

Bill 185, Cutting Red Tape to Build More Homes Act, 2024

AMO'S SUBMISSION TO THE STANDING COMMITTEE ON FINANCE AND
ECONOMIC AFFAIRS

May 6, 2024

Executive Summary

AMO appreciates the introduction of Bill 185, which most importantly addresses problematic elements of Bill 23 regarding development charges (DCs). AMO would also like to acknowledge the productive, collaborative approach that the Minister and Ministry of Municipal Affairs and Housing brought to the development of this legislation.

The introduction of Bill 185 has re-opened discussion about the role of DCs in housing affordability, engendering criticism from the federal Minister of Housing and Infrastructure. AMO's hopes this submission will help to clarify some important facts to support discussion across all three levels of government on how to fund and finance the historic infrastructure investments required over the next decade.

DCs are not a tax. They are a tool which allows municipalities to recover the costs of incremental infrastructure tied directly to growth. Unlike the HST or the provincial Land Transfer Tax, they do not flow directly into consolidated revenues to be used for any purpose deemed appropriate. They are collected and spent in highly regulated ways on specific growth-related projects.

While some believe that lowering DCs will lead to lower house prices, this idea goes against basic economic principles. It assumes that the price of a house is simply the sum of its costs as opposed to being determined by the market. It assumes that developers will act against their own rational self-interest by passing on cost savings to buyers instead of pocketing higher profits and leaving property taxpayers to foot the bill.

Recently, there has been a sense that the principle that "growth pays for growth" needs to be rethought, as homebuyers struggle to afford housing due to a variety of complex factors. AMO is very open to a discussion about other ways that growth-related infrastructure can be funded and financed. We have called on the province to sit down with municipalities to explore the services and infrastructure that Ontarians rely on most, can be delivered more effectively, more affordably and more sustainably.

AMO estimates that Ontario's municipalities are planning to invest more than \$250 billion in capital over the next 10 years, with more than \$100 billion of that related to growth. We can't do it with policies designed to reduce our capacity for infrastructure investment. AMO is confident that the Government of Ontario will answer our call for a Social and Economic Prosperity review to ensure that communities in every part of the province have a sound economic foundation and enviable quality of life.

Development Charges

The Facts on Development Charges in Ontario

DCs have been part of Ontario’s municipal fiscal framework for decades and are a critical way that municipalities pay for the infrastructure to support housing and growth. There has been much recent misunderstanding of the nature of DCs – and the impact of exemptions – at both the provincial and federal levels.

DCs are not a tax. They are a cost recovery tool with strict provincially mandated rules that ensure that funds collected are tied to specific projects needed to support growth and are not able to be used for any other purposes. This approach contributes to municipal fiscal sustainability and ensures transparency and accountability for current and future residents.

- Municipalities follow a prescriptive process to determine DC rates, beginning with provincial population and employment growth forecasts and conducting a detailed cost of growth analysis to apportion the cost of growth to different development types (e.g., residential, commercial, industrial).
- The process is transparent and consultative, and developers factor these charges into their project costs.
- Because DCs can only be used for the purposes for which they are collected, municipalities create special reserve for each “service” category (e.g. water, wastewater, emergency services) to hold funds to both leverage debt-finance, and to use to pay for specific projects at the time funds are required.
- This funding is not, however, additional money available for new projects or contingency amounts that reflect a sector that is overly risk averse. It is funding that is already committed to support growth-related projects that are underway, managed in a prescriptive way aligned with provincial rules.

While DCs are not a tax, there *are* many taxes on new housing construction, including the HST and provincial land transfer taxes that generate billions in revenue for the federal and provincial governments. The federal government makes the most of all three orders of government on a new house, receiving a 39% share of tax revenues, but contributing only 7.1% of the public infrastructure.¹

¹ Source: [An Uncomfortable Contradiction: Taxation of Ontario Housing - Canadian Centre for Economic Analysis \(cancea.ca\)](https://www.cancea.ca/analysis/an-uncomfortable-contradiction-taxation-of-ontario-housing)

Ontario's long-standing and highly productive DC framework was designed to:

- Support the development of complete communities, including social, health transportation and environmental infrastructure, and
- To ensure that new growth was not wholly subsidized by existing property taxpayers (DCs only covered between 60-80 percent of costs prior to Bill 23²).

That leaves two choices for policy makers who wish to support DC discounts:

- They can offset the municipalities' restricted ability to recover the incremental costs of new development with an alternate source of funding, such permanent provincial or federal grants, or a new revenue source, such as a share of the HST, or
- They can affect increased property taxes on residential and commercial taxpayers, including people on fixed incomes and small businesses.

AMO and Ontario municipalities recognize the need to explore different ways of funding and financing infrastructure in the face of historic growth. But transferring property tax dollars to developers with no clear public benefit would not seem to be the basis of a sound strategy.

Support for Bill 185 Development Charges Act Changes

Across Ontario, municipalities are planning for capital expenditures of over \$250 billion over the next 10 years, with around \$100 billion of that related to growth. Bill 23 significantly undercut municipalities' ability to fund and finance the infrastructure needed to support housing supply – creating an estimated \$10 billion loss in municipal revenue over 10 years. In response to municipal submissions highlighting the impact of these changes, this government committed to “make municipalities whole” in November 2023.

