

Green Energy and Green Economy Act, 2009

COMPENDIUM

The proposed Bill, the *Green Energy and Green Economy Act, 2009*, if enacted, would enact the *Green Energy Act, 2009* and amend and repeal various Acts according to the provisions of Schedules A, B, C, D, E, F, G, H, I, J, K and L set out in greater detail below.

Schedule A *Green Energy Act, 2009*

Schedule A enacts the *Green Energy Act, 2009* and repeals the *Energy Conservation Leadership Act, 2006* and the *Energy Efficiency Act*. Many of the provisions of the two repealed statutes are re-enacted in the *Green Energy Act, 2009*.

Section 1 of the Act contains definitions and an interpretation section providing that the Act shall be interpreted in a manner that is consistent with section 35 of the *Constitution Act, 1982* and with the duty to consult aboriginal peoples.

Under section 2 of the Act, the Lieutenant Governor in Council is permitted, by regulation, to require persons who are offering to sell or to lease an interest in real property to provide such information, reports or ratings as may be prescribed relating to energy consumption and efficiency with respect to a prescribed residence or other building on the property or a class of prescribed residences or other buildings on the property in the circumstances that are prescribed.

Section 3 of the Act allows a person to use goods, services and technologies designated by the Lieutenant Governor in Council in prescribed circumstances despite a restriction imposed at law that would otherwise prevent or restrict their use. A restriction imposed by an Act or regulation remains operative.

Renewable energy projects may be designated by the Lieutenant Governor in Council under section 4 for the purposes of assisting in the removal of barriers to and promoting opportunities for the use of renewable energy sources as well as promoting access to transmission systems and distribution systems for proponents of renewable energy projects.

Section 5 of the Act authorizes the Lieutenant Governor in Council, by regulation, to require public agencies and prescribed consumers to establish energy conservation and demand management plans. Under section 7 of the Act, the Lieutenant Governor in Council may require public agencies to consider energy conservation and energy efficiency when acquiring goods and services and when making capital investments.

Section 8 of the Act authorizes the Minister of Energy and Infrastructure to enter into agreements to promote energy conservation and energy efficiency.

The Act provides guiding principles for the Government of Ontario in constructing, acquiring, operating and managing government facilities. These principles include reporting on energy use and greenhouse gas emissions, ensuring energy efficiency in the planning and design of government facilities, making environmentally and financially responsible investments in government facilities and using renewable energy to provide energy for government facilities.

The Renewable Energy Facilitation Office is established under section 10. The objects of the Office include facilitating the development of renewable energy projects. The Act also permits the designation of a Renewable Energy Facilitator who is given certain authority to collect information, some of which may be subject to protection as being confidential or secret.

Part III of the Act largely re-enacts the *Energy Efficiency Act*. This Part places restrictions on the sale or lease of regulated appliances or products that do not meet the prescribed efficiency standards and on the labelling of appliances.

Section 15 allows the Deputy Minister to designate persons as inspectors for the purposes of Parts I and III. Inspectors have the power to conduct inspections and, with a warrant, to conduct searches.

Section 16 creates a penalty of a fine of not more than \$10,000 for a person or \$25,000 for a corporation who contravenes a provision of Part I, III or IV or of the regulations.

Part V of the Act provides the Lieutenant Governor in Council with regulation-making authority.

Schedule B ***Electricity Act, 1998***

Schedule B enacts amendments to the *Electricity Act, 1998*. Section 1 of the Schedule enacts and repeals and re-enacts a number of definitions consistent with the green energy initiative. These include enacting definitions for “renewable energy generation facility” and “smart grid” and repealing and re-enacting the definition for “renewable energy source.” The Lieutenant Governor in Council is given the power to make regulations governing the smart grid and its implementation by the new section 53.0.1.

The repeal of section 25.11 of the Act removes the requirement for the establishment of the Conservation Bureau within the Ontario Power Authority (OPA). Amendments to the *Environmental Bill of Rights* in Schedule F require that the Commissioner under that Act make annual reports on energy conservation.

