Bill 257, *An Act to enact the Building Broadband Faster Act, 2021*

AMO's Submission to the Standing Committee on General Government

March 26, 2021

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The Association of Municipalities of Ontario (AMO) appreciates the opportunity to provide comments on Bill 257. Municipal governments have been staunch supporters of deploying high-speed, affordable, and reliable broadband and cellular connectivity across Ontario.

AMO is pleased with the progress to expand reliable, high-speed, and affordable broadband and cellular connectivity across Ontario but also understands more must be done to make this priority a reality. In the 21st century, connectivity is a necessity, not a luxury.

According to the Provincial 2021 Budget, as many as 700,000 households in Ontario are underserved or unserved (i.e., do not meet speeds of up to 50 Mbps download/10 Mbps upload). The Budget also set a goal to ensure that every region in the Province has access to Ontarians to reliable broadband services by 2025. Finding ways to reduce the barriers (perceived or otherwise), that can slow public infrastructure projects is key to achieving that goal and to leverage the investments in public infrastructure being made at all levels of government.

Bill 257 has the objective of doing just that. Accelerating timely deployment of broadband infrastructure should help bring connectivity to communities faster and boost the economy. However, the desire to expedite these builds cannot supersede the need for municipal governments to conduct proper due diligence and manage liability surrounding the municipal service and rights of way (ROW) access that is being required. There are also significant implications regarding access to electricity infrastructure through Local Distribution Companies (LDCs) of which municipal governments are shareholders.

AMO believes that broadband is the mechanism to economic recovery from COVID-19, and beyond. This enabling legislation provides a unique opportunity to 'get it right' the first time. With some small but important changes and clarifications, AMO believes this Bill can help to do that. Some of our recommendations concern the legislation itself and others are provided to make the Committee aware of our expectations for the regulations to follow.

If this Bill passes, the process around developing the regulations and the participants at the decision-making table will be incredibly important. Our association looks forward to being strongly engaged during the regulation process on behalf of our members.

In the interim, AMO respectfully submits the following comments regarding each of the three Schedules for the Committee's consideration and for the information of members of the Legislature and municipal governments.

Schedule 1, *Building Broadband Faster Act, 2021*

Municipal governments support the objective of the legislation to expedite the delivery of "broadband projects of provincial significance. Removing barriers and streamlining processes related to infrastructure that may result in delays to its timely completion is as important as enhancing co-ordination and engagement with and being fair to public and private sector stakeholders.

There is a distinct difference, however, in reducing barriers to deploying broadband and cellular connectivity in communities that are not already at the 50/10 standard set out by the Canadian Radio-television and Telecommunications Commission (CRTC), and incenting companies to provide 5G to already profitable urban areas that meet and exceed that target.

This legislation should focus on helping unserved and underserved areas improve their services to, at minimum, the CRTC standard. Doing so, will help meet our shared policy goals and objectives of improving access to information and services, economic development potential, cultural development, and social connection to the benefit of all communities in Ontario.

AMO supports this Schedule if it the Province confirms that it would only be used as a backstop measure and that provincially 'designated projects' will be defined as those that receive provincial funding for broadband and cellular connectivity.

Furthermore, for designated projects that are provincially funded, the tools in the Schedule should only be used where a Municipal Access Agreement (MAA) does not already provide certainty for permitting access to ROWs. Where a MAA exists between a municipal government and telecommunications company, this must be the default and any new industry players seeking to enter the municipality should join or negotiate a similar agreement.

These are critical conditions to ensuring the Bill meets its mark in expanding services to all Ontarians while protecting municipal investments made in public infrastructure and for the benefit and enjoyment of their communities. For designated projects where a municipality has not put in place a MAA, having the provincial tools in this Schedule as a backstop could help to ensure public investments in connectivity are more efficient and services can be expanded faster.

