

Item

Meeting

2007 Feb 05



City of  
Burnaby

COUNCIL REPORT

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**TO:** CITY MANAGER

**DATE:** 2007 January 31

**FROM:** DIRECTOR FINANCE

**FILE:** Trade

*Reference: Internal Trade*

**SUBJECT: THE TRADE, INVESTMENT AND LABOUR MOBILITY AGREEMENT (TILMA) –BRITISH COLUMBIA & ALBERTA**

**PURPOSE:** To provide Council with information regarding the TILMA.

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**RECOMMENDATION:**

this report be received for information.

a copy of this report be sent to the Union of B.C. Municipalities.

**REPORT**

At its meeting held on 2007 January 08, Council received correspondence from the provincial Official Opposition regarding the potential effects, for local government, of the *Trade, Investment, and Labour Mobility Agreement (TILMA)*.

The TILMA comes into effect 2007 April 01 with a two year transition period. The agreement covers the provincial government and its entities; including: Crown corporations, government-owned commercial enterprises, local government, regional districts, school boards, health and social services, and non-governmental bodies that exercise authority delegated by law (e.g.: Workers Compensation Board).

Municipalities are exempt from the provisions of TILMA during the transition period (to 2009 April 01) except being bound to:

- involvement in further consultations and negotiations to identify any special provisions, exclusions, and other transitional provisions.
- working on reconciling differences in standards and regulations, investment, business subsidies, labour mobility, and procurement of professional services of architects and engineers.

-not establishing new or amending or renewing existing standards or regulations that operate to restrict or impair trade, investment or labour mobility.

The agreement is intended to liberalize trade, investment and labour mobility beyond the level provided by the *Agreement on Internal Trade (AIT)* that was brought into effect for British Columbia on 2002 March 31.

Although characterized as building on or furthering the AIT, TILMA is structured to be very broad and encompassing (inclusive) unless specific exclusion are provided. The AIT only covered certain specified areas. This fact alone makes the potential for challenges under the new agreement much more probable than the under the AIT.

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General Rules

- A summary of the TILMA general provisions is provided below.

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No Obstacles

- Municipalities are committed to ensuring that any measures they implement don't impair trade, investment or labour mobility between the provinces. This has the potential to impact the regulation of business, zoning requirements and other bylaws that may affect commercial enterprises and must be taken into consideration when formulating or changing municipal policy.

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Non-Discrimination

- Unless there is an actual cost-of-service differential; *like, directly competitive, or substitutable goods; persons; services and investors or investments* must be given the highest level of consideration that is currently provided to the best of our current suppliers; or our own forces. This is further clarified by the statement that municipalities are not allowed to protect or favour goods or services that are provided by their own forces. (*"Legitimate objective" does not include protection or favouring of the production of an enterprise of a Party*)

The agreement doesn't seem to provide for quality as an allowable differentiator. This could have an impact on the selection of successful proponents in tenders for both goods and services.

Clarification is also needed regarding the impact on financial investments that require the assessment of relative risks; costs may be similar but risk is a critical consideration when placing municipal funds with external investment institutions.

The non-discrimination clause may also impact a municipality's ability to take on or significantly alter its current functions in areas that are also provided by the commercial sector: internal sign shops, refuse pick-up, janitorial service or any other internally provided service not considered a "legitimate objective".

### Standards and Regulations

The agreement states that the existing standards and regulations of each party that impact on trade, investment or labour mobility must be recognized by the other and/or reconciled to remove the differences. This section provides the incentive for reconciliation at the lowest common denominator; reconciling standards to higher levels would be contrary to Article 3(1) ("*...measures do not operate to restrict or impair trade....*") and Article 6(1)b ("*...not more restrictive to trade, investment or labour mobility than necessary to achieve that legitimate objective .....*").

