

Ontario Government Introduces the *Green Energy Act*

On February 23, the Ontario Government tabled for First Reading its omnibus Bill 150, the *Green Energy and Green Economy Act, 2009*, which is intended to both ease the birth pangs of renewable energy projects and promote energy conservation among Ontarians. While the threat of local NIMBY opposition delaying or even derailing green energy projects may have prompted the move, the 75-page Bill goes far beyond curtailing the ability of local councils to hold up investments in renewable energy. The ambitious Bill is designed to spark growth in clean and renewable sources of energy, AND to promote conservation of energy and water, AND to facilitate creation of a “smart grid” for Ontario. The Government anticipates that the Act will create 50,000 new, green jobs in the first three years following proclamation.

There are more carrots than sticks in the Bill. There are relatively modest penalties – ranging from \$10,000 to \$25,000 – for not providing energy conservation information to potential buyers/renters, or for failing to comply with the energy and water conservation requirements for prescribed appliances. These penalties will also extend to directors and officers, whether or not the corporate entity has been charged or convicted.

There’s a little something in the Bill for everyone. For business and green energy proponents, there is “certainty and clarity” in a streamlined, one-stop approvals process for renewable energy projects that meet regulatory requirements. They’ll also have the “right to connect” to the electricity grid, as well as a new “Feed-in Tariff” that guarantees specific rates for energy generated from renewable sources. For First Nation and Métis communities, there will be help in building, owning and operating their own renewable energy projects. And for the environmental community, conservation standards are being built into the *Building Code Act*, energy audits will be required prior to home sales or leases, and a range of household appliances will have to meet Energy Star standards for energy and water efficiency.

Perhaps the most dramatic and challenging feature is in the replacement of the several approvals currently required under the *Environmental Protection Act* with a single new Renewable Energy approval process. The *Environmental Assessment Act* is not amended so the EA regimes for renewable energy projects under the Electricity Projects Regulation and the Waste Management Projects Regulation remain in place for the time being.

There is still relatively little information on when or how the proposed Act and any future regulations are to be phased in. Much of the detail will be unveiled in the yet-to-be-released regulations. Meanwhile, there is a lot of meat in the lengthy Bill, which will amend some 21 other Ontario statutes, including substantive changes to the *Environmental Protection Act*, the *Ontario Energy Board Act, 1998*, and the *Electricity Act, 1998*. Both the *Energy Efficiency Act* and *The Energy Efficiency Act, 2006* are repealed. The attached table summarizes the major amendments designed to support renewable energy, remove regulatory obstacles and formalize energy conservation measures.

Bill 150 should not be confused with the earlier incarnations of the so-called “Green Energy Act”, part of the lobbying effort of the Ontario Sustainable Energy Association. The coalition of some 1,500 individuals and organizations are “engaged in or supporting Community Power projects and renewable energy”. While the OSEA is generally supportive of the government’s proposal, some say it doesn’t go far enough in pushing Ontario away from the nuclear pathway.

The Government says that it will hold ongoing consultation “with First Nations and Métis communities and stakeholders including business, environmentalists and municipalities” as the proposed legislation moves forward and is implemented. According to Energy and Infrastructure Minister George Smitherman, pricing information on the “generous” feed-in tariffs that will be set for electricity from renewable sources should be released in several weeks.

W+SEL will monitor closely the passage of the Bill through Parliament. Watch for the W+SEL newsletter for our further and more detailed analysis as the full implications of the Bill and regulations to be made under it become clear. W+SEL lawyers will be making presentations on the Bill and the new approval processes at upcoming conferences and seminars.

A copy of Bill 150 and a compendium explaining the intent of some of the legislative amendments can be found at www.mei.gov.on.ca:80/english/energy/gea/. (But don’t bother with the Environmental Registry; it’s not posted.)

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Table 1
Provisions to Support Renewables and Promote Conservation

Section	Proposed Provisions of Schedule A
s.1	“Renewable energy source” is broadly defined as an “energy source that is renewed by natural processes and includes wind, water, biomass, biogas, biofuel, solar energy, geothermal energy, tidal forces and such other energy sources as may be prescribed”.
s.2	Anyone who intends to sell or lease real property (for longer than a prescribed period) must be prepared to supply information on the energy consumption and efficiency rating of the prescribed residence or other class of building.
ss.3-4	Section 3 removes any restriction established in a municipal by-law, condominium by-law, encumbrance on real property or an agreement that would serve to prevent or restrict the use of any designated goods, services or technologies designed to promote energy conservation. Section 4 removes the same restrictions on renewable energy projects/sources, and their associated transmission and distribution infrastructure, in such circumstances as may be prescribed. Requirements and restrictions contained in statute or regulation are not affected.
ss.5-6	Those public agencies (which may include municipalities) as prescribed in regulation must prepare and implement energy conservation and demand management plans. In addition, agencies may be required to achieve prescribed energy conservation and demand targets, while meeting environmental and energy standards. The required contents and publication of such plans are set forth in general terms.
s.7	Public agencies must “consider” energy conservation and energy efficiencies in the acquisition of goods and services, and when making capital investments, and must comply with such prescribed requirements that may apply.
s.8	This section authorizes government agencies to enter into transactions, arrangements and agreements as necessary to promote energy conservation and energy efficiency.
s. 9	Sets forth a series of “guiding principles” for the construction, acquisition, operation and management of government facilities to ensure the efficient use of energy, that renewable energy sources provide energy for government facilities, and that investments be “environmentally and financially responsible”. This section also permits the Ministry to issue “directives” to government facilities requiring greenhouse gas reporting, minimum energy and environmental standards for new construction or major renovations, and other requirements relating to energy conservation or energy efficiency.
ss.10-11	Mandates the creation of the Renewable Energy Facilitation Office to foster renewable energy projects and to assist proponents “with satisfying the requirements of associated approval processes and procedures”, including interactions with local communities and potential requirements imposed by the Government of Canada.
s.13-14	This Part would require prescribed appliances and products that are to be sold or leased to meet energy and water efficiency standards and bear the appropriate labelling, as prescribed.
s.15	Sets forth inspection and enforcement powers. Contravention of the requirements in sections 2 and 13-14 would carry a penalty of up to \$10,000 for individuals and \$25,000 for corporations. Directors and officers would also be liable to such penalties whether or not the body corporate has been prosecuted or convicted.