Under section 25.32 of the Act, the Minister is provided with additional authority to issue directions to the OPA to undertake a request for proposal, any other form of procurement solicitation or any other initiative that relates to the procurement of electricity supply and capacity. Subsection 25.32 (4.5) permits the Minister to direct the OPA to establish measures to facilitate the participation of aboriginal peoples in the development and implementation of renewable energy generation facilities and transmission and distribution systems.

Through amendments to subsections 25.33 (1) and (2), the Independent Electricity System Operator (IESO) is required to calculate payments in accordance with the regulations for classes of market participants. The scheme requiring distributors and retailers, through their billing systems, to make adjustments to payments to reflect amounts paid is amended to address classes of consumers, rather than simply consumers.

The Schedule amends section 25.35 of the Act to permit the Minister to direct the OPA to develop a feed-in tariff program. A feed-in tariff program provides standard program rules, standard contracts and standard pricing regarding classes of generation facilities differentiated by energy source or fuel type, generation capacity and the manner by which the generation facility is used, deployed, installed or located.

A new section, section 25.36, requires transmitters and distributors to connect generation facilities to their transmission systems or distributions systems if specified criteria are met. The new section 25.37 requires distributors, transmitters, the OPA and the IESO to provide prescribed information about the distribution system's or transmission system's ability to accommodate generation from a renewable energy generation facility. Section 26 is amended to require transmitters and distributors to give those renewable energy generation facilities that meet prescribed requirements priority access to their systems.

Technical amendments in section 32 allow the Board to make rules with respect to the reliability of electrical services or the IESO-controlled grid.

There are amendments to section 144 of the Act that deal with the authority of a municipality to generate electricity other than through an *Ontario Business Corporations Act* corporation.

Schedule C ***Ministry of Energy Act***

Schedule C amends the *Ministry of Energy Act* to update its name and other references to reflect the change of the Ministry from the Ministry of Energy to the Ministry of Energy and Infrastructure. The Schedule also amends the objectives of the Ministry to include references to infrastructure, growth planning, renewable energy and energy conservation.

Schedule D
Ontario Energy Board Act, 1998

Schedule D amends the *Ontario Energy Board Act, 1998*.

The Board's objectives under subsection 1 (1) are amended with respect to electricity to include the promotion of conservation of electricity, the facilitation of investments to implement smart grids and the promotion of the use and generation of electricity from renewable energy sources. Similarly the Board's objectives with respect to gas are amended to include the promotion of energy conservation and energy efficiency under section 2 of the Act.

Section 3 of the Act, the definition section, is amended to adopt the definitions of 'renewable energy generation facility' and 'smart grid' from the *Electricity Act, 1998*.

Section 26.1 of the Act is amended to require the Board to assess prescribed persons or classes of persons for expenses incurred and expenditures made by the Ministry of Energy and Infrastructure in respect of conservation programs provided under this Act, the *Green Energy Act, 2009*, the *Ministry of Energy and Infrastructure Act* and any other Act. For the purpose of the *Financial Administration Act* assessments under section 26.1 are deemed under section 26.2 to be money paid to Ontario for special purposes.

The new section 27.2 allows the Minister, with the approval of the Lieutenant Governor in Council, to issue directives to the Board that contain conservation and demand management targets to be met by distributors and other licensees. A directive may also 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.

Under section 28.5, the Minister, with the approval of the Lieutenant Governor in Council, may issue directives to the Board relating to the establishment, implementation or promotion of a smart grid for Ontario. Similarly, with the approval of the Lieutenant Governor in Council, the Minister may issue directives under section 28.6 requiring the Board to take such steps as are specified in the directive relating to the connection of renewable energy generation facilities to a transmitter's transmission system or a distributor's distribution system.

Section 71 of the Act is amended to permit a distributor to own and operate a renewable energy generation facility in certain circumstances.

Section 78 of the Act is amended to allow the Board to make orders permitting the OPA or distributors to establish deferral or variance accounts related to costs associated with a directive issue under section 27.2.

The Act is amended, by section 78.5, to require the IESO to make payments to distributors or to the OPA on behalf of other persons prescribed with respect to amounts

approved by the Board for conservation and demand-management programs approved by the Board pursuant to a directive issued under section 27.2.

