

Proposed Regulations Under the *OMERS Act*

AMO'S SUBMISSION TO THE ONTARIO REGULATORY REGISTRY

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Introduction

The Association of Municipalities of Ontario (AMO) is a non-profit, non-partisan organization that is the collective voice of Ontario's 444 municipal governments. Municipalities deliver essential front-line services that Ontarians rely on daily, from safe drinking water to electricity to emergency services; and, increasingly, health and social services. Municipalities are also community builders. They plan and build the physical infrastructure, such as sports arenas, parks, roads and public transit that is the bedrock for enabling housing developments, attracting investments to Ontario, and creating a quality of life that Ontarians enjoy and expect.

As an Ontario Municipal Employees Retirement System (OMERS) Plan Sponsor, AMO appreciates the opportunity to provide comments on the regulatory proposals supporting implementation of the new governance framework for OMERS. OMERS plays an important role in Ontario's municipal sector. The sustainable, affordable and meaningful defined benefit pension provided by OMERS helps municipalities attract and retain the skilled workforce needed to deliver essential public services in communities across the province. At the same time, pension contributions represent a significant and ongoing cost for municipalities which are funded, in part, by property taxpayers.

This balance between providing meaningful retirement security and maintaining long-term sustainability and affordability makes effective governance critically important.

Ontario's municipalities are operating in an increasingly challenging fiscal environment. They are already managing significant infrastructure pressures, growing demands for services, rising operating costs, and limited revenue tools. These pressures are occurring against a broader economic backdrop characterized by trade and tariff uncertainty, persistent cost pressures and wage inflation.

Within this environment, municipalities require predictability and confidence that OMERS will remain affordable, sustainable, and well governed over the long term.

As OMERS is a jointly sponsored pension plan (JSPP), key responsibilities for the plan rest solely with its Sponsors. Employers and employees alone fund the plan and ultimately bear the financial consequences of the investment performance of the OMERS fund, a task which is overseen solely by the OMERS Administration Corporation (AC). Effective Sponsor oversight is therefore not simply a matter of governance design; it is fundamental to the affordability and long-term sustainability of OMERS.

AMO accordingly views any regulations made under the *Ontario Municipal Employees Retirement System Act, 2006* (OMERS Act) through the lens of whether they provide Sponsors with the representation, authority, information, independence and resources

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necessary to fulfill their responsibilities for the 'ABCs' – Appointments, Benefits and Contributions - effectively.

Important Progress

AMO recognizes that the regulatory proposals reflect meaningful progress and respond to some concerns we have previously raised.

AMO appreciates the preservation of its existing representation on the Sponsors Council: two representatives carrying four votes in total. It is consistent with the recommendation of the 2025 OMERS Governance Review to maintain existing Sponsor representation and voting. This representation is important because AMO speaks on behalf of municipal governments across Ontario whose employees participate in OMERS and whose taxpayers ultimately support municipal employer contributions. Municipal employers and their employees make approximately 40% of total contributions to OMERS, and municipal employers employ approximately 38% of active member headcount¹. The existing weighted-vote arrangement has long recognized the breadth of municipal participation in the plan.

AMO also welcomes confirmation that the Sponsors Council will retain ultimate authority over appointments to the OMERS AC Board, as per the Sponsor role under the *Pension Benefits Act* (Ontario) (PBA). Sponsors bear the risks associated with the plan and require the governance tools necessary to discharge their responsibilities effectively.

AMO similarly supports the decision not to proceed with provisions that would have permitted the AC Board to determine its own compensation. This reflects previous feedback provided by AMO and is consistent with appropriate governance and accountability.

Recommendations on The Regulatory Proposals

While the regulatory proposals reflect meaningful progress, AMO offers constructive feedback on several areas where changes are needed to ensure effective, accountable and Sponsor-led governance. AMO's recommendations respond to the three proposals posted for consultation: (1) the Initial Composition of the Sponsors Council, (2) the Minimum Requirements for the Initial By-Laws of the Sponsors Council, and (3) the Appointments Framework for the AC Board.

AMO's recommendations are focused on ensuring that the regulations preserve the representation, authority, information, independence and resources that the Sponsors need to carry out their responsibilities, consistent with the JSPP framework under the PBA.

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Minimum Requirements for the Initial By-Laws of the OMERS Sponsors Council

Ensuring the Sponsors Council has access to independent third-party expertise paid by the plan

The Sponsors Council will be responsible for all decisions respecting Benefits and Contributions and will exercise important oversight responsibilities within the OMERS governance framework by way of Appointments. These decisions can involve complex considerations, including with respect to actuarial and legal matters.