Table 2
Subsequent Amendments to other Statutes
(as set forth in Schedules B to L of the Act)

Schedule	Statute or Ministry	Summary of Proposed Amendments
Schedule B	<i>Electricity Act, 1998</i>	<p>In addition to housekeeping changes, new definitions and other amendments, the Minister is authorized to direct the OPA to:</p> <ul style="list-style-type: none"> • undertake a request for proposal, other form of procurement solicitation or any other initiative that relates to the procurement of electricity supply or capacity from renewable sources, reductions in demand, or measures related to conservation; • facilitate the participation of aboriginal peoples in the development and implementation of renewable energy generation facilities, transmission and distribution systems; • develop a feed-in tariff program (i.e., standard program rules, contracts and pricing for classes of generation facilities). <p>Transmitters and distributors will be required to connect (renewable energy) generation facilities to their transmission systems or distributions systems if specified criteria are met. Schedule B also removes the requirement for the establishment of the Conservation Bureau within the OPA.</p>
Schedule C	<i>Ministry of Energy Act</i>	<p>In addition to housekeeping changes, Schedule C amends the objectives of the Ministry to include references to infrastructure, growth planning, renewable energy and energy conservation.</p>
Schedule D	<i>Ontario Energy Board Act, 1998</i>	<p>The OEB's objectives would be amended to include the promotion of conservation, the facilitation of investments to implement "smart grids" and the promotion of the use and generation of electricity from renewable energy sources. In addition, the Minister could issue directives to the Board that:</p> <ul style="list-style-type: none"> • contain conservation and demand management targets to be met by distributors and other licensees; • require that a distributor meet all or part of its conservation target by contracting with the OPA to meet the target through programs offered by the OPA; • relate to the establishment, implementation or promotion of a smart grid for Ontario; • require the connection of renewable energy generation facilities to a transmission or distribution system. <p>Under certain circumstances, a distributor will be permitted to own and operate a renewable energy generation facility.</p>
Schedule E	<i>Clean Water Act, 2006</i>	<p>Consequential to the amendments made to the EPA, this schedule would require that assessment reports be prepared to quantify the existing and anticipated amounts of water taken by a renewable energy project.</p>

Schedule F	<i>Environmental Bill of Rights</i>	The Environment Commissioner would be required to submit two new annual reports: one on energy conservation, and one outlining the progress of activities in Ontario to reduce emissions of greenhouse gases.
Schedule G	<i>Environmental Protection Act (EPA)</i>	The amendments to the EPA would combine approval requirements under the EPA and the <i>Ontario Water Resources Act</i> into a single new renewable energy approval, and ensure that certain prohibitions (introduced to streamline the approval of waste projects) would also apply to renewable energy approvals. In addition, the Director is given broad discretion to issue or renew (or refuse to issue or renew) a renewable energy approval if doing so would be “in the public interest”.
Schedule H	<i>Ontario Water Resources Act</i>	The amendments to the <i>OWRA</i> are consequential to those to the EPA that support the introduction of the renewable energy approval process.
Schedule I	<i>Co-operative Corporations Act</i>	The Act is amended to authorize the incorporation of renewable energy co-operatives.
Schedule J	<i>Building Code Act, 1992</i>	The Act is amended to ensure that standards for energy conservation in the Code be reviewed every five years, and that the Building Code Energy Advisory Council be established to advise the Minister on such standards.
Schedule K	Planning Act	Schedule K includes a new exception from the subdivision and part lot control restrictions of the Act, as well as the demolition control by-laws for renewable energy generation facilities and renewable energy projects.
Schedule L	Ministry of Natural Resources	Contains amendments to a number of statutes administered by MNR, including the <i>Conservation Authorities Act</i> , the <i>Ministry of Natural Resources Act</i> , the <i>Niagara Escarpment Planning and Development Act</i> , the <i>Provincial Parks and Conservation Reserves Act, 2006</i> , and the <i>Public Lands Act</i> . Among these amendments, a conservation authority could only refuse permission for a renewable energy project (or impose conditions on such a project) if it is necessary to do so to control pollution, flooding, erosion or dynamic beaches.