



September 22, 2006

Hon. John Gerretsen  
Minister of Municipal Affairs & Housing  
17th Floor, 777 Bay Street  
Toronto, ON M5G 2E5

Dear Minister Gerretsen:

**Re: Bill 130**

I am writing to provide you with the position of the Board of Directors and membership of AMCTO on Bill 130, the Municipal Statute Law Amendment Act, 2006.

AMCTO supported the Province's decision to launch an early review of the Municipal Act in June 2004 (while expressing reservations with respect to the timing). We also welcomed your statement that the Ontario Government "no longer want[s] to micro-manage municipal government. They are a level of government, duly elected just like the provincial and federal levels."

AMCTO sees Bill 130 as a good first step toward the realization of that vision. However, we also have concerns about certain facets of the bill, and we see a number of provisions that we believe can be improved. The purpose of this letter is thus to express our basic support for the legislation, to outline the concerns we have and to explain the amendments we are recommending.

This input builds on the effort that AMCTO has made over the last three years to support the Ministry's policy work on the reform of municipal legislation. We have provided three extensive reports on Municipal Act review—one in September 2004, another in February 2006 and yet another in March 2006. In addition, AMCTO has met with Ministry representatives many times, most recently last month when our Legislative Committee went through the bill with staff from the Municipal Governance and Structures Branch.

We have throughout the exercise been able to draw on the pool of expertise represented by the almost 2,200 municipal professionals working in municipalities across Ontario who belong to our association. The perspective that AMCTO members bring to the task is a practical one. They are interested not only in the underlying philosophy of a bill, but also the administrative impacts if the bill becomes law. They ask such questions as, have all of the financial, legal and human resource implications been taken into account? Does the initiative avoid prescriptive solutions that would hinder innovative service delivery solutions? Does it take into account the different kinds of municipalities (one size does not fit all)?

That is the approach that AMCTO has taken in its review of Bill 130.

### **AMCTO's Support for Bill 130**

AMCTO believes that Bill 130 will advance the cause of efficient and effective decision-making and service delivery in Ontario municipalities. The positive features we see in the bill include:

- The retention of the present structure of the Municipal Act, 2001 (this will aid understanding of the new statutory framework).
- The change in the wording of the Municipal Act's interpretation provision to ensure that municipal powers under that act and any other act are interpreted broadly.
- The expansion in the authority of elected councils to delegate responsibilities to staff, committees and others (but note the suggestion we make for the form of the provision later in this submission).
- The streamlining of the licensing and registration provisions of the Municipal Act (Part IV).
- Flexibility for councils to create, design and modify municipal service boards and other local boards.
- The prospect of councils having greater flexibility to establish corporations to deliver municipal services.
- The removal of many specific notice provisions and authorizing councils to adopt general notice policies.
- The removal of unnecessarily prescriptive rules for the disposition of land, hiring of employees and procurement of goods and services.
- The removal of provisions relating to service delivery performance reporting (e.g., "section 300" reports).
- The harmonization and enhancement of municipal enforcement powers.
- The provisions addressing the problems that Crown liens create for municipal tax sales (the subject of a separate submission from AMCTO).
- The provision allowing a municipality to write off taxes on the treasurer's recommendation.
- The amendments to the Liquor Licence Act allowing municipalities to extend hours of sale of liquor.
- The amendments to the Retail Business Holidays Act allowing municipalities to regulate holiday store opening.

These changes will help create the more flexible legislative framework that Ontario municipalities need if they are to make decisions for and deliver services to communities in accordance with current public expectations and financial realities. We commend the Ministry for bringing forward Bill 130 and urge the Government to make the bill a priority in its fall legislative program.

### **AMCTO's Concerns about Bill 130**

Notwithstanding the positive features of Bill 130, AMCTO sees areas where the bill falls short of the vision that you have presented of an Ontario in which municipalities are treated as an accountable and responsible level of government.

Our first concern is the Government's failure to use Bill 130 to broaden the authority of municipalities to raise revenue and make other financial decisions. The Province has rejected giving municipalities not only additional revenue-raising capacity but also control over the policy governing the distribution of existing local property taxes. In fact, Bill 130 makes minimal changes to the half of the Municipal Act dealing with financial matters. We are, of course, aware of the Provincial-Municipal Fiscal and Service Delivery Review that the Premier announced last month. AMCTO looks forward to contributing to the review and urges that property tax policy and the financing of income redistribution programs out of property taxes be at the top of the list of issues to be considered.

