

Provincial Legislation 2011

Auditor General for Local Government Act (Bill 20, 2011) Introduced

Summary and Timing

Minister Ida Chong introduced the *Auditor General for Local Government Act* (Bill 20, 2011) in the Legislative Assembly today.

The Bill is available at:

http://www.leg.bc.ca/39th4th/1st_read/gov20-1.htm

The Bill provides the mandate, powers and duties of the Auditor General for Local Government (AGLG), establishes an audit council, and sets out an administrative and accountability structure for both.

If enacted, the audit mandate for the AGLG would consist of performance audits of the operations (see definitions) of municipalities, regional districts, greater boards (i.e., Greater Vancouver Water District and Greater Vancouver Sewerage and Drainage District), and any organization that, under generally accepted accounting principles, is controlled by a municipality, regional district or greater board. Additional entities may be added to this audit mandate by Cabinet regulation.

The Bill was introduced on the last day of the current Legislative Session, and as a result, is not expected to receive Royal Assent this Session. UBCM's understanding is that the Legislature will adjourn at the end of the day, and any Bills currently in process, including Bill 20, will be considered in the Spring Session, which we expect will begin in February, 2012.

Key Provisions in the Bill

The following is a summary of key provisions in the Bill, and it is not intended to be exhaustive. For certainty with respect to the proposed provisions, please refer to the Bill.

AUDITOR GENERAL, EMPLOYEES AND DELEGATION (SECTIONS 2, 5-7, 11, 12)

- The AGLG is appointed by Cabinet on the Minister's recommendation, after the Minister has considered the recommendations of audit council; only a qualified individual (see definitions) may be appointed; appointment term is 5 years and an AGLG may not be appointed for more than 2 consecutive terms; a similar process to suspend or remove the AGLG in limited circumstances and appoint an acting AGLG is set out; and
- The AGLG may appoint a deputy and other employees, retain other persons, and delegate most powers or duties.

AGLG MANDATE AND PERFORMANCE AUDITS (SECTIONS 3, 4, 13-17, 23, 24)

- The AGLG's mandate and powers are focussed on performance audits and recommendations;
- Performance audits are conducted "to provide local governments with objective information and relevant advice that will assist them in their accountability to their communities for the stewardship of public assets and the achievement of value for money in their operations";
- The AGLG decides what performance audits are to be conducted, but these must be in accordance with the annual service plan;

- Performance audits consist of a review of specific operations of a local government to evaluate such things as the extent to which: operations are undertaken economically, efficiently and effectively; or procedures to monitor economy, efficiency and effectiveness are sufficient;
- Performance audit reports must provide recommendations arising from the review to the local government; the local government is given an opportunity to comment on the proposed audit report, and a summary of the local government's comments must be included in the final audit report, which must be published by the AGLG;
- The AGLG may provide information about recommended practices arising from performance audits that may be applicable or useful to other local governments;
- If permitted by regulation, and if this does not interfere with other audits, the AGLG may undertake a performance audit for a local government upon its request;
- The AGLG may not call into question the merits of policy decisions or objectives of a local government;
- The AGLG may not act as a financial/attest auditor for a local government;
- The AGLG must be provided access to things like records and information needed to conduct a performance audit and may compel persons to answer questions or produce records;
- Confidentiality provisions are included for audit information, proposed reports and proposed comments.

AUDIT COUNCIL (SECTIONS 18-21)

- At least 5 audit council members are appointed by Cabinet for terms of up to 3 years, on the Minister's recommendation, after the Minister has consulted with UBCM, and representatives of business, taxpayers and local government professionals; members must have knowledge, skills, education or experience in one or more

of: accounting, auditing, or local, regional or provincial governance; and

- The role of the audit council is to: make recommendations for the AGLG appointment, suspension or removal and appointment of an acting AGLG; comment on and recommend changes to the annual service plan; comment on AGLG reports, including performance audit and annual reports; disseminate information about performance audit report recommendations and recommended practices; and review and monitor the performance of the AGLG, including having a statement on the AGLG's performance included in the annual report.

ANNUAL SERVICE PLAN, ANNUAL REPORT, ANNUAL AUDIT AND BUDGET PROVISIONS (SECTIONS 8, 9, 10, 22, 25, 26)

- AGLG must submit to Treasury Board an annual estimate of costs; Treasury Board may adjust the estimate before approving it;
- AGLG must annually prepare financial statements, which must be audited by an independent auditor appointed by the Minister;
- AGLG must prepare an annual service plan, including at least: the approved estimate; for each of the current and two future years, its goals and objectives, and measures to determine progress respecting these, general criteria to determine the need for and priority of performance audits, and themes on which performance audits may be based;
- AGLG must prepare, in respect of the previous year, an annual report, including at least: the activities of the AGLG; the audited financial statements; and progress in relation to the goals, objectives and measures established for that year in the annual service plan;
- AGLG may prepare other specified reports; and
- Reports must be distributed to audit council, and in some cases, the Minister, and all must be published.

Consistency with Policy Paper principles

The UBCM membership considered a Municipal Auditor General Policy Paper at the 2011 Convention, and endorsed the following resolution:

THEREFORE BE IT RESOLVED that UBCM, while disagreeing on the necessity to create an office of the Municipal Auditor General, due to the fact that requirements of such an office are already met under existing local government legislation and regulations, endorse in principle the policy paper and instruct the UBCM Executive to continue negotiations with the provincial government.

The Policy Paper set out a number of principles intended to guide policy development for this initiative. The following identifies how key elements of the Bill relate to these principles.

Consultation between the province and local governments is critical

- UBCM has been consulted on the drafting of the legislation.
- UBCM must be consulted prior to audit council appointments.

Changes should build on existing systems, avoid duplication and meet specific objectives

- The AGLG is specifically precluded from undertaking audits currently required under local government legislation (i.e., financial audits now performed by independent auditors).

System changes should maximize public accountability benefits while respecting local autonomy and recognizing local capacity

- Performance audit provisions treat each local government as a separate government entity, thereby respecting local autonomy.
- The legislation requires the Province to pay the cost of the AGLG, which recognizes the limited financial capacity of some local governments to support these additional costs.

Legislative empowerment of a MAG should not exceed that typical of a federal or provincial AG

- The legislation prohibits the AGLG from calling into question the merits of policy decisions or objective of a local government.
- Performance audit provisions and powers in relation to this do not appear to exceed those provided to the Provincial Auditor General.

Administrative and governance structures should strike a balance between auditor independence and auditor accountability to the governments within its audit mandate

- Auditor independence is provided through provisions such as fixed terms of office and providing AGLG the sole discretion to choose which audits to undertake.
- Auditor accountability is provided through the annual service plan and report requirements, as well as audit council responsibility to monitor the AGLG's performance.
- Composition of the audit council is not consistent with the Policy Paper's recommendation that the AGLG be accountable to the local governments within the audit mandate. The Policy Paper recommended this be achieved through appointment of audit council representatives from the local government system, which is also consistent with existing Canadian precedent for Municipal Auditors' General.
- Instead, the legislation provides for audit council appointments by Cabinet, upon the recommendation of the Minister, after consultation with a range of interests. Appointees must have knowledge or expertise in at least one of a number of specific areas, but there is no requirement that appointees be representatives of the local government system. Consequently, the approach taken in the legislation is both inconsistent with existing precedent, and inconsistent with the Policy Paper's principle that the AGLG be accountable to local governments within its audit mandate.