



Bill 151, *Waste-Free Ontario* *Act, 2016*

Submission to the Standing Committee on Social Policy

April 19, 2016

On behalf of the Association of Municipalities of Ontario and our members, I would like to thank you for the opportunity to speak to you today and be able to contribute to your deliberations on the proposed *Waste Free Ontario Act*.

Municipal governments have long advocated for a new legislative framework for waste management in the Province and we support the introduction the proposed Act.

That said, we would like to give you a brief overview of our key comments and concerns with the proposed legislation in order to improve it from a municipal perspective.

Municipal governments support a new waste management legislative framework – compared to current *Waste Diversion Act* and its municipal impact.

We do support the clear intent of the proposed Act to move toward real producer responsibility and having producers --- not the municipal tax base -- fully fund the costs of managing products and packaging at the end of their useful life.

We are encouraged to see that a wide variety of products and packaging can be designated under the Act to ensure the lifecycle of the resources used in these materials, and can be extended through source reduction, reuse and recycling.

The Act provides an ability to increase producers' current funding cap for the Blue Box program beyond 50%. This is helpful given our years of receiving less than the full 50% we expected under the current *Waste Diversion Act*. Since 2004, this lost funding has cost municipal governments and our residents \$233 million. We went to arbitration in 2014 on this issue and the matter remains in dispute to this day.

There is a stated intention to ensure service standards and geographic coverage are maintained or improved, compared to current standards for diversion programs. If packaging and designated materials can be sold in Red Lake or Moosonee or Mattawa or anywhere in the province, then there needs to be a diversion program to make sure that those resources are recovered. This will be a key difference between the B.C. producer-lead program and what we want in Ontario.

We agree that the proposed oversight agency needs the proper tools for enforcement and ensuring compliance.

Although we are supportive of this draft legislation, we do ask that some key issues are addressed and amended by this committee in Bill 151 through your deliberations.

Municipal government must have a seat at the table.

Municipal governments are responsible for an integrated waste management system. Our current diversion programs under the *Waste Diversion Act (2002)* and Regulation 101/94 represent less than 20 per cent of the tonnes municipalities manage and an even smaller percentage of the total costs municipalities incur to operate the system.

Given our extensive integrated waste management role and responsibilities, which will continue for the foreseeable future beyond the enactment of the new Act, we need to have a seat at the table during transition of the current diversion programs **and after** the *Resource Recovery and Circular Economy Act* is in force.

The future decisions and regulations made regarding these new diversion programs will impact the roughly 80% of the integrated waste management systems that municipal governments will still be responsible for operating and funding. This includes landfill and other disposal facilities, litter, organics, and wastewater treatment.

Municipal governments have significant roles in the current diversion programs for Blue Box, municipal hazardous and special waste, electronics, used tires, and pharmaceuticals. We need to be recognized formally as a partner in the transition/wind-up process and have a formal seat at the table when decisions are being made about these new waste recovery and diversion programs.

Municipalities bear the primary burden when waste materials are not effectively collected and reused. These materials end up in municipal landfills, disposal facilities, water systems, or on our streets as litter. We are not merely an interested stakeholder but are the local government who will always have a major responsibility in waste management.

***Waste Diversion Transition Act* language continues the current intractable disagreements between municipal governments and the stewards.**

Our other key ask is an amendment to section 11 of the *Waste Diversion Transition Act* regarding payments from producers to municipalities for operation of the Blue Box program.

At present, the current section 11 language is identical to section 25(5) of the *Waste Diversion Act 2002*. This same section was the subject of a complex arbitration in 2014 between AMO, City of Toronto, and Stewardship Ontario. Despite a clear award in favour of municipalities, stewards continue to dispute the interpretation of this section.

The review of the *Waste Diversion Transition Act* at this Committee offers a desperately needed opportunity to remedy this challenging and unproductive conflict.

We implore the members of this Standing Committee to amend the language to clearly state that municipal governments should be paid the applicable percentage by producers for Blue Box services based on the verified net costs of the program, as determined through the WDO datacall.

This was the Arbitrator's decision. We respectfully ask you to make sure the section 11 language in the *Waste Diversion Transition Act* is crystal clear and non-disputable by parties when you report back to the Legislature.

Producers should pay all waste management costs for their products and packaging.

We are concerned that the proposed Act only requires producers to fund activities related to reduction and resource recovery. It appears to assume that the designated materials that end up in the municipal waste streams will continue to be funded entirely by the municipal property tax base.

Producer responsibility should be full producer responsibility. It is what the producers have asked for and we absolutely agree with them.

We think everyone would agree that we don't want to have perverse incentives that move materials from recycling and recovery streams to landfill and disposal. In our view, producer's fiscal responsibilities include managing the full end-of-life costs for their designated products and packaging. This includes producers paying for designated materials that end up in the municipal

waste streams- organic, litter, or garbage. We also would like to touch upon a couple of other priority matters for the municipal sector:

- Principles for setting producer responsibility targets should be in the proposed Act, as it would be helpful for all affected parties to have broad descriptions in the Act of how the producer responsibility program targets will be set and who will be responsible for setting those targets.
- Provincial Policy Statements must be clear, specific, and enforceable. We in the municipal sector have seen mixed results in the use of Provincial Policy Statements under the *Planning Act*. Therefore, it is critical to ensure that policy statements are drafted in a way that provides for enforcement measures.

In closing, we would ask the Committee to ensure that the legislation presents a fair and balanced approach for municipal governments and our residents.

In our view, a fair and balanced approach would be achieved through changes to section 11, the establishment of a Municipal Advisory Body, and other specific amendments to the *Waste Diversion Transition Act* and the *Resource Recovery and Circular Economy Act*.

