

HOW TO PETITION

THE ALBERTA LEGISLATURE
TO PASS A **PRIVATE BILL**

NOVEMBER 2011



PETITIONER'S GUIDE **PRIVATE BILLS**

Office of Parliamentary Counsel
Legislative Assembly of Alberta

PETITIONER'S GUIDE

TO PRIVATE BILLS PROCEDURE

How to petition the Alberta Legislature to pass a Private Bill

What are Private Bills?

Private Bills are proposed legislation like any other Bill put before the Legislative Assembly. Once passed, they become Acts and are laws, enforceable in the courts as any other law. The difference is that Private Bills (not to be confused with “Private Members’ Bills”) are initiated by an individual or group and affect only one or a few persons, a corporation, service club, charity, etc. , but not the population as a whole.

What other types of Bills are there?

Public Bills are truly “public” in that they propose to regulate things of a much wider nature than Private Bills. A Public Bill might attempt to regulate an entire industry, impose a new tax, amend existing legislation, affect the administration of justice, and so on. A Public Bill, if passed, applies throughout the province and applies to everyone. Public Bills that are introduced by members of Cabinet as instruments of that government’s policy are referred to as “Government Bills”. Public Bills introduced by Members of the Legislative Assembly (MLAs) who are not Cabinet Ministers are called “Private Members’ Public Bills” (or “Private Members’ Bills”). Sometimes, Government Bills are introduced by Private Members but this change of categories must be approved by the Assembly. This guide will deal with the least common type of Bill, being a “Private Bill”.

What are Private Bills used for?

Private Bills are proposed laws to accommodate something for which there is no other way to obtain a remedy. A petitioner (the person requesting the remedy) might want something which is not available under existing laws.

Another reason for petitioning for a Private Bill might be to obtain an exemption from the general application of public legislation that governs the laws affecting everyone else. To obtain an exemption, the reasons must be overwhelming and unique. In such a case, the Legislative

Assembly might well be persuaded that an application of the public law would not be equitable in the circumstances. Occasionally, outdated or outmoded laws still exist. A Private Bill can exempt the petitioner from the effect of the law until such time that the Government might repeal the old law entirely.

Sometimes a situation may arise that is unique and so exceptional that an application of the general laws of the province might be perceived to create a miscarriage of justice. The courts may have little room to manoeuvre in such cases. On the other hand, the Legislature can, in remarkable situations, make an exception to the law. For example, in exceptional situations a limitation period might be extended or a tax exemption might be provided to exempt the petitioner from either provincial or municipal taxation. The reason for such a request, however, cannot be flippant, frivolous, or otherwise designed to seek a privileged position amongst one’s competitors.

The Legislative Assembly will usually require an overwhelming reason that would justify or necessitate legislating such an exemption, and such cases are rare. In many cases, the Assembly may refuse to pass a Private Bill exempting a petitioner from the operation of public law even though it might be seen by some to create an injustice. It is the Legislative Assembly’s first priority to consider public policy issues in the context of providing for the population as a whole. If an exemption can be accommodated without resulting in inequity to others, the exemption might be granted. However, if the overall ramifications of such legislation would create a serious public policy difficulty, such as dozens of petitioners approaching the Legislature to obtain an exemption for themselves from laws they found merely inconvenient or cumbersome, the Assembly may well refuse to pass such a provision to avoid a run on extraordinary remedies.

It is important to note that the purpose of a Private Bill is to provide a remedy where no other remedy exists. Petitioners are well advised to consult the applicable legislation to see if there is a process or means in place to achieve their desired objective. If something can be achieved through existing legislation, the courts, a government department or agency, a private firm, or a lawyer, the petitioners will likely be asked why they are not following the existing avenues to accomplish their objective.

Who do I contact to get a Private Bill?

The Standing Committee of the Legislative Assembly on Private Bills administers Private Bill petitions through the Office of Parliamentary Counsel. Parliamentary Counsel are lawyers who work for the Legislative Assembly, not the Government. They have expertise in both legislative drafting and the parliamentary procedures required to have a Private Bill considered by the Legislature on a petitioner's behalf. The Office will check the drafting and arrange for printing of the Bill, arrange for a hearing before the Private Bills Committee, advise the petitioners on the process, and advise the Committee on the Bill.

