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ARTICLE

Bill 66 — Restoring Ontario's Competitiveness Act, 2018: What's in store for land use planning?

UPDATE — January 24, 2019

On January 23, 2019, Ontario's Minister of Municipal Affairs and Housing announced via social media that the Government of Ontario would not proceed with Schedule 10 to Bill 66, which covers the proposed amendments to the *Planning Act* described in this bulletin. The Minister cited concerns raised by members of provincial parliament, municipalities, and other stakeholders as the reason for this decision. We will continue to monitor the status of Bill 66 as the legislature returns in February.

On December 6, 2018, the Ontario government introduced Bill 66, referred to as the *Restoring Ontario's Competitiveness Act, 2018*, in the Ontario legislature. Among other things, the bill proposes to amend the *Planning Act* to allow local municipalities to pass "open-for-business" planning by-laws (OFB by-laws) for certain prescribed purposes, which are currently limited to new major employment uses. Unlike zoning by-laws, open-for-business by-laws could be passed without prior notice or hearing and may not be appealed to the Local Planning Appeal Tribunal. Critically, such by-laws would not be subject to a long list of statutory requirements, including conformity and/or consistency with provincial plans and policies (e.g., the Greenbelt Plan) and local planning policy.

Such by-laws would not be subject to a long list of current statutory requirements including consistency with the Provincial Policy Statement (the PPS), conformity with the Growth Plan for the Greater Golden Horseshoe, the Greenbelt Plan and the Oak Ridges Moraine Conservation Plan, and conformity with municipal official plans, among numerous other requirements. In other words, OFB by-laws could be passed even if they are not consistent with the PPS and do not conform with provincial and local planning policy.

The municipality could also impose certain enumerated conditions on the use of land or erection, location or use of buildings or structures in accordance with the OFB by-law. Permitted conditions include those currently permitted site plan conditions under s. 41(7) and (8) of the *Planning Act* (conditions that may be required by municipalities and upper-tier municipalities) as well as any requirement that is "reasonable for and related to the appropriate use of the land and that the municipality considers necessary for the protection of public health and safety." Site plan control would not apply in respect of land that is subject to an OFB by-law.

A municipality would not be able to pass an OFB by-law without approval in writing from the Minister of Municipal Affairs and Housing (which the municipality must request by resolution) and satisfying any prescribed criteria. The Minister may also impose conditions on approval. Under Bill 66, OFB by-laws are proposed to come into force 20 days after the by-law is passed or on such later date as specified by the Minister. A municipality may amend or revoke the OFB by-law in accordance with the way it can amend zoning by-laws, but notice to the owner of the lands to which the by-law applies is sufficient to amend or revoke conditions imposed by the OFB by-law.

Additional details about the use of OFB by-laws will be found in a forthcoming regulation. The Environmental Registry of Ontario (the ERO) is currently accepting comments on the regulation which, as proposed, would require confirmation that the by-law would permit a new major employment use that would meet a minimum job creation threshold (e.g., 50 jobs for municipalities with a population of less than 250,000 people, or 100 jobs for municipalities with a population of more than 250,000 people). Moreover, only certain land uses, such as manufacturing and research and development, would be permitted as a primary use.

The ERO is accepting comments on the proposed regulation until January 20, 2019. BLG will continue to monitor the status of Bill 66 and any related regulations.

Should you have any questions regarding Bill 66 and how it may affect your interests, please do not hesitate to contact a member of our [Municipal and Planning Law Group](#).

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