



AMO's Response to the *Great Lakes Protection Act and Strategy*

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**Association of
Municipalities
of Ontario**

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Introduction

The Great Lakes represent the largest fresh water system in the world. Together with their feeder rivers and lakes, the Great Lakes Basin is home to most Ontarians and a substantial number of Americans and Quebeckers. As such, the Great Lakes system is of international importance and must be restored and protected for current and future generations to enjoy its economic, cultural and ecological benefits.

As a measure of its importance, finding common solutions to Great Lakes challenges resulted in the creation of the Boundary Waters Treaty and the International Joint Commission at the turn of the 20th century to institute a cooperative mechanism for Canada and the United States. Later on, in the 1970s Canada and the United States signed the Great Lakes Water Quality Agreement, which is currently being renegotiated, to provide a collaborative framework for water quality issues in the Great Lakes Basin. The Agreement and the Canada-Ontario Agreement on the Great Lakes which operationalizes the international goals, has been instrumental in focusing on Areas of Concern in the basin and providing ongoing efforts at rehabilitating historically polluted environments.

In recent years, the Great Lakes have been the focus of the Great Lakes Compact between subnational governments in both Canada and the U.S. which provides a common framework to work on water quantity issues and conservation efforts. Also, the United States, under former President George W. Bush created an investment program aimed at providing infrastructure funding for water quality systems amongst others in the Great Lakes. Municipalities in Ontario have also worked in concert with provincial and federal governments to improve municipal water and sewage treatment which benefit Great Lakes basin waters.

Within the context of these major historical actions on the Great Lakes, Ontario is seeking to create a provincial focal point and framework to focus action on Ontario's challenges in the Great Lakes Basin. Ontario is also looking to create legal mechanisms which will allow the government to engage communities and take action on focused, localized water quality problems to enhance water quality and citizen connection to the Great Lakes.

To do so, the government has proposed a new *Great Lakes Protection Act* (referred to as the GLPA, the Act, or Bill 100) and a Great Lakes Strategy (the Strategy) that will allow citizens, stakeholders and communities to come together to tackle common challenges with the provincial government and improve and enhance the waters of the basin.

Municipal governments, with primary responsibility for health infrastructure and environmental systems such as drinking water, wastewater and storm water are obviously the authorities with the most connection and investment in the quality of these waters. Any improvements will likely impact municipal infrastructure in some way. While AMO welcomes the objectives of the Act and Strategy to provide a focus on municipal challenges in these areas, AMO does have concerns that the financial and municipal government autonomy impacts of these instruments could have some detrimental effects on municipal governments in Ontario. These are laid out below.

General Overview

On June 6th, 2012, the Ontario Government introduced the *Great Lakes Protection Act* and corresponding Strategy to protect and restore the Great Lakes-St. Lawrence River Basin. Both documents were posted to the Environmental Registry for public comment.

The purpose of the proposed Act is “to protect and restore the ecological health of the Great Lakes Basin; and to create opportunities for individuals and communities to become involved in the protection and restoration of the ecological health of the Great Lakes-St. Lawrence River Basin (The Basin).” The “Basin” is defined as any part of Ontario that borders on a Great Lake, or that contains a tributary lake, stream, river, brook, etc., of the Great Lakes.

Bill 100 is intended to respond to the requests of several parties, amongst them municipal governments that have been looking for more formal opportunities for intergovernmental and non-governmental cooperation on Great Lakes water quality, and other issues related to the ability to use the Great Lakes. The intent is to enhance the economic, social, cultural and environmental viability of the Great Lakes to the benefit of Ontario's communities.

The legislation sets the framework and provides new legal mechanisms through which the Ministry of the Environment (MOE) aims to fulfill those purposes. Key features of Bill 100 include:

- The primary means by which the MOE seeks to fulfill the purpose of the Act is through the proposal and approval of **geographically focused targets and initiatives**.
- **Targets** would relate to general concerns for the Basin, and be set by the Minister of the Environment in consultation with local stakeholders and other members of cabinet who have an interest in the Great Lakes.
 - Targets would be quantitative in nature. They would be achieved by a public body designated by the minister that has pre-existing jurisdiction within the target area.