Parliamentary Counsel can examine witnesses and review other evidence during the hearing so that he or she may advise the members of the Committee on various aspects of the proposed legislation. The Office of Parliamentary Counsel is located at:

Office of Parliamentary Counsel

800 Legislature Annex
9718 - 107 Street
Edmonton, AB T5K 1E4
Telephone: 780.422.4837
Fax: 780.427.0744
e-mail: parliamentary.counsel@assembly.ab.ca

What steps are involved in petitioning?

The procedures for petitioning for a Private Bill are set out in the Standing Orders of the Legislative Assembly, which is the "rule book" of the Assembly. First, the petitioner must ensure that the remedy he or she seeks is within provincial jurisdiction. For provincial or municipal matters the provincial Legislature is the appropriate body to petition. For federal matters such as divorce, military issues, exemption from or variance of the terms of a federal statute, immigration, citizenship, etc. , a Private Bill must be requested from the Parliament in Ottawa.

Secondly, the petitioner must be aware of the fact that his or her Private Bill can only be dealt with while the Legislature is in session. All documents, advertising, and payment of fees must be received in the Parliamentary Counsel Office no later than 15 days after the first day of a session. The Legislature Session typically commences in February, and that date is always publicized. The Clerk of the Assembly places a notice of the deadline for receiving petitions in daily newspapers across the province and in *The Alberta Gazette*.

Step 1: Preparing the Petitions

In brief, the petitioner must prepare and sign two petitions, one to the Lieutenant Governor and one to the Legislative Assembly, which briefly describe the objects of the Private Bill the petitioner desires. Examples of the two petitions are provided in Schedules A and B attached at the end of this booklet. The format should be the same in the preamble and concluding "prayer". The petitioner must briefly describe the objects of the Bill where indicated. The petition need not be long, technical, or go into great detail about the legislation requested. The petition may be signed by a solicitor on behalf of the petitioner(s) or by the petitioner(s) directly. There is no minimum number of petitioners required, but in some instances the petitioners must be 18 years of age or more.

Step 2: Drafting the Bill

The petitioner must submit in duplicate, in Alberta legislative drafting style, a Bill the petitioner would like passed. If the Bill requested is a **new** statute, headings summarizing the sections must accompany the draft, one heading for each new section. Subsections and clauses should not have headings. If the Bill requested amends an existing Private Act (an **amending** Bill), explanatory notes must be completed for placement on the page opposite each major amending provision in the Bill.

There are a number of drafting rules to consider in Alberta. The following are a few examples.

- a) As much as possible, language should be gender neutral (e.g. "he" or "she" should be avoided, and "the individual" or "the person", etc. , should be used).
- b) Each section or subsection should contain no more than one sentence. Clauses and subclauses must be included as part of the one carefully drawn sentence in that section or subsection.
- c) Alberta no longer uses "long form" titles (e.g. "An Act to Provide For the Incorporation of ABC College"). The use of short titles is encouraged (e.g. "ABC College Act").
- d) Clauses and subclauses should appear at the end of a section or subsection, not in the middle. For guidance, solicitors should consult the Statutes of Alberta (non-consolidated, yearly issues), which include both Public and Private Acts.

Step 3: Advertising

A notice must be published once a week for two consecutive weeks in a newspaper published in Alberta. The notice must appear in the “legal notices” section of a newspaper that circulates in the region where the petitioner lives or where the subject matter of the Private Bill is located. **The notice must also be published in one issue of *The Alberta Gazette*, which is published twice a month.** The editor of *The Alberta Gazette* can be reached at 780.427.4952.

While the Private Bills Committee may waive certain deadlines or advertising requirements in extraordinary circumstances, such an exception may not be granted if the only reason for not being able to meet the deadline is insufficient preparation in advance for the upcoming session.

Petitioners are advised to advertise well in advance so advertising is completed by the deadline date, but there are **two important dates** to remember.

November 1 and the 15th Day After Session Commences:

1. Petitioners should be aware that advertising must not commence earlier than the 1st day of November immediately before the next session, which is typically in February of the following year.
2. The advertising must be completed by the **15th day after the opening day of session.**

Therefore, if a Bill is to be presented in the Spring of 2012, advertising must not be commenced earlier than November 1, 2011, and must be completed by the 15th day after opening day of session.

Format of the Advertisement

The Notice appearing in *The Alberta Gazette* and the newspaper must follow the format in the attached Schedule C. The advertisement should briefly set out the objects of the Bill or the remedy requested from the Legislature. It is important to ensure that the Notice in *The Alberta Gazette* and the newspaper follows the format in Schedule C.

