



London
CANADA



**Implementation of a Sustainable Financing System
For Solid Waste Management in Ontario**

Discussion Paper #1

Issues Regarding the Amended Municipal Act, 2001

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E&E Fund Project #160

Prepared For

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1. Introduction and Background

The Stewardship Ontario E&E (Effectiveness and Efficiency) Fund Project #160 has explored the viability of a municipality or group of municipalities establishing a self-financing entity or municipal solid waste management utility-like structure to deliver solid waste services to households in Ontario. The project identified barriers or limitations imposed by the Ontario *Municipal Act, 2001* and issued a Draft Discussion Paper #1 in January, 2006 outlining a number of considerations identified through the research. The *Municipal Act, 2001* was substantially changed in January, 2007, through Bill 130, and a number of the barriers and limitations perceived to exist in the previous *Municipal Act, 2001* have been addressed.

This updated Discussion Paper #1 discusses provisions in the *Municipal Act, 2001* and amended *Municipal Act, 2001* which were applicable to providing solid waste services through a utility-like self financing structure.¹

Through the project research (described in a series of six other Discussion Papers) it was established that the word “utility” is of concern to some municipal representatives, as it connotes particular governance structures. The wording in the project has therefore been changed to “sustainable financing entity” where possible the text in this Discussion paper.

¹ The *Municipal Act* 2001 was amended in 2007.

2. Municipal Solid Waste Sustainable Financing Issue

2.1 Definition of Municipal Solid Waste Sustainable Financing Entity

For the purpose of this project, a municipal solid waste sustainable financing entity is defined as an entity which is self financing and charges fees directly to households within a municipality for municipal solid waste management services. The solid waste management sustainable financing entity operates independently from other municipal departments or funding systems (e.g. property tax based or general funds).

In a perfect situation, a municipal solid waste sustainable financing entity would have the following features:

- All costs are included in the fees charged: Municipal solid waste management services include collection, processing and disposal of residential waste, as well as all education, waste reduction and administrative activities and the costs associated with these services. The waste management budget identifies all waste management related costs and the total waste management budget is financed through fees charged directly to households;
- Independence in financial management: The solid waste sustainable financing structure would retain all of the solid waste revenue that is generated independently through fees in a way that is protected from other municipal budget demands (surplus revenues do not have to go back to general funds). Where a municipal solid waste sustainable finance entity is formed, no financial support is provided by the municipality, unless in specific instances.

The benefit of the solid waste sustainable financing structure, as articulated by interested Ontario municipalities, is that municipal solid waste management services would be independent and self financing, and would no longer need to compete with other municipal services (e.g. daycare, police, ambulance) at budget time. This approach will eliminate the situation where the solid waste management department competes with other municipal departments or interests during budget deliberations. Waste diversion initiatives often suffer during budget time when proposed improvements or expansions to solid waste management services (which would improve the effectiveness and efficiency of the solid waste management and recycling systems) are proposed as part of the capital budget. In municipal budget discussions, solid waste related projects are often cancelled or postponed because other capital and operating budget demands (fire halls, roads, etc) are considered more important by municipal decision makers.

A sustainable financing approach for waste management would lead to more independent decisions on waste management system design and finance because the decision making process would no longer compete with other social and infrastructure budget demands and require Council approval. Furthermore, moving from the current system to a utility-like structure would require full cost accounting of the solid waste management system which would lead to a more efficient solid waste management and recycling system.

2.2 Status of Municipal Solid Waste Management Utilities in Ontario

The majority of Ontario municipalities operate their municipal solid waste departments within the municipal corporate structure and not as a separate sustainable financing entity. Only a handful of municipalities have jointly formed separate municipal solid waste organizations or associations to deliver services or raise funds. These groups do not use the title “utility” as the word implies very specific governance structures within Ontario municipalities. These nine municipal groups include:

- Essex-Windsor Solid Waste Authority
- Bluewater Recycling Association

- Bruce Area Solid Waste Recycling
- Quinte Waste Solutions
- Ottawa Valley Waste Recovery Centre
- R.A.R.E (North Glengary)
- Almaquin Recycling Initiative
- Hawksbury Joint Recycling
- Cochrane-Temiskaming Waste Management Board
- Tri-Neighbours Recycling
- NORA - (Northwestern Ontario Recycling Association) which was dissolved in 2002.

These entities operate using some, many or all of the features identified above.