- **Initiatives** would apply to specific geographic areas of concern, and be developed by a designated authority in consultation with relevant stakeholders within the area.
 - Stakeholders are considered members from (but not limited to) the following groups: the **Great Lakes Guardian Council**; the provincial cabinet; local governments; First Nations; the agricultural and Industrial sectors; and members of the scientific and environmental communities.
 - The **proposed initiatives** would outline the geographic area under consideration, and explicitly state the concerns and goals to be addressed by the new policies.
 - The proposal would include any funding measures to be taken in order to implement the initiative.

- A proposed initiative would include **“designated policies”** and regular policies.

- **“Designated Policies”** would have special legal status under Bill 100, and include those that relate to:
 - The protection or restoration of natural heritage and hydrological features;
 - Or the prohibition and/or restriction of land-uses, buildings, or structures within the area designated.

- Once approved, **present and future municipal by-laws would have to conform to designated policies** proscribed in an initiative, and have regard to any other policies outlined in the initiative. The timelines for enforcement of such measures would be set by the Minister.
 - Abiding by the timelines set by the Minister of the Environment, designated policies would have to be included in a municipality's Official Plan, and its zoning by-laws would have to be brought into conformity as well (at an Official Plan's next five year review, unless stated otherwise).
 - After the time period for conformity has elapsed, the Minister of the Environment could, in concert with the Minister of Municipal Affairs and Housing, overwrite or amend municipal Official Plans and zoning by-laws that failed to conform to an initiative's designated policies.

- Bill 100 seeks to establish a **Great Lakes Guardian Council** to be made up of representatives of interest whom the Minister of the Environment has invited to join. Guardians can be drawn from (but not limited to) members from the following groups:
 - Provincial ministers who have an interest in the Great Lakes.
 - Representatives of interest from municipalities located in whole, or in part, of the Basin.
 - First Nations and Metis Communities that have an historic relationship with the Basin.
 - Representatives from the scientific, environmental, industrial, recreational, agricultural and tourism sectors that have an interest in the Basin.

- The Council would meet at the request of the Minister, or when an initiative is proposed. The Council would offer advice on potential priorities, projects, proposals, and funding measures to help the Minister fulfill the purposes of the Act.
- Bill 100 would supersede the *Planning Act* and the *Condominium Act* in the case of conflicts. In conflicts with other legislation, that which provides the greatest protection to the Basin would prevail.

Great Lakes Strategy

Bill 100, the *Great Lakes Protection Act*, also includes the requirement for the government to lay out its approach to Great Lakes protection and restoration in a Great Lakes Strategy. While not law, the Strategy has been issued as a draft for comment as an instrument of the Act that will be implemented if passed. In addition to the government's vision, the Strategy provides a comprehensive overview of the challenges facing the Great Lakes, including: Lake Erie being overwhelmed by chemicals and phosphorous; rapid population growth in Southern Ontario; invasive species; climate change; the quality of beaches, among others. A vision statement guides action in the Basin and the Strategy sets out six goals, each of which includes a lengthy list of possible policies to follow in order to achieve them. Key features of the Strategy include:

Vision Statement: "Ontario's vision is one of healthy Great Lakes for a stronger Ontario – Great Lakes that are drinkable, swimmable and fishable."

6 Goals:

- **Empowering Communities:**
 - The strategy intends to help fund community involvement through Great Lakes Guardian Community Fund (GLGCF) (which is currently open for applications).
 - Establish multi-stakeholder Great Lakes Guardian Council.
- **Protecting Water:**
 - The need for jurisdictions to update their storm water, sewage, and industrial source treatments through comprehensive Source (water) Protection Plans.
 - The Strategy calls for the investigation of water quality (emissions) trading in priority areas.

