Bill 130, Municipal Statute Law Amendment Act, 2006

AMO Written Submission to the Standing Committee on General Government

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Association of
Municipalities
of Ontario

393 University Avenue, Suite 1701
Toronto, ON M5G 1E6 Canada
tel: 416-971-9856 fax: 416-971-6191
email: amo@amo.on.ca
website: www.amo.on.ca

Introduction:

The Association of Municipalities of Ontario – AMO – represents Ontario's municipal governments and advocates on behalf of those governments and the property tax payers and citizens they represent. AMO's position on the *Municipal Act* review and this Bill in particular was prepared by our Municipal Act Working Group; involving the Association of Municipal Managers, Clerks and Treasurers of Ontario (AMCTO), the Municipal Finance Officers Association (MFOA), the Ontario Municipal Managers Association (OMMA), the Municipal Law Departments Association of Ontario (MLDAO), and the Ontario Good Roads Association (OGRA).

AMO is generally quite pleased with the intended outcomes of this Bill in terms of moving municipalities from being 'wards' of the Province to being recognized as responsible and accountable governments with respect to matters within their jurisdiction. AMO is encouraged by improvements to the provincial-municipal relationship and sees the revised *Municipal Act* as yet another milestone in the advancement of a more collaborative and respectful relationship.

Before commenting on specific aspects of the Bill, it is important to reiterate the principles developed by our *Municipal Act* Working Group and adopted by the AMO Board and others. These principles formed the basis for our input to the review itself and continue to be used for developing analysis and recommendations. First and foremost, is the recognition of municipalities as responsible and accountable governments. In addition, the following principles are imperative to improving the 2001 Act:

1 New legislation shall enhance existing municipal powers.

2 The Province shall stop micromanaging municipal governments.

3 Where there is a compelling provincial interest the province shall when regulating municipal government define at the outset that interest.

4 Provincial legislation shall be drafted with the expectation of responsible municipal government behaviour and not as a remedial tool.

5 Accountability means mutual respect between municipal government, the Province and other public agencies.

6 Resources for municipal governments shall be sustainable and commensurate with the level of responsibility.

7 The *Municipal Act* shall include principles that will protect the *Municipal Act* and municipal powers from all provincial legislation.

8 The Province shall commit to increasing the understanding and awareness of municipal government within all ministries.

We urge the government to do its utmost to ensure that the improved *Municipal Act* receives Third Reading so that it comes into effect on January 1, 2007.

While this Bill gives municipalities broader authorities, they will not help with the systemic fiscal pressures and the impact the downloaded services have on property taxes. This Bill, unlike the *Toronto Act*, does not provide any new sources of revenue.

Responding to the Proposed Legislation:

Municipal councils collectively make hundreds of thousands of decisions each year. Members of municipal councils are elected by their communities to govern their respective municipalities and to make decisions that are in the best interests of the municipal organization and of the community at large. The public consistently rates municipalities as the most trusted order of government in Canada. This, along with other reasons, is why AMO and other groups have advocated for a series of reforms that would recognize municipalities as mature and accountable and provide good governance to the citizens of Ontario.

AMO is very pleased that in introducing this legislation to the House on June 15, 2006, Minister Gerretsen agreed with our position that "if the municipal role is to evolve in the years ahead ... that if Ontario municipalities are going to deliver on behalf their communities ... then they need greater responsibility, greater authority and greater accountability."

Perhaps the most important step in making this goal a reality is incorporating broad powers for the economic, social, and environmental well-being of the community and that health, safety, and well-being of persons is incorporated as part of the broader authority.

Broad Powers and Spheres:

AMO supports including the economic, social, and environmental well-being of the municipality and the health, safety, and well-being of persons as new broad authorities that will be "interpreted broadly so as to confer broad authority on the municipality" as Sections 8-10 of the Bill indicate. We also support the continuation of the "Spheres of Jurisdiction" to deal with powers within the spheres. It would be impossible to assign authority in two-tier jurisdictions for the new board powers and the conflict rule will mean municipalities will exert their own mature intergovernmental relationships.

The broad powers bestowed upon municipalities in the 2001 Act have helped municipalities govern by enhancing their ability to respond to local issues. Extending the broad powers and having them apply to the rest of the Act and to any other legislation governing municipalities is a positive move. It at last reflects how the Courts have been interpreting municipal powers in Ontario and across Canada.

Provincial Interest and the Override Provision:

AMO firmly maintains that this Bill must describe the nature of the provincial interest in terms of the *Municipal Act's* purpose and that the Bill leads the way and also make this a requirement on a go forward basis for any future legislation affecting municipal governments. For example, a provincial interest is one where there is a direct financial impact on the Province or where there is an important, over-riding province-wide/ intergovernmental imperative. A framework such as this would be more 'upfront'. A more informative approach to dealing with provincial interests will enable both the provincial and municipal orders of government to develop and make informed policy decisions that reflect the areas of interest and authority of the respective orders of government. It should not be difficult for the Province to enlighten not only municipal governments, but also the public on its interests. Ambiguity of what constitutes a

provincial interest will not strengthen decision-making for any party.