Unintended Consequences of Bill 257

With that said, AMO members are still concerned that this Schedule will create the following unintended consequences if it should pass in its current form:

1. **Telecommunications is constitutionally a federal jurisdiction to regulate and the CRTC has set the conditions of access to municipal ROWs.**

The very fact that Ontario is legislating access to municipal ROWs for telecommunications could create a jurisdictional conflict between the federal government's regime, and the one created in this Bill. This is likely to lead to legal uncertainty which could have the opposite effect than what is intended.

Ensuring that the powers in the Bill are used only as a backstop in those circumstances set out previously (designated projects must receive provincial funding AND there is no MAA in place) will help to avoid such a conflict and destabilization by limiting the focus.

2. **It is unclear how having a Municipal Access Agreements (MAA) in place or existing good faith negotiations would be treated if a Minister's Directive could be delivered at any time**.

There must be recognized supremacy of the MAA as a tool where it is in place and providers cannot go around agreements established agreements to seek Minister's orders for matters that are covered by MAAs.

3. **Municipalities will likely be in effect subsidizing telecommunications companies if directives are made to direct access to municipal service or ROWs without fair compensation.**

This is unacceptable. The timelines associated with requiring access and the Administrative Monetary Penalty (AMPs) for non-compliance are too strict and may have the opposite effect than what is intended to be a backstop mechanism.

The contemplated fines are high enough to have a significant financial impact on municipal governments and local taxpayers if the full weight of them is brought forward. The legislation should require the Ministry to establish thresholds and guidance around this section to protect municipal ratepayers.

4. **The Bill dictates access to a broad range of municipal services and property that is much wider than simply the ROWs.**

Municipal buildings and structures are also implicated the way the Bill is written (Section 11). This is a significant risk to municipal governments and taxpayers and could have significant cost implications for the sector. It is very important that the Committee limit the access to infrastructure in the municipal ROWs that will assist in helping underserved and unserved communities get better service.

Amendments for Consideration

For the reasons set out above, AMO suggests that the Committee consider the following amendments to improve the Bill, focus it on the objective of improving connectivity for unserved and underserved Ontarians and protect municipal taxpayers:

1. **Define "designated broadband project of provincial significance" to include only broadband projects that are provincially funded and that the tools be used only in those circumstances.**

This would provide proper guidance to all stakeholders and protect against changes that would have implications for municipal governments who own ROW access. It would also ensure that taxpayer funds are most efficiently deployed, and projects are municipally supported and important to the community.

2. **Require that if a MAA is in place already, there is no recourse to the ROW access orders for existing or new telecommunications providers in the municipality.**

This will ensure fairness to existing providers covered by a MAA and to municipal residents that will expect their local government to appropriately manage this infrastructure in the best interests of the community.

3. **Amend the legislation to specify that the powers in the Schedule may come into effect at a later date to allow municipal governments time to introduce MAAs.**

Municipalities, particularly those in unserved or underserved communities, may not have the adequate resources or knowledge to develop these documents. Adequate time should be given before this Bill comes into force (at least January 1, 2022), to ensure that municipal governments have enough time to prepare these agreements before the Schedule's powers may be implemented.

AMO will help to provide members with examples and templates of agreements that can be adapted to local purposes.

4. **Ensure that the legislation is written in a way that does not see the Minister's direction given to areas with broadband access that exceeds speeds of 50 Mbps download/10 Mbps upload.**

Municipal taxpayers cannot fairly be forced by provincial legislation to enter the business of subsidizing telecommunications companies who want to invest in communities.

5. **Make other amendments to the legislation, including:**

- Set out regulatory requirements for an escalating fine threshold that would apply based on the size of municipality/capacity to reasonably afford it. Also require guidance on fine application to be developed to such effect.

- Ensure that the Ministry "**shall**" not "may" notify a municipal service and right of access is required. That will ensure timely compliance with the order and avoid confusion.

- Consider fully whether a claim for compensation should be determined by the Local Planning Appeal Tribunal (LPAT). There are concerns about whether there is capacity and a strong knowledge base about these claims at the LPAT, and whether this will quicken the pace as intended.