- **Improving Wetlands, Beaches, and Coastal Areas:**
 - Wetlands education should be a focus so that stakeholders understand the vital role such features serve in filtering storm water and providing habitat. Efforts should focus on point and non-point protection.
 - Use performance measures to keep beaches and coastal areas open.

- **Protecting Habitats and Species:**
 - Assess and adapt Great Lakes science priorities, optimize research investments, sustain long term monitoring capabilities, and improve outreach and education measures.
 - Improve habitat protection and restoration methods

- **Enhancing Understanding and Adaptation:**
 - Assess and adapt Great Lakes science priorities, optimize research investments, sustain long term monitoring capabilities, and improve outreach and education measures.

- **Ensuring Environmentally Sustainable Economic Opportunities and Innovation:**
 - There needs to be a strong campaign to help improve agricultural techniques in the Basin.

General Comments

AMO recognizes that Bill 100 is framework legislation and the Great Lakes Strategy is a broad document laying out potential directions, intended to provide legal tools and general direction for future initiatives and programs. It is therefore difficult to fully critique these documents without actual plans for realizing the Strategy's goals. These will not be available until the Act is passed and the Strategy is finalized.

Overall, AMO welcomes the intent behind the *Great Lakes Protection Act* and Strategy as the order of government with overwhelming responsibility for the infrastructure systems that safeguard water quality and environmental health of our water resources. As such, any efforts that increase public focus on the challenges, opportunities and costs of municipal government operations to safeguard public health and water quality through water treatment, wastewater treatment and storm water systems is welcomed. However, there remains the potential for initiatives under these instruments to increase municipal costs.

AMO also supports the ecosystem approach to the Great Lakes-St. Lawrence Basin outlined in the Strategy as an important way of ensuring that all parties who are responsible for contributing to the problem of water pollution also contribute to its solutions. This could help to ensure that municipal operations are not unfairly targeted in any proposed solutions. Also, the clear emphasis on collaboration is encouraging as this will increase understanding of the

municipal context and responsibilities for environmental and health protection as well as cost control for our residents.

As a result of this, AMO appreciates the heavy emphasis that Bill 100 and the Great Lakes Strategy place on consultation. From the Great Lakes Guardian Council, to the successive requirements for Cabinet approval, the consultation measures in the documents appear aimed at providing the government with the best proposals for taking action on common water quality and conservation problems. It is also clear that the Ministry has tried to ensure that those affected by a proposed initiative can have some say in its development, and that costs for implementing initiatives will be well known to stakeholders before they are approved.

While AMO agrees with the intent and general direction provided by the *Great Lakes Protection Act* and Strategy, reservations about some of the powers granted the MOE, as well as some of the policy directions outlined in the Strategy, are warranted from a municipal government perspective. Many proposals contained within the Act and Strategy could have significant cost implications for municipalities when it comes to implementation. These include:

- Measures required to bring Official Plans and other municipal by-laws into conformity with initiatives;
- Possible changes to sewage, waste water, and storm water management facilities due to higher regulatory standards; and
- The continued development and implementation of Source Protection Plans.

The regulatory environment regarding land-use planning, water, wastewater, and storm water have evolved quickly in recent years and further changes may challenge the municipal sector to keep up with it. Many municipalities may be wary of any provincially led policy initiative that will require yet another set of plans, and all the financial and human resource implications that come along with them. Because of the clear cross-jurisdictional nature of the problem, and the possible imposition of yet more plans on local jurisdictions, the implementation of measures to protect the Basin should be funded substantially by provincial and federal orders of government, and carried out with the agreement of the municipalities affected.