2.3 Issues Raised By Municipal Staff

Based on the definition of a sustainable financing entity used at the outset of this project, and provided above, municipal solid waste staff interviewed or involved in this project identified a number of issues related to municipal utilities which are not fully resolved in Ontario at this time. One issue identified through the course of the research is that, in the past, legal staff in different municipalities have interpreted the *Municipal Act, 2001* in different ways.

The list of issues raised by municipalities included:

- Can a municipal solid waste utility be established for solid waste management in Ontario under the Municipal Act, or does the Municipal Act prohibit establishment of solid waste utilities in particular?
- What does incorporation of a municipal entity as a “body corporate” within the Municipal Act entail?
- How to charge and collect fees (what type of billing process to use);
- How to deal with non-payment of solid waste fees (fines, etc);
- Charging fees which are more than the exact cost of providing the service;
- Is there a structure within municipalities that allows the solid waste department to keep the \$ they generate through utility fees?
- Is there a structure which allows the solid waste department to borrow outside of the municipality (from banks)? There is an opinion that municipalities can borrow for specific activities both within the municipality and as an outside entity?
- Can a reserve fund structure be used to protect funds collected from solid waste user fees and charges so that they are used only for solid waste management activities?. It appears that this objective can be accomplished through a by-law?
- Can a single tier municipality (e.g. Peel) or single tier cities (e.g. Ottawa and London) set themselves up as a Joint Services Board under the Municipal Act?

The amended *Municipal Act, 2001* provides municipalities with significant flexibility to operate their services in a manner that best suits the needs and desires of the community. With changes to the amended *Municipal Act, 2001*, many of the earlier issues have been resolved.

3. The Ontario Municipal Act as it Applies to a Solid Waste Management Utility

3.1 How the Municipal Act Defines a Utility

The *Municipal Act, 2001*, which came into force in 2003, resulted from the review of the first key piece of municipal legislation, the Baldwin Act, which was passed in 1849. The *Municipal Act, 2001* has since undergone one major review that led to the amendments through Bill 130 in 2007 and to the amended *Municipal Act, 2001*.

The previous provision under the *Municipal Act, 2001* that provided authority to establish public utility commissions has been replaced with provisions providing for the establishment of municipal service boards. Certain old public utility commissions which existed on December 31, 2002 are deemed to be municipal service boards under the *Municipal Act, 2001*. Generally, they would maintain the same name, composition and service area, and have the same powers and the same control of services. In general, if a service remains under municipal management, it cannot fall under the Public Utility Act. For example, water utilities, formally governed under the Public Utilities Act, are now governed under the Municipal Act as a Municipal Service Board. The amended *Municipal Act, 2001* continues this provision (see section 195 of the *Municipal Act, 2001* for more information).

Many municipal services, which are often delivered through utilities, are actually operated as municipal service boards.

Public Utility

In Part 1, the *Municipal Act 2001* defines a public utility as:

“public utility” means,

(a) *a system that is used to provide any of the following services or things for the public:*

- (i) *water,*
- (ii) *sewage,*
- (iii) *fuel, including natural and artificial gas,*
- (iv) *energy, excluding electricity,*
- (v) *heating and cooling, and*
- (vi) *telephone, and*

(b) *the service or thing that is provided; (“service public”)*

Section 194. (1) In this section and in sections 195 to 202,

“public utility” includes, in relation to a municipality, any system of the municipality, the control and management of which has been given under any Act to a public utilities commission continued by section 195. (“service public”) 2001, c. 25, s. 194 (1); 2006, c. 32, Sched. A, s. 86 (1, 2).

“municipality” means, in relation to a municipal service board, the municipality of which the board is a local board; (“municipalité”).

With the passage of Bill 130 in January 2007, the amended *Municipal Act, 2001* was changed to be less prescriptive and to give municipalities more independence on how they deliver services. It provides municipalities with broad powers to provide services that are considered important to residents. Municipalities have more control over what they do and how they do it (e.g. instead of stipulating the requirements of a hiring policy or a policy regarding the sale of land, the new approach simply states that there should be a hiring or land sale policy: municipalities can decide on the details as long as their approach meets all provincial legislation).