A second concern is the power that the Province continues to give itself to circumscribe municipal decision-making by issuing regulations. Bill 130 not only retains most of the existing regulation-making provisions in the Municipal Act but creates new such powers (to circumscribe municipal delegation, to change the allocation of jurisdiction within two-tier areas, etc.). This approach makes it difficult for stakeholders to evaluate the proposed legislation and creates uncertainty for municipalities in the conduct of their business. We urge the Government to indicate as soon as possible the areas where it intends to maintain existing regulations or issue new ones and what the content of the regulations will be. Ideally, all regulations should be in effect at the same time as the legislation itself.

Perhaps the most troubling aspect of Bill 130 for AMCTO is the proposed provision that would allow the Province to suspend by regulation any by-law enacted by any of Ontario's 445 municipalities. This is not only offensive to the principle that municipalities are an accountable and responsible level of government; it will also increase the uncertainty for municipalities and the organizations that they deal with. We urge that Bill 130 be amended to at least include a process requiring that the Province consult with the affected municipalities and state the provincial interest affected before it exercises a suspensive veto under section 451 of the Municipal Act.

A final major concern is with regard to the timing of the implementation of Bill 130 in the event that it is approved by the Legislature. We do not wish to see the additional authority and flexibility that the bill will afford municipalities delayed beyond what we understand is the Ministry's target effective date—January 1, 2007. However, the revised Municipal Act will contain certain new requirements that it would be virtually impossible for all 445 municipalities to meet. Examples include the appointment of an investigator to handle complaints about closed meetings under the new section 239.1 of the Municipal Act and the policies that must be adopted under paragraphs 1 and 4-7 of section 270(1). We note that the 2001 act gave municipalities three years to meet the new policy requirements imposed at that time. We recommend that the Ministry review the bill to identify provisions where some additional lead time makes sense.

Such are the overarching concerns that AMCTO has with Bill 130. We urge the Government to take these into consideration when the bill is being given clause-by-clause consideration by the Legislature and when the Municipal Act is amended in future years.

## **Comments on Specific Provisions**

Let me now provide you with AMCTO'S comments on specific provisions in Bill 130. The comments are based on a careful review of the act by our Legislative Committee. The comments will be presented in the order that provisions are amended in the Municipal Act. Please note that AMCTO's comments on the Bill 130 provisions dealing with Crown liens and other tax collection issues will be the subject of a separate submission.

### ***Part I—General***

We note that Bill 130 does not address the position of AMCTO that all municipally-imposed amounts that can be added to the tax roll be eligible for inclusion in the cancellation price in a tax sale irrespective of whether the phrase used is “same manner as taxes”, “like manner as taxes” or “deemed to be taxes.” This is necessary in order to avoid administrative difficulties and revenue losses for municipalities. We again recommend that the Ministry consider amending subsections 1(2.1)(2.2)(2.3) of the Municipal Act to accomplish this.

Bill 130 adds a provision to Part I acknowledging that a municipality has the authority to enter into agreements with the federal government. While we believe that the provision is unnecessary because the authority already exists under municipal natural persons powers, now that the equivalent provision appears in the City of Toronto Act, 2006, it is important that the Bill 130 provision, section 3.1, appear in the Municipal Act.

### ***Part II—General Powers***

While we appreciate the broader general powers that Bill 130 confers on municipalities, we note that it does this using the method found in the City of Toronto Act—authorizing council to “provide any service or thing that the municipality considers necessary or desirable for the public.” This is different than the approach that AMCTO recommended in our Municipal Act Review brief—to build on the existing spheres of jurisdiction in section 11 of the act.

AMCTO is not advocating [our brief stated] that section 11 mirror the “Broad authority” provision of the City Act, section 8—at least at this time. The “broad authority” conferred by section 8 of the City Act is, we surmise, part of a package that includes the authority for the Province to suspend any City by-law for 18 months under section 25 of the City Act. In addition to colliding with the principle that municipalities are responsible and accountable governments, the inclusion of such a provision in the Municipal Act would create uncertainty for municipal councils and staff throughout the province. AMCTO is also concerned that suddenly broadening the authority of all municipalities in this manner could open the door to further downloading by the provincial government.

