

UPDATE ON EDUCATION DEVELOPMENT CHARGES UNDER BILL 108 MORE HOMES, MORE CHOICE ACT, 2019

On May 2, 2019, the Ontario government introduced Bill 108 *More Homes, More Choice Act, 2019*. The Bill proposes significant amendments to the Education Development Charges (EDC) section of the Education Act. The proposed changes, if passed, would provide school boards that are already eligible to collect EDCs increased flexibility on how to use the funds and an opportunity to make agreements with local developers to forgo EDCs in exchange for obtaining a lease, real property or other types of benefits for pupil accommodation. The proposed changes will not, however, benefit school boards like the TDSB that do not qualify for EDCs.

Background

EDCs are funds that school boards can charge on new developments to help address the substantial pressure on local schools arising from new residential developments. They are a critical funding tool that would help the TDSB meet growth-related infrastructure needs. EDCs are governed by Part IX and Ontario Regulation 20/98 of the Education Act.

Under O.Reg. 20/98, school boards that have more student spaces than students, when measured across the entire school system as a whole, are not eligible to collect EDCs. The TDSB does not qualify for EDC funding for this reason. The regulation does not help school boards address significant capacity pressures and challenges in some neighborhood schools. The regulation also restricts use of EDCs to purchase land for future school sites only. School boards may not use EDCs to support the cost of building new schools or renovating existing ones.

TDSB Application for Judicial Review

In December 2017, the TDSB Board granted Legal Services authority to commence an application for judicial review of O.Reg. 20/98. A Notice of Application was issued shortly thereafter. In October 2018, the Ontario government froze all school boards' ability to pass new EDC by-laws until they completed their review of the EDC regime. In March 29, 2019, the Ministry of Education lifted the current cap on EDC rates and replaced them with restricted rate increases.

In the Application for judicial review, the TDSB sought:

1. Amendments to O. Reg. 20/98 to allow the TDSB to collect EDCs; and
2. Amendments that would allow school boards more flexibility in how it uses EDC funds, for example, to pay for construction of new buildings, additions and renovations to existing schools, and to acquire strata interest in land (i.e., ownership of a portion of a building).

Bill 108 Proposed Changes

The Bill's purported objective is to increase the supply of affordable housing. One of the ways the Bill achieves this objective is by "allowing school boards and development partners to find innovative ways to finance new schools" through two new means: (1) Alternative Projects and (2) Localized Education Development Agreements (LEDA).

Bill 108, if passed, would allow a school board to request the Minister's approval to allocate revenue raised by EDCs toward "alternative projects" which are defined as projects, leases or other measures

approved by the Minister that would “address the needs of the school board for pupil accommodation and would reduce the cost of acquiring land.” The Bill would also give school boards the authority to enter into a LEDA with a land owner to forgo EDCs in exchange for obtaining a lease, real property or other types of benefits to provide pupil accommodation. Both types of measure require Ministry approval.

This Bill is only at First Reading and may change as it goes through the legislative cycle before it receives Royal Assent, so we will continue to monitor its progress through the legislature. These changes are expected to come into force on November 1, 2019 or upon Royal Assent, whichever is later.