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November 13, 2013

Hon. Kathleen Wynne
Premier of Ontario
Legislative Building - Room 281
Queen's Park
Toronto ON M7A 1A1

Tim Hudak
Leader of the Official Opposition
Legislative Building - Room 381
Queen's Park
Toronto ON M7A 1A8

Andrea Horwath
Leader - New Democratic Party of Ontario
Legislative Building - Room 113
Queen's Park
Toronto ON M7A 1A5

Dear Provincial Party Leaders:

We are writing to you today regarding the Private Member's Bill, Bill 69 - *An Act representing payments made under contracts and subcontracts in the construction industry*. The municipal sector is quite concerned about this Bill and its potential impacts on municipal governments as construction owners. Municipal governments were not consulted during the development of Bill 69 or during the debates to date at the Ontario Legislature.

In our review of the draft legislation, it would appear that it places a significant limit on the freedom of contract for construction services that would restrict municipal governments' and other construction owners' rights. The draft Bill provides no ability for owners and contractors to freely negotiate the most suitable payment arrangements for their projects. In our understanding of the draft Bill, there are extremely short timelines to make payment that do not allow for reasonable review of the work and certification of the payments process.

It also does not deal with the reasonable payment process of complex infrastructure projects. It also appears in the draft legislation that a contractor can request to be paid for services and materials that “will be supplied” to the project, rather than asking for payment once work has been completed or for materials that have actually been supplied. It is a standard business practice that payment is only to be provided once work has actually been done. This Bill appears to trump or amend established contract law that is in place on behalf of all the involved parties.

There are proposed stringent requirements to pay contractors even if there are valid reasons for withholding payment. Under the draft legislation, this could mean that general contractors and/or subcontractors could suspend work which could bring on project completion delays which would also involve stoppage and restarting costs. The proposed legislation also removes the right to include financial tools to ensure performance such as warranty and maintenance revisions, which could mean the only way to resolve potential disputes would be litigation for resolving deficiencies that are not done in accordance with the contract. These are only some of the concerns that municipal governments have raised upon reviewing Bill 69.

We would ask that this proposed Bill, should it go forward, be amended by agreement of all three parties to exempt municipal governments from its requirements. If the Bill becomes law without this exemption, it would have significant financial impacts on municipal governments and our property taxpayers.

We would look forward to discussing this further with you and your members. We appreciate your serious consideration of our and the municipal sector’s request with respect to Bill 69.

Yours truly,



R.F. (Russ) Powers
President

cc: Hon. Linda Jeffrey, Minister of Municipal Affairs and Housing
Steven Del Duca, MPP Vaughan
Cindy Forster, MPP Welland, NDP Municipal Affairs Critic
Jim McDonnell, MPP Stormont-Dundas-South Glengarry, PC Municipal Affairs Critic