Given the insertion of the suspensive veto provision, section 451, proposed by Bill 130, we feel that our surmise was correct. AMCTO's position on section 451 has been noted earlier in the current brief.

Bill 130 adds provisions to Part II that would broaden the ability of councils to delegate authority to committees, staff and others. These provisions—sections 23.1 to 23.5— are drawn word-for-word from the City of Toronto Act. They are excessively prescriptive for

most municipalities, and we suggest that they be streamlined. We also recommend that the authority to delegate be limited to administrative and quasi-judicial powers. As we explained in our February brief, we fear that allowing councils to delegate legislative powers could undermine accountability to the electorate.

***Part III—Special Municipal Powers***

We are pleased to see the changes that Bill 130 makes to this part, including the removal of specific provisions now covered by the general powers and the addition of the words “without limiting sections 9, 10 and 11” to provisions that must remain to preserve municipal authority. We also appreciate the new powers being provided with respect to the control of rental conversion (section 99.1), entering on land to remove vehicles (section 101) and establishing a system of administrative penalties for parking infractions (section 102.1). It is important that these provisions remain in Bill 130 through to its enactment into law.

***Part IV—Licensing and Registration***

We are very pleased to see the addition of business licensing as a sphere of jurisdiction for local municipalities in Part I of the Municipal Act and the overhaul of Part VI—Licensing and Registration. We note, however, that Bill 130 does not appear to address our requests for explicit authority for municipalities to regulate the vehicle storage fees charged by towing companies and for the removal of the requirement for municipalities to repay licence fees where the Minister retroactively limits municipal authority to license. In addition, while we are in support of the new powers that allow municipalities to suspend licenses for up to 14 days, we would like to see this period extended to 28 days to allow both parties adequate and reasonable time to prepare for the hearing. We believe that the bill would be improved if these three additional changes were made to the bill in Committee.

***Part V—Municipal Reorganization***

AMCTO supports the changes Bill 130 makes to this part giving municipalities greater flexibility with respect to the use of municipal services boards and other local boards and of corporations for the conduct of municipal business. With respect to corporations, however, it is very important to know at an early stage if the Government intends to maintain or amend O. Reg. 168/03 and/or issue a new regulation under subsection 203(4) and, if so what the contents of the regulation will be.

We do not see in Bill 130 a provision comparable to subsection 112(3) of the City of Toronto Act exempting municipalities from the requirement of ministerial approval for community improvement plans where bonusing is involved. We hope that this is an oversight. As we explained in previous submissions, if one municipality has this power, all should have it if a level playing field for economic development is to be maintained. At the same time, we reiterate the point made in our letter to the Ministry of April 2006 about the danger of intermunicipal incentive “bidding wars” and ask that there be statutory criteria for CIP bonusing to prevent this.

Subsection 218(4) of the Municipal Act authorizes an upper-tier municipality to change the office of an appointed head of council to either one year or the same as the term of council. It has been pointed out that with the extension of the term of councils to four years, more

flexibility is needed. We suggest that upper-tier councils have full discretion to determine the term of the head within the four-year limit.

***Part V.1—Accountability and Transparency***

We are pleased that the Government agreed with AMCTO’s position that use of this new part of the Municipal Act should be left to the discretion of municipalities. While the measures in this part may go beyond what would be appropriate in many municipalities given the tradition of local government being closest to the people, we recognize the growing public expectations for ethical conduct at all levels of government. Those municipalities who decide to use Part V.1 will be looking for guidance on how best to do this. We look forward to receiving the information that the Ministry has compiled on the relevant experience in other jurisdictions.

***Part VI—Practices and Procedures***

AMCTO has a number of comments about the amendments that Bill 130 makes to this part of the Municipal Act.

We are pleased to see that the Government agreed with AMCTO’s position that electronic meetings should be authorized for open meetings only, but are disappointed that you did not agree to our suggestion that the provision extend to meetings of committees. We hope that this suggestion will be given further consideration in future years, if an amendment is not made to Bill 130 in Committee.