Attached to our submission are proposed amendments developed by the municipal sector that we would ask you to consider as the Standing Committee develops the critical amendments needed to Bill 151.

Thank you for your attention and I would be happy to answer any questions you may have. [1218 words-- ~ 10 minutes]

Appendix: PROPOSED AMENDMENTS TO BILL 151

The Association of Municipalities of Ontario (“AMO”) requests the following amendments to Bill 151.

WASTE DIVERSION TRANSITION ACT, 2015

1. Section 2, **Interpretation**, of the Waste Diversion Transition Act, 2015, is amended by adding the following definition for Municipal Advisory Body:

“Municipal Advisory Body” means one municipal representative from each of the Association of Municipalities of Ontario, the City of Toronto, the Regional Public Works Commissioners of Ontario and the Municipal Waste Association;
2. Subsection 11 (1), **Blue box program payments to municipalities**, of the Waste Diversion Transition Act, 2015, is deleted in its entirety and replaced with the following:
 11. (1) The waste diversion program for blue box waste must provide for payments to municipalities to be determined in a manner that results in the total amount paid to all municipalities under the program being equal to the applicable percentage of:
 - (a) the total actual costs incurred by all municipalities with respect to the diversion of blue box waste as verified by the Datacall, minus (b) the total actual revenue generated by all municipalities with respect to the diversion of blue box waste as verified by the Datacall.
 - (2) For the purposes of this section, the applicable percentage is 50 per cent or such greater percentage as is prescribed by the regulations for the purposes of this subsection.
 - (3) For the purposes of this section, “Datacall” means the datacall described in the waste diversion program for blue box waste developed under the Waste Diversion Act, 2002 that is continued by subsection 9(1) of this Act.
 - (4) The waste diversion program for blue box waste developed under the Waste Diversion Act, 2002 that is continued by subsection 9(1) of this Act is deemed to provide for payments to municipalities as set out in this section as of the date this section comes into force.
3. Section 12(2), **Consultation**, of the Waste Diversion Transition Act, 2015 is amended by inserting the words “shall consult with the Municipal Advisory Body and” after the words “relevant industry funding organization”. The revised section shall read as follows:

12(2) The Authority and the relevant industry funding organization shall consult with the Municipal Advisory Body and shall determine which persons they consider to be affected by the proposed material change and how to consult those persons about it, and shall conduct consultations accordingly.

4. Section 13 (2), **Consultation**, of the Waste Diversion Transition Act, 2015 is amended by inserting the words “shall consult with the Municipal Advisory Body and” after the words “industry funding organization”. The revised section shall read as follows:

13 (2) The Authority and the relevant industry funding organization shall consult with the Municipal Advisory Body and shall determine which persons they consider to be affected by the proposed change and how to consult those persons about it, and shall conduct consultations accordingly.

RESOURCE RECOVERY AND CIRCULAR ECONOMY, 2015

5. Section 1, **Definitions**, of the Resource Recovery and Circular Economy, 2015, is amended by adding the following definition for Municipal Advisory Body:

“Municipal Advisory Body” means one municipal representative from each of the Association of Municipalities of Ontario, the City of Toronto, the Regional Public Works Commissioners of Ontario and the Municipal Waste Association;

6. Section 2(j), **Provincial Interest**, of the Resource Recovery and Circular Economy, 2015, is amended by inserting the words “from existing diversion levels at the time this Act comes into” force after the words “all sectors of the economy”. The revised section shall read as follows:

2 (j) increase the reuse and recycling of waste across all sectors of the economy from existing diversion levels at the time this Act comes into force.

7. Section 2, **Provincial Interest**, of the Resource Recovery and Circular Economy, 2015, is amended by the addition of the following new subsection and renumbering the following subsection accordingly:

(o) foster fairness to taxpayers;

8. Section 11 (2), **Development of policy statements**, of the Resource Recovery and Circular Economy, 2015, is amended by inserting the following words “and amending” after the words “In developing”. The revised section shall read as follows:

11 (2) In developing and amending a policy statement, the Minister shall consult, in the manner the Minister deems appropriate, with,

9. Section 11 (2), **Development of policy statements**, of the Resource Recovery and Circular Economy, 2015, is amended by the addition of the following new subsection (e) and renumbering the following subsection accordingly:

11 (2) (e) the Municipal Advisory Body;

10. Section 30, **Consultations, etc.** of the Resource Recovery and Circular Economy, 2015, is amended by the addition of the following new subsection 4:

4. Conduct consultations with the Municipal Advisory Body to identify any financial impacts and/or burdens that may be placed on municipal waste operations or result in negative impacts on diversion rates.

11. The addition of a new subsection to section 89, **Administrative penalties**, authorizing and requiring that the Authority to pay all or some of a collected penalty to a municipality if the contravention giving rise to the administrative penalty pursuant to subsection 89(2) caused, or resulted in, increased collection, processing or other costs to that municipality.

(Alternatively, the list in subsection 89(2) could be limited only to administrative contraventions that would not result in waste services costs being incurred by municipalities (e.g. not submitting a required report, or failure to comply with record keeping), in which case, the additional subsection suggested above would be unnecessary.)

12. The addition of a new subsection to section 98, **Offences**, authorizing and requiring the Province to pay the fine to the municipality where the offence occurred as a result of a contravention of subsections 98(1) or 98(2).

13. Section 103, **Regulations, general rules**, of the Resource Recovery and Circular Economy, 2015 is amended by the addition of the following new subsection (6):

Consultation Municipal Advisory Body

(6) Prior to the posting of any draft regulations on the Environmental Bill of Rights or the Regulatory Registry the Municipal Advisory Body shall be provided an opportunity to review and comment on any draft regulation to identify possible financial burdens that may be placed on municipal waste operations or negative impacts on diversion rates.