This concern about provincial interest or the lack of scoping is of particular concern with respect to Section 451.1 of the Act. That provision restricts a municipality in the exercise of its general powers as the government may, when it considers necessary or desirable in the "provincial interest", make LGIC regulations imposing limits and conditions on the powers of a municipality under sections 9, 10 and 11. If the government responds by such regulation, then a municipality cannot exercise its powers except as permitted by the regulation. While a regulation under this section will have a life span of eighteen months unless it is revoked or expires prior to that date, it represents an intrusion into the operations of one or more municipalities after the fact.

AMO believes the inclusion of section 451.1 in the *Municipal Act* is contrary to each of the first 5 principles that enunciated earlier in this presentation and that we see as the means to achieving a full mature relationship". This regulation is an after-the-fact power that the Province may exercise. It provides a limitation on the broad language used in sections 10 and 11 when describing the new municipal powers.

The inclusion of this regulation creates uncertainty for not only municipal governments but also anyone who will be contracting with a municipality. If a municipality is entering into an agreement using a Part 2 power, what will be the impact on a contractual relationship if the province does so act? There will be a lingering lack of certainty.

Without some scoping of the provincial interest, there could well develop an ad hoc approach. How will the Province exercise restraint and not get involved in purely local matters? The Province must scope the provincial interest in a policy area at the outset and insert this into the legislation where absolutely necessary if the intent of this review is to be achieved. Saving to itself regulatory power that can be applied after the fact (i.e., when a municipal bylaw is passed), the Province will leave municipalities facing uncertainty, particularly in situations when the municipality is dealing with a third party.

Municipalities have already demonstrated their responsible use of the powers included in the current Act. Municipal governments are a mature and accountable order of government interested in the most efficient delivery of services for their citizens. The powers included in *Bill 130* will be handled in an equally responsible manner.

At the very least, any utilization of Section 451 regulatory powers must be subject to the pre-consultative requirements of the MOU process the Province has with AMO.

Corporations and Boards:

Municipal governments could benefit from less micromanagement by having broader discretion in establishing and regulating municipal service boards as well as the ability to create a joint municipal service boards for any municipal service.

Bill 130 will enable municipal governments to establish corporations and municipal service boards for any municipal service. Providing flexible concepts, with broader discretion will help municipalities deliver services in a manner that makes sense locally without provincial intrusion.

Bill 130 also provides more discretion over the structure, composition, governance, and reporting relationships of corporations. However, the Province continues to retain regulatory power over corporations as well. We will be looking to the Province to pre-state what would not be permitted for incorporation rather than the current approach, which requires a specific regulation on a case-by-case basis. This is very time consuming, does little to enhance municipal leadership/innovation, and continues the role of the Province as micro-manager.

Indeed, whether these less prescriptive provisions will be successful largely depends on what type of corporations will and will not be permitted under regulation. AMO believes the Province can and should move from the currently heavy-handed regulatory approach, that micromanages *municipal act*ivities to one that is more unfettered and meets it commitment to build the strong communities that can deliver the services needed to support a high quality of life for all our residents.

Open Meetings:

The general principle that all meetings of council and its committees are open to the public unless specifically authorized by the Act to be held in camera has been carried forward. The addition of subsection 239 (3.1) to the list of reasons to meet in a closed session would include the professional development or training, technical information sessions or intergovernmental relations - matters that do not involve decision-making. That subsection reads:

(3.1) A meeting may be closed to the public if, at the meeting, no member of the council or local board or committee of either of them, as the case may be, discusses or otherwise deals with any matter in a way that materially advances the business or decision-making of the council, local board or committee.

Concerns regularly expressed to AMO have generally been frustrations around meeting to receive training/education, technical information or a briefing by staff on complex matters that the formal council or committee structure limits. This new provision will help clarify these circumstances.

The meeting provisions for municipal governments remain comparatively much more open and transparent than any of the other orders of government. The Province by introducing this additional provision meets the request made by AMO to clarify this section and is to be commended for understanding the need to help elected officials learn about the many facets of their jobs. This new provision allows council to reflect the caucus process of the federal and provincial governments. It recognizes the increasingly complex role of municipal governments and the need to acquire knowledge and understand the many technical elements related to municipal services.