The emphasis on targeted, geographically specific measures in both the Act and Strategy could be positive, depending on how these are focused. However, the watershed approach taken by the Ministry may mean that virtually the entire population of the province is covered by the Bill. The Ministry should ensure that proposed targets are based on sound evidence and a proven need for action. Either blanket regulations or requirements for all

municipalities could lead to burdensome costs on some municipalities who may not be a major part of the problem of polluting the Great Lakes Basin. To ensure that this does not occur, the actions that are taken should be focused on the sources of pollution as determined by sound and transparent science. This will ensure that only those sources of pollution that are actively contributing to a pollution or nutrient problem will be targeted and then only to the extent of their contribution. Federal and provincial funding should also be available to support any costly capital needs to implement targets and plans for municipalities, agriculture and industry as necessary.

Specific Comments: Bill 100

PART II: GREAT LAKES GUARDIANS' COUNCIL

Bill 100 and the Strategy envision the creation of a Great Lakes Guardian Council as a forum to coordinate the perspectives of various stakeholders, provide advice on potential areas for action, investigate funding instruments, and identify key partners as they would relate to a target or initiative. Its membership is to consist of stakeholders that the MOE believes has a relevant concern within an area targeted for an initiative. The Council is mandated to meet at least once before the first anniversary of Bill 100 enactment, and thereafter at the request of the MOE.

Municipalities are specifically mentioned as organizations that may be called to participate on the Council. While recognizing the value of fluid, case-by-case membership on the Council, AMO recommends the creation of a "core group" of stakeholders (that would include municipalities) to sit on the Council. Having a core group of members would allow for greater continuity and consistency in Council deliberations, and ensure that the municipal sector has a strong voice in reviewing and creating policies.

In addition to municipal governments, we also recommend that members of the general public have a permanent number of seats on the Council. Having members of the general public sit at the table with officials and experts of all sorts would be an invaluable way of educating regular citizens of the need for private and large scale action, and give them both a view and a voice in the development of policies that would direct those initiatives. This would also bring the perspective of municipal property and provincial income taxpayers to the Council, which may help to ensure that all proposals receive this filter. A lottery system has in the past been used for citizen fora that could be replicated to identify potential members.

Finally, AMO recommends an amendment to the Bill regarding the meeting schedule of the Great Lakes Guardian Council, so that it meets on a more regular basis. Having the Council meet on a regularly scheduled basis would improve members' ability to provide advice to the Minister, and to share information with one another.

PART IV: TARGETS

Given the regulatory regime already in place for water and wastewater, specific water quality targets should only be implemented for municipal works under this strategy and legislation if they are agreed to in advance by the municipality and sufficient financial support from other orders of government is available. This will ensure that base requirements to meet water regulatory requirements are met under existing legislation such as the federal *Fisheries Act*,

the *Environmental Protection Act* and certificates of approval for facilities. Undertakings under the *Great Lakes Protection Act* would go a step further to enhance protection.

PART V: PROPOSALS FOR INITIATIVES & PART VI: INITIATIVES

AMO has concerns about the selection process of the authorities that would propose or carry-out initiatives. Currently, the Minister would choose a public body to create a proposal for an initiative, and then pick another (possibly, but not necessarily, the same) body to carry-out the initiative once it has been approved by cabinet. The definition of “public body” is broad, including:

- (a) a municipality, local board or conservation authority, (b) a ministry, board, commission, agency or official of the Government of Ontario, (c) a source protection authority or source protection committee, or (d) a body that has been prescribed by the regulations or an official of such a body.

A proposed and approved initiative would include “designated policies” and “other policies”. “Designated Policies” and regulations in an initiative could require considerable costs on behalf of affected municipalities, as their by-laws, Official Plans, zoning regulations and other instruments would need to conform to such policies. That the MOE wants to reduce duplication of efforts by using pre-existing regulatory bodies is encouraging, and AMO supports measures that would require information gathered from existing bodies being used to inform initiatives. Since some of these bodies could be composed of non-elected officials, however, AMO recommends that, whenever possible, elected governments are chosen to develop initiatives, and; where it is not possible, policies within a target area only be made with the input and agreement of the local governments that will be affected.

