Bill 57 – *Restoring Trust, Transparency and Accountability Act, 2018*: Implementation of Ontario's Fall Economic Statement

AMO Submission to the Standing Committee on Finance and Economic Affairs

December 3, 2018

The Association of Municipalities of Ontario (AMO) appreciates the opportunity to contribute to the Standing Committee on Finance and Economic Affairs Committee's deliberations on Bill 57- *Restoring Trust, Transparency and Accountability Act, 2018* (Bill 57).

This Bill is a collection of Schedules amending 45 pieces of legislation and is intended to implement the Government's Fall Economic Statement. It is broad in scope and effect. AMO will focus its comments on Schedule 18, *Fire Protection and Prevention Act*. There are several other schedules for which we have provided comment, too.

A. Schedule 18 – *Fire Protection and Prevention Act*

AMO is delighted that the government is taking clear action to address two longstanding concerns within the municipal sector.

First is rebalancing the fire interest arbitration (IA) process to put the local municipal government's circumstances more clearly and correctly within the decision-making process of an arbitrator.

The second element is creating enhanced protections for individuals who are "double-hatters" who are career firefighters in one community and have a desire to contribute their home community by using their talents when available in off hours. At the centre is their desire to be free to use their time off as they wish, without reprisal.

These changes are highly supported and we are providing a couple of important amendments that would improve it further and provide needed clarity and strongly urge this Committee to adopt them.

Each of the specific amendments to Schedule 18 are found in the Appendix and several are highlighted here.

We ask for a clarifying change to the definition of "double hatter" found on page 43 of the Bill. This change will make sure that double hatters remain as defined as firefighters under Part IX - Employment and Labour Relations, in the *Fire Protection and Prevention Act, 1997*. We understand that the government has incorporated this amendment into their proposed amendments; however, we are raising it here for complete transparency of this critical revision.

AMO supports moving to a single arbitrator model, rather than a three-member panel. This change, which parallels the police IA model, should help get more timely decisions from an arbitrator. It will bring efficiency to scheduling. There are other administrative-based changes, such as requiring the arbitrator to provide written reasons demonstrating their consideration of the statutory criteria upon request that are long overdue.

It is our expectation that proposed changes to the fire interest arbitration process will provide interest arbitration criteria that will allow a municipal government to advance information about its fiscal health. If passed, the change to the criteria will mean that local circumstances will have a real place in the arbitrator's considerations. The proposed criteria signals a change. It will provide for the opportunity for municipal employers to make arguments at the bargaining table and at interest arbitration. The criteria will not determine or guarantee arbitration outcomes but local

circumstances cannot be passed over for arbitration to simply replicate fire service awards elsewhere across the province.

Municipal employers will very much still need to provide well-researched arguments, including local and regional economic and comparator evidence, to make a compelling case on municipal fiscal capacity. Time and again, communities have wanted to know how local circumstances were considered in an interest arbitration award. The changes within this Bill help those taxpayers understand how an arbitration award considered their community.

Schedule 18 should generate meaningful bargaining rather than an express ticket to interest arbitration. Interest arbitration should be a last resort for both parties.

While AMO believes that the fire interest arbitration changes are a move in the right direction, some clarification changes are needed. It is with this in mind that AMO offers twelve amendments. Nine of these proposed amendments are of critical importance to ensure that the fire arbitration legislation achieves its stated goals and three additional amendments that are in the best interests of communities and their taxpayers. Please refer to the Appendix for the full list.

Two additional key critical amendments are:

1. Deleting the phrase "changes to" in front of the listed criteria in subsection 50.5(2) (3). A community with consistently stagnant economic growth or consistently low population growth will not be able to show that its economic data has "changed." We would submit that this is worthy of consideration.