Section 79.1 is a rate protection provision and is added for prescribed consumers or classes of consumers where a distributor incurs costs for making specified investments for the purpose of connecting certain specified generation facilities to its distribution system.

The regulation-making authority in subsection 88 (1) of the Act is expanded to deal with renewable energy capacity and storage and circumstances dealing with the costs to a transmitter or distributor of construction, expansion or reinforcement associated with the connection of a renewable energy generation facility to the transmitter's transmission system or the distributor's distribution system.

Subsection 96 (2) of the Act is expanded such that the Board shall, where applicable, consider the promotion of the use of renewable energy sources when it considers whether the construction, expansion or reinforcement of an electricity transmission line or electricity distribution line, or the making of an interconnection, is in the public interest.

The Act is amended by adding subsection 127 (5) which permits the Lieutenant Governor in Council to make regulations governing transitional matters to facilitate the implementation of amendments to this Act arising from the enactment of the *Green Energy and Green Economy Act, 2009* and to facilitate the implementation of the *Green Energy Act, 2009*.

Schedule E ***Clean Water Act, 2006***

Section 1 of this Schedule amends section 15 of the *Clean Water Act, 2006* to make changes consequential to the amendments made to the *Environmental Protection Act* (EPA). The amendments require that assessment reports be prepared to quantify the existing and anticipated amounts of water taken by a renewable energy project.

Section 2 provides for the coming into force of this schedule upon the coming into force of s. 4 (1) of Schedule G which adds Part V.0.1 to the EPA.

Schedule F ***Environmental Bill of Rights, 1993***

Section 1 of this schedule adds three new sections to the *Environmental Bill of Rights, 1993*, sections 58.1, 58.2 and s. 58.3.

Section 58.1 requires the Environmental Commissioner to report annually to the Speaker of the Assembly on energy conservation concerning electricity, natural gas, propane, oil and transportation fuels. The report would be required to:

- describe the results of initiatives in Ontario to conserve energy in the previous year;
- describe the progress in meeting targets established by the government of Ontario to conserve energy;
- identify Acts, regulations, and policies of Ontario or Canada that result in barriers to the conservation of energy; and
- identify by-laws and policies of municipal councils in Ontario that result in barriers to the conservation of energy.

Section 58.2 requires the Environmental Commissioner to report annually to the Speaker of the Assembly on the progress of activities in Ontario to reduce emissions of greenhouse gases (carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulphur hexafluoride). The report will include a review of any annual report on greenhouse gas reduction or climate change published by the Government of Ontario during the previous year.

Section 58.3 requires that the two new reports required by the new sections be made separately from each other and separately from the annual report required by s. 58.

Schedule G ***Environmental Protection Act***

At present, proponents of renewable energy projects may be required to obtain one or more approvals or permits under the *Environmental Protection Act* (EPA) and the *Ontario Water Resources Act* (OWRA). The amendments to the EPA would combine approval requirements under the EPA and the OWRA into a single new renewable energy approval.

Schedule G also includes amendments to the EPA to define certain words and to ensure that certain prohibitions apply to the new renewable energy approval. It also makes numerous amendments consequential to the creation of the new renewable energy approval.

Section 1 adds “renewable energy approval” to the definition of “regulated person”. It also adds definitions for “renewable energy generation facility” from the *Electricity Act, 1998* and “renewable energy project” from the *Green Energy Act, 2009*.

Section 2 repeals and substitutes the prohibitions in sections 40 and 41 regarding the deposit of waste and use of waste facilities so that the prohibitions include reference to a renewable energy approval.

Section 3 includes the reference to a renewable energy approval in subsections 42(3) and (5).

Section 4 of Schedule G adds Part V.0.1 (Renewable Energy). This Part creates a new approval regime for renewable energy projects.

Section 47.1 of the Act defines “environment” as set out in the *Environmental Assessment Act* which includes social, cultural or economic conditions that influence human life or communities. For the rest of the Act, the definition of “natural environment” is the relevant definition.