Municipal Service Boards

Section 195. *A public utility commission established or deemed to have been established under the Public Utilities Act, a parking authority established under paragraph 57 of section 207 of the old Act and a board of park management established under the Public Parks Act, which exist on December 31, 2002, are deemed to be municipal service boards established under this Act and continue with the same name, composition and service area and have the same powers and the same control and management of the same services as they had on that day. 2006, c. 32, Sched. A, s. 87.*

In terms of operational requirements related to municipal service boards, subject to restrictions under the amended *Municipal Act, 2001*, municipalities can now generally decide on and change, among other things, all the matters listed in Section 196 of the *Municipal Act, 2001* (see below).

Power to establish municipal service boards

Section 196. *(1) Without limiting sections 9, 10 and 11, those sections authorize a municipality to establish a municipal service board and to provide for the following matters:*

- 1. The name, composition, quorum and budgetary process of the board.*
- 2. The eligibility of persons to hold office as board members.*
- 3. The manner of selecting board members, the resignation of members, the determination of when a member's seat becomes vacant and the filling of vacancies.*
- 4. The term of office and remuneration of board members.*
- 5. The number of votes of the board members.*
- 6. The requirement that the board follow rules, procedures and policies established by the municipality.*
- 7. The relationship between the municipality and the board, including their financial and reporting relationship. 2006, c. 32, Sched. A, s. 87.*

Operation of A Municipal Service Board

With regards to the operations of a Municipal Service Board, the Ontario Government states,

*"Subject to restrictions in the Act, it is up to the municipality to decide which of its services it wants a municipal service board to operate and manage, and under what limits and conditions the service board will deliver the delegated services. The municipality should keep in mind that the services it delegates must fall within one of the five spheres of jurisdiction mentioned above. In deciding what powers to delegate to a municipal service board, a municipality should recognize that a municipal service board is a corporate body and an agent of the municipality that created it. A municipality can, therefore, delegate the powers necessary to enable the service board to control and manage a municipal service, such as establishing a separate bank account, hiring staff, entering into contracts, purchasing materials and services needed for administrative activities and regular maintenance of facilities and setting rates."*²

² Ontario Government, Municipal Service Boards (Sections 194 to 202) at http://www.mah.gov.on.ca/userfiles/HTML/nts_1_7912_1.html

3.2 Municipal Solid Waste Management Utilities, Municipal Service Boards and Joint Service Boards

Municipal Solid Waste Management Utilities:

The Public Utilities Act does not apply to municipalities. Many municipal “utilities” are not utilities under the Public Utilities Act, rather they are probably Municipal Services Boards. In general, if a service remains under municipal management, it cannot fall under the Public Utility Act. For example, water utilities, formally controlled under the Public Utilities Act, are now controlled under the Municipal Act as a Municipal Service Board.

Waste management is one of the services which can be delivered through Municipal Service Boards. The revised Municipal Act gives great leeway to municipalities in the way they run their operations.

Municipal Service Boards:

Sections 195 to 201 of the Act permit a municipality to establish a Municipal Service Board (MSB) to control and manage a municipal service, including waste management. A Municipal Service Board is a corporate body and an agent of the municipality that created it (see section 197 of the *Municipal Act, 2001* for more information). A municipality can give a Municipal Service Board control and management of a municipal service, and must do so by delegating municipal powers and duties to it (see section 198 of the *Municipal Act, 2001* for more information).

197. (1) *A municipal service board is a body corporate unless the municipality provides otherwise when establishing the board. 2006, c. 32, Sched. A, s. 87.*

(2) A municipal service board is an agent of the municipality. 2006, c. 32, Sched. A, s. 87.

198. (1) *A municipality may give a municipal service board the control and management of such services and activities of the municipality as the municipality considers appropriate and shall do so by delegating the powers and duties of the municipality to the board in accordance with this Act. 2006, c. 32, Sched. A, s. 87.*

Powers and duties

(2) The following provisions apply with necessary modifications to a municipal service board, except as otherwise provided by by-law:

- 1. Section 9.*
- 2. Part XIV (Enforcement), except sections 433, 434, 442 and 447.1.*
- 3. Part XV (Municipal Liability). 2006, c. 32, Sched. A, s. 87.*

Restriction

(3) A power provided to a municipal service board under subsection (2) is subject to any limits on and duties related to the power and to any procedural requirements, including conditions, approvals and appeals which apply to the power. 2006, c. 32, Sched. A, s. 87.

