMMENDATION 6: Broaden the range of eligible investment instruments available to municipalities by moving to a “prudent investor” standard for the sector or, if not for the sector, at least for the ONE Funds which is professionally managed and would provide access to greater returns for all municipalities.

RECOMMENDATION 7: Remove restrictions on the use of user fees in the Municipal Act and in other statutes (e.g. building permit fees under the Ontario Building Code Act) to facilitate the use of creative pricing regimes designed to promote council goals with regard to such things as conservation or environmental protection.

RECOMMENDATION 8: Municipalities are accountable governments and should be able to determine their own accountability regimes to communicate performance and similar information to citizens. Onerous accountability requirements in MA 2001 and its regulations should be removed.

RECOMMENDATION 9: The Municipal Act review should be accompanied by a review of new fiscal tools for enhancing own source municipal revenue. The review of new financial tools should take place within a broader review of the fiscal position of municipalities given the numerous and significant changes that have taken place to the provincial-municipal financial relationship since 1995.

9. Appendix B: Financial Changes Made in MA 2001

This appendix identifies key changes made to MA 2001 in the area of municipal finance. In addition to the changes noted here, there were various housekeeping changes that were made as well. These include, but are not limited to, minor changes in tax administration, municipal debt obligations, financial reporting, etc. A considerable number of changes were also made to MA 2001 with respect to property taxation. These too are not dealt with in this appendix. Finally, this appendix focuses only on changes made to MA 2001 and does not deal with other legislation or regulations that could have a significant municipal financial impact such as the Bill 124 changes to the Building Code act, the Sustainable Water and Sewer Act, or MOE regulations related to drinking water quality and testing.

a. Eligible Investment Regulation ([O. Reg. 265/02](#) amending [O. Reg. 438/97](#))

Municipal investment powers are highly prescribed. Section 418 of MA 2001 states that a municipality may only invest surplus funds in prescribed securities, under prescribed rules.

The general investment regulation, O. Reg. 438/97 was amended in 2002 as part of Municipal Act review. O. Reg. 265/02. It expanded the range of eligible investments slightly by adding asset backed securities and commercial paper to the list of eligible securities. These new securities were only eligible if they were highly rated by a prescribed agency. Only municipalities with a AA minus rating could invest in these new instruments. Smaller municipalities could invest in these instruments through a prescribed investment pool such as ONE: The Public Sector Group of Funds.

The regulation also added more reporting requirements for the municipal Treasurer. The regulation has always required municipalities with investment portfolios to have an investment policy. The new regulation requires the policy to address issues related to risk tolerance, portfolio diversification and the need for third party financial or legal advice.

b. Area Rating Regulation ([O. Reg. 305/02](#))

Section 326 of the MA 2001 deals with matters related to special area tax rates. The legislation confers wide powers on the Minister of Municipal Affairs and Housing to pass regulations with regard to area rating. Subsection 326(5) identifies the areas the Minister may regulate.

Regulations

(5) The Minister may make regulations providing for any matters which, in the opinion of the Minister, are necessary or desirable for the purposes of this section, including,

- (a) prescribing special services for the purposes of clause (1) (a);
- (b) establishing conditions and limits on the exercise of the powers of a municipality under this section, including making the exercise of the powers subject to the approval of any person or body;
- (c) prescribing the amount of the costs or the classes of costs for the purpose of clause (1) (b);
- (d) prescribing the area or rules for determining the area for the purpose of clause (1) (c);
- (e) prescribing the amount of the additional costs or the rules for determining the additional costs for the purpose of clause (1) (d);
- (f) providing for a process of appealing a by-law under this section and the powers the person or body hearing the appeal may exercise;
- (g) providing that an appeal under clause (f) may apply to all or any aspect of the by-law;

- (h) providing for rules or authorizing the person or body hearing an appeal under clause (f) to determine when by-laws subject to appeal come into force, including a retroactive date not earlier than the day on which the by-law was passed;
- (i) for the purpose of subsection (4), exempting or delegating to a municipality the power to exempt specified rateable property from all or part of a special local municipality levy or a special upper-tier levy for a specified special service. 2001, c. 25, s. 326 (5).

O. Reg. 305/02 has been the only regulation passed with regard to area rating. The regulation merely identifies the services which are eligible for area rating, which include:

1. Culture, parks, recreation and heritage systems.
2. Waste management systems.
3. Fire protection and prevention systems.
4. Parking systems, except on highways.
5. Transportation systems, other than highways.
6. Sewage systems.
7. Water systems.
8. Drainage and flood control systems, including storm sewers.
9. Street lighting.

Although the regulation only deals with matters under paragraph 326(5)(a), the regulatory power is very broad. There are additional limitations, in subsection 326(3), that appear to be less comprehensive than the previous Municipal Act with regard to area rates for deferred benefits.

c. Leasing Regulation ([O. Reg. 266/02](#) amending [O. Reg. 46/94](#))

Section 110 of MA 2001 permits municipalities to enter into lease agreements for the provision of capital facilities.

110. (1) A municipality may enter into agreements for the provision of municipal capital facilities by any person, including another municipality.

