Alberta Legislature introduces Bill 73 - Infrastructure Accountability Act

November 08, 2021

Bill 73

On October 25, 2021, Bill 73 the *Infrastructure Accountability Act* (the Act) was introduced in the Alberta Legislature and is currently undergoing second reading. The announced legislation aims to provide transparency, predictable funding, and accountability for construction spending. At first reading, Prasad Panda, the Minister of Infrastructure, noted that the Act would create a "governance framework" featuring "objective criteria to guide how capital projects and the spending are prioritized."

The Act would establish a Deputy Ministers Capital Committee and mandate the development of a 20-year strategic capital plan to be updated every four years under the advice of the Capital Committee. This strategic capital plan would outline the long-term infrastructure needs of Albertans and guide funding decisions for future projects.

The proposed Act features six (6) criteria for evaluating capital planning submissions and additional criteria can be added as determined by a responsible Minister. The Act would require the responsible Minister consider the following factors when determining whether a particular project or program is to receive public funding:

1. Risk and compliance with health and safety or security of Albertans;
2. Alignment with strategic objectives and business plans;
3. Positive economic impacts including job creation;
4. Improvement in delivery of programs and services;
5. Life cycle costs and return on investment; and
6. Enhancing the resilience of a community.

Background

The tabling of the Act is timely considering the 2019 The MacKinnon Report (the Report) which took a critical look at Alberta's cyclical spending habits in infrastructure. The Report recommended that the "…Government of Alberta establish a stable and sustainable level of annual capital spending and put an end to boom and bust cycles."

Alberta's capital spending on infrastructure is projected to average $6.6 billion per year for the next four years. The Report notes that this spending is currently debt financed and inaction will lead to higher taxes or lower spending on public services. Alberta infrastructure spending appears to be significantly more per capita than other provinces.

Application of the Act

While the proposed Act sets out explicit criteria that must be considered for any new project and contains some guidance and clarity for how potential infrastructure fits within a provincial hierarchy, it does not contain quantifiable or objective measures to rank projects for eligibility. It is functionally a written checklist of factors that are likely already being considered when provincial capital funding decisions are made.

The breadth of the criteria leaves several unanswered questions that the proposed legislation was intended to solve including how infrastructure planning processes are conducted, how decision-makers are kept accountable, and determining how these projects align with municipal planning. Furthermore, the Act does not seem to specifically address some of the previous requests from industry and taxpayers tied to increased reporting, delivery milestones, transparency, public accessibility on decision-making processes, and greater collaboration with Albertans.

Despite potential practical limitations of the Act, the criteria within the proposed legislation signals to industry that these factors must be present and accounted for in any project or proposal moving forward. Any companies considering an unsolicited proposal under Alberta's recently introduced framework should review this criteria and attempt to highlight how their proposal meets them.

Conclusion

The proposed Act signals to Alberta and the infrastructure industry that there is a process and criteria in place for how this Provincial government allocates funding. When considered alongside the other recent actions, including the recently introduced unsolicited proposal framework, this Act is a clear signal that Alberta is ready to build and fund infrastructure projects.

BLG will continue to monitor the progress of Bill 73 as it receives further consideration by the Alberta legislature. If you have questions about Bill 73, reach out to any of the key contacts listed below.

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