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Attn: Gary Kent, Chief Administrative Officer
Davinder Valeri, Chief Financial Officer and Commissioner of Corporate Services
Julie Pittini, Deputy Treasurer, Senior Director, Treasury Services

Re: Comments on the Proposed *Water and Wastewater Public Corporations Act, 2025* (Schedule 16 of Bill 60 entitled *Fighting Delays, Building Faster Act, 2025*)

Dear Sirs and Mesdames:

The following are comments of WeirFoulds LLP ("**WeirFoulds**") in response to the request of the MMAH for comments on the proposed *Water and Wastewater Public Corporations Act,* 2025 ("**WWPC Act**").

Our law firm has extensive experience advising and representing the investment dealers who comprise the underwriting syndicates engaged by all Ontario municipalities to market and sell their debentures necessary to finance their infrastructure projects, including water and wastewater facilities, in the capital markets.

Given our long-standing role in assisting municipalities and other public-sector bodies in the development and financing of essential water and wastewater infrastructure, WeirFoulds has a significant and vested interest in ensuring that the legislative framework governing the financing of these systems is clear, workable, and conducive to sustainable, accountable, and fiscally responsible service delivery. In our view, the interests of AMO and WeirFoulds in respect of the financing of such projects are aligned.

Transfer of Liabilities and Alignment with the *Electricity Act, 1998*

A central concern with the current draft of the WWPC Act (Schedule 16 to Bill 60) is the provision requiring prescribed lower-tier municipalities to enact "transfer by-laws" assigning employees, assets, liabilities, rights, and obligations to a Water and Wastewater Public Corporation ("**WWPC**"). As drafted, these transfer by-laws must assign all municipal liabilities "without the

consent of any person," including liabilities arising under municipal debentures. This approach departs from the established statutory model in the *Electricity Act, 1998*, which expressly prohibits the transfer of debenture-related liabilities to a successor corporation. That safeguard reads:

> ***Electricity Act, 1998*, s. 145(2)**
> "Despite subsection (1), a transfer by-law may not transfer any liabilities, rights or obligations arising under a debenture issued or authorized to be issued by a municipal corporation."

The omission of a parallel protection in the WWPC Act is inconsistent with both long-standing municipal finance practice and the government's stated policy intentions during debate on Schedule 16. In second reading, government members emphasized that the proposed model is not intended to privatize water services, and that existing public-safety and liability protections (such as those under the *Safe Drinking Water Act*) will remain intact. Opposition members, in turn, raised Walkerton as a cautionary example and urged the government to ensure that no part of the Bill creates uncertainty around public ownership, liability, or accountability.

These exchanges demonstrate a shared recognition across the Legislature that maintaining public and investor trust and avoiding any perception of privatization or diminished safeguards is paramount. In that context, it is unclear why the Bill departs from the well-established framework in the *Electricity Act, 1998*, which has been relied upon for more than two decades to manage asset and liability transfers without destabilizing municipal borrowing relationships. Accordingly, it is difficult to see a policy rationale for omitting the same statutory protection for debenture-related liabilities. It is entirely possible that this omission is simply an oversight, and if so, it can be readily remedied by including a provision similar to section 145(2) of the *Electricity Act, 1998* which would avoid the creation of ambiguities and uncertainty, both of which are not well received in the capital markets.

Financing Structures and the Need to Safeguard Public Ownership

As drafted, the proposed WWPC Act makes no express reference to public ownership. Establishing stand-alone corporate entities with share structures and independent boards introduces the risk that ownership or control could shift over time unless the legislation contains clear prohibitions.

Ontario's existing Municipal Services Corporation ("**MSC**") framework already embeds such protections. Section 18(5) of O. Reg. 599/06 under the *Municipal Act, 2001* provides that a water or sewage MSC "shall not issue shares or give voting rights attached to the shares to a private person" and "shall not transfer to a private person any asset that is part or all of a municipal

drinking water system or of a sewage works" unless the board first declares that the asset is no longer needed. This reflects a well-established public policy that water and wastewater systems must remain publicly owned and publicly accountable.

Debate on Schedule 16 underscored this concern. Members cautioned that corporatization without firm statutory safeguards could allow utilities to be "sold bit by bit" and noted that nothing in the Bill currently guarantees continued public ownership. Recent legal commentary has similarly suggested that, even where direct share ownership is restricted, contractual capital-contribution arrangements could grant equity-like rights to private investors, potentially undermining the intent of section 18(5) of O. Reg. 599/06.

To preserve public ownership, the proposed WWPC Act should incorporate explicit prohibitions on equity-like or control-conferring arrangements with private sector entities. Aligning the proposed WWPC Act with the protections already set out in O. Reg. 599/06 would ensure that Ontario's water and wastewater infrastructure remains securely in public hands.

Uncertainty Regarding the Application of the WWPC Act and Financing Implications

Bill 60 simultaneously amends the *Municipal Act, 2001* and introduces the proposed WWPC Act. Schedule 7 of Bill 60 transfers jurisdiction for water and sewage services from The Regional Municipality of Peel to the lower-tier municipalities of Mississauga, Brampton and Caledon. Although this makes clear that these lower-tier municipalities are intended to assume responsibility for water and wastewater services, the proposed WWPC Act does not clarify whether its transfer and corporate-establishment requirements apply only to those municipalities or to other lower-tier municipalities across Ontario more broadly, many of which do not currently have the power to issue debentures under the *Municipal Act, 2001*, as this power is exclusively conferred on a region in a regional municipality as that term is defined in the *Municipal Act, 2001*. As a result, the intended scope of the WWPC Act is uncertain.

This uncertainty has meaningful implications for municipal financing. In two-tier systems, upper-tier regional municipalities typically provide the credibility and creditworthiness relied upon for long-term borrowing and debenture issuance to support major water and wastewater capital projects. Ambiguity about which level of municipal government must transfer assets and liabilities into a WWPC—and which level may lawfully finance or support that corporation—creates risk for those involved in the financing and issuance of municipal debt. Reduced predictability may make borrowing more difficult and potentially more costly. Clear statutory guidance on the intended application of the proposed WWPC Act is therefore essential to maintain confidence, stability and efficiency in municipal water and wastewater financing across Ontario.

Immunity Provisions

The proposed WWPC Act includes broad immunity provisions. Section 16 prevents any cause of action against the Crown, prescribed municipalities or their officials for anything done or not done under the WWPC Act, and removes "any remedy," including for misfeasance, bad faith, or breach of fiduciary obligation, other than judicial review or constitutional challenges. These protections also apply to members of Cabinet (section 17) and to directors and officers of WWPCs (section 18). This framework is considerably broader in scope than the limited, good-faith protections typically associated with municipal restructuring or with directors and officers performing statutory duties.

During second reading on Schedule 16, members noted that these immunity clauses appear only in this schedule and not elsewhere in Bill 60 and sought clarification as to why water and wastewater restructuring specifically requires immunity of this breadth. Government members responded that director protections are expected in the context of service-delivery corporations and emphasized that obligations under the *Safe Drinking Water Act* remain unchanged. In light of this discussion, and given the need for clear accountability mechanisms in the delivery of essential water and wastewater services, it may be helpful to further clarify the purpose and intended scope of these expanded immunity provisions. Ensuring that they remain appropriately tailored would support both operational safety and certainty as well as public confidence in the new governance framework.

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