

# BL 12-035 - Ambulance Station Debenture Bylaw #25-2012 Detail

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First Reading of Debenture Borrowing Bylaw #25-2012 – EMS Ambulance Station

**Legistar**

**6/17/2012**

## Detailed Report

The following clauses in the bylaw are worded in this way to ensure that the municipality is responsible for the debt. This is a requirement of the Alberta Capital Finance Authority:

### **NOW, THEREFORE, THE COUNCIL OF THE MUNICIPALITY DULY ASSEMBLED, ENACTS AS FOLLOWS:**

1. That for the purpose of constructing the Emergency Medical Services (EMS) Ambulance Station the sum of FIVE MILLION SEVEN HUNDRED AND NINETY FOUR THOUSAND TWO HUNDRED DOLLARS (\$5,794,200) be borrowed from the Alberta Capital Finance Authority or another authorized financial institution by way of debenture on the credit and security of the Municipality at large, of which amount the full sum of \$5,794,200 is to be paid by the Municipality at large.
4. The Municipality will enter into a 20 year lease agreement with the Province of Alberta, Alberta Health Services Department for the use of the completed ambulance station. The revenue from this lease will be sufficient to offset the cost of the borrowing authorized in this bylaw. In the event that there are insufficient funds to pay the debt the Municipality shall levy and raise in each year municipal taxes sufficient to pay the indebtedness.

The reason that these sections are stated in this way is because the municipality is totally responsible for repaying the debt no matter what. The municipality must raise the funds required to pay this debt through taxation unless there is another source of funds that can be used to pay the debt. In this case that source of funds will be the revenue from the lease agreement with the Province of Alberta, Alberta Health Services Department. The revenue from the lease agreement will pay the annual cost of the debt and also provide a reasonable rate of return on the investment. If for some reason the Province defaults on the lease agreement the municipality will still have to repay the debt likely by collecting taxes to pay it. This is the reason that the bylaw must be structured in this fashion.

It will be important then to ensure that the bylaw advertisements also clearly state that the proposed lease agreement will totally pay the cost of this debt plus provide a net return on investment (potentially reducing taxes) and as a result will have no financial impact on the taxpayer.

The following excerpts from the MGA regarding the borrowing process are provided here for convenience:

## **Borrowing**

### **Borrowing bylaw**

**251(1)** A municipality may only make a borrowing if the borrowing is authorized by a borrowing bylaw.

**(2)** A borrowing bylaw must set out

(a) the amount of money to be borrowed and, in general terms, the purpose for which the money is borrowed;

(b) the maximum rate of interest, the term and the terms of repayment of the borrowing;

(c) the source or sources of money to be used to pay the principal and interest owing under the borrowing.

**(3)** A borrowing bylaw must be advertised.

1994 cM-26.1 s251

### **Use of borrowed money**

**253(1)** Money obtained by a municipality under a borrowing must be used for the purpose for which it is borrowed.

**(2)** Money obtained by a municipality under a borrowing for the purpose of financing a capital property may be used for an operating purpose if the amount spent is available when it is needed for the capital property.

1994 cM-26.1 s253

### **Capital property - long-term borrowing**

**258(1)** This section applies to a borrowing made for the purpose of financing a capital property when the term of the borrowing exceeds 5 years.

**(2)** This section does not apply to a borrowing referred to in section 263.

**(3)** The expenditure for the capital property must be included in a budget.

**(4)** The term of the borrowing must not exceed the probable lifetime of the capital property.

**(5)** If

(a) a borrowing bylaw that authorizes the borrowing has been passed,

(b) the money to be borrowed is insufficient because the cost of the capital property has increased, and

(c) the increased cost does not exceed 15% of the original cost of the capital property, the borrowing bylaw that authorizes the borrowing of the increased cost does not have to be advertised.

1994 cM-26.1 s258;1996 c30 s15

### **Validity of borrowings, loans and guarantees**

**273(1)** A borrowing made by a municipality and a loan or guarantee of a loan made by a municipality under section 264 and any legal instrument issued under the borrowing, loan or guarantee is valid and binding on the municipality and is not open to question in any court if the borrowing is authorized by a borrowing bylaw or the loan or guarantee is authorized by bylaw.

**(2)** A borrowing bylaw or a bylaw authorizing a loan or guarantee is, for the purposes of this section, a valid bylaw if

(a) no application has been made to the Court of Queen's Bench to have the bylaw declared invalid within 30 days after the bylaw has been passed, or

(b) an application has been made to the Court of Queen's Bench to have the bylaw declared invalid within 30 days after the bylaw has been passed and, on the final disposition of the application and any appeal, the application is dismissed.

1994 cM-26.1 s273

### **Civil liability of councillors**

**275(1)** When a municipality makes a borrowing, loan or guarantees the repayment of a loan that causes the municipality to exceed its debt limit, a councillor who voted for the bylaw authorizing the borrowing, loan or guarantee is liable to the municipality for the amount borrowed, loaned or guaranteed,

unless the borrowing, loan or guarantee has been approved by the Minister.

**(2)** If subsection (1) applies to more than one councillor in respect of a bylaw, the councillors are jointly and severally liable to the municipality for the amount borrowed, loaned or guaranteed under the bylaw.

**(3)** The liability may be enforced by action by

(a) the municipality,

(b) an elector or taxpayer of the municipality, or

(c) a person who holds a security under a borrowing made by the municipality.

1994 cM-26.1 s275

### **Requirements for advertising**

**606(1)** The requirements of this section apply when this or another enactment requires a bylaw, resolution, meeting, public hearing or something else to be advertised by a municipality, unless this or another enactment specifies otherwise.

**(2)** Notice of the bylaw, resolution, meeting, public hearing or other thing must be

(a) published at least once a week for 2 consecutive weeks in at least one newspaper or other publication circulating in the area to which the proposed bylaw, resolution or other thing relates, or in which the meeting or hearing is to be held, or

(b) mailed or delivered to every residence in the area to which the proposed bylaw, resolution or other thing relates, or in which the meeting or hearing is to be held.

**(3)** A notice of a proposed bylaw must be advertised under subsection (2) before second reading.

**(4)** A notice of a proposed resolution must be advertised under subsection (2) before it is voted on by council.

**(5)** A notice of a meeting, public hearing or other thing must be advertised under subsection (2) at least 5 days before the meeting, public hearing or thing occurs.

**(6)** A notice must contain

(a) a statement of the general purpose of the proposed bylaw, resolution, meeting, public hearing or other thing,

(b) the address where a copy of the proposed bylaw, resolution or other thing, and any document relating to it or to the meeting or public hearing may be inspected,

(c) in the case of a bylaw or resolution, an outline of the procedure to be followed by anyone wishing to file a petition in respect of it, and

(d) in the case of a meeting or public hearing, the date, time and place where it will be held.

**(7)** A certificate of a designated officer certifying that something has been advertised in accordance with this section is proof, in the absence of evidence to the contrary, of the matters set out in the certificate.

**(8)** The certificate is admissible in evidence without proof of the appointment or signature of the person who signed the certificate.

1994 cM-26.1 s606