Section 47.2 of the Act provides a specific purpose clause for this new part: to provide for the protection and conservation of the environment. Given the definition of “environment” the purpose of the new Part V.0.1 is broader than the purpose set out in subsection 3 (1) of the Act.

Section 47.3 of the Act requires a person engaging in a renewable energy project to obtain and comply with a renewable energy approval, if engaging in the project would require an approval, permit or other instrument under specified provisions of the EPA, OWRA or if engaging in the project would involve any other prescribed activity. The section provides that a person who is engaging in a renewable energy project is exempt from specified approval and permit requirements under the EPA and OWRA and from requirements set out in any prescribed provisions under other Acts. Thus, only one Ministry of the Environment approval, a renewable energy approval, would be generally required for renewable energy projects. As noted above, “renewable energy project” will have the same meaning as in the *Green Energy Act, 2009*, namely the construction, installation, use, operation, changing or retiring of a renewable energy generation facility.

Section 47.4 requires that an application for the issue or renewal of a renewable energy approval be prepared in accordance with the regulations and submitted to the Director. The amendments to the regulation-making authority below allow for specification of a number of requirements for content and process related to the application, including the setting of standards governing renewable energy projects and consultation (public and aboriginal).

Section 47.5 gives the Director broad discretion. The Director is authorized to issue or renew or to refuse to issue or renew a renewable energy approval if doing so would be in the public interest. The Director has the authority to impose terms and conditions on a renewable energy approval, to alter the terms and conditions, to impose new ones and to suspend or revoke a renewable energy approval. Given the broad definition of “environment” and the specific purpose of the proposed Part V.0.1, these conditions could relate to social, economic and cultural conditions that influence human life or communities.

Section 47.6 prevents a renewable energy approval from authorizing a taking of water contrary to subsection 34.3 (2) of the OWRA. This section prohibits a transfer of water out of the Great Lakes-St. Lawrence River Basin, the Nelson Basin or the Hudson Bay Basin. This provision is added to ensure consistency with section 34.3 (2) of the OWRA.

Section 47.7 permits the Minister of the Environment to issue written policies in respect of decisions made about renewable energy approvals under the new part. Decisions made in respect of renewable energy approvals shall be consistent with these policies.

Sections 5, 6, and 7 make consequential amendments to reflect the introduction of the renewable energy approval.

Sections 7 to 12 of Schedule G amend provisions for hearings by the Environmental Review Tribunal (ERT) related to a renewable energy approval, including giving third parties the right to request a hearing regarding the decision of a Director respecting a renewable energy approval.

Section 7 replaces the circumstances giving rise to an appeal to include refusal to issue or renew a renewable energy approval, suspension or revocation of a renewable energy approval, imposition or alteration of terms and conditions. Further, the section provides that the Director is required to give notice of his or her decision and provide written reasons.

Section 8 of Schedule G amends the provisions related to a hearing required by an applicant by making those sections not apply to a hearing by a third party.

Section 9 of Schedule G adds section 142.1. Section 142.1 allows a person resident in Ontario who is not entitled to require a hearing as a party to require a hearing before the ERT in respect of a decision of the Director regarding a renewable energy approval. The section provides that the person requiring a hearing serve written notice on the Director and the ERT within 15 days of a day to be prescribed by regulation. The section also provides that a hearing could be required only on the grounds that engaging in the renewable energy project in accordance with a renewable energy approval would cause serious and irreversible harm to plant life, animal life, human health or safety or the natural environment. If the ERT does not dispose of a hearing within a period of time prescribed by regulation, the decision of the Director would be deemed to be confirmed by the ERT.

Section 20 of the Schedule amends section 176 to add regulation-making power relating to the new Part V.0.1, including power to make regulations governing the location of renewable energy facilities and eligibility requirements relating to applications for renewable energy approvals, including transitional matters.

Schedule H ***Ontario Water Resources Act***

Schedule H contains amendments to the *Ontario Water Resources Act* that are consequential to the amendments to the *Environmental Protection Act* to reflect the introduction of the renewable energy approval.

