



Bill 132: *Better for People, Smarter for Business Act, 2019*

Submission to the Standing Committee on General Government

November 25, 2019

Introduction

The Association of Municipalities of Ontario (AMO) is pleased to provide municipal perspectives on Bill 132, the *Better for People, Smarter for Business Act, 2019* with members of the Standing Committee on General Government. AMO is a non-partisan, non-profit organization representing almost all of Ontario's 444 municipal governments. We appreciate the opportunity to contribute to the committee's deliberations on this Bill which is of significant municipal interest and concern.

This omnibus Bill touches on a large number of topics. While some fifteen Acts that impact municipal responsibilities are amended, AMO will only comment on the top issues that raise concerns due to the anticipated impact to municipal governments.

First, and of most importance, is the opportunity to rectify a shortcoming relating to both the *Safe Drinking Water Act* and the *Aggregate Resources Act*. While the proposed amendments to the *Aggregate Resources Act* raise the bar by requiring an application process where below water table extraction is proposed (rather than just amending an existing licence), this still leaves municipal council members vulnerable. The *Safe Drinking Water Act* identifies a duty of care for owners of drinking water sources. If drinking water is contaminated, the *Safe Drinking Water Act* reads such that individual council members can be jailed. They owe a duty of care to the public and they must undertake due diligence to ensure they have done all they can to ensure drinking water is safe to drink. Without a concurrent amendment to the *Safe Drinking Water Act*, Council members will be responsible for decisions on applications that the province makes. This is unfair and we believe unintended. Council members need to be indemnified where contamination results from a provincial approval process.

If this Bill is not amended to assure municipal governments that there will be no below water table extraction without municipal agreement, or provide indemnification, municipal governments will have no alternative but to appeal applications to the Local Planning Appeal Tribunal (LPAT) to demonstrate due diligence at a minimum. This will greatly increase red tape and administrative burden for the LPAT and municipal governments -not to mention delay decisions for aggregate businesses which would risk new investment in the industry.

There seems to be a lack of recognition about hydrogeology and the connections between surface water and aquifers, and the links between aquifers. By creating a pathway for contaminants into one aquifer, there is a danger that neighbouring aquifers will be contaminated. The timeframe for contamination to move through other aquifers may be very long, or only a few years. A provincial approval for below water table extraction conflicts with Drinking Water Source Protection. Modeling for vulnerable water sources has been limited to wellhead areas and intake areas, not all vulnerable aquifers, so the science is incomplete.

Another shortcoming of the proposed amendments is the removal of the power of the Local Planning Appeal Tribunal to "have regard to road degradation that may result from proposed truck traffic to and from the site". AMO's advice is that this would create significant hardship for municipal governments who are attempting to create and maintain safe roads. Should this Bill not be amended, municipal governments will need a new tool to cause these types of agreements to be entered into. Otherwise, municipal taxpayers will be required unduly to subsidize aggregate operations.

The Bill proposes that changes to site plans require Minister's approval. AMO would ask that no new or amended site plans be approved without municipal consultation and concurrence. Site plans do not require Minister's approval if they comply with regulation, which restricts the municipal ability to comment and approve. This approach ignores local concerns about noise, dust and other nuisance factors that neighbouring property owners have. It takes away their rights with respect to enjoyment of their properties. Further, the complaints regarding these matters will be directed to municipal staff and council, not to the Minister. AMO cannot support this without ensuring that these regulations protect municipal interests.

Finally, the Bill proposes that expansion of extraction operations into road allowances can be approved by the Minister. There is no assurance in the Bill that one of the conditions of approval would be agreement of the municipal government that owns the road allowance. This need to be amended to include the requirement of municipal agreement on its own road allowance.

Recommendation: Amend the *Safe Drinking Water Act* to **indemnify** municipal council members where drinking water sources are contaminated due to a provincial decision, such as an aggregate exaction permit.

Recommendation: That the following **be deleted** from the Bill:

Section 12 of the Act is amended by adding the following subsections:

Exception

(1.1) Despite clause (1) (h), the Minister or the Local Planning Appeal Tribunal shall not have regard to road degradation that may result from proposed truck traffic to and from the site.

Recommendation: That the following be added:

No amendments to site plans without approval

(3.1) A licensee shall not amend a site plan or prepare a new site plan without first obtaining the Minister's written approval, **based on a municipal recommendation**.

Recommendation: That the clause **be amended** as follows:

Expansion of boundaries

13.2 (1) Subject to subsection (2), the boundaries of the area subject to a licence, as specified in a site plan for the licence, may not be expanded unless an application for a new licence is made under section 7 to operate the pit or quarry in the proposed expansion area.

