



REPORT

To: Electoral Area Directors Committee

Report Number: ADM-EADC-030

From: Tyra Henderson, Corporate Officer

Date: February 18, 2021

Subject: Legislation and Voting Rules

RECOMMENDATION:

That the Electoral Area Directors Committee receive the report from the Corporate Officer titled "Legislation and Voting Rules ADM-EADC-030", which provides information regarding the applicability of the *Local Government Act* to Regional District service establishment bylaws, for discussion.

BACKGROUND/RATIONALE:

The legislation governing Regional District decisions and services is the *Local Government Act* (LGA). Depending on the service and the situation, varying rules apply. This report has been prepared to explain the portions of the LGA that apply to establishing new services, and obtaining participating area approval. As per LGA Section 342 (1), service establishment bylaws must receive both the approval of the inspector, and participating area approval.

There are four methods of obtaining participating area approval that may be used.

PARTICIPATING AREA APPROVAL OPTIONS

Method #1 – Assent Voting (referendum) (LGA Section 344)

Assent of the electors (referendum) conducted in accordance with Section 344 of the LGA, ie; 'going out to ask the people to indicate their approval by majority vote is *always* an acceptable method of obtaining approval from the participating area.

Method #2 – Alternate Approval Process (counter petition) (LGA Section 345)

With this method, the local government posts a notice of intent to do something ie: establish a service to provide kittens to every household, UNLESS, by a specific date, the local government receives written objection, on an approved 'petition' form, that the public does not approve that the local government complete the proposed action without conducting a full assent voting process. In this situation, if more than 10% of eligible voters object, the local government may not proceed with the action until they obtain participating approval via assent voting. If less than 10% of the eligible voters submit their objection in writing, the approval of the participating area is deemed to have been given.

The alternate approval process (AAP) can be used under *any* of the following circumstances:

1. The requisition amount is \$0.50/\$1000 or less
2. The service is related to sewage, water, or solid waste

Therefore, if a service will cost more than \$0.50/1000 of assessment, AAP is not an option, unless the service is sewer, water, or solid waste.

Method #3 – Municipal Participating Area Consent (LGA Section 346)

This method involves a member municipality providing consent on behalf of the residents of the municipality. A written letter of consent from the Council of the municipality (certified resolution of the Council) is required (the municipal director to the Regional Board is unable to consent on behalf of their municipality). This method of obtaining participating area consent is permitted only if the participating area for the service is the entire municipality.

Method #4 – Electoral Participating Area Consent (LGA Section 347)

This method is similar to Method #3 above, applicable to an electoral area, not a municipality. The Electoral Area Director, elected to represent the rural residents in the electoral area, is able to provide written consent to a service establishment bylaw on behalf of residents. There are additional 'conditions' on when this type of approval is acceptable, not found in the municipal participating approval provisions. Electoral Area written consent is acceptable if *any* of the following apply:

- A sufficient petition has been received from residents, requesting the service
- The participating area is the entire electoral area AND the service can be established without borrowing AND the service is one that does not require a maximum requisition limit to be set. (LGA Section 339) Those services are:
 - Regulatory service
 - Coordination, research and analytical services relating to regional district development
 - Social planning services
 - Promotion of economic development
 - Programs in preparation for emergencies
 - Emergency communication systems
 - Regional parks and regional trails
 - Services related to heritage conservation
 - Participation in a regional library district
 - General administration, electoral area administration, feasibility, regional hospital as per LGA Section 338 (2) (a) to (d)

CHOICE OF APPROVAL METHOD AND RESPONSIBILITY FOR OBTAINING APPROVAL (LGA SECTION 343)

At the time a service establishing bylaw is introduced and given readings, the Board must also choose the method of obtaining participating approval (from the list of available and approved methods outlined above and in the legislation).

The Board may decide that approval is to be obtained for the entire service area, which triggers additional decisions that are to be made by the Board.

If the Board chooses AAP, the Regional District conducts the AAP process.

If the Board chooses assent voting, the Board may conduct assent voting in all participating areas, or may require that the member municipalities conduct the assent voting in their municipality.