As previously discussed, Bill 100 places a heavy emphasis on formal consultation with stakeholders of all sorts. While AMO realizes that the intent of the Bill is to create consensus amongst stakeholders, and that the policies are intended to be highly localized, there is nothing in the current wording of the Bill to stop Cabinet from imposing legally binding measures onto local governments. AMO therefore recommends that the wording of the Bill be changed so that changes to Official Plans, by-laws and other instruments of a municipality should only be done after consultation **and agreement** with the affected municipalities.

The latter emphasis on municipal government agreement is particularly significant given the potential issue of the capacity of some municipalities to either participate in or lead these planning initiatives. Like other plans recently proposed for municipal governments on water quality and infrastructure (ex. Source Water Protection Plans, Water Conservation Plans, Sustainability Plans, etc.) the focus of municipal government can be either limited or

fractured by the requirement to participate in yet another planning process. As with all public services, municipal governments face the dual mandate of providing quality public services and accountable spending of public funds. It is conceivable that there are municipalities in areas of the Great Lakes Basin where planning and implementation of coordinated measures to improve water and environmental quality is both warranted and desirable, but municipalities within these areas may be limited by staff and financial resources in their ability to participate. AMO believes that these municipalities should not be required to implement something that they can neither afford nor is identified by residents as critical.

Specific Comments on the Great Lakes Strategy

- *Empowering Communities*

Great Lakes Guardian Community Fund:

This fund, which has already been announced and is open to applications, is intended to foster a sense of connection between the physical Basin and the communities within it. Projects are eligible for up to \$25,000 if they help to achieve one of the goals in the Strategy, and include significant involvement from the general public.

Funding community involvement through local projects is a good way of engaging the general population, and AMO is supportive of Great Lakes Guardian Community Fund to advance water quality and environmental clean-up. It is hoped that this program will fund valuable projects throughout the Basin, and AMO appreciates that the fund does not require matching contributions from local governments in order for projects to get approval. AMO also appreciates that for the purposes of the fund, the Great Lakes-St. Lawrence Basin has been divided into smaller areas, each of which has its own pool of funding. This measure will encourage broad engagement by ensuring that all communities throughout the Basin have an opportunity to access the fund. AMO recommends that the fund be reviewed for effectiveness over the three years for which it currently planned, so that it can be improved and made permanent in the coming years.

While funding community involvement and education is beneficial, the pollution of source water in the Basin is also an industrial and agricultural concern. There should be a separate, adequately funded, and permanent program to provide incentives to commercial and agricultural operations on Basin source waters. Such a program should be incentive-based so as to encourage buy-in from participants, and so that local economic competitiveness is not harmed. We note that there are existing programs, such as the Environmental Farm Plan, that support farmers in assessing their operations and making improvements. Such programs should be made permanent, expanded, and improved over time.

- *Protecting Water:*

End-users pricing measures are recommended in the Strategy to encourage water conservation. The emphasis on conservation through pricing measures could be acceptable, as long as they are undertaken by municipalities within their own jurisdiction. Direct, **end-user pricing measures** for water consumption can encourage conservation and efficiency of use. Measures for areas facing growth or asset renewal pressures could include pricing mechanisms like frontage charges for water systems, a form of which has recently been instituted in the Cities of Kitchener and Waterloo, and is currently being considered by the

City of Toronto. These cities are good examples of local innovation, and the government should support them by ensuring that there are no legal obstacles in their way. It is important to note, however, that not all municipalities face the same growth pressures, and direct, end-users pricing measures should only become a consideration where there is pressure building on municipal water systems through growth and development, and with a jurisdiction's agreement.

The Strategy outlines that **Source Protection Plans (SPPs)** should be used to help coordinate the protection of the Basin, and stakeholders should discuss how to improve the plans. SPPs were required under The *Clean Water Act, 2005*. Many municipalities, especially smaller ones, have limited financial resources, and are anticipated to face significant financial pressure to implement SPPs. There continues to be a clear need for provincial assistance in funding SPP implementation. Any revision of the criteria for SPPs should include significant consultation with municipalities.

