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December 1, 2016

Peter Milczyn, Chair
Standing Committee on Finance and Economic Affairs
Bill 70, *Building Ontario Up for Everyone Act*, 2016
c/o Committee Clerk Erie Rennie

Dear Mr. Milczyn:

The Association of Municipalities of Ontario (AMO) is pleased to provide written comments to the Standing Committee on Finance and Economic Affairs to contribute to the deliberations on Bill 70, *Building Ontario Up for Everyone Act* (Budget Measures), 2016.

Our comments are provided in the order of the Bill 70 schedules for the ease of the committee members' review. Recommendations for change are highlighted as such for *Schedule 9, Fire Protection and Prevention Act and Schedule 15, Municipal Act.*

Schedule 2 ***Assessment Act***

These proposed changes address the managed forest and pipeline rates and some tightening of the rules around disclosure of the information that Municipal Property Assessment Corporation (MPAC) collects from owners. Amendments which improve the assessment system are always welcome.

In addition, the proposed amendments will pave the way to resolve the assessment issues surrounding landfill sites. Not everyone will be pleased with this direction, however, we appreciate the years of work that have gone into finding a way to move forward on this difficult issue.

Schedule 9 ***Fire Protection and Prevention Act***

These proposed amendments of the *Fire Protection and Prevention Act, 1997* will make the following changes:

- removing the requirement for parties to go through a conciliation process before the interest arbitration process can commence;
- introducing a legislative requirement for pre-hearing submissions; and
- prohibiting boards of arbitration from referring items in dispute back to the parties for further negotiation, unless the items relate to implementation of an award, or if

the items are referred back prior to the making of a final award and both parties agree.

These are modest changes to the fire arbitration interest arbitration process and may help in a minor way. Amending the Act to clarify the basis upon which the fiscal health of a municipality is to be evaluated and therefore its capacity to pay still needs to be addressed. The fiscal capacity of communities is not the same, yet awards are replicated as if municipal fiscal capacity was the same. This Bill also does not include the requirement for boards of arbitration to provide written reasons for their decisions.

In our view, requiring an arbitrator to look at fiscal health criteria would not result in a guaranteed outcome but rather it is a matter of clear process, as is providing the rationale underlying awards that result in increases to property taxes.

With respect to this Schedule of the Bill, we strongly recommend several amendments that would bring clarity to the government's proposed changes.

Recommendations:

i) Schedule 9, section 3 proposes to add section 50.2(22.1): "The parties shall file written submissions on all matters remaining in dispute with the board of arbitration before the date set by the chair of the board of arbitration." From our read of the section, it is not clear if "written submissions" means the outstanding proposals that are in dispute between the parties or the actual submissions to the board to justify the proposed changes either party is seeking at arbitration. In addition, it is not clear when "before the date set by the chair" actually is – is it the date of mediation or the date of arbitration?

We believe that the Act would require the parties to put in writing the actual proposals before the mediation. Then the mediation would be held and the parties would attempt to resolve or decrease the outstanding issues. Then the parties should further be required to exchange their written submissions before the arbitration date. In those situations, where employers seek to have a mediation and an arbitration on the same date (the case for smaller Ontario municipalities trying to approach the process this way to keep costs down) it would be a two-step process – (1) written exchange of proposals and then (2) a few weeks later, required written exchange of the written submissions followed thereafter by the scheduled mediation/arbitration.

ii) There could be a possible inconsistency in section 4. Here the proposed change to clause 50.4(3)(b) of the Act arguably does not work. To understand this, one must first start with section five. The proposed changes to 50.5(1.1) and (1.2) prevent the board from referring matters back to the parties for further bargaining. We agree that this is a good idea. That proposal builds in an exception to the newly proposed rule that

would allow matters to be referred back to the parties for further bargaining if the parties agree. That too is a good idea.

The problem is that clause 50.4(3) of the Act sets out the powers of the arbitration board. In the current version it says that the board can "refer matters of particular dispute to the parties concerned for further bargaining". Obviously that needs to be changed because of the section five changes. The problem is that the legislation is proposing that 50.4(3) would read: "In an arbitration to which this section applies, the board may, in addition to the powers conferred upon the board of arbitration by this Part,… (b) despite subsections 50.5(1.1) and (1.2), refer matters of particular dispute to the parties concerned for further bargaining." [emphasis added]. The word "despite" means "notwithstanding, regardless of, without considering, without regard for". This arguably eliminates or defeats the addition of the new changes which are intended to restrict the ability of the board to refer matters back to the parties.

Accordingly, we recommend that the word "despite" in s. 50.4(3)(b) should be changed to "subject to". This would mean the new article would read: "In an arbitration to which this section applies, the board may, in addition to the powers conferred upon the board of arbitration by this Part,… (b) subject to subsections 50.5(1.1) and (1.2), refer matters of particular dispute to the parties concerned for further bargaining." This would, in our opinion, be more consistent with the intended purpose of the changes contemplated by these amendments in respect of the ability of the board to refer matters back to the parties.

Schedule 15 *Municipal Act*

The Bill's proposed changes to create more latitude around dealing with vacancy rebates and removing barriers to ending "capping" of commercial classes are welcomed. They help municipal governments strike that balance between the ability to fairly charge taxes and stem the erosion of the tax base with the ability to foster economic development.

However, it is with great disappointment and astonishment that we see that the government has proposed to freeze taxes paid by multi-residential owners to 2016 amounts where the tax rate is over 2.0. While this is to be a temporary measure while a study takes place, it is problematic in practice. As this Bill provides exit strategy to the commercial class cap, a new one arrives.

Many municipal governments impacted by this measure are mostly finished their 2017 budgets and this unforeseen action could put them in a deficit position, which is not permitted meaning they will have to go back at their budgets.
The temporary measure will have tax shifts occurring in 2017 yet the policy analysis isn't done. There are 44 municipal governments affected and surprisingly, many are not cities, but rather small towns and townships. Some have already been shocked by

the closure of industry. Putting these municipal governments at further fiscal risk is not the route.

The study can be done without the freezing of taxes paid by multi-residential units to 2016 amounts – let that analysis come forward, let it inform a policy position next year. Municipal governments should not have their property tax assessment ability amended without any discussion or consultation and certainly not at the end of a fiscal municipal year.

Municipal tax is only one portion of what makes up rent. This proposal presumes it is a driving factor in setting the rent or in the need for rent increases. There is also no assurance that the benefit of this freeze will be passed on to tenants. Likewise, it presumes that municipal governments have not been thoughtful in setting the tax rates for multi-residential units and that they have not conducted their own research in this matter.

Recommendation:
We therefore ask that the related proposed amendments be deleted prior to reporting Bill 70 back to the Legislature.

AMO asks you to fully consider the issues we have raised and to return the Bill to the Legislature for Third Reading with the needed amendments to Schedule 15.

Yours sincerely,

Lynn Dollin
AMO President

cc: The Honourable Charles Sousa, Minister, Finance
The Honourable Bill Mauro, Minister, Municipal Affairs
The Honourable Kevin Flynn, Minister, Labour