Any municipality can set up a Municipal Service Board (MSB) to run a particular service. They operate as a management body. Furthermore, municipalities have several options in how they set up the MSB including:

- A single municipality can set up a MSB to operate municipal solid waste management services;

- a Joint Municipal Services Board (JMSB) may be established by agreement between two or more municipalities (and essentially operates in the same fashion as a MSB)³;
- A MSB or JMSB can be set up to operate multiple services (e.g. solid waste, water, street lighting), which covers a geographical area.

When the MSB or JMSB is formed, control and management of the “municipal service” (in our case solid waste management service) is given to the Board by the municipality, and the municipality assumes more limited control over the service. The JMSB may help small municipalities to achieve economies of scale by delivering services in collaboration with other municipalities. However, the municipality still assumes legal and financial responsibility for the MSB (or member municipalities in the case of the JMSB) at the end of the day. While an MSB may assume functional independence, it does not assume legal independence from the municipality.

Delegated Powers:

The adoption of Bill 130 resulting in the amended Municipal Act 2001, which increased the powers and controls available to municipalities. The amended Municipal Act has become less prescriptive, with less provincial intervention. If a municipality feels that it is important to hand off a service to a Municipal Service Board (MSB) then the municipality can set the rules and identify the responsibilities – they can consider using a MSB to handle more services.

Whereas the previous version of the *Municipal Act, 2001* placed a number of qualifications and limitations on the operations of a Municipal Service Board, the 2007 amendments to the *Municipal Act, 2001* remove many of the restrictions stated in the previous Act. Instead the Municipal Service Board is restricted through the by-law developed by the member municipalities. In essence, a MSB is bound by what a municipality can and cannot do itself.

Functions of municipal service boards

198. (1) *A municipality may give a municipal service board the control and management of such services and activities of the municipality as the municipality considers appropriate and shall do so by delegating the powers and duties of the municipality to the board in accordance with this Act. 2006, c. 32, Sched. A, s. 87.*

Powers and duties

(2) *The following provisions apply with necessary modifications to a municipal service board, except as otherwise provided by by-law:*

1. *Section 9.*
2. *Part XIV (Enforcement), except sections 433, 434, 442 and 447.1.*
3. *Part XV (Municipal Liability). 2006, c. 32, Sched. A, s. 87.*

For the purposes of this Discussion Paper a *Solid Waste Management Utility* will be referred to as a **Solid Waste Municipal Services Board** from this point on.

³ Section 202 of the Municipal Act allows two or more municipalities to establish a Joint Municipal Service Board (JMSB). Municipalities could consider including provisions in these agreements, for example, to address the initial composition of the board or boards, the services and powers delegated to the board or boards and under what conditions. Actions taken by municipalities to change existing joint municipal boards may require consent of participating municipalities (see subsection 216(6) of the *Municipal Act, 2001* for more information).

3.3 Solid Waste Municipal Service Board as a “Body Corporate” within the Amended Municipal Act, 2001 for the Purpose of Borrowing Money

A MSB/JMSB is defined as a “body corporate”, under Section 197 of the amended *Municipal Act, 2001* which allows it to enter into contracts and to employ staff.

Section 197. (1) *A municipal service board is a body corporate. 2001, c. 25, s. 197 (1).*

(2) *A municipal service board is an agent of the municipality. 2001, c. 25, s. 197 (2).*

Any MSB is an agent of the municipality, and is bound by the constraints of the municipality. The delegation of borrowing powers is a local decision, i.e. municipalities can consider whether it is practical to delegate their borrowing powers to MSBs. The decision regarding whether to loan money to the MSB depends on the lender. Where lenders have concerns about loans to MSBs, in practice, they might ask that the municipality itself take on the borrowing - because that is familiar to them - rather than consider entering into complex and uncertain arrangements with the MSBs.⁴

3.4 Financing a Solid Waste Management Municipal Service Board

Financing of the operations of a MSB can be accomplished through fees and charges under *Part XII* of the *Municipal Act – Fees and Charges*. Most of the concerns raised by municipal staff at the outset of this project about financing restrictions placed on Solid Waste Management Municipal Service Boards in the previous version of the *Municipal Act*, have been addressed in the amended *Municipal Act, 2001*.

It is in the *Fees and Charges* Part XII where some of the greatest changes have been made by providing municipalities with greater control over finances and charges. Part XII of the Act addresses a number of concerns and deficiencies in the previous version of the *Municipal Act*.

