Urban municipal perspectives on Bill C-69

Senate Standing Committee on Energy, the Environment and Natural Resources
April 10, 2019
Introduction

The Alberta Urban Municipalities Association (AUMA) was founded in 1905 and today represents over 260 of Alberta’s cities, towns, villages, summer villages, and specialized municipalities. As the voice for Alberta’s urban municipalities, AUMA appreciates the opportunity to bring forward municipal perspectives on Bill C-69, an Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act.

Navigation Protection Act

Primary area of impact to municipalities: Bridges that cross water bodies in Alberta

Municipalities are responsible for the construction, maintenance, and upgrades to the majority of bridges that cross water bodies in Alberta. As part of the transportation network, bridges connect communities, provide access to community services, support tourism, and are key infrastructure for various industries important to Alberta’s economy.

The following outlines how proposed changes to the Navigation Protection Act would adversely impact municipalities.

1. Federal review of small-scale projects: Proposed amendments to the Navigation Protection Act may reverse improvements made to the legislation in 2009 and 2012. The previous amendments helped address municipal concerns regarding federal review of small-scale projects, which were causing significant delays and incurring unnecessary costs.

   Impact: Returning to the requirement for federal review of small-scale projects will cause unnecessary delays, which will be of particular concern for projects with federal and/or provincial grant funding with timeline requirements. The review requirement may also impact the ability for municipalities to access infrastructure grant funding.

   Recommendation:

   • That the Government of Canada explore amendments to the Act to limit federal review of small-scale projects. If the Government of Canada is committed to overseeing all projects on navigable waters, then it is recommended the approval agency explore measures to limit delays and costs to municipalities.

   • That the Government of Canada amend the Canadian Navigable Waters Act to explicitly state that the prohibition in section 3 and the obligations in sections 5 and 10 do not apply if there would be no interference with navigation.

2. Lack of definitions for work categories: Bill C-69 does not include definitions for key aspects including defining what constitutes major work versus minor work and includes a newly-proposed category that is not considered major or minor.

   Impact: Lack of clarity is concerning as the regulations will ultimately determine the scope of administrative responsibilities being added to municipal governments.

   Recommendation: That the Government of Canada release draft versions of the proposed regulations so municipalities can fully understand the expected impact of Bill C-69 before the Senate makes its decision on the Bill or the Senate propose amendments to define key terms such as minor and major works in the Act.

3. Lack of definition for the term “interference”: Section 64(4) of the proposed amendments designates that any works that slightly interfere with navigation will be considered minor
works and any works that substantially interfere with navigation will be considered major works.

**Impact:** Municipalities need guidance on whether interference relates to the navigability of the vessel or is measured by changes to water level or water flow.

**Recommendations:** That the Government of Canada amend the Canadian Navigable Water Act to include the definition of “interference.”

4. **Expanded scope of regulation for scheduled and non-scheduled water bodies:** The Navigation Protection Act currently uses a schedule to define each water body subject to federal oversight. Bill C-69 creates a complex system of requirements for approval depending on the scope of work and whether the water body is scheduled or non-scheduled; however, there is lack of clarity on these requirements.

**Impact:** Without additional clarity, municipal governments will be challenged to self-determine whether a bridge project requires federal approval. In its current form, Bill C-69 creates an environment where municipalities may seek federal approval for all projects - even when not necessary - to avoid potential violation of the Canadian Navigable Waters Act. This type of regulatory environment should be avoided to limit costs on taxpayers.

Expanding federal regulation to include unscheduled water bodies will quite possibly increase the administrative burden on municipalities when planning bridge maintenance projects. This will result in increased administrative/engineering costs as well as a longer pre-planning period for projects that will have no impact or limited impact on navigation.

**Recommendation:** That the Government of Canada release draft versions of the proposed regulations so that municipalities can fully understand the expected impact of Bill C-69 before the Senate makes its decision on the Bill or the Senate propose amendments to define key terms such as minor and major works in the Act.

5. **Lack of prescribed timelines for approval:** The proposed amendments create a new process and timeline for project proponents to conduct public consultation, but it does not set out timelines for when the Government of Canada must make a decision on an application.

**Impact:** Alberta’s municipalities operate in a winter climate where there is a limited number of months when construction can take place. The lack of timelines imposed on the approval agency can cause delays and may risk the success of a project as well as the municipality’s ability to meet funding timeline requirements.

**Recommendation:** That the Government of Canada amend the Canadian Navigable Waters Act to define the time period within which the Minister must make a decision on an application.

6. **Responding to emergencies:** Section 10.4 of the proposed amendments allows the Minister to authorize work in various circumstances even if the obligations in sections 5 and 10 are not met.

AUMA supports the Federation of Canadian Municipalities in calling for section 10.4 to be expanded to address the unique needs of communities in the event of an emergency.

**Recommendation:** That the list of criteria in section 10.4 of the Canadian Navigable Waters Act is broadened to include social disruption or a breakdown in the flow of essential goods, services, or resources in order to adequately acknowledge the hardship and complexity created by damaged infrastructure in an emergency.
Impact Assessment Act

Primary area of impact to municipalities: Large-scale projects and municipal consultation

As the government closest to the people, municipalities have a unique understanding of the potential impact of large-scale projects on the local environment, economy, and health of citizens. It is essential there is an open and transparent process where municipal governments are consulted on projects that fall under the Impact Assessment Act.

AUMA supports the “one-project, one review” objective that Bill C-69 strives to achieve and the broadening of scope assessment to include economic, social and health impacts, both positive and negative, on local communities.