Schedule I
Co-operative Corporations Act

The *Co-operative Corporations Act* is amended to authorize the incorporation of renewable energy co-operatives. A renewable energy co-operative is a co-operative whose articles restrict its business to generating and selling electricity produced from renewable energy sources. As part of its business, a renewable energy co-operative may establish or develop generation facilities to generate electricity produced from renewable energy sources and may promote the purchase by electricity users of electricity produced from renewable energy sources.

Other amendments to the Act authorize a renewable energy co-operative to distribute its surplus in accordance with the by-laws of the co-operative and not in accordance with the rules in the Act relating to patronage returns.

Schedule J
Building Code Act, 1992

The purposes of the Building Code (the regulation made under subsection 34 of the *Building Code Act, 1992*) currently include establishment of standards for “conservation”. Schedule J amends the *Building Code Act, 1992* to clarify that this purpose includes energy conservation.

The *Building Code Act, 1992* is also amended to require that

- reviews of the Building Code, with reference to standards for energy conservation, be initiated at five year intervals, and
- an advisory body – the Building Code Energy Advisory Council – be established with a mandate to advise the Minister of Municipal Affairs and Housing on the Building Code with reference to standards for energy conservation.

This Schedule comes into force on the day the *Green Energy and Green Economy Act, 2009* receives Royal Assent.

Schedule K
Planning Act

Subsection 1(1) of the *Planning Act* is amended to add definitions of “renewable energy generation facility” and “renewable energy project”.

Subsections 50(3) and 50(5) of the *Planning Act* are amended to include a new exception from the subdivision and part lot control restrictions of the Act for leases of up to 40

years for the purposes of renewable energy generation facilities and renewable energy projects.

Section 62.0.2 is added to the *Planning Act* to exempt renewable energy generation facilities and renewable energy projects from demolition control by-laws under section 33; by-laws, orders and agreements under Part V which include zoning by-laws, site plan control by-laws and interim control by-laws; the development permit regulation and by-laws under section 70.2; and by-laws under sections 113 and 114 of the *City of Toronto Act, 2006*.

This Schedule comes into force on a date named by proclamation of the Lieutenant Governor.

Schedule L Ministry of Natural Resources

Schedule L amends various statutes administered by the Ministry of Natural Resources in order to facilitate the development of renewable energy projects. Details of these amendments are set out below. Schedule L also amends various statutes to provide a more accurate translation of the phrase “Niagara Escarpment Plan”.

The *Conservation Authorities Act* is amended such that, if a person requests permission under section 28 of the Act for development related to a renewable energy project, as defined in section 1 of the *Green Energy Act, 2009*, a conservation authority or the executive committee appointed by a conservation authority is not allowed to refuse the permission or to impose conditions on the permission unless it is necessary to do so to control pollution, flooding, erosion or dynamic beaches.

The *Ministry of Natural Resources Act* is amended such that the Minister may require that the proponent of a renewable energy project, as defined in section 1 of the *Green Energy Act, 2009*, provide to the Minister the information or studies that the Minister considers necessary before the Minister issues a permit or approval under an Act for whose administration the Minister is responsible.

Schedule L amends the French term “Niagara Escarpment Plan” in the *Niagara Escarpment Planning and Development Act* and other Acts and amends the definition of “utility” in the Niagara Escarpment Plan to include renewable energy projects, as defined in section 1 of the *Green Energy Act, 2009*, in the reference to the generation, transmission and distribution of electric power.

Subsection 19 (2) of the *Provincial Parks and Conservation Reserves Act, 2006* presently allows facilities for the generation of electricity to be developed in provincial parks and conservation reserves for use within communities that are not connected to the IESO-controlled grid if the Lieutenant Governor in Council approves. Schedule L changes the

requirement for approval from the Lieutenant Governor in Council to the Minister responsible for the administration of the Act.

A person who has entered into an agreement, including a lease, a licence or an easement, with the Crown under the *Public Lands Act* or to whom a permit to occupy public lands has been issued under the *Public Lands Act* is required to comply with the agreement or permit, as the case may be. It is an offence to contravene the requirement. A court that convicts a person of the offence can make a compliance order.