Alberta's Legislative Push For Provincial Autonomy With Intergovernmental Agreements



On April 10, 2024, the Government of Alberta (the **Province**) introduced Bill 18 (**Bill 18**), the *Provincial Priorities Act*. If the proposed legislation comes into force, it will mandate the requirement for provincial entities to secure advance approval from the Province prior to initiating, amending, extending, or renewing any intergovernmental agreement with the federal government. Accompanying regulations would detail the procedure for obtaining approval, specify any prerequisites that a public body must fulfill before forming an agreement with the federal government, and outline any exemptions in which the legislation would not apply. Bill 18 would not apply to private companies.

Background

Currently, the *Government Organization Act* stipulates that the Alberta Minister of Intergovernmental Relations must approve any intergovernmental agreements involving specific government departments and certain public agencies, such as Alberta Gaming, Liquor and Cannabis, the Alberta Securities Commission, and Travel Alberta. This approval mandate does not cover all public agencies in Alberta, nor does it include other public sector organizations like municipalities, public post-secondary institutions, school boards, and health organizations. According to the Province's news release, this

discrepancy has led to situations where agreements made with the federal government have conflicted with the Province's strategic objectives and financial commitments.

Bill 18

The preamble of Bill 18 provides the background for the Province's proposed legislation. In justifying Bill 18, it notes occasions where the federal government has engaged in agreements with provincial entities within the scope of provincial authority without provincial participation. Bill 18 contends that such arrangements ought to conform to the Province's strategic goals and fiscal commitments, highlighting the Province is most capable of recognizing and addressing the specific needs of its residents. Through the support of the Legislative Assembly of Alberta, Bill 18 is intended to equip the Province with the means to address what it perceives as federal overreach.

Applicability

Quebec has a similar legislation to the proposed Bill 18; however, Quebec's legislation adopts a narrower definition of provincial entities. For instance, it does not encompass post-secondary institutions within its scope.

In contrast, Bill 18 adopts a broad approach to defining provincial entities by capturing various definitions across different legislations. Provincial entities, such as those managed by public agencies or Crown-controlled organizations, will be required to obtain prior approval from the Province before they can enter into, amend, extend, or renew any intergovernmental agreements with federal entities. Pursuant to the definition of "provincial entity" under the *Alberta Public Agencies Governance* Act, examples of companies that are captured are those that are either wholly or partly owned by the Crown, or have their board members appointed directly by the government through legislative or regulatory means.

Importantly, Bill 18 defines a provincial entity to include not only specified organizations but also “any other entity or class of entity that is designated as such in accordance with the regulations.”

Approvals and Exemptions

The exact procedures for obtaining the requisite provincial approval, along with the necessary criteria and prerequisites a provincial entity needs to fulfill, have not yet been disclosed. These particulars are expected to be defined in accompanying regulations. However, approvals may come with specific terms and conditions that could potentially influence the scope, funding, and execution of projects to which Provincial entities are engaging on with the federal government.

As noted, there may be exemptions specified in the regulations that could apply to certain entities or types of agreements. Ministers or designated authorities may have the power to exempt certain agreements or entities from the approval requirements, which could affect projects on a case-by-case basis.

Any intergovernmental agreements that are entered into, amended, extended, or renewed without the necessary prior approval, or without an applicable exemption, will be considered invalid and will have no effect. This mandate for prior approval may introduce procedural delays for public entities developing projects who are reliant on federal assistance or collaboration. It should also be noted that the legislation is intended to be forward-looking and may not apply retroactively to existing agreements or projects.

Instances of Federal Overreach as

Identified by the Alberta Premier

In the Province's news release for Bill 18, the Premier of Alberta highlighted instances of what the Province perceives as federal interference. One case in point involved the federal government allocating $325 million to Calgary in 2023 for the electrification of the city's public transit bus fleet. The Premier suggested that this allocation for electric buses circumvented Alberta's constitutional jurisdiction. Additionally, the Premier remarked on the conditions accompanying federal funding, implying that such conditions can be rigid and may not align with Alberta's energy priorities, noting the Province's preference to focus on reliable base load power over investments in solar and wind energy.

In the context of net-zero policies, including those relating to regulatory measures, the Premier expressed reservations about the federal government's fiscal strategies, suggesting they could potentially conflict with the province's own policy objectives on net-zero policies.

It was also disclosed that, out of approximately 14,000 active agreements involving Alberta's provincial bodies and the federal government, close to 800 have been designated by the Province as problematic.

Next Steps

Once Bill 18 has been passed, there are plans to conduct consultations with stakeholders in the summer of 2024 to discuss the implementation of Bill 18. If passed, the legislation is expected come into force at the beginning of 2025, after the associated regulations have been established.

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guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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