### Legitimate Objectives

The city is allowed to adopt measures that may impair trade, investment or labour mobility between the provinces for certain specified objectives but only to the extent that absolutely necessary to achieve the objective (lowest standard possible); the specified legitimate objectives are:

- Public security and safety
- Public order
- Protection of human, animal or plant life or health
- Protection of the environment
- Conservation and prevention of waste of non-renewable or exhaustible resources
- Consumer protection
- Protection of the health, safety and well-being of workers
- Provision of social services and health services
- Affirmative action programs for disadvantaged groups
- Prevention or relief of critical shortages of essential goods

The civic measures dealing with quality (quality of life, neighbourhoods, etc.) are not covered as legitimate objectives and are therefore subject to challenge under the agreement. For example, zoning to minimize industrial/residential interface issues could be challenged; there are many areas in the city where the interface is an issue, based on historical development. Any bylaws restricting new development could be challenged based on its restriction of trade and the fact that historical examples do exist where commercial enterprises are built adjacent to residential areas.

Regardless of the intent, the breadth of these sections provides the potential for virtually unlimited challenges to city bylaws, zoning, and practices.

### Procurement

- In order to remove discretion and ostensibly provide open and non-discriminatory access to procurement between provinces, the AIT established thresholds over which tenders must be issued and posted on an electronic tendering system or on the Provincial system.

The municipalities will be required to tender goods, services, and construction that exceed much lower thresholds than those previously implemented under the AIT:

	<u>TILMA</u>	<u>AIT</u>
Goods	\$10,000	\$100,000
Services	\$75,000	\$100,000
Construction	\$100,000	\$250,000

The Greater Vancouver Municipal Purchasing Group (includes the City of Burnaby) has written the Minister of Economic Development, the Honourable Colin Hansen, asking that the restrictive thresholds in TILMA be raised to a more practical level due to the costs of preparing documents and advertisements, for little return, for relatively small dollar purchases that are more appropriately handled by a less formal method of acquiring competitive quotes.

#### Enforcing the Agreement

- The agreement provides individuals and businesses the right to launch complaints for lack of compliance or for measures that are felt to impair trade, investment or labour mobility between the provinces. A panel would be established to adjudicate the matter with the authority to award up to \$5 million for each complaint.

#### Impacts, savings and job creation

- The Conference Board of Canada prepared a paper for the B.C. Ministry of Economic Development entitled *An Impact Assessment of the BC/Alberta Trade, Investment and Labour Mobility Agreement* that is often cited for its estimates of job creation and increase on the Gross Domestic Product of British Columbia.

The methodology and resulting calculations for the estimates have been the source of some controversy. The suspect components of the methodology include the apparent lack of relationship of the survey scoring to specific GDP percentage impacts, exempt industries included in the analysis thereby overestimating the impacts of the agreement and including capital intensive industries (with low labour content) in the calculation, resulting in a likely over estimation of job creation.

The estimate of the positive impacts of the implementation of TILMA requires much more, and much more rigorous, analysis before implementing such a broad change to provincial public policy.

### Consultation

- According to the provincial government consultation on the implementation of TILMA has been limited to press releases from the joint cabinet meetings and consultations with ministries, business groups, academic institutions and regulatory bodies.

The municipalities and public have not been engaged in the discussions and there has been no apparent analysis of the real impacts on the quality of life issues dealt with by municipal government regulation and bylaws.

### Next Steps

- During the transition period from 2007 April 01 to 2009 April 01 Alberta and British Columbia are to undertake “consultations” to reconcile the differences in standards and regulations that govern about 60 occupations listed in the agreement. Also, municipalities are prohibited from establishing new, or amending existing, standards or regulations that may operate to restrict or impair trade, investment or labour mobility.

The Trade, Investment, and Labour Mobility Agreement (TILMA) has the potential to have far reaching negative impacts on municipal objectives; therefore it is recommended that Burnaby ask the Union of B.C. Municipalities to review the agreement and consult with the provincial government and municipalities, with the intent of making required changes, exempting municipalities, or having the province withdraw from the agreement in its entirety.

This report is provided for the information of Council.

Rick Earle  
DIRECTOR FINANCE

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