AUMA is concerned that the current reading of the Act doesn’t consistently reflect this objective. For example, the term “jurisdiction” as defined in the Act doesn’t include municipalities. AUMA is also concerned with the potential opportunity for political interference in the impact assessment process. In spite of the rigorous, arms-length assessment process and structure, sections of the Act still allow for expanded Ministerial discretion into the process.

The Impact Assessment Act and processes must be balanced to ensure projects of merit proceed in a timely manner so municipal projects and job-creating efforts are not thwarted; investments and use of grant funds made available to municipalities must be utilized.

The following outlines how proposed changes to the Impact Assessment Act would adversely impact municipalities.

1. Lack of definition of a “designated project” and the scope of federal oversight: Although the focus of the Impact Assessment Act is for large-scale projects, the Act does not clearly define what is considered a “designated project.”

   **Impact:** The lack of definition makes it unclear what types of municipal projects could be subject to federal oversight. Until that information is available, it is difficult for AUMA to understand and provide feedback on the Impact Assessment Act.

   **Recommendation:** That the Government of Canada release a draft definition of a “designated project” so municipalities can fully understand the expected impact of Bill C-69 before the Senate makes its decision on the Bill or the Senate propose an amendment to define a “designated project” in the Act.

2. Lack of consultation with municipal governments: The proposed Impact Assessment Act does not recognize the value of local knowledge that municipal governments have with respect to projects that may be proposed in local regions.

   **Impact:** It is essential the Agency has all relevant information regarding local context and impacts before rendering a decision on a project application. Municipal governments are local stewards of the land and have unique knowledge that can assist a review panel. As such, there needs to be a clear and transparent process for the Agency to consult municipal governments that may be affected by a proposed project.

   **Recommendations:**
   - That the Government of Canada amend relevant sections of the Impact Assessment Act to expressly require consultation with impacted municipal governments.
• That the Government of Canada amend section 22(1) to include “comments from a municipal government impacted by the designated project” as one of the factors that must be considered by the review panel.

• That the Government of Canada amend the definition of jurisdiction to include municipalities.

**Canadian Energy Regulator Act**

AUMA’s observations and recommendations are focused on municipal government perspectives, which are less affected in the Canadian Energy Regulator Act. AUMA is pleased the Act does not include its scope water or wastewater pipelines used solely for municipal purposes.

AUMA’s general concern with the Act is that it not become a conduit to delay or deter energy infrastructure projects of merit. Alberta and Canada have resource-based economies and the sustainability of our communities relies on a healthy resource sector.

Of particular concern is the removal of the “standing test” from the National Energy Board Act, which is used to determine interested parties that can participate in public hearings. Removal of the standing test has the potential to create project delays, ineffective consultation, and investor unease, all with no value being added to the process.

AUMA also strongly disagrees with the position of the Federation of Canadian Municipalities that suggests the Commission consider the input of all municipalities, regardless of whether they are located directly along the route of a proposed pipeline or transmission line. As noted before, allowing this will only create project delays, with no value added to the consultation and evaluation process.

**Issue:** While it is important the Regulator collect input from a diverse range of stakeholders, public input should be limited to persons or organizations that live or operate within reasonable proximity to the proposed project area or offer technical expertise that is relevant to the project.

**Recommendation:** That the Canadian Energy Regulator Act be amended to maintain the “standing test” to ensure that public hearings only involve input from municipalities or communities located directly along the route of a proposed pipeline or those that could be directly impacted in an adjacent municipality.

**Contact**

Thank you for your consideration of AUMA’s perspectives and recommendations on Bill C-69. If you have any questions regarding our recommendations, please contact Dan Rude, Chief Executive Officer, at drude@auma.ca or 780-433-4431.
Summary of Recommendations

Navigation Protection Act

- That the Government of Canada explore amendments to the Act to limit federal review of small-scale projects. If the Government of Canada is committed to overseeing all projects on navigable waters, then it is recommended the approval agency explore measures to limit delays and costs to municipalities.
- That the Government of Canada amend the Canadian Navigable Waters Act to explicitly state that the prohibition in section 3 and the obligations in sections 5 and 10 do not apply if there would be no interference with navigation.
- That the Government of Canada release draft versions of the proposed regulations so municipalities can fully understand the expected impact of Bill C-69 before the Senate makes its decision on the Bill or the Senate propose amendments to define key terms such as minor and major works in the Act.
- That the Government of Canada amend the Canadian Navigable Water Act to include the definition of “interference.”
- That the Government of Canada amend the Canadian Navigable Waters Act to define the time period within which the Minister must make a decision on an application.
- That the list of criteria in section 10.4 of the Canadian Navigable Waters Act is broadened to include social disruption or a breakdown in the flow of essential goods, services, or resources in order to adequately acknowledge the hardship and complexity created by damaged infrastructure in an emergency.

Impact Assessment Act

- That the Government of Canada release a draft definition of a “designated project” so municipalities can fully understand the expected impact of Bill C-69 before the Senate makes its decision on the Bill or the Senate propose an amendment to define a “designated project” in the Act.
- That the Government of Canada amend relevant sections of the Impact Assessment Act to expressly require consultation with impacted municipal governments.
- That the Government of Canada amend section 22(1) to include “comments from a municipal government impacted by the designated project” as one of the factors that must be considered by the review panel.
- That the Government of Canada amend the definition of jurisdiction to include municipalities.

Canadian Energy Regulator Act

- That the Canadian Energy Regulator Act be amended to maintain the “standing test” to ensure that public hearings only involve input from municipalities or communities located directly along the route of a proposed pipeline or those that could be directly impacted in an adjacent municipality.