Statutory Declarations

Statutory Declarations must be completed both for the advertising in the newspaper and the advertising in *The Alberta Gazette*. Each declaration should accompany the application package sent to the Legislative Assembly. *The Alberta Gazette* and most major newspapers will be able to assist in the completion of the Statutory Declarations. A copy of the advertisement should be attached as an Exhibit to each Statutory Declaration.

Step 4: Finding an MLA to Sponsor the Bill

Only a Private Member (an MLA not in Cabinet) can introduce a Private Bill in the Assembly. Accordingly, the petitioner should approach a Private Member to sponsor the Bill. The MLA may be the petitioner’s own elected representative, but it is not necessary to use the MLA from the petitioner’s own constituency. Any Private Member may sponsor the Bill, and it is irrelevant whether the MLA is from the government or an opposition party. Private Bills are not typically reflective of any party’s platform or ideology, so party affiliation of the sponsoring MLA need not be a consideration.

The MLA need not personally support the objects of the Bill. It is for the Assembly itself to decide whether or not the Bill will be passed, and it is every citizen’s right to petition the Assembly to consider a Private Bill.

A good place to start is the petitioner’s MLA or, if the petitioner is unfamiliar with any MLA who might sponsor the Bill, assistance may be obtained from the Office of Parliamentary Counsel.

Step 5: Fees

A fee of \$200 is required at the time of application for a Bill not exceeding 10 pages (450 words per page) and an additional \$10 per page in excess of 10 pages. Remittance should be made by certified cheque, law firm cheque, or money order made payable to the Minister of Finance – Legislative Assembly Office. Payment should accompany all other documents. Fees are not refundable in the event the Bill is not passed by the Assembly or the Bill is withdrawn for any other reason.

What other points are there to consider?

It is always wise to check with the Office of Parliamentary Counsel well in advance of petitioning the Legislative Assembly for a Private Bill. Depending on the type of Bill requested, other authorities or government departments may have to be consulted. Certain individuals whose rights may be affected by the Private Bill may also have to be notified directly if possible.

Parliamentary Counsel are in a position to advise petitioners of the requirements for a Private Bill and give assistance in the drafting of such a Bill so that it is consistent with Alberta’s legislative drafting style.

FINAL CHECKLIST

Before the 15th day after the commencement of a session, the petitioner must have submitted to the Office of Parliamentary Counsel the following items:

1. Petition to the Lieutenant Governor (2 copies);
2. Petition to the Legislative Assembly (2 copies);
3. Draft Bill (2 copies);
4. Statutory Declaration of advertising in 1 issue of *The Alberta Gazette*;
5. Statutory Declaration of advertising in 2 issues of a newspaper published in Alberta;
6. Required fee made payable to Minister of Finance - Legislative Assembly Office;
7. Name of the MLA who has agreed to sponsor the Bill, if arranged;
8. Any other materials which may be relevant to the Private Bills Committee in considering the petitioner's application (e. g. similar Private Acts from previous years or other jurisdictions, certificates from other authorities or individuals, background, etc.).

What happens at the hearing?

Once the complete application is received in the Office of Parliamentary Counsel, assistance will be given where necessary to adjust drafting, documentation, and so on. As the Committee's lawyers, Parliamentary Counsel advise the Members about the Bill. Before the hearing and if all the documents are in order, the MLA sponsoring the petitioner's Bill will introduce the Bill in the Assembly (first reading). After first reading the Bill is referred to the Private Bills Committee.

At present, Private Bills Committee meetings are scheduled on Tuesday mornings during session. Once the petitioner or the petitioner's solicitor is advised of the hearing date, the petitioner, counsel and any witnesses relevant to the application are expected to attend at the designated time and location. Petitioners and counsel are expected to dress appropriately for attendance at the Legislative Assembly, although lawyers do not have to gown.

Once the hearing commences, the petitioner or the petitioner's counsel will be invited to make a brief presentation to the Committee about the reasons for the Private Bill requested. The Committee, which is comprised of MLAs from all parties, may direct questions to any of the parties or witnesses. Certain questions may be directed to the parties from Parliamentary Counsel, who are responsible for advising Committee members on points of the law, possible contentious issues in the Bill, and recommending certain considerations of the Bill's contents. All evidence is given under oath, just as in a courtroom. One interesting contrast to a court of law is that even the petitioner's counsel is sworn in because the Legislative Assembly is a separate jurisdiction independent of the courts.

