

Bill 130: The Municipal Statute Law Amendment Act, 2006, Schedule A

The Ministry is providing these questions and answers to assist public libraries in understanding some things set out in *Bill 130: The Municipal Statute Law Amendment Act, 2006, Schedule A* and the *Municipal Act, 2001*. This document does not cover all matters relating to the new legislation. The Ministry is not providing legal advice on any of the matters addressed in this FAQ. Library boards may wish to review sections of the Bill that affect local boards with their own legal counsel.

Q 1. Do municipalities have the authority to dissolve or change library boards under the new ss.7(3) of the *Municipal Act, 2001*, which is set out in s.6 of Schedule A?

A 1. No. S.90 of Schedule A substitutes a new s.216 for the *Municipal Act, 2001*. The language in the substituted s.216 of the *Municipal Act, 2001*, precludes a municipality from dissolving or changing a library "board", as defined in s.1 of the *Public Libraries Act*.

Q 2. Under the new ss.7(3) of the *Municipal Act, 2001*, a municipality could exercise its powers with respect to certain specified matters to 'override' a special Act, even if the special Act was more specific and was enacted more recently. Would this municipal override power affect the *Public Libraries Act*?

A 2. No. The municipal "override", power appears to apply only to "special Acts". A "special Act" is defined in section 7 of the *Municipal Act, 2001*, as "an Act relating to a particular municipality." For example, the *City of Toronto Act* would be a special Act. It would therefore appear that, since the *Public Libraries Act* is not a special Act, the municipal override would not apply to it.

Q 3. Would the new s.94 of the *Municipal Act, 2001*, as set out in s.36 of Schedule A, enable a municipality to deliver library services outside its municipal boundaries?

A 3. Yes. The new s.94 enables a municipality to deliver library services outside its boundaries as long as it is doing so, at least partly, for the purpose of serving its own inhabitants. However, the ability to deliver library services for more than one municipality already exists under the *Public Libraries Act (PLA)* through the establishment of union library boards and county library boards. A municipality or library board may also contract for library services with a neighbouring library board or boards. While a municipality may deliver library services beyond its borders under the new s. 94, a library board or municipality would still need to comply with the PLA to receive provincial library operating funding under that statute.

Q 4. Does the new ss. 186(2) of the *Municipal Act, 2001*, as set out in s.84 of Schedule A, enable a municipality to dissolve or change a local board in cases of municipal restructuring?

A 4. The new ss. 186(2) clarifies that a restructuring order of the Minister or a Commission that contains provisions relating to certain local boards does not prevent a municipality from passing a by-law to dissolve or change those local boards, as long as the restructuring order does not contain words which expressly or by necessary implication prevent the municipality from passing that by-law.

However, the new ss.186(2) does not affect library boards, as the authority of a municipality to dissolve or change local boards under new s.216 of the *Municipal Act, 2001*, does not include the authority to dissolve or change a library "board" as defined in s.1 of the *Public Libraries Act*. (Please see Q1 and A1)

Q 5. S. 98 of Schedule A amends the Municipal Act, 2001, by adding Part V.I on Accountability and Transparency. Does this new part of the Municipal Act, 2001 apply to library boards?

A 5. No. Library “boards” as defined in s.1 of the *Public Libraries Act* are one of a group of organizations that are exempted from the new municipal accountability and transparency provisions in Part VI. They are exempted under s. 223.1 of this new part of the Municipal Act, 2001.

Q 6. Does s.238 of the *Municipal Act, 2001*, (which pertains to procedure by-laws) as amended by s.102 of Schedule A, apply to public library boards?

A 6. No. Although the amended s.238 applies to local boards, public library boards are excluded from the definition of “local board” in ss. 238(1).

Q 7. Public library budgets are provided for in the Public Libraries Act’s annual estimates process. How does the new s.291 of the Municipal Act, 2001(pertaining to multi-year municipal budgets), as set out in s.121 of Schedule A, affect library boards?

A 7. The new s.291 enables municipalities to conduct multi year budgeting and is administrative in nature. Where a municipality decides to undertake multi-year budgeting, it is required to adopt the budget for that year, and for any subsequent years to which the multi-year budget applies. The municipal budgets for the second and subsequent years of a municipal multi-year budget function as municipal fiscal planning tools.

Insofar as public library boards are concerned, the new s. 291 enables a municipality to require a public library board to submit a multi-year budget to council. The multi year budget process set out in the new s. 291 does not replace the annual estimates process set out in the Public Libraries Act.

Q 8. Does the new ss.391(1.1) of the Municipal Act, 2001, as set out in s.163 of Schedule A, enable a library board to charge fees for things precluded under the Public Libraries Act and its Regulation?

A 8. It is a condition of library operating funding that certain things, if provided by a library, be provided free of charge. The changes made by the new ss. 391(1.1) do not change that requirement. To continue to receive funding under the Public Libraries Act, any of the following services provided by a library must be provided to residents free of charge [Public Libraries Act subsections 23 (1) and (2)]:

- admission to a public library or use in the library of the library's materials,
- reserving and borrowing circulating materials specified in section 2 of *Public Libraries Act Regulation 976* *,
- using reference and information services (as the board considers practicable).

**The following materials are specified in Public Libraries Act Regulation 976 section (2):*

- books with hard, soft and paper covers,
- periodicals,
- newspapers,
- audio materials designed for people with disabilities,
- sound recordings,
- audio and video cassettes,
- tape recordings,

- video discs,
- motion pictures,
- film strips,
- film loops,
- micro materials in all formats,
- computer software, and
- multi-media kits.

Q 9. Do the amendments made by Bill 130 change a library board's authority to have reserve funds under the Municipal Act, 2001? What is the difference between the existing legislation and the legislation as amended by Bill 130?

A 9. In the past, public library boards established and maintained reserve funds under the authority of ss. 417(1) of the Municipal Act, 2001, as that subsection read before it was repealed and replaced by s. 181 of Schedule A.

The new subsection 417(1) continues to authorize public library boards to establish and maintain reserve funds although it is different from the previous subsection of 417 (1) in at least two ways:

- First, the former ss. 417(1) applied to both local boards and municipalities, whereas the new ss. 417 (1) only applies to local boards.
- Second, the former ss. 417(1) provided that the municipality, local board, or other body might provide, in its budget, for the establishment of a reserve fund, whereas under the new ss. 417 (1) the local board or other body may provide, in its budget, for the establishment of a reserve fund pursuant to this section but only if it does not have the power to do so under another Act or another section of the Municipal Act, 2001.

Q 10. Does the new s. 397 of the Municipal Act, 2001, as set out in s. 169 of Schedule A, authorize municipalities to require library boards to submit their fees and charges by-laws or resolutions for municipal approval?

A 10. If the by-law or resolution imposing the fee or charge is passed by the library board under the Public Libraries Act ss. 23(3), the municipality cannot require the by-law or resolution of the library board to be submitted for its approval. However, if the bylaw or resolution imposing the fee or charge is passed under the new ss.391 (1.1) of the *Municipal Act, 2001*, and if the library board is the library board of only one municipality, then the municipality can require the library board to submit its fees and charges by-laws or resolutions for municipal approval.