The Sponsors Council will receive support from the AC. However, access to independent third-party advice is an important element of effective Sponsor oversight and reflects the foundational principles of a JSPP where the Sponsors and Administrator have different roles and responsibilities. The Sponsors Council must have the capacity to obtain advice independent of the AC when necessary to exercise its statutory responsibilities effectively. For example, the AC's internal legal counsel acts for the AC and may be in a conflict of interest when advising the Sponsors Council, and their advice would not be privileged, thus requiring the Sponsors Council to retain independent third-party legal counsel.

Such third-party advice and other necessary sponsor expenses should be funded by the plan. Expenses not funded by the plan risk being recovered through levies which could increase costs for municipalities. Municipalities are under immense financial pressure and cannot reasonably shoulder the financial burden of levies to pay for plan expenses.

Moreover, there is legal precedent supporting reimbursement of expenses through the Plan. In the *Archibald*² decision, the Court recognized that the OMERS Sponsors Corporation (SC) had "no other purpose than to participate in the governance of the OMERS Pension Plans" and "no independent corporate interests beyond fulfilling its statutory duties and ensuring the health and viability of the OMERS Pension Plans." The Court also noted that the SC had equal representation of employers and plan members and statutory duties under the *OMERS Act*. On that basis, it was satisfied that the SC could be reimbursed and supported by plan funds for sponsor-type expenses related to plan design and governance.

Although the corporate model has been eliminated, the facts of the *Archibald* decision that led to the Court's decision that sponsor-type expenses could be paid from the plan remain largely unchanged and AMO is of the view that the *Archibald* decision stands and the Sponsors Council must have access to independent advice when needed.

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Recommendation #1: AMO requests that the regulations clearly provide that the initial by-laws of the Sponsors Council must include a provision that the Sponsors Council can obtain independent third-party advice when required and that such expenses be paid by the plan.

Sponsors Council communications

AMO supports transparency and communication between the Sponsors Council, Sponsors, members and other OMERS stakeholders. At the same time, communications issued in the name of the Sponsors Council must accurately represent its discussions and decisions. We want to ensure that municipal employers and employees have consistent access to reputable and accurate information.

Recommendation #2: AMO requests that the regulations provide that the initial by-laws of the Sponsors Council must include a provision that public communications of the Sponsors Council are subject to approval by the Sponsors Council's Co-Chairs before release.

Appropriate use of confidential deliberations

Transparency should remain a foundational principle of the new Sponsors Council. However, transparency and effective governance are not incompatible with the need for confidential deliberations in limited circumstances. In fact, it is only through confidential deliberations that governance can be effectively exercised. The ability to hold in camera deliberations, when necessary, enables candid discussion of sensitive matters while maintaining confidence in the Plan. Premature disclosure of options under consideration could create confusion among members, employers, and investors regarding potential changes and their implications. This uncertainty may influence retirement decisions, create workforce planning challenges for employers, and undermine confidence in the long-term stability of the Plan. The Sponsors Council's by-laws should provide the Council with the right to have confidential deliberations depending on the nature and sensitivity of the matter under consideration. In-camera sessions are intended to address exceptional circumstances rather than limit participation in or transparency of the Sponsors Council's ordinary business. In some cases, the attendance of non-voting members will be appropriate, in others, discussion should be limited to voting members. The Sponsors Council should have the authority to determine this through its by-laws.

Recommendation #3: AMO requests that the regulations provide that the initial by-laws of the Sponsors Council must expressly provide the Sponsors Council with authority to convene in-camera sessions (for voting members only) and determine appropriate attendance for those portions of its meetings, and that information with respect to the in-camera sessions is excluded from transparency and reporting requirements.

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Sponsors Council insurance and indemnification

Sponsors Council members need to be indemnified and covered by plan-funded insurance to ensure they can carry out their governance responsibilities without undue personal financial risk. This is consistent with current practice. Members of the Sponsors Corporation and AC Boards are indemnified pursuant to SC By-Law No. 1 and AC By-Law No. 1, respectively.

The government, via amendments to the OMERS Act, identified the potential for insurance expenses to be financed through a separate levy on participating employers and members rather than being treated as plan expenses, which is a departure from historical practice as expressly endorsed in the *Archibald* decision which provides that directors and officers and fiduciary insurance may be paid from the plan.

Sponsors Council remuneration, expenses and appropriate insurance are inherent costs of governing the plan. AMO's position remains that these costs should continue to be treated as plan expenses rather than creating an additional direct financial obligation for participating municipalities and plan members. As previously indicated, municipalities are already providing substantial contributions into the OMERS Plan and should not be expected to shoulder additional burdens for plan expenses.