The hearing is usually fairly informal in style for the petitioners and witnesses. Parliamentary Counsel will advise on all procedural issues and protocol before the hearing. While the procedure may seem somewhat formal or intimidating to a casual observer, the Chair will ensure that parliamentary procedures are adhered to, so the parties may relax about that aspect of the hearing and simply concentrate on their presentation and answers to questions that may be asked of them.

In addressing the members of the Committee, the parties should use the MLA's proper name (e. g. Mr. _____, Ms _____, Mrs. _____) or just sir and ma'am and the Chair of the Committee as "Mr. Chair" or "Madam Chair", as applicable.

As a final note, petitioners should be aware that persons whose rights may be adversely affected by the Bill or interested government departments might wish to give

evidence to the Committee to oppose the application. The petitioner will be advised in advance of any interested parties who will be making a presentation, and the petitioner will be given the opportunity to respond to any issues raised, or even to cross-examine should the Committee deem it appropriate. Unwilling witnesses may also be summoned to appear by a warrant of the Legislative Assembly pursuant to the *Legislative Assembly Act*. Only the Private Bills Committee by resolution can authorize the issuance of a warrant.

How will the Bill proceed after the hearing?

Once the hearing is completed, the petitioner(s) will be excused by the Chair. Consideration of the Bill does not usually occur on the date of the hearing. The Committee may make one of three recommendations to the Assembly for each Private Bill:

1. to proceed as originally presented in the House;
2. to proceed with certain amendments as recommended by the Committee; or
3. not to proceed.

If the Bill is recommended to proceed or to proceed with amendments, it will go to second reading and, if it passes, then to Committee of the Whole, where amendments are made. If the Bill passes Committee of the Whole, it goes to third reading and, finally, Royal Assent. The Bill, unless otherwise stated, will come into effect on the beginning of the day the Bill is given Royal Assent. The petitioner will be advised of the status of the Bill if and when it passes.

While it is unusual to require changes to the text of a Bill after it is submitted, changes sometimes are necessary when unforeseen circumstances arise. In the event of a change, Parliamentary Counsel should be advised immediately so that changes may be implemented in time.

Any questions may be directed to:

Office of Parliamentary Counsel

800 Legislature Annex

9718 - 107 Street

Edmonton, AB T5K 1E4

Telephone: 780.422.4837

Fax: 780.427.0744

e-mail to: parliamentary.counsel@assembly.ab.ca

This Guide offers general information on the Private Bills process. It is not intended to provide legal opinions on specific issues. Readers requiring advice on specific legal issues should consult their legal adviser.

SCHEDULE A

Form of petition to Lieutenant Governor for a Private Bill

To His Honour The Lieutenant Governor of the Province of Alberta.

The Petition of the Undersigned **John Smith** and **Mary Smith**, of the **City of Edmonton**, in the Province of Alberta, humbly shows:

That *(here state the object desired by the petitioner in soliciting a Private Act)*

Wherefore your petitioner humbly prays that Your Honour may be pleased to sanction the passing of an Act for the purposes mentioned.

And as in duty bound your petitioner will ever pray.

(Signature)

(Date)

SCHEDULE B

Form of petition to the Legislative Assembly for a Private Bill

To the Honourable, the Legislative Assembly of Alberta, in Legislature Assembled:

The Petition of the Undersigned **John Smith** and **Mary Smith**, of the **City of Edmonton**, in the **Province of Alberta**, humbly shows:

That (here state the object desired by the petitioner in soliciting a Private Act)

Wherefore your petitioner humbly prays that Your Honourable Assembly may be pleased to pass an Act for the purposes mentioned.

And as in duty bound your petitioner will ever pray.