2. Adding an obligation of an arbitrator to consider what municipal employers have done with non-unionized staff compensation as well as unionized. We think it relevant for an arbitrator to consider, for example, whether a municipality has frozen non-union wages for the period of the term of the collective agreement in question. There is nothing in the draft legislation that provides the basis to establish such a reasonable requirement to consider that evidence. We will note that this evidence can cut both ways. If a community gives its non-union staff a 3% wage increase, it will have a much harder time arguing that it is in such poor economic health that it cannot provide its unionized employees a comparative wage increase.

As previously noted, there are additional amendments and rationale in the Appendix that should be implemented by the Committee.

B. Schedule 2 – *Assessment Act*

Property tax is the primary source of revenue for municipal government. Municipal governments support the Legion and its members. That is why more than half of Legion properties in Ontario already benefit from exemptions or rebates. For some others, we understand other arrangements exist that provide support.

We need to note respectfully that any time a type of property is afforded preferential treatment through assessment and class assessment appeal decisions, every other property taxpayer pays for it. The stability and reliability of the rules that govern the assessment system and the property tax system are critical to municipal revenues and how municipal governments fund local services.

C. Schedule 8 – *Construction Act*

The Act was "modernized" in 2017 through Bill 147. It instituted holdback rules effective July 1, 2018 and established prompt payment and adjudication processes, scheduled to take effect next October.

AMO and others sought technical amendments to Bill 147 that would bring clarity to some of its provisions. Schedule 8 of this Bill does this and we support these amendments. They benefited from the advice from construction law experts and an Advisory Group that included two municipal legal representatives.

We are pleased with the clarification provided around the adjudication rules, and that liens will no longer attach to municipal lands including contracts that were entered into before July 1, 2018. We recognize that any piece of legislation has to strike a balance between the needs of government and their stakeholders. We think the Schedule before the Committee is much closer in achieving this than when we started this review process in 2014.

D. Schedule 27 – *Municipal Act*

In AMO's submission to Bill 36, *The Cannabis Law Statute Amendment Act, 2018*, we asked the provincial government to amend the *Municipal Act*. Municipal governments need absolute clarity that in enacting by-laws restricting the public consumption of cannabis is aligned with municipal action permitted under the *Smoke-Free Ontario Act* for tobacco.

AMO is pleased that the Province is moving forward on this technical amendment. This will provide clarity for the legislative authority for municipal by-laws restricting public consumption of cannabis as well as tobacco by enabling municipal governments to act to safeguard the health of our residents.

Conclusion

This submission addresses the Schedules for which AMO supports the government's intent. It offers amendments that would strengthen the intent and offer clarity for all. We encourage the Committee to adopt our proposed changes.

Appendix

Proposed AMO Amendments to Schedule 18, *Fire Protection and Prevention Act*

Critical Amendments

1. Volunteer definition

The expansion of the Volunteer definition in Part 1 and in Part IX s. 41(2.1) to include double hatters in the definition of volunteer inadvertently means that double hatters are removed from the definition of "firefighters" in Part IX. That is not the intended result.

2. An arbitrator should not be limited to considering "changes to a municipality's economic circumstances".

As currently drafted, subsection 50.5(2) (3) requires the arbitrator to consider "changes to labour market characteristics, property tax characteristics and socio-economic characteristics". AMO recommends that the words "changes to" be deleted. If a municipality's labour market, property tax and socio-economic characteristics have not changed, they should still be considered by the arbitrator. Consider a financially disadvantaged municipality with consistently stagnant economic circumstances. Its stagnant labour market, property tax and socio-economic characteristics are relevant and must be considered by the arbitrator regardless of whether they have changed.

3. The importance of non-unionized wage trends within a municipality

As currently drafted, subsection 50.5(2) (2) states that the arbitrator shall take into consideration "a comparison of collective bargaining settlements reached in the same municipality".

AMO maintains that it is important for collectively bargained settlements within the same municipality to be considered. However, arbitrators should also be required to consider the increases (or lack thereof) that the municipality has given to its non-unionized employees. For example, if after a recession a municipality were to establish a wage freeze on all non-unionized staff for a period of time, it should be mandatory for the arbitrator to consider this fact when determining what increases, if any, to award to firefighters within the same municipality.