Amendment

(2) A licensee may apply to the Minister for an amendment of the licence and an amendment to the site plan to expand the boundaries of the area subject to the licence if,

(a) the proposed expansion area is wholly within a portion of a road allowance directly adjacent to the boundaries of the area subject to the licence; and

(b) the prescribed conditions, **including but not limited to approval of the municipal council that owns the road allowance**, are satisfied.

Second, the *Line Fences Repeal Act, 2019*, has some positive aspects but will be challenging to transition in a short time period. Most rural governments rely on this Act and its repeal means all municipal governments will need to use provisions under the *Municipal Act* to govern fences and resolve disputes. Many municipal governments find retaining fence viewers problematic. Many municipalities already have fence by-laws under the *Municipal Act*. We understand that the transition time will be two years after Bill 132 receives royal assent. This should provide sufficient time to review templates and samples and enact the by-laws. The transition timeframe of two years after royal assent is essential.

Recommendation: That the province undertake a thorough consultation on the use of the *Line Fences Act*, prepare sample by-laws and be prepared to retain a provincial referee to resolve issues under dispute.

Third, many of the proposed amendments in the Bill shift toward replacing various penalty regimes with Administrative Monetary Penalties (AMPs) and this is welcomed. However, these transitions will require additional work on the part of municipal governments to set up this system. Our understanding is that AMPs replace the quasi-criminal Provincial Offences and other penalty regimes with a civil mechanism for enforcing regulatory requirements. The Ministry's report on AMPs from 2015 notes that AMPs are more efficient than other penalties or offences and do not lead to convictions or imprisonment. This leads to less administration costs in some cases and less court time. However, because AMPs are imposed without a court hearing, other mechanisms for review that protect natural justice principles must be put in place.

Many municipal courts and enforcement officials have supported the move to put in place AMPs for Provincial Offences that are enforced by municipalities to increase compliance and reduce collection and courts administration costs. The province's direction in this Bill should lead to more widespread acceptance of AMPs in Ontario.

Recommendation: That sufficient time to enact the by-laws and administrative procedures be provided to permit an orderly transition to AMPs in the various pieces of legislation that would be amended should this Bill pass.

Fourth, proposed amendments to the *Pesticides Act* shift to focus on the active ingredient of a pesticide. Therefore, the Bill repeals provisions of section 7.1 of the *Pesticides Act*, which currently prohibits the use of prescribed pesticides that may be used for a cosmetic purpose, subject to specified exceptions. The repealed provisions are replaced with provisions that prohibit the use of an active ingredient unless the Director has determined that the active ingredient is appropriate for use for a cosmetic purpose and has listed the active ingredient in a prescribed document.

Also, the provision of the Act that currently prohibits the sale of prescribed pesticides is replaced with a provision that prohibits the sale of pesticides unless they have been prescribed. This implies there are pesticides that are not prescribed. No information has been provided as to what these are. It is unclear if this will make certain pesticides easier to access, or to prosecute if misused.

Recommendation: That a full explanation what will be prescribed pesticides and not prescribed be provided by the province. As well, a disclosure of the practical outcomes of this change, including what are the benefits and risks, is required. Without details, this change cannot be supported.

Fifth, the Bill would amend the *Highway Traffic Act* to enable emissions from motor vehicles to be governed under that Act. With the wind up of the Ontario Drive Clean program, vehicle emissions testing is being moved out of the Ministry of Environment, Conservation and Parks to the Ministry of Transportation. We want to go on record that this may require greater emissions testing for municipal fleets. While testing is the right thing to do, it also will increase municipal costs.

Recommendation: That the province track the cumulative total of fiscal impacts of this Bill on municipal governments to ensure that administrative burdens and costs are not being shifted from one order of government to another.

As stated at the outset, the focus of this submission is on areas where municipal governments seek change. There are a number of other proposed changes in the Bill impacting municipal governments including the *Environmental Protection Act*, *Ontario Water Resources Act*, *Pesticides Act*, *Safe Drinking Water Act, 2002*, *Waste Diversion Transition Act, 2016*, *Building Code Act, 1992*, *Statute Labour Act*, *Lakes and Rivers Improvement Act*, and the *Highway Traffic Act*.

These proposals will impact municipal governments with administrative and procedural changes and some new operational costs. While there will be a transition periods required, in general terms these changes can be managed and have potential to create some benefit. The positive proof of these benefits is expected to be seen as regulations are put into place.

Summary of Recommendations:

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Recommendation: That the province undertake a thorough consultation on the use of the *Line Fences Act*, prepare sample by-laws and be prepared to retain a provincial referee to resolve issues under dispute.

Recommendation: That sufficient time to enact the by-laws and administrative procedures be provided to permit an orderly transition to AMPs in the various pieces of legislation that would be amended should this Bill pass.

Recommendation: That a full explanation what will be prescribed pesticides and not prescribed. As well, a disclosure of the practical outcomes of this change, what are the benefits and risks. Without details, this change cannot be supported.

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