One policy that receives mention in the Strategy is that of **Water Quality Emissions trading**. The concept of **Water Quality Emissions trading** for municipalities is neither adequately nor fully explained in the Strategy. Without more detail, it is unclear how such a proposal would work. Moreover, depending on the price set, this could represent a financial cost to some municipalities. It may also provide an incentive to upgrade sewage treatment to some. We understand that some pilot projects of Water Quality Emissions Trading have been successful. We would recommend that, if this is used, it remain a highly localized solution with the agreement of all stakeholders in the area affected before implementation.

- ***Improving Wetlands, Beaches, and Coastlines:***

Beaches and shorelines are of particular interest, as these features are often areas that spark and maintain public interest in water resources and conservation. As such, they should have their own separate funding programs.

Through the Strategy, the MOE encourages the use of performance measures in order to meet targets in a designated area. AMO accepts the targeted use of performance measures for hydrological features only where there is a clear, evidence-based need for action in an area. If needed, then targets and performance standards should be easy to understand and measure by all parties and they should also come with financial support for jurisdictions that would otherwise have trouble meeting them. In general, incentive based programs are preferred by local governments.

The Strategy also places emphasis on wetland and coast line restoration/creation as a way to improve the health of the Basin. Projects to protect, restore, or create wetlands and

naturalized coastlines would have the advantage of addressing municipal recreational priorities, reducing Ontario's municipal infrastructure deficit, and helping to protect the Great Lakes Basin. In AMO's recent member survey on municipal infrastructure, 75% of respondents noted that some form of recreational and community infrastructure was on their list of top 5 long-term priorities (many specifically naming parks and trails), yet such measures are outside the funding envelopes of many federal and provincial infrastructure programs. Ways to include such projects in infrastructure funding programs should be explored.

- ***Enhancing Understanding and Adaptation:***

The strengths of the MOE's method in taking an ecosystem (or watershed) approach to protecting the Great Lakes is that efforts include all people that contribute to polluting the Basin, both directly and indirectly. That all-encompassing approach to problem solving is also difficult, because many people who live far from the shores of the Great Lakes or the St. Lawrence River do not realize that they are a part of the watershed. Accordingly, AMO hopes that the Ministry partners with the school boards, municipalities and conservation authorities throughout the Basin to ensure that communications and public education measures are created to appeal to widespread audiences and reach into most households throughout the region.

- ***Ensuring Environmentally Sustainable Economic Opportunities and Innovation:***

The Strategy states that the MOE has funded, and will continue to fund innovative technologies and products to reduce pollution in the Basin. The use of pilot projects to encourage innovative ways to address water pollution, both in the Basin, and elsewhere, is appropriate. AMO hopes that the Ministry places a heavy emphasis on communicating the successes and failures of such projects so that new techniques and technologies can be quickly adopted by municipalities. In addition, the MOE could help to measure and communicate the economic benefits of taking action on these problems and the pay back of environmental and recreational infrastructure to local communities. Finally, as innovation in water technologies was one objective of a recent legislative initiative of the provincial government (*Water Opportunities and Conservation Act, 2010*), the province should continue to provide funding to these types of projects on a pilot basis.

Conclusion

On the whole, AMO believes that the *Great Lakes Protection Act* and Strategy may provide tools for municipalities to help “protect and restore the ecological health of the Great Lakes Basin; and create opportunities for individuals and communities to become involved in the protection and restoration of the ecological health of the Great Lakes-St. Lawrence River Basin.” Protecting and restoring the Great Lakes and St. Lawrence Basin is essential for the physical and economic health of all Ontarians, both now, and in the future. AMO appreciates the political and scientific challenges of preparing effective legislation that helps coordinate the efforts of a region that includes: two nations, two provinces, ten states, and hundreds of municipalities. As the order of government most directly responsible for water infrastructure, Ontario’s municipalities are committed to protecting this precious resource but remain concerned about the potential financial and administrative impacts of these initiatives.