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May 21, 2020

**BULLETIN**

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**PROVINCE ANNOUNCES MUNICIPAL FINANCING AND TAX COLLECTION MEASURES IN  
RESPONSE TO COVID-19 PANDEMIC**

On May 15, 2020, the Province issued Ministerial Order 0159 to assist local governments and ratepayers who may be facing financial difficulties as a result of the Covid19 pandemic ([http://www.bclaws.ca/civix/document/id/oic/oic\\_cur/m159\\_2020](http://www.bclaws.ca/civix/document/id/oic/oic_cur/m159_2020)). The Order enacts some initiatives previously announced by the Ministry of Municipal Affairs and Housing, although the Order does not include changes to penalties for the late payment of property taxes.

Ministerial Order 0159 is issued under the *Emergency Program Act* and grants a number of powers and relaxations, which are summarized as follows:

Reserve Borrowing – Municipalities, regional districts and improvement districts may, in 2020, borrow from reserve funds to cover an operational shortfall in 2020, thereby overriding the normal rule that capital reserves may only be used, even temporarily, for capital purposes. No bylaw is required to authorize such a borrowing. The borrowed funds must be repaid, without interest, by December 31, 2025. If any money remains unpaid after that time, that amount must be added as a transfer to reserves under the 2026 financial plan (or budget or estimates) together with a 5% penalty.

Revenue Anticipation Borrowing – If a municipality or regional district borrows in anticipation of revenue in 2020 (by bylaw, respectively, under section 177 of the *Community Charter* and section 404 of the *Local Government Act*), the outstanding 2020 debt from such a borrowing that remains in 2021 will not affect the maximum amount that may be borrowed by way of revenue anticipation borrowing in 2021. The Order does require that the money borrowed in 2020 be repaid in full the earlier of December 31, 2021 or the date on which all the anticipated revenue is received.

Municipal Tax Sale Deferral – Municipalities may, by bylaw adopted on or before August 31, 2020, defer the 2020 annual tax sale until September 27, 2021. The municipality must give notice of the deferred tax sale and other information prescribed by the Order to owners of property with delinquent taxes within two weeks of the adoption of the bylaw. Delinquent taxes for a property will continue to accrue interest until those taxes are paid or the property is sold at the 2021 tax sale.

Tax Sale Redemption Period Extension – Municipalities may, by bylaw adopted on or before August 31, 2020, extend all tax sale redemption periods that end in 2020 to September 27, 2021.

Written notice of the extension must be sent within two weeks of the adoption of the bylaw to both the property owner and the purchaser at tax sale. The Order does not require the municipality to notify charge holders or to obtain any consent from tax sale purchasers.

Extension of Reporting Requirements – The deadlines for the following have been extended to August 31, 2020: (1) preparation of annual municipal reports under section 98 of the *Community Charter*, (2) presentation under section 376 of the *Local Government Act* of regional district audited financial statements and the report on board member remuneration, expenses and contracts, and (3) statements of financial information under the *Financial Information Act*.

#### General Comments on the Effect of Order

Section 2 of the Order provides that it applies from the date it was made and “ends on the date on which the last extension of the declaration of a state of emergency made March 18, 2020 under section 9(1) of the *Emergency Program Act* expires or is cancelled”. An emergency declaration automatically expires after 14 days, unless it is extended for a further 14 days. The Covid19 pandemic declaration was most recently extended to May 26, 2020.

After the Order ceases to apply, a local government will no longer be able to exercise the various powers provided under the Order. If the emergency declaration continues through the end of August, this will not be an issue in relation to the August 31<sup>st</sup> deadlines for adoption of tax sale deferral and redemption period extension bylaws and for municipal and regional district reporting requirements. However, after the Order ceases to apply, a local government will not be able to borrow from a reserve pursuant to the Order, or rely on the special rules in the Order regarding 2020 revenue anticipation borrowing for any such borrowing undertaken in 2020 after expiry of the Order.

While it is clear that the substantive powers in the Order will cease to be available to local governments after the expiry of the Order, it is not entirely clear what effect the expiry of the Order will have on the rights and obligations set out in the Order in relation to substantive powers that were exercised before the Order expired. There is nothing in the Order itself or the *Emergency Program Act* that addresses that issue. As discussed below, we think such rights and obligations likely continue by application of the *Interpretation Act*, but that is not totally clear. To explain the issue, we would note, for example, that the Order gives local governments the right to do revenue-anticipation borrowing in 2021 without including outstanding 2020 revenue-anticipation borrowing debt in its calculation of the amount it may then borrow. This right to exclude such debt from the 2021 calculation is one that would be exercised after the Order expires and so could be considered a right that is lost when the Order expires. Nothing in the Order or the *Emergency Program Act* says otherwise. Similarly, the Order sets out certain obligations that one expects would be fulfilled after the Order expires, such as the repayment obligations in relation to funds borrowed from reserves in reliance on the Order. It seems likely the Province wishes such obligations to continue, but again nothing in the *Emergency Program Act* or the Order specifically operates to preserve those obligations after expiry of the Order.

Accordingly, it is necessary to consider whether rights and obligations in the Order that relate to powers exercised before the expiry of the Order would be preserved by sections 2 and 35 (1) (c) of the *Interpretation Act* - which we think is likely the case.

Sections 2 and 35 (1) (c) of the *Interpretation Act* provide that rights and obligations that were “acquired,” “incurred” or which were “accruing” under an enactment continue after the expiry of the enactment, unless a contrary intention appears in the enactment. While there is some uncertainty as to how one determines whether a right or obligation has been “acquired” or “incurred” or whether one is “accruing” for the purpose of section 35 (and we have not conducted a full analysis of the issue for the purpose of this bulletin), it seems to us likely that a court would find that the rights and obligations associated with powers exercised under the Order (or to which the Order applied when it was in force) are indeed rights and obligations that should be considered to have been either “acquired” or “incurred” when the relevant substantive power was exercised or were at least “accruing” when the Order expired. But again, there is some uncertainty as to the application of section 35 and thus as to the status of post-expiry rights and obligations under the Order.

Given this uncertainty respecting the effect of Order expiry, we are hopeful the Province will address the matter more directly by some form of further enactment. Furthermore, if the Order ceases to apply before the end of 2020, further Provincial enactment would be needed if the Province wishes to make the Order’s special borrowing powers exercisable throughout 2020.

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