Bill 185 takes significant steps towards restoring municipalities' ability to fund growth-related infrastructure by:

1. Repealing the mandatory five-year phase-in of new DC rates; and
2. Restoring studies as eligible DC expenses.

²The City of Toronto stated that before Bill 23, DCs paid for approximately 60-70% of growth-related infrastructure costs. This means that DCs never fully covered off the cost of growth, and we were already requiring taxpayers to cover a significant portion of growth-related costs. Source: <https://www.toronto.ca/wp-content/uploads/2019/05/97e8-CP-TorontoFactSheet-development-charges.pdf>

To enable municipalities to keep pace with growth infrastructure needs and to help address the growing homelessness crisis across the province, AMO calls on the government to:

- Reinstating the cost of land as an eligible DC expense. Purchasing land on which to build infrastructure like new water treatment plants, water towers, transit hubs and police stations is a key cost driver of municipal infrastructure. Barring municipalities from being able to recover these costs from developers will cost property taxpayers \$1.9 billion over 10 years.
- Reinstating the cost of housing services as an eligible DC expense. Capital to repair and build more community housing and emergency shelters is needed Ontario-wide. This measure removed \$2 billion from municipal housing services, impacting an estimated 47,000 units.

Neither Bill 185 nor any of the government's many other pieces of housing legislation since 2022 adequately address the challenge of the extreme lack of deeply affordable housing in Ontario. Community housing waitlists top 200,000 individuals in Ontario. An estimated 140,000 new units of community housing are needed in this province just to approach the OECD average.³ While the National Housing Strategy was supposed to provide a way forward, a lack of federal and provincial alignment are putting at risk more than \$350 million a year in funding for rent supplements and community housing capital. There is an urgent need for federal, provincial and municipal governments to come together to fundamentally re-think the way that community housing is funded in Ontario.

Minister's Zoning Orders (MZOs)

The proliferation of MZOs under the previous Minister of Municipal Affairs and Housing undermined local decision-making and created challenges for infrastructure planning and funding. The government's new framework requiring those requesting an MZO to provide timelines for downstream approvals, project completion, and demonstrate how infrastructure servicing will be addressed for a project is an important step forward. Going further and enshrining in legislation the need to use MZOs only in collaboration with municipalities and in situations of extraordinary urgency would strengthen protections against MZOs that undermine municipal decision-making, planning, and growth financing.

³ Canada Housing and Renewal Association, "The Impact of Community Housing on Productivity."

Land Use Planning Changes

Bill 185 includes a number of changes to the *Planning Act* that can help to incent density and streamline processes. AMO commends the province in particular for:

- **“Use It or Lose It”** provisions recognize the need to hold developers accountable for the building of houses and that municipalities alone do not control the levers of housing supply. Enabling municipalities to reallocate servicing capacity from those developers who do not pull building permits within a reasonable amount of time will help municipalities make better use of the infrastructure that is already in place and incent developers to move forward with housing
- **Removing application fee refund** provisions to reflect that *all* development partners – including provincial ministries and agencies and developers – have a collective impact on the amount of time it takes to finalize planning approvals. Many municipalities and developers have highlighted the disconnect between fee refund requirements and the realities of the planning process on the ground and called for the repeal of this provision.

While Bill 185 has addressed a number of the fiscal and policy challenges inherent in Bill 23, key outstanding issues remain, including:

- **Eliminating regional Official Plans and planning responsibilities**, breaking the logical link between planning and servicing. In a rapid growth environment, the lack of a way to coordinate planning approvals and infrastructure creates a significant risk of either under-servicing or over-building and an over-burdening of the property tax base.
- **Downloading environmental risks** by preventing municipalities from entering into agreements with Conservation Authorities to provide technical advice on development proposals, requiring municipalities to take on responsibility for safeguarding environmentally sensitive lands including farmland and protecting people and property from natural hazards without the appropriate expertise. The ability for the Minister to override Conservation Authorities’ decisions flood hazards proposed in the new regulation significantly compounds these risks.

- **Remaining vague on Indigenous consultation and consent** in the face of First Nations calls to more explicitly incorporate United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) provisions for free, prior and informed consent into land-use planning and development processes. Detailed guidance is required to support a shared understanding of obligations and best practices to underpin strong Indigenous-municipal relationships.

Conclusion

Bill 185 addresses some critical issues with Bill 23 regarding development charges, but further action is needed. While reinstating the 5-year phase-in and studies as eligible expenses is positive, restoring housing services and land costs as eligible for development charges is crucial to ensure municipalities can manage growth and infrastructure needs.

Affordable housing remains a significant concern. AMO urges the government to reinstate housing services as an eligible development charge cost to support building critically needed community housing units. This, along with addressing the federal funding shortfall, is essential to address the housing affordability crisis.

While streamlining land use planning is desirable, it must be balanced with environmental protection. Bill 23's weakening of Conservation Authorities and the lack of clarity on Indigenous consultation create significant risks and require government action.

Ultimately, a successful path forward requires a comprehensive approach that addresses infrastructure funding, affordable housing needs, environmental protection, and clear roles and responsibilities for all partners involved in building Ontario's future.