

Ontario introduces sweeping changes to environmental legislation

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On July 21, 2020, the *COVID-19 Economic Recovery Act, 2020* (Bill 197) received Royal Assent. Bill 197 amends multiple statutes as part of the Ontario government's efforts to stimulate the economy by simplifying regulatory processes across various industries. Bill 197 amends 20 statutes, including significant amendments to key environmental legislation such as the *Environmental Assessment Act* (the EAA). This Update provides a high-level overview of those changes.

Key amendments to the EAA

Schedule 6 to Bill 197 ushers in a new regime for environmental assessments in Ontario. At its inception in 1975, the EAA applied to all public sector undertakings (unless exempted), but only private sector undertakings that were specifically designated. With the exception of sectoral regulations (for electricity, waste and transit projects) passed in the years between 2001 and 2008, this public/private approach to applicability has remained in place. The changes introduced by Bill 197 (once proclaimed) would mean that the EAA will only be required for projects (public or private) that are specifically designated.

Bill 197 will effectively replace Part II (Individual Environmental Assessments) with a new Part II.3. Projects subject to Part II.3 will be those designated by Cabinet via regulation. Where a project has been designated, the project will need to complete a "comprehensive environmental assessment" in accordance with terms of reference that have been approved by the Minister. The project proponent must then prepare and submit an environmental assessment for the project to the Ministry for approval.

Bill 197 also replaces Part II.1 (Class Environmental Assessments) with a new Part II.4. Projects subject to Part II.4 will also be designated by Cabinet via regulation, and will undergo a "streamlined" environmental assessment (to be set out in a forthcoming regulation). The 10 approved class environmental assessments that currently exist will continue to apply to undertakings in each class until all 10 are revoked and replaced, where appropriate, by regulations designating Part II.4 projects and setting out the prescribed requirements, including the streamlined environmental assessment, for those projects.

Pursuant to the amendments, the Minister may make an order declaring Part II.4 projects to be Part II.3 projects and thus requiring proponents of Part II.4 projects to comply with the more rigorous environmental assessment process in Part II.3 instead of the streamlined environmental assessment.

Other key amendments to the EAA include:

- Section 21.2 of the *Statutory Powers Procedure Act* (a tribunal's power to review) will not

- apply to decisions made under the EAA as amended.
- Proponents of an undertaking to establish a landfill site will be required to obtain municipal support for the project.
 - Part II.2, which dealt with undertakings to dispose of waste proposed or carried out by municipalities, is repealed.

Bill 197 also contains consequential amendments to the *Cap and Trade Cancellation Act*, the *Clean Water Act*, the *Endangered Species Act*, and the *Resource Recovery and Circular Economy Act*, all of which repealed sections that commented on whether particular items within the Acts constituted undertakings within the meaning of the EAA. Further consequential amendments were made to the *Environmental Protection Act*.

The amendments to the EAA are set to come into force in three phases. A new Part V.1 to the EAA has been enacted to provide for various transitional matters, with additional transition provisions to be made by regulation. These amendments to the EAA provide that such transitional regulations may have retroactive effect.

Bill 197 to be investigated by the Auditor General for compliance with the Environmental Bill of Rights

The amendments to environmental legislation contained in Bill 197 are not without controversy. Arthur Ian, Environment Critic for the opposition NDP, has requested an investigation be undertaken by provincial Auditor General Bonnie Lysyk, in order to determine if, in passing Bill 197, the Ontario government contravened the *Environmental Bill of Rights* (the EBR). The EBR requires that any proposed amendments to legislation that could have a significant effect on the environment need to be made available to the public for comment on the Environmental Registry of Ontario (the ERO) for at least 30 days before being implemented. While a *Discussion Paper* on modernizing Ontario's environmental assessment program was posted to the ERO in April 2019 for public comment, Bill 197 was not posted on the ERO for public comment.

Auditor General Lysyk has publicly stated that her office advised the government a week prior to the passage of Bill 197 of the potential contravention. The Auditor General says she will be looking into the possible violations of the EBR and will table a report on the matter later in the year. Ontario Premier Doug Ford has stated that he does not agree with the Auditor General's assessment in respect of a possible contravention of the EBR.

Conclusion

The amendments contained in Schedule 6 to Bill 197 make significant changes to Ontario's environmental assessment regime. As further changes are expected to be made by way of regulations, businesses should carefully track such developments to ensure ongoing compliance. For those businesses currently undertaking an environmental assessment or a class environmental assessment, a detailed review should be completed of the transition provisions contained within Schedule 6 of Bill 197. Osler's *Environmental Group* will keep abreast of these changes, the forthcoming regulations and their potential significance.

[View the unofficial comparison PDF](#) prepared by Osler, Hoskin & Harcourt LLP showing the amendments to the EAA introduced by Schedule 6 to Bill 197.