3.5 Municipalities Can Only Charge Exactly What the Solid Waste Management Service Costs

Under the previous *Municipal Act*, many municipal staff believed that they were prohibited from making a profit or running a surplus from the fees charged for the services provided. The thinking at the time the Act was written is that the Government of the time did not want municipalities to be in competition with the private sector and providing services that the private sector could provide.

Under O. Reg. 244/02 (*Fees and Charges*), a municipality (interpreted to also mean a MSB) could only charge what the service costs. This raised concerns for municipalities running landfills and the municipality’s ability to charge market prices and rates rather than their real fully costed amounts. If they were required to only charge fully costed tip fees, these tip fees would be lower than market rates and all of the regional waste would go to the cheap landfill, filling it up and not allowing sufficient room to meet municipal requirements.

Deferred benefit:

In the past, municipalities thought they could not include planned capital expenditures and a number of other administration costs in the fees charged for municipal services. This provision has been broadened to include deferred benefit costs for other services provided by the municipality, in addition to sewer and water. The revisions to the *Municipal Act, 2001* state more explicitly that municipalities can charge fees

⁴ One municipality has a legal opinion that a local board under old provisions of *Municipal Act* was a “body corporate”. They have used this opinion as a means of borrowing money directly from a bank and has established a line of credit with a bank.

which include an allowance for capital costs which will be incurred by the municipality in the future for a service that is not yet available but will be available at some later point. An example of this would be a municipality beginning to charge for capital costs being incurred to construct a sewer and water system, even though the intended customer is not yet hooked up to the system.

390. (1).

Deferred benefit

A fee or charge imposed for capital costs related to services or activities may be imposed on persons not receiving an immediate benefit from the services or activities but who will receive a benefit at some later point in time. 2006, c. 32, Sched. A, s. 163 (2).

Costs related to administration:

Costs related to administration refer to the ability of municipalities to charge for administrative costs and enforcement costs incurred by municipalities as part of the service in the “fees and charges” elements of the legislation. For example, if a municipality has a contract for \$60 per household it can add 10% to 15% (or whatever full costs are) to cover administration and enforcement costs.

390. (3).

The costs included in a fee or charge may include costs incurred by the municipality or local board related to administration, enforcement and the establishment, acquisition and replacement of capital assets. 2006, c. 32, Sched. A, s. 163 (3).

3.6 Charging of Fees When the Service Is Not Used

Municipal staff have raised a concern regarding how to deal with people who do not use the municipal solid waste management service all year, e.g. snowbirds who are in Florida for four months of the year and vacant properties which do not produce waste. The *Municipal Act, 2001* (current and previous versions) does not require a municipality to determine if a service which is provided is actually being used; municipalities can charge fees for services they are providing, whether or not the service is being used. The change in Bill 130 clarifies that municipalities can charge fees for services that they are mandated to provide.

390. (4).

A fee or charge may be imposed whether or not it is mandatory for the municipality or local board imposing the fee or charge to provide or do the service or activity, pay the costs or allow the use of its property. 2006, c. 32, Sched. A, s. 163 (3).

3.7 How Municipal Solid Waste Management Fees Can Be Charged and Collected

The amended *Municipal Act, 2001* does not set out rules regarding how a municipality collects fees (e.g. utility bill or separate item on tax bill). It explicitly states that the municipality or local board (MSB) may impose a fee or charge for the service provided.

Ability to charge variable rates using any preferred method of billing:

Variable rates can be charged for solid waste management in Ontario under the amended *Municipal Act, 2001*. Waste related fees can be shown on the property tax bill under “fees and charges”. This means

they are separate to the property tax. Municipalities or MSBs can use whatever service they like to bill and collect the fees (banks, electrical utilities, etc) and they can use any corporation or utility to collect fees – they are simply buying the service.

For example, in the case of water or wastewater, the fees can be split into a fixed element, which is charged simply because the infrastructure (pipes in the ground, treatment systems) are provided, and a variable fee which is based on usage. The same principle now can be applied to waste management services; charge a fixed fee for sending a truck down the road, and a variable fee based on how much waste is picked up. This fee structure has been adopted by the City of Vancouver for its variable rate garbage service.

By-laws re: fees and charges

- 391.** (1) Without limiting sections 9, 10 and 11, those sections authorize a municipality to impose fees or charges on persons,
- (a) for services or activities provided or done by or on behalf of it;
 - (b) for costs payable by it for services or activities provided or done by or on behalf of any other municipality or any local board; and
 - (c) for the use of its property including property under its control. 2006, c. 32, Sched. A, s. 163 (1).