Recommendation #4: AMO requests that the regulations require that Sponsors Council members be provided with an indemnity and insurance, and that the government repeal Section 28(2)(c) under the OMERS Act which, if proclaimed, would permit insurance for Sponsors Council members to be paid from a levy instead of the plan.

Appointments Framework for the AC Board

Administration Corporation board representation

AMO is seeking clarification respecting language in the regulatory proposal that indicates that Sponsors would each appoint one member to the AC Board.

The 2025 OMERS Governance Report expressly recommended maintaining existing Sponsor representation and voting. There was no recommendation in the 2025 OMERS Governance Report proposing that AMO's existing two AC Board appointments be reduced to one nor was such a change an objective of the governance review. As noted above, municipal employers and their employees make approximately 40% of total contributions to OMERS, and municipal employers employ approximately 38% of active member headcount. It is therefore appropriate that AMO retain two representatives on the AC Board.

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Our understanding from discussions with government officials is that there is no intention to change the existing allocation of Sponsor appointments to the AC Board, including AMO and CUPE Ontario's existing two appointments each, and that the description in the regulatory proposal did not accurately reflect the intended approach. AMO and our members would be incredibly concerned with any such change. Given the representation and sizable contributions that municipal employers make to the OMERS plan, a strong municipal voice in OMERS governance is critical.

Recommendation #5: AMO requests that the Government provide in the regulations that AMO will continue to appoint two members to the AC Board.

Independent chair of the AC board

The independent Chair of the AC Board occupies an important position within the OMERS governance structure.

AMO strongly supports the proposed regulatory provisions that provide the Sponsors Council with sole authority to appoint the independent AC Board Chair, in accordance with the Sponsors' role under the PBA. As the body representing the plan Sponsors who are responsible for the 'ABCs', and ultimately maintaining the affordable, sustainable and meaningful defined benefit pension that OMERS provides, the Sponsors Council must have confidence in the leadership of the AC Board.

The organizations that fund the Plan and represent its members should have the primary role in selecting the Independent Chair. This helps ensure the Chair remains accountable to the Plan's sponsors and maintains confidence that key governance decisions reflect the interests of employers and employees.

Recommendation #6: AMO fully supports the authority of the Sponsors Council to appoint and reappoint the Independent AC Board Chair and views this as a core governance responsibility of the Sponsors Council.

The Chair must appropriately exercise independent judgment and leadership of the AC Board. At the same time, this independence operates within the JSPP governance structure in which Sponsors have fundamental stewardship responsibilities.

The Chair should be able to work effectively with the Sponsors Council and earn its confidence over time. Positive sponsor relations are a practical measure of whether the Chair can successfully lead within OMERS' shared governance model.

Recommendation #7: AMO therefore reiterates the recommendation that the criteria considered when determining whether to reappoint the independent Chair should include demonstrated productive and respectful relations with the

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Sponsors Council and individual Sponsors.

Moving Forward

Implementation of the Sponsors Council

As AMO and other employer Sponsors have previously communicated to the government, the transition to the new OMERS Sponsors Council should be implemented with urgency to ensure that Sponsors continue to exercise meaningful oversight over the governance and strategic direction of OMERS. Any unnecessary delay in establishing the Sponsors Council risks creating uncertainty and weakening the direct governance link between Sponsors and essential decisions that need to be made impacting the plan.

Recommendation #8: AMO continues to call for the timely implementation of the Sponsors Council.

Regulatory certainty and Sponsor-led governance

AMO supports the government's objective of strengthening accountability, transparency and effective governance within OMERS.

Once the new Sponsors Council has been successfully established and the transition to the new governance framework is complete, however, OMERS should be afforded a stable and predictable governance environment.

A foundational feature of the JSPP model is that employers and employees who fund and bear the risks of the plan have meaningful responsibility for its governance.

Recommendation #9: AMO requests that following successful establishment of the Sponsors Council, the government consider repealing the broad regulatory powers afforded to the Minister under the amended OMERS Act. This would reinforce the principle that ongoing responsibility for OMERS rests with its Sponsors rather than the provincial government.

Conclusion

OMERS is both an important workforce tool and a significant financial commitment for Ontario's municipalities. An affordable, sustainable and meaningful defined benefit pension plan helps municipalities attract and retain employees while providing retirement security to hundreds of thousands of current and former municipal-sector

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workers. The strength of the plan depends in significant part on the strength of its governance.

AMO recognizes the meaningful improvements reflected in the current proposals. The remaining issues identified in this submission are targeted refinements intended to ensure that the new framework functions effectively in practice.

AMO encourages the government to address these matters in the regulations and associated implementation framework.