(2) An agreement may allow for the lease, operation or maintenance of the facilities and for the lease payments to be expressed and payable partly or wholly in one or more prescribed foreign currencies.

A general regulation dealing with municipal capital facilities has been in place since 1994. O. Reg. 266/02 added new provisions related to leasing that resulted in a significant level of prescription which is not duplicated with regard to other means of acquiring capital assets. The new regulation requires municipalities to:

- Have a leasing policy if they engage in leasing
- Address a number of issues in their leasing policy
- Prepare a “detailed report” (see section 9 of O. Reg. 266/02) to council prior to entering any lease. The regulation identifies a number of things that the report must include, such as the costs of the lease, the risks associated with it, a schedule of payments associated with the lease, statement of assumptions used in analyzing the lease, etc.

In addition to the “detailed report” required for an individual lease, section 10 of O. Reg. 266/02 requires the treasurer to prepare another “detailed report” to council on the status of all leases if the municipality has more than one lease. This report must deal with such things as:

- The estimated proportion of total financing arrangements undertaken through leasing

- Whether, in the opinion of the treasurer, all financing leases comply with the municipality's leasing policy, and
- Any other information deemed relevant by the treasurer.

MFOA is concerned that the Province may impose additional requirements with regards to leasing when Madame Justice Bellamy issues her report on the Toronto Computer Leasing Inquiry.

d. Cross Border Leasing, Toronto ([O. Reg. 157/03](#))

The Municipal E-Guide, in describing regulations pending under section 110 of MA 2001, states that "regulations may be passed to allow municipalities to enter into cross-border (foreign-currency) leasing arrangements."²⁶

No general regulation was passed to permit cross border leasing. A specific regulation was passed, O. Reg. 157/03, applies only to Toronto for a specific transaction to permit a cross border lease of transit vehicles. The power to enter into cross-border leases has not been generalized.

e. User Fee Regulation ([O. Reg. 61/01](#); [O. Reg. 244/02](#))

Fees and charges can account for a significant proportion of municipal revenues. In 1996, the previous government passed *the Savings and Restructuring Act, 1996*, which amended the Municipal Act with respect to user fees and charges.²⁷ The Act granted fairly broad powers to impose fees and charges, along with limitations that prohibited municipalities from imposing sales taxes, income taxes, and poll taxes. These tax sources had not been municipal revenue sources, so the restrictions did not limit existing fee structures in the municipal sector.

The Act provides for significant regulatory power to be exercised by the Minister of Municipal Affairs and Housing. Section 400 permits the Minister to pass regulations with respect to the following matters:

400. The Minister may make regulations providing for any matters which, in the opinion of the Minister, are necessary or desirable for the purposes of this Part, including,
- providing that a municipality or local board does not have the power to impose fees or charges under this Part for services or activities, for costs payable for services or activities, for use of municipal property or on the persons prescribed in the regulation;
 - imposing conditions and limitations on the powers of a municipality or local board under this Part;
 - providing that a body is a local board for the purpose of this Part;
 - providing that fees or charges in a prescribed class of fees or charges which are added to the tax roll under subsection 398 (2) have priority lien status and designating all or any of those fees or charges to be fees or charges relating to a local improvement;
 - providing that fees or charges that have priority lien status under clause (d) are payable with respect to property that is exempt from taxation under section 3 of the *Assessment Act*;
 - requiring a municipality or local board to give the prescribed notice of its intention to pass a by-law imposing the fees and charges which have priority lien status under clause (d) to the prescribed persons in the manner and form and at the times prescribed;

²⁶ See the [Municipal E-Guide to the Municipal Act](#) on the website of the Ministry of Municipal Affairs and Housing.

²⁷ The Act received Royal Assent on January 30, 1996. The Act addressed a wide range of other municipal issues in addition to user fees and charges.

- (g) providing for a process of appealing a by-law under this Part to the extent that it imposes the fees or charges that have priority lien status under clause (d) and providing that the appeal may apply to all or any aspect of the by-law specified in the regulations;
- (h) providing for the powers the person or body hearing the appeal under clause (g) may exercise;
- (i) providing for rules or authorizing the person or body hearing the appeal under clause (g) to determine when by-laws subject to appeal come into force, including a retroactive date not earlier than the day on which the by-law was passed;
- (j) without limiting any of clauses (a) to (i), providing for any matter provided for in the *Local Improvement Act*, as it read immediately before its repeal on January 1, 2003, including delegations of authority. 2001, c. 25, s. 400; 2002, c. 17, Sched. A, s. 78.

This regulatory power has been used to restrict municipal user fee powers and to put in place new reporting requirements that were thought to promote accountability. Fees and charges are prohibited for operators of telecommunications businesses as well as generators, transmitters, distributors or retailers of electricity or gas. The regulation contains detailed procedural requirements for public meetings, notice and providing a “rationale for imposing the fee or charge” that certainly qualify as micro-management. Municipalities already conduct most of their meetings in open council and councils do not need detailed provincial regulations to tell them how to relate and communicate with their residents.

f. Corporations Regulation ([O. Reg. 168/03](#))

Section 203 of MA 2001 empowers municipalities to establish corporations in their area of jurisdiction. This was a new power for municipalities.