4. Exchange of written submissions

AMO recommends that the language of subsection 50.3(4) be amended to clarify that all written submissions on the matters in dispute must be exchanged before the first day of hearing. It is customary in interest arbitration proceedings for the parties to exchange two or three different types of briefs, including their submissions on their own proposals, reply submissions, and rebuttals.

Clarifying that all written submissions must be exchanged in advance of the hearing will expedite the hearing process, including by ensuring that the arbitrator has the opportunity to review the material in advance of the hearing date. Exceptions would be appropriate on a

case-by-case basis where ordered by the arbitrator (i.e. to address new matters that arise at the oral hearing).

5. Need to eliminate all language referring to boards of arbitration

AMO recommends that the language of subsection 50.4(1) be changed from "board of arbitration" to "an arbitrator" to be consistent with the balance of the amended legislation.

6. The costs of operating a fire department

AMO respectfully suggests that an additional criterion be added to subsection 50.5(2), namely "the cost of operating the fire department".

Municipalities across Ontario are concerned with the escalating cost associated with operating their fire departments. Most of these costs relate to wages and benefits for firefighters. At interest arbitration, municipalities commonly rely upon data showing the costs associated with operating their fire departments (including, for example, the cost per capita of operating the fire department relative to other similar municipalities in Ontario). This data has been given insufficient consideration and weight by arbitrators and therefore, this criterion should be added as a mandatory criterion under subsection 50.5(2).

7. Consistency in terms – "community" vs. "municipality"

Subsections 50.5(2) (5) and (6) use the word "community". AMO suggests that the word "municipality" be used to create clarity and consistency across the different statutory criteria.

8. The interest and welfare of the community served by the fire department

The word "interest" in subsection 50.5(5) should be "interests".

9. Transitional provisions

As drafted, section 50.10 would terminate boards of arbitration that have already been constituted, so long as notice under section 49 was given after November 15, 2018 and the hearing has not yet commenced. In addition, in the same circumstance, the new statutory criteria under section 50.5(2) would apply.

AMO believes that terminating boards of arbitration that have already been constituted could create unnecessary and unwanted litigation.

With regard to the amended statutory criteria, because the legislation does not specifically define when a hearing "commences", this may create uncertainty as to what statutory criteria apply (where, for example, the parties have drafted or exchanged submissions on the basis of the old statutory criteria but the hearing date to present those submissions to the arbitrator has not passed).

AMO believes that the listed sections should apply prospectively to matters for which referral to arbitration (and therefore the hearing) occur after the date that Bill 57 receives Royal Assent.

Recommended Amendments

10. Ministerial involvement in communicating the time and place of proceeding

AMO recommends that the language in section 50.3 be amended to remove the words "and the Minister shall notify the parties".

AMO understands that it is important for the Minister to be advised of the time and place of proceedings, so that the Minister can ensure the matter will be heard in an expeditious manner in accordance with the legislation. However, AMO does not believe that it is necessary to have the Minister advise the parties of the time and place of the proceedings. Arbitrators' offices are accustomed to advising parties of this information in Notices of Hearing, typically issued electronically or by mail. AMO believes that would be more practical and expedient for the Minister to simply be copied on the Notice of Hearing that is issued to the parties directly by the arbitrators' office.

11. Notice of agreement to recommence

In AMO's view, the language of section 50.3.1 should reflect that, in many circumstances, the parties would not be able reach agreement to recommence the arbitration before a different arbitrator. The government may wish to consider amending the legislation to contemplate an alternative process that would apply if the parties are unable to reach agreement, such as going back to the Minister for a further Ministerial appointment.

12. Mandatory criteria

Although the language of section 50.5(2) of the legislation specifies that an arbitrator "shall" take into consideration the listed statutory criteria, AMO suggests that the heading of this section be changed from "criteria" to "mandatory criteria" to further emphasize the importance of the listed criteria.