The Board may decide that participating area approval is to be obtained separately in each participating area.

In this scenario, the municipality gets to choose the method they wish to use to obtain approval in the municipality (assent voting, AAP, or written consent). If the municipality is able to provide

written consent (the service area is the entire municipality) and chooses instead assent voting or AAP, the municipality must bear the costs of the election/voting process they choose.

In this scenario, for the electoral areas that are participating in a service, the Board chooses the method that will be used, (assent voting, AAP, or written consent) and the Regional District conducts any voting/election (AAP) process selected, and bears the costs.

FAILURE TO PROVIDE APPROVAL

(LGA SECTION 343(3) – MUNICIPAL AND LGA SECTION 347(3) and (4) – ELECTORAL

The legislation also provides guidance to follow in a situation when either a municipality, or an electoral participating area, refuses to either obtain elector approval via assent voting or AAP, or provide written consent.

Municipal Refusal to Provide Consent

If the Board chooses separate participating area approval be obtained, and a municipality who is a participant in the service, provides notice from their Council, within thirty (30 days of third reading of the service establishing bylaw) that they refuse to seek approval, either by assent voting, or AAP, or written consent, or fail to provide any notice of the method they have chosen, the Board has the ability to adopt a resolution (2/3 majority required) to instead seek participating area approval for the entire service area, and the Regional District would then conduct any assent voting/AAP in all areas, including municipal areas.

Electoral Area Refusal to Provide Consent

If an electoral area director refuses to provide written consent, in circumstances where an electoral area director is authorized to provide consent, as outlined in the **PARTICIPATING AREA APPROVAL OPTIONS** section above (Method #4), the Board has the ability to adopt a resolution (2/3 majority) required that relieves the Regional District of the requirement to obtain written consent from the Electoral Area Director, and provides consent on behalf of the electors in the electoral participating area.

The Electoral Area Director can appeal the Board resolution overruling their refusal to provide consent to the Minister, within 14 days. Upon review of an appeal, the Minister has three options: uphold and accept the consent provided by the Board on behalf of the residents of the electoral area, direct that approval instead be obtained by assent voting, or direct that approval be obtained via AAP.

The foregoing was written as pertaining to new service establishment bylaws. It should also be noted, that when an amendment to an existing service establishment bylaw is proposed, approval may be obtained in accordance with all of the same requirements as were applicable to the adoption of the original bylaw, or with written consent of at least 2/3 of the participants. (LGA Section 349(1)). Ministry approval is also required for amendments and repeals.

For clarity, a conversion bylaw, to convert an authority previously granted by Supplementary Letters Patent, to a service authorized by a service establishment bylaw, is dealt with as an amendment, and the option of written consent of 2/3 of the participants is also available.

For both 'regular' amendments and conversions, when the bylaw is sent to the Ministry, along with the consent of 2/3 of the participants, the Ministry may direct that assent voting or AAP be conducted.

Ministry staff are unable to advise when this additional step may be required by the Minister, as each bylaw is reviewed individually. If the Minister determines that the scope of the change warrants assent voting or AAP, in lieu of written consent from the participating area, there is no appeal for the Regional District. They can either opt not to proceed with adoption of the bylaw, or seek the approval of the participating area as directed by the Ministry.

All of the sections of the Local Government Act relied upon in the foregoing explanation have been attached for reference.

ALTERNATIVE OPTIONS:

1. That the Electoral Area Directors Committee provide further direction.

STRATEGIC PLAN RELEVANCE:

☒ Not Applicable to Strategic Plan.

FINANCIAL CONSIDERATION(S):

None at this time.

COMMUNICATIONS CONSIDERATION(S):

None at this time.

OTHER CONSIDERATION(S):

None at this time.

Attachments:

1. *Local Government Act - Part 10 - Regional District Service Structure and Establishing Bylaws*
(Sections 339 – 349)
Division 3 – Establishing Bylaws for Services
Division 4 – Approval of Establishing Bylaws
Division 5 – Changes to Establishing Bylaws