Local board

- (1.1) A local board may impose fees or charges on persons,
- (a) for services or activities provided or done by or on behalf of it;
 - (b) for costs payable by it for services or activities provided or done by or on behalf of any municipality or other local board; and
 - (c) for the use of its property including property under its control. 2006, c. 32, Sched. A, s. 163 (1).

3.8 Adding and Removing Charges from the Property Tax Bill

Removing waste management costs from the property tax bill:

There has been some confusion about removing solid waste management costs from the residential property taxes and the impact of removing the cost from residential property taxes on the IC&I property taxes. It would be difficult to separate out the portion of taxes from residential and IC&I because the relative burdens for the different classes cannot be increased wherever they exceed the prescribed “range of fairness” (% tax burden between residential and IC&I) set by the province in 1998.

For instance, if residential solid waste management costs \$20 million and a municipality moved to a residential fee, they could not reduce residential taxes by \$20 million if it resulted in an IC&I tax ratio increasing to higher than the “range of fairness”. The overall tax burden would need to be reduced by \$20 million across all classes to keep ratios within boundaries permitted by the province.

The City of Toronto worked around this problem by providing a rebate to single family residents rather than removing the waste management costs from the property tax in the first year of the new financing system (2008-2009). Solid waste management will be fully financed through fees charged to households. One of the selling features for the plan was that the residential waste management system would no longer be a burden to business tax payers.

Amount owing added to tax roll:

A municipality can include fees on the tax bill as a separate charge for collection purposes. Section 398 allows a municipality to add unpaid fees and charges imposed by a municipality or local board to the

property tax roll for collection purposes. This is a “fee and charge” levy and adding it to the tax bill, however, does not turn the outstanding balance into unpaid property taxes; therefore, non-payment does not trigger a tax sale. Any outstanding “fees and charges” are typically cleared as part of a property sale.⁵

398.

(2) The treasurer of a local municipality may, and upon the request of its upper-tier municipality, if any, or of a local board whose area of jurisdiction includes any part of the municipality shall add fees and charges imposed by the municipality, upper-tier municipality or local board, respectively, to the tax roll for the following property in the local municipality and collect them in the same manner as municipal taxes:

1. In the case of fees and charges for the supply of a public utility, the property to which the public utility was supplied.

2. In all other cases, any property for which all of the owners are responsible for paying the fees and charges. 2001, c. 25, s. 398 (2); 2006, c. 32, Sched. A, s. 170 (2).

3.9 Transfer of Surplus

The previous Municipal Act established a caveat under Section 200 (2) relating to the transfer of surplus funds which read:

“Transfer of surplus - After providing for the expenditures under subsection (1), a board shall, when required by the municipality, pay all or part of the surplus revenues to the municipality and the amount paid forms part of the general funds of the municipality. 2001, c. 25, s. 200 (2)”.

This statement was previously interpreted to mean that the surplus monies collected by the MSB could not be kept strictly for waste management purposes but could be re-possessioned by the municipality for other purposes.

This would defeat one of the key benefits of a sustainable financing entity (being somewhat independent of other municipal services financially)

This section was repealed in the amended *Municipal Act, 2001*. The MSB needs to treat unplanned surpluses differently from a planned surplus (reserve fund, contingency funds). The MSB can collect funds for future capital expenditures under the deferred benefits section. These funds must be placed into Reserve Funds. Otherwise, management of unplanned surpluses (e.g. through unexpected high recycling revenues) must be addressed in the MSB by-law. This can be written to stipulate that annual surpluses be retained in Reserve Funds until needed for waste management system financing uses.

Solid waste management charges must be set at rates which ensure full cost recovery, to achieve a balanced budget or a revenue neutral operation. The by-law could require the MSB to set up a separate account in which fees are placed or it can enable the MSB to place the unplanned surplus funds into a reserve fund.