- Set parameters around the person "authorized" to do a proposed excavation and dig if location of underground infrastructure is not done within 10 days by the Ontario One Call member. There must be criteria to ensure they are qualified to do the work and that liability concerns are addressed.

The concerns raised above are of concern for municipal governments and would ask the Committee to mitigate these issues.

Schedule 2, *Ontario Energy Board Act, 1998*

Municipal governments are concerned that the amendments are not scoped to those projects defined in Schedule 1. If the Schedule is not scoped to deal with only "broadband projects of provincial significance", AMO is concerned that these changes could end up with taxpayers subsidizing costs of telecommunications companies that wish to build in urban areas.

Further, that Local Distribution Companies (LDCs) including those owned by municipalities, may see a risk to their dividends depending on how compensation levels are set. **That is why AMO is advocating for wording changes in the legislation to make payments of compensation mandatory**: *"The Minister **shall** (not may) make payments of such amounts as may be determined by the regulations in order to compensate a transmitter, distributor or other prescribed person licensed under Part V for any lost revenue arising from the application of this Part or the regulations".*

Without this change, LDCs could see a decrease in their dividends and profitability without secured access to compensation.

It is very important that municipalities and LDCs as well as telecommunications providers have a clear and secure understanding of what is included in the Schedule and how it links to the objective of better service for unserved and underserved Ontario residents.

AMO will also have comments on the detailed regulations, as that is where many of these details around compensation and Ontario Energy Board (OEB) objectives around electricity infrastructure will be determined.

Schedule 3, *Planning Act*

The planning process in Ontario has evolved over the decades to support development in a way that reflects democratic values, property rights, public expectations and case law, all while seeking to use land in a way that fosters social good, economic growth and environmental sustainability. It is a process which is intended to provide clarity and certainty to all parties involved.

The proposed change in Bill 257 to the *Planning Act*, removes the Minister of Municipal Affairs from having to issue Minister's Zoning Orders (MZO) consistent with the Provincial Policy Statement.

On the one hand, it is understood that the Minister would still have to "have regard for" matters of provincial interest as articulated in Section 2 of the *Planning Act* when issuing an MZO. The Section 2 list is extensive and indeed covers issues that are a priority for every government seeking to ensure development in Ontario serves the public good.

On the other hand, Section 3 of the *Planning Act* builds on the matters identified in Section 2. Section 3 explains how provincial interests are to be 'regarded' through being consistent with the Provincial Policy Statement (PPS). This policy statement is a carefully crafted set of principles developed over time by many experts on the breadth of topics identified as provincial interests. It requires that all, even the Province itself, protects provincial interests by approving development that is consistent with the PPS. It explains how to balance these interests for developments, even where there may be in conflict between the provincial interests. It sets priorities.

The MZO is a tool to address complexities in the development approval process where time is of the essence to secure a significant development. It shortens the approval pathway, it excludes public consultation, it is unappealable. This tool has been in place for many years without controversy, it is powerful and needed.

However, under the existing legislation there has been assurance that while the outcome would be faster than the standard planning process, the outcome would reflect the principles of the standard planning process. In other words, a faster process but with the same outcome had it gone through the standard planning process. AMO has supported the application of MZOs where local councils are in agreement it is needed to secure a development that is likely to be approved through the longer planning process.

With this proposed amendment, Ontarians can no longer be assured of an outcome that reflects the balance of priorities that the PPS would require, and it may make some members of the public question the reasons behind declaring provincial interests in the Statement in the first place. As a result, we would recommend that the Province reconsider this schedule and choose to lead the planning process through example to ensure confidence in our planning system is maintained broadly.

Planning decisions impact our province, not just for years to come, but indelibly. The MZO tool is important and needed as is the PPS in order to achieve the best sustainable use of our land-based resources.

Conclusion

On behalf of municipal governments across Ontario, thank you for the opportunity to provide comments to the Committee. We look forward to working together on next steps.