Investigations of Closed Meetings:

The new investigation provisions enable any citizen to direct an investigator, if set up by the municipality, or the Provincial Ombudsman where this is no investigator, to probe whether a meeting was closed based on the conditions permitted in the Act. We understand that the Ombudsman is concerned that a municipality would appoint a municipal employee as the investigator. There is no municipality that would put municipal staff in this position – it certainly would bring disdain of the community and

put an employee in an untenable position. We are concerned that the default is the Provincial Ombudsman – that the question of whether or not a meeting was properly 'closed' will be handled out of Queen's Park. Certainly, as will be mentioned subsequently, this provision of the legislation needs to be given a healthy transition period, preferably a year. There should be nothing in the Act that would prohibit or otherwise limit the ability of municipalities to join together in developing an investigator or a third party from undertaking this function.

Municipal Ombudsman for Administrative Investigations:

The Bill proposes that a municipality can appoint a municipal ombudsman. It then enables any person to direct an ombudsman *"to investigate any decision or recommendation made or act done or omitted in the course of the administration of the municipality, its local boards and such municipally-controlled corporations as the municipality may specify..."*.

We appreciate the government's interest in moving from a court application process but this provision moves the pendulum too far in the other direction. The investigator provisions lack any rigor necessary to deal with a multitude of frivolous and vexatious claims. As with the previous closed meeting/investigation provision, a claimant does not even have to be a resident or taxpayer of the municipality in question to launch an administrative investigation. If this Committee decides to maintain this administrative investigation provision, it should amend the section to be similar to the FOI legislation. It was amended after a rush of claims against a number of police forces. The addition of a minimal fee system such as that for FOI would be reasonable.

We strongly urge the Committee to amend the section to clarify that the application of Section 223.13 does not apply to deliberations and proceedings of Council or any Committee of Council or local Board. This would be in keeping with the scope of investigation contained in Section 13 of the *Ombudsman Act* for the province. And again, municipalities will need time to consider how they might want to deal with this new concept.

We believe that the Provincial Ombudsman should remain as a provincial ombudsman and not be involved in administrative investigations of municipal governments. Given an appropriate amount of time to make arrangements for an independent investigator and to implement the new policies, Ontario's municipalities will demonstrate that the efforts of neither the Ombudsman nor the Province are required.

Policies*:*

Bill 130 contains streamlined provisions for policies related to Sale of Land, Hiring of Employees, Procurement of Goods and Services, Notice, Accountability, Delegation, and Financing Capital Works. Boards can also enact policies for disposition of land, hiring of employees, plus the procurement of goods and services if council has not adopted such a policy on behalf of the local board. The proposed policy provisions are more flexible than the current *Municipal Act* by allowing individual municipal councils to determine their own internal operating procedures according to the needs and demands of its local citizens.

However, Section 270 of the *Municipal Act* is being repealed and replaced in *Bill 130* to include seven policies. One of the new policies being required is: "The manner in which the municipality will try to ensure that the rights, including property and civil rights, of persons affected by its decisions are dealt with fairly." The provincial intent in requiring such a policy is not clear, nor is it clear how this policy could be prepared appropriately. What is clearer is that it will create confusion in terms of existing federal and provincial statues and regulations that deal with civil and property rights.

The policy area would seem to encompass every decision and exercise of power by a municipal council. The policy requirement is so wide-ranging and far-reaching that any policy development will be substantial in size and yet will not likely take into account all those that are affected by municipal decisions. The policy requirement seems to encompass matters such as real property, acquiring or disposing of goods or services, employees and volunteers, legislative by-laws, plus relationships with neighbouring municipalities and first nation communities. It would also affect persons beyond the municipal boundaries. It is unclear why the Province is suggesting such a policy when

there is no similar policy in place that applies to all decisions of the province and its impact on all persons.

Unless the province can articulate its expectations as to what the policy would look like, how it will interact with existing provincial laws and not create confusion in law, AMO recommends that this policy area not be included in Third Reading of *Bill 130*. Simply putting into policy the current safeguards that exist in provincial legislation will not be of benefit.

We want to see this Bill take effect January 1, 2007, so that new councils can utilize the broader powers as soon as possible in their new term. However, the policies and investigations components of the Bill will require some additional time to be developed and should be proclaimed at a later date.

Licensing:

Bill 130 proposes incorporating business licensing into the *Municipal Act* as a broad power. The proposed licensing provisions remove restrictions that prescribe how business licensing is undertaken, including among other matters the requirements for maintaining a list and registry.

AMO supports incorporating business licensing into the *Municipal Act* as a broad power and removing prescriptive detail on how business licensing is undertaken. AMO also supports the removal of many administrative, red tape requirements and restrictions, such mandated categories for the licensing by-law, the necessity of maintaining a list, as well as a registry. These actions would also satisfy AMO's principles and would satisfy the Province's own objective of streamlining and reduced micro-management. The removal of the prescriptive and cumbersome requirement to explain the purpose of licensing is especially supported. Deleting the provision for the Province's regulatory power (Section 158) over municipal licensing would be the ultimate signal that the Province is committed to its goal of recognizing municipalities as a mature and responsible order of government. We strongly encourage the deletion of Section 158.