Section 203 provides for sweeping regulatory power for the Lieutenant Governor in Council. O. Reg. 168.03 provides the framework for municipal business corporations. The regulation permits corporations in a limited number of areas with significant restrictions. Municipalities may establish service corporations for the operation and maintenance of:

- public transportation systems
- residential waste management services
- economic development (promotion only)
- municipal administrative services to MUSH sector
- Services listed in Section 110 of MA 2001
 - Council facilities and administration
 - Highways, roads, bridges
 - Culture, parks, recreation
 - Parking
 - Nursing homes and charitable homes
 - Community centres

Municipalities can establish corporations to construction and ownership of any services listed above, excluding:

- Economic development
- Administrative services
- Facilities used by council
- Municipal community centres

A review of these lists reveals that a number of municipal services are excluded, including:

- Emergency services (Police, fire, ambulance)
- Water, wastewater
- Storm water management
- Animal control
- Telecommunications
- Social housing
- ICI waste management
- Public utilities (electricity, natural gas)
- Social and health care services

In addition, there are significant issues related to transfer of assets, creating subsidiaries, and numerous other issues for those services which are eligible.

At the time the regulation was passed, the government of the day recognized that there were still many outstanding issues related to corporations and suggested that further rounds of consultation would be forthcoming to address these issues. MFOA feels that this review of the Municipal Act is an ideal time to re-initiate discussions with respect to municipal business corporations.

g. Bank Loans ([O. Reg. 276/02](#))

The regulation sets out a number of conditions related to long-term bank loans for municipalities.²⁸

- Municipalities will be able to borrow from banks, trust companies or credit unions.
- On request, a municipality will be able to enter bank loans on behalf of another municipality or school board.
- Bank loans will have to be used to fund capital works or repay temporary borrowing, not for current spending.
- Municipalities will not be able to provide security to the lender.
- Bank loans will have to state the amount of money borrowed, and a fixed interest rate.
- Municipalities with a AA- or better credit rating will be able to enter bank loans with variable interest rates and syndicated loans. (An amendment to the existing regulation on Variable Rate Debentures and Foreign Currency Borrowing will require that variable rate bank loans and variable rate debentures together be subject to a limit of 15 per cent of total outstanding debt.)
- Bank loan terms will be limited to the lifetime of the capital facility, up to 40 years.
- Municipalities will be required to levy to raise the funds needed to repay the loan.
- Temporary borrowing will be allowed prior to entering into a long-term bank loan agreement.

²⁸ Taken from "[Regulation Opens Door to Bank Loans for Municipalities](#)," a Fact Sheet prepared by the Minister of Municipal Affairs and Housing, October 8, 2002.

- Lower-tier municipalities within regions will not be able to enter into bank loan agreements. This is consistent with the debt provisions in the *Municipal Act*.

h. Construction Finance ([O. Reg. 278/02](#))

Subsection 408(4), clause (d), of the Act permits municipalities to postpone payment of principal or interest, or both, on debentures and loans during the construction phase of a project, up to a maximum of five years. The intent of this provision is to allow municipalities the opportunity to align their expenditures with their revenues when undertaking construction on capital facilities with revenue generating potential. For example, a municipality could defer interest and principal payments while constructing an arena until arena revenues were available to fund the debt incurred. O. Reg. 278/02 imposes limits and requirements on municipalities using this tool. These requirements include public disclosure provisions and a statement of construction financing policies and goals.

i. Local Improvements ([O. Reg. 119/03](#))

Part XII of MA 2001 (sections 390 to 400) deals with fees and charges.²⁹ It came into force on January 1, 2003 and carries forward the authority previously found in section 220. This section also incorporates the power to impose charges of the type formerly incorporated under the Local Improvement Act, which was repealed when MA 2001 came into force. Section 400 of MA 2001 empowers the Minister of Municipal Affairs and Housing to enact regulations with respect to charges and fees. O. Reg. 119/03 is passed pursuant to this section.

In bringing the Local Improvement Act into MA 2001, efforts were made to streamline the provisions and delete any anachronisms. Generally, the provisions in MA 2001 do not alter the powers of municipalities with respect to tax sales.

j. Tax Sale ([O. Reg. 181/03](#))

MA 2001 came into force on January 1, 2003. On that date the Municipal Tax Sales Act was repealed and Section XI (sections 371 to 389) came into force replacing the Tax Sales Act. Section 387 of MA 2001 empowers the Minister of Municipal Affairs and Housing to enact regulations to provide for forms and rules with regard to tax sales. O. Reg. 181/03 is passed pursuant to this section.

In bringing the Municipal Tax Sales Act into MA 2001, efforts were made to streamline the provisions and delete any anachronism.³⁰ Generally, the provisions in MA 2001 do not alter the powers of municipalities with respect to tax sales.

²⁹ See the section on [user fees and charges](#) in the Municipal E-Guide on the website of the Ministry of Municipal Affairs and Housing.

³⁰ See the description of [Part XI in the Municipal E-Guide](#) on the website of the Ministry of Municipal Affairs and Housing.