We note that the provision of the Municipal Act permitting the appointment of a chief administrative officer has been retained (and that it was added into Bill 53 in clause-by-clause). This is good as far as it goes. However, it does not address our recommendation that the Municipal Act should require that councils assign one individual (appointed not elected) the responsibility for overall management of municipal operations (apart from functions assigned by statute to other municipal staff).

In our previous briefs on the Municipal Act Review we recommended that section 239 of the Act be amended to clarify that council can move into closed session for the purposes of conducting a long-range or strategic planning exercise, receiving briefings from administration on technical issues or engaging in training or professional development activities. Bill 130 adds a new subsection to section 239, subsection (3.1), which provides that “a meeting may be closed to the public if, at the meeting, no member of the council or local board or committee of either of them, as the case may be, discusses or otherwise deals with any matter in a way that materially advances the business or decision-making of the council, local board or committee.” We appreciate the Ministry’s attempt to address the issue we raised but believe that the proposed provision is too vague and will give rise to controversy and litigation, particularly now that council decisions about closed meetings will be subject to a new complaint procedure. We urge the amendment specify the additional types of meetings where council can meet in camera—namely, the purposes of conducting a long-range or strategic planning exercise, receiving briefings from administration on technical issues or engaging in training or professional development activities.

The new subsections 239(7)(8) of the Municipal Act provide that a municipality or local board must record all resolutions, decisions and other proceedings at a council or committee meeting, including closed meetings, and that this requirement *may* be satisfied by a record of the meeting made by the clerk under clause 228(1)(a). We are concerned that the current wording opens the door to council and local board minutes being taken by persons other than the municipal clerk or local board secretary. We strongly recommend that subsections 239(7)(8) and clause 228(1)(a) be clarified to preclude that result.

The new section 239.1 of the Municipal Act require an investigation where a municipality or local board receives a complaint about compliance with the open meeting provisions of the act or council's procedure by-law. We are pleased to see that the Provincial Ombudsman will only become involved where the municipal council has not established an investigation procedure. Our concern with the provision is, as previously noted, with the implementation date. It will be very difficult for newly elected councils to have the necessary procedures in place by January 1, 2007. We recommend a three-year window for municipalities to comply with this provision.

We are pleased that many of the specific notice provisions in the Municipal Act are being removed by Bill 130 and that subsection 270(1) provides for the adoption of policies on the circumstances in which notice will be given to the public and the form, manner and times for the notice. Municipalities need flexibility in order to develop notice procedures that are appropriate to local community circumstances (e.g., where there is no daily newspaper). However, we also note that the bill leaves fourteen such provisions in the Municipal Act and does not address the provisions in the regulations under that act (e.g., Regulation 244/02) and in other provincial legislation and their regulations. In five instances in the Municipal Act (sections 81, 295, 356(12), 357(6) and 359(3)(4)), the method of giving notice (e.g., by mail) is specified. AMCTO urges that the Government carry through and delete the remaining notice provisions. If there is not the time to do this through Bill 130, a provision should at least be added stating that where a municipal notice provision exists in provincial legislation, council has the option of adopting an alternative form, manner or time for giving the notice.

Another new subject that councils must deal with under the policy requirements of section 270 is "the manner in which the municipality will try to ensure that the rights, including property and civil rights, of persons affected by its decisions are dealt with fairly." We are concerned that because of its open-ended nature, this requirement may create liability exposure for municipalities despite their best efforts to comply. We therefore strongly recommend that paragraph 6 of subsection 270(1) be removed from the bill.

#### ***Part VII—Financial Administration***

We are pleased to see the removal of the reference to bonding, the detailed rules for cheque signing, the notice requirements for budgets and budget amendments and the prescriptive reporting requirements presently found in sections 299, 300 and 303. While we believe that councils already have the authority to adopt multi-year budgets, we agree that, for the sake of legal certainty, the provision should be added to the Municipal Act now that it appears in the City of Toronto Act, 2006. We note that subsection 290(2) continues to authorize the Minister to prescribe the detail and form of municipal budgets. We recommend that this provision be

removed. We are unclear about the necessity for the extension, by the revised subsection 297(2), to current and former officers and employees of the municipality of the auditor's power to require information. We suggest that protections for those who acted in good faith with the best available information at the time should be added.