Delegation:

Sections 23.1 to 23.5 of the Act set out in considerable detail the general delegation powers. Traditional delegation powers have been expanded to include quasi-judicial and legislative functions. These expanded powers were not asked for by AMO or other municipal associations.

It is expected that these expanded delegation powers would be used cautiously and in a limited way by few municipalities. These expanded powers could have the effect of municipal councils being less accountable to their ratepayers, particularly in situations where the council can delegate to a person or body outside the municipal government itself. These will need to be local considerations. The delegation powers have been drafted in a detailed format with many of the provisions a restatement of the common law delegation powers.

User Fees and Charges:

AMO supports the proposed provisions on user fees and charges because they remove most existing restrictions including the arduous information requirements in Sections 300 and 303 and the ability for the Province to impose standards. However, if it is still in force, *Regulation 244/02 Fees and Charges* will continue to impose onerous limitations and requirements. AMO advises the Province to commit to scrap this regulation outright.

A Reminder:

While currently not in the bill, we encourage the Province to fulfill its commitment to providing municipalities with the authority to approve financial incentives within a Community Improvement Plan under the Planning Act.

Other Technical Matters:

Joint and Several Liability

While not an issue directly related to the review of the *Municipal Act*, the impact of the legal principle of joint and several liability in negligence law should be examined as part of this review process. The impact on municipal government of this provision in the *Negligence Act* is substantial. We have encouraged the government to bring greater fairness for municipalities to the litigation process. By making two or more defendants in a negligence action jointly and severally liable to the plaintiff, there will always be an attempt by the plaintiff's lawyer to include in the lawsuit, a defendant with the ability to pay any judgment. Municipalities have been seen as defendants with deep pockets because of their imagined unlimited ability to tax.

Many states in the United States have abandoned the principle of joint and several liability. The approval by the Law Society of contingency fees in civil litigation may have a detrimental impact on municipalities as defendants. The repeal of section 1 of the *Negligence Act* would result in a dramatic drop in lawsuits against municipalities. It would also result in a significant impact on municipal budgets as insurance premiums would be adjusted to reflect the change in risk. It would also bring a level of fairness to the litigation process in that those responsible will be required to pay their fair share and no more.

Line Fences Act

AMO would like to restate its objections to the proposed amendments to the Line Fences Act contained in Schedule D of Bill 130. AMO remains opposed to Section 20 of the *Line Fences Act*. Bill 130 proposes two amendments to this section of the Line Fences Act that are intended to curtail fencing demands from adjoining landowners. Municipalities are still, however, responsible for "constructing, keeping up and repairing the fences …" This provision contradicts the aims of the Provincial Trails Strategy because the use of trails is threatened by various lawsuits claiming liability against municipalities and other trail owners. If the concerns of trespass and liability are addressed through amendments to the *Occupiers Liability* and *Trespass* Acts, Section 20 of the *Line Fences Act* could be removed.

Priority Lien Status

Bill 130 should amend the *Municipal Act* to be more inclusive of charges that can be added to the tax roll in the event of a tax sale. Granting priority lien status under subsection 1(3) of the *Municipal Act* to all municipally-imposed charges would remove the confusion and difficulties associated with current practice of allowing certain charges but prohibiting others.

Register Rehabilitation Orders on Title

AMO requests that the Province amend the Municipal Act to allow for the registration of rehabilitation orders on title to the subject land so that it is binding to successor owners. This has become a concern where municipalities have passed forestry management by-laws and the Courts have imposed a rehabilitation order to require a defendant to carry out activities to ameliorate damages caused by a violation. This amendment will allow municipalities to protect woodlots from cutting that is not in accordance with good forestry management.

Vehicle Storage Fees

Bill 130 does not enable municipalities to regulate the vehicle storage fees charged by towing companies. While municipalities can regulate towing charges, they cannot regulate storage fees and these range from reasonable to exorbitant as a result.

Conclusion:

AMO looks forward to ensuring the revised *Municipal Act* is considered as yet another milestone in the advancement of a more mature provincial-municipal intergovernmental relationship. By and large, with the exceptions noted in this report, the proposed changes are further progress toward recognizing municipalities as mature and accountable governments that provide good governance to the citizens of Ontario. *Bill 130* is a strong indication that the Province is prepared to show its faith in municipalities through less oversight, by much less prescriptive authority and recognition that municipal accountability and responsibility rests predominantly with their communities and not the Province.

The *Municipal Act* is an important cornerstone of a renewed provincial-municipal relationship. Enhancing a municipality's ability to govern its own affairs and hopefully in the not too distant future to more properly match services to revenue streams will bring clarity to roles and responsibilities of both the Province and municipal governments.