3.10 Providing Additional Services

Providing IC&I (Industrial, Commercial and Institutional) Service:

Under the amended Municipal Act, 2001, municipalities can provide service to the IC&I sector, or there are at least no prescribed restrictions to providing service to the private sector waste generators. A

⁵ If the fees are for a public utility (e.g. sewer, water), the amounts can be added to the property to which the utility is supplied. For other fees and charges, the amounts can only be added to the property if all of the owners are responsible for paying the fees and charges. The *Municipal Act, 2001* provides for certain unpaid fees to be added to the property tax roll and collected as taxes. The Minister of Municipal Affairs and Housing prescribes which fees have priority lien status. Currently solid waste is not a fee with priority lien status.

number of municipalities (i.e. Quinte, Bruce, Bluewater) provide commercial collection. Essex Windsor Solid Waste Authority provides collection, processing and disposal service to IC&I customers and bills for the service. There are no restrictions under the Municipal Act that would prohibit a MSB from providing services to IC&I customers.

Providing services outside the boundaries of the MSB:

Municipalities or MSBs can provide service outside of the MSB municipal boundaries, as long as there is an agreement in place with other municipalities affected or involved.

4. Municipal Services Corporation

With the amendments to the *Municipal Act, 2001*, establishment of a Municipal Business Corporation under Ontario Regulation 168/03 has been replaced by the Municipal Services Corporation Regulation 599/06.

Previous Municipal Business Corporation (Regulation 168/03)

Under the previous Municipal Act 2001, Ontario Regulation 168/03 (Municipal Business Corporations) permitted municipalities to establish corporations for certain purposes, including waste management. However, there were several key restrictions to the waste management related provisions of the regulation:

- A municipal business corporation (MBC) could operate and maintain a waste management service for collection, transfer, storage, disposal and recycling of residential waste, but could not own the land related to the waste management service. Ownership of the land remained vested in the municipality.
- An MBC could also construct, operate, maintain and own (including land ownership) waste management facilities for the collection, transfer, storage, disposal and recycling of residential waste. However, the corporation may only construct, operate, maintain and own facilities that were new when the corporation first carried out business with respect to them.
- Before incorporating an MBC, the participating municipalities needed to undertake a business case study that addressed a significant number of financial, accountability and risk issues (outlined in Subsection 6(2) of the Regulation).

The Municipal Business Corporation regulation structure permitted municipalities to set up corporations to provide residential waste management service but expressly prohibited these corporations from providing commercial collection service. Their collection service was restricted to residential locations only. Furthermore, the regulation restricted the assets that could be owned by the Municipal Business Corporation.

This regulation was of concern to municipalities with landfills, MRFs or composting facilities used by the private sector on a fee for service basis. If these municipalities wanted to raise capital to expand the facilities but felt there was a lack of clarity where processing (i.e. municipal MRFs and composting facilities) and landfill services were provided to IC&I customers, as well as being used to manage the residential municipal waste. In some cases, the municipal landfill is the best location for local haulage companies to dispose of IC&I waste, therefore a prohibition on any commercial waste management activity, if it included the landfill, presented a number of challenges.

New Municipal Services Corporation (Regulation 599/06)

Under the new regulation, municipalities have been provided with a broad scope within which to operate. The corporation can compete with the private sector for all waste management services, it may own its existing assets, and although it requires a business case the regulation does not define how it must be developed or the requirements.

Should the municipality choose to set up a corporation to run waste management services, the municipality can choose to remain 100% publicly owned or it can choose not to be the owner. Water and wastewater services and corporations offering youth recreation programs are the exceptions to this rule: they still need to be 100% municipally owned, and cannot provide shares to a private company. There is nothing prohibiting a municipality from partnering with a private waste company and setting up a new corporation.⁶

⁶ The municipality can sell shares to a private company but municipality must be the one to set it up.

The MSC has the freedom to borrow money independently of the municipality. The MSC becomes a commercial enterprise which enables it to borrow as any other corporation can – independently borrow apart from municipality (unless 100% publicly owned). If the MSC is 100% publicly owned (wholly municipal), the banks still may look to the municipality to guarantee the loan.

Setting up and/or dissolving a Municipal Service Corporation is much more complicated for a municipality than setting up or dissolving a Municipal Service Board. Municipalities have become gun-shy about forming corporations based on experience with electrical utilities in recent years. Electrical utilities in some cases started off as municipally owned entities and then became corporations with the restructuring of the power and electricity sector in the last 10 years. Electrical utilities were sold off to other corporations in a number of cases. The municipalities lost control over the management of the electrical utilities and of the rates charged to customers. Residents still expected the protections they were used to under municipal control, and complained to municipal politicians about issues that the municipality could no longer control. There were also unforeseen challenges involved in dissolving the corporations. If pursuing this option, clear rules of engagement are needed.