***Part VIII—Municipal Taxation***

AMCTO's concern that Municipal Act municipalities are not receiving the limited new taxing powers given the City of Toronto was noted earlier in the submission.

***Part IX—Limitation on Taxes for Certain Property Classes***

AMCTO's concern that the Province has rejected our recommendations that provincial legislation respecting ratios and capping be structured to allow municipalities to employ the legislative and regulatory provisions in a permissive manner was noted earlier in the submission.

***Parts X—Tax Collection and Part, XI—Sale of Land for Tax Arrears***

As indicated above, AMCTO's specific comments on these parts of the Municipal Act will be provided in an accompanying submission on Crown liens and the municipal tax collection process.

***Part XII—Fees and Charges***

We are pleased that this part has been revised along the lines of Bill 53 and that clause 17(d) (in Part II) is being repealed. We also welcome the repeal of the unnecessarily prescriptive requirements in section 392 and 396. We cannot comment beyond that until we see the regulation that we hope the Ministry will be developing to replace O. Reg. 244/02. AMCTO would be pleased to provide input to the Ministry on this regulation.

***Part XIII —Debt and Investment***

By our assessment, Bill 130 makes no substantive changes to municipal powers under this part, in contrast to what Bill 53 has done for the City of Toronto. Bill 130's approach is consistent with the position that AMCTO took in its February 2006 submission that there is no great benefit in expanding municipal debt and investment powers at this time given the risks to municipal credit ratings if any one municipality falls into financial difficulty. We believe it will take time for municipalities to digest the additional flexibility that the regulatory package issued in December 2005 affords municipalities. AMCTO supports the prudent approach the Government is taking to Part XIII.

***Part XIV—Enforcement***

We welcome the many changes that Bill 130 would make to this part of the act, including:

- Authority to fine directors of corporations that knowingly concur in contraventions of by-laws (the new section 426 of the Municipal Act)
- Harmonized authority to establish fines and special fines, with a higher maximum of \$100,000 (section 429)
- Ability to seek imprisonment for by-law contraventions in adult entertainment parlours (section 430)



- Harmonized administrative powers of entry to ensure compliance with by-laws (sections 435-439)
- Authority for a judge or JP to issue a warrant to search for evidence without evidence having to be seized
- Expanded powers to make orders (sections 444-445)
- Making remedial costs a lien on the property (section 446)
- Authority to require payment of an administrative penalty for parking by-law infractions, subject to issuance of an enabling regulation (section 102.1 in Part III)

We are particularly pleased about the new authority to establish a system of fines, including escalating fines for repeat offenders. Provided that the Government also addresses the shortage of justices of the peace, this new authority may help alleviate the pressure on court times and reduce the current backlog in municipal prosecutions. While we also welcome the proposed powers-of-entry provisions, we believe that the inspection process for rooming houses could be improved by empowering municipal officials to enter dwelling units within the houses without having to obtain search warrants or rely on exceptional circumstances. This is also the case where the municipality inspects marijuana grow houses, when requested by the police, as now required by Bill 128.

***Part XV—Municipal Liability***

We are disappointed that Bill 130 contains no amendments to Part XV. We reiterate our previous request that the Government look into the possibility of limiting or abandoning the principle of joint and several liability as it applies to municipalities. Action is needed in order to address the increasingly dramatic increases in insurance premiums that municipalities across Ontario are facing.

**Conclusion**

AMCTO welcomes the introduction of Bill 130. We strongly support the direction of the reforms being proposed by the Government to the legislative framework for local government in Ontario. We hope that the concerns that we have raised and the amendments that we have suggested will be of help to the Ministry. We want to assist in any way we can to ensure that the vision of municipalities as “a level of government, duly elected just like the provincial and federal levels” is realized and that there is a smooth transition to the new system. We would be pleased to answer any questions you or your staff may have about our submission.

Yours truly,



Kathy Coulthart-Dewey, CMO  
President

c.c.: Hon. Greg Sorbara, Minister of Finance and Chair of Treasury Board