(Signature)

(Date)

SCHEDULE C

Form of advertisement in *The Alberta Gazette* and newspaper for a Private Bill

NOTICE

Name of Proposed Private Act Here

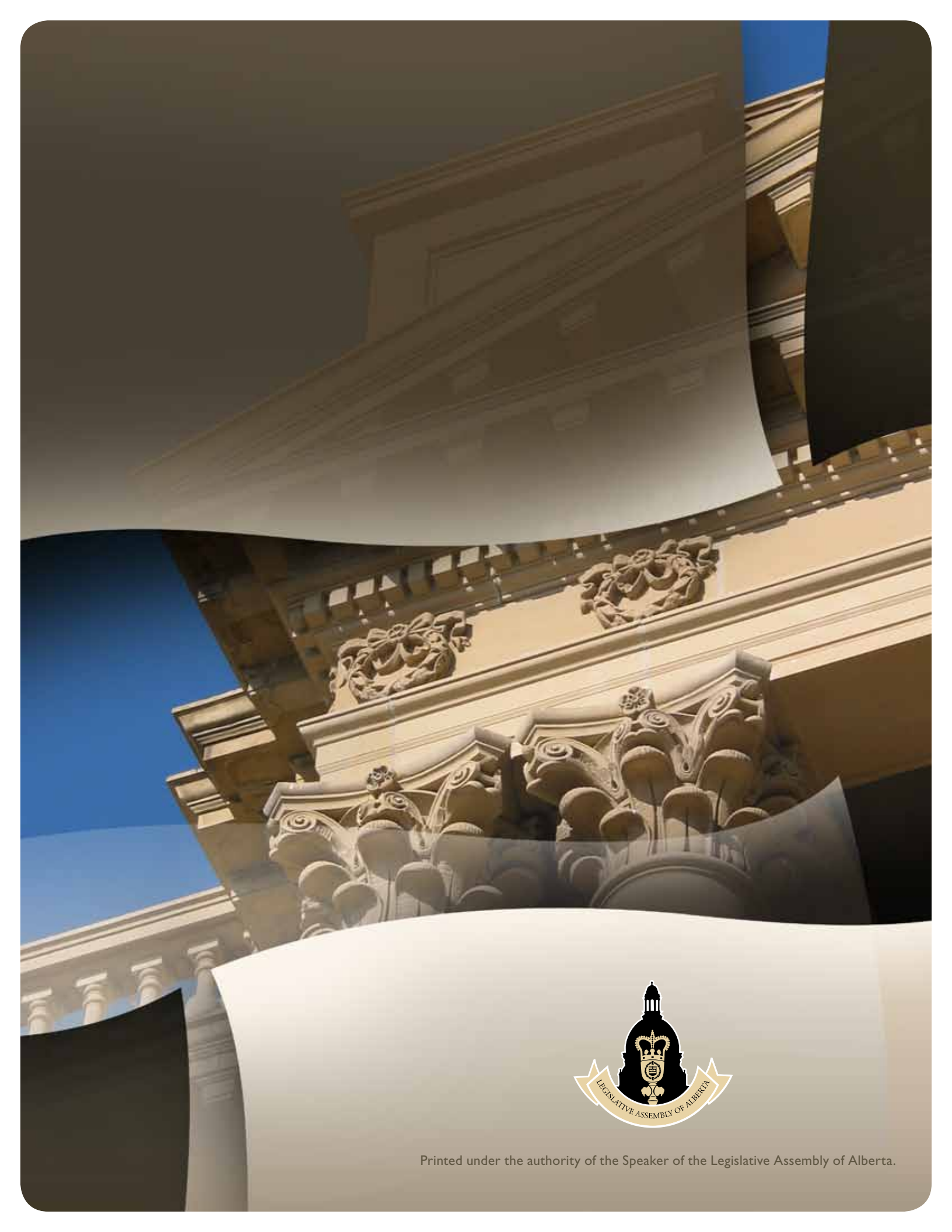
NOTICE is hereby given that petitions will be submitted by John and Mary Smith to the Lieutenant Governor and the Legislative Assembly of the Province of Alberta at its next session for the passage of a Bill that

(here state the object desired by the petitioner in soliciting a Private Act).

Any person whose rights or property are materially affected by the proposed legislation may contact the Legislative Assembly in writing no later than the 15th day following the opening day of session should they wish to make a representation relevant to this application. Correspondence should be addressed to the Office of Parliamentary Counsel, 800 Legislature Annex, 9718 - 107 Street, Edmonton, Alberta, T5K 1E4. Telephone 780.422.4837. Fax 780.427.0744. E-mail parliamentary.counsel@assembly.ab.ca

DATED at the City of Edmonton, in the Province of Alberta, this ____ day of _____, 201__.

(Name(s) and address(es) of petitioner(s) or petitioner's counsel)



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