Overview of Ontario's Bill 5

A Snapshot of the Bill's Most Egregious Provisions

BACKGROUNDER
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environmental defence

Bill 5, the *Protect Ontario by Unleashing Our Economy Act*, would give Premier Ford and his cabinet unprecedented power over our communities, including powers to dictate who is exempt from the law and who is not.

If passed, Bill 5 would be a direct attack on healthy communities, good planning, clean water and air, species at risk and the rights of Indigenous people—all to benefit a handful of the government's hand-picked friends.

A Snapshot of Bill 5

Special Economic Zones (Schedule 9)

Schedule 9 in Bill 5 would allow the premier and cabinet to take full control over decisions that are usually made by the legislature. This means they could decide which provincial and municipal laws would apply to "special economic zones", the geographic extent of the law's applicability, and even the specific individuals and companies to which the law applies.

By empowering the premier to create special economic zones, "trusted proponents" will be given the authority to undertake projects without regard to provincial municipal laws and bylaws.

Schedule 9 provisions enable the premier and cabinet to hand out exemptions to:

- Any person or company they choose, for any purpose whatsoever, regardless of whether they are actually engaged in any work combating U.S. economic aggression or involved in any business enterprise at all.
- Any portion of Ontario they choose, including large regions that are home to the largest concentration of people (e.g. the Greater Golden Horseshoe), or individual residential or commercial properties (e.g. a car dealership or cottage lot) for any purpose whatsoever.
- Any initiative or project they choose, including those with little to no significance to U.S. trade barriers.
- Any provincial or municipal law whatsoever (e.g. *Planning Act*, *Environmental Protection Act*, *Occupational Health and Safety Act*, *Highway Traffic Act*, and *Trespass to Property Act*) for any purpose whatsoever.

What does this mean for Ontarians?

- Schedule 9 is extreme and anti-democratic because it delegates the elected legislature's power to determine what laws govern Ontario to the premier and his chosen cabinet. It also enables them to arbitrarily apply different laws (or no laws) to different people. Rather than setting clear criteria for or limits on designating a geographic area as a special economic zone or an enterprise as a "designate project", the current language proposes unrestricted discretion over the criteria to that premier and his cabinet.
- The establishment of special economic zones would create a legal mechanism for the government and the development proponent to bypass consultation and engagement with First Nation governments. The exemption from provincial laws and regulations could represent a breach of constitutionally defined and protected Indigenous rights including the Duty to Consult and the respecting the Honour of the Crown under section 35. It also represents an abandonment of public participation as legislated under the *Environmental Bill of Rights, 1993.*
- While long-established consultation and engagement rights are being upended, this legislation does not propose any replacement or substitutes. As a result, Indigenous critics of the special economic zones have deemed them "Constitution-free Zones."

The *Ontario Heritage Act* (Schedule 7)

Schedule 7 of the bill proposes to exempt developments from archeological assessments if the Ontario government is of the opinion that an exemption "could potentially advance one or more of the following provincial priorities":

- Transit;
- Housing;
- Health and Long-Term Care;
- Other infrastructure; and
- Such Other Priorities as May Be Prescribed.

What does this mean for Ontarians?

- By exempting infrastructure and housing projects from archeological assessments, the Ontario government will be backtracking on Indigenous reconciliation progress made since the Oka crisis of 1990 as well as the 2006 standoff in Caledonia in 2006.
- Archeological (and environmental) assessments often trigger the duty to consult with Indigenous communities and First Nations governments. Undertaking archeological assessments processes is also one of the ways that governments uphold the Honour of the Crown. Destroying undisturbed Indigenous historic sites in the name of economic progress would set Ontario back decades in Indigenous and economic reconciliation.

Replacement of the *Endangered Species Act* with the *Species Conservation Act* (Schedule 10)

Schedule 10 of the bill would repeal Ontario's *Endangered Species Act* - ending most meaningful protections for endangered, threatened and special concern species and their habitat. While new legislation, the *Species Conservation Act*, is being presented as a replacement, it would not provide meaningful protection. The vast and sweeping proposed changes will move Ontario away from a science-based approach to protecting species at risk to one that relies on industry and developers' voluntary and discretionary approaches. Significant amendments that will politicize the protection of species at risk include:

- The removal of the mandatory listing of species at risk for the minister to list species identified by an independent committee of experts (the Committee on the Status of Species at Risk Ontario or COSSARO).
- Narrowing the definition of habitat so that the definition excludes a species' habitat for feeding or migration. This will lead to the fragmentation of critical habitat for species at risk, thereby accelerating their disappearance. The bill also suggests that the premier's cabinet can further limit the definition of habitat by regulation (i.e. without having to vote on it in the legislature).
- Removing the requirement for the government to develop a recovery strategy, management plans, response statements or a species' review of progress. By no longer tracking species at risk and removing the requirement for recovery strategies, the Ontario government is effectively removing the onus to ensure conservation programs and initiatives result in species' recovery.
- Removing the prohibition on the harassment of species thereby removing the prohibition on disturbing a species in a way that could disrupt a species' behaviour or life processes.
- Introducing a new approach that relies entirely on a voluntary registry, which will be used at the discretion of industry, as there does not appear to be provisions authorizing mandatory criteria for registration, nor mitigation measures to minimize the harm caused to the species at risk.
- Permitting also becomes completely discretionary—at the behest and whim of the Minister of Environment, Conservation and Parks.

What does this mean for Ontarians?

- By removing the focus on the species' recovery strategies and programming, the Ontario government is rejecting scientifically sound and globally agreed international protection approaches and targets for biodiversity conservation.
- By no longer tracking species at risk and removing the requirement for recovery strategies, the Ontario government is effectively removing the onus to ensure conservation programs and initiatives result in species' recovery.
- Currently, industry must receive permits to undertake activities that will kill or harm species at risk, whereas in the future they simply have to register their intent to kill or harm species.
- Bill 5 represents a sweeping and unprecedented gutting of the *Endangered Species Ac*t. By eliminating the act and substituting toothless legislation that relies on voluntary and

discretionary measures by major extractive industries and developers, Ontario will accelerate the extirpation and extinction of key species at risk.

Exemptions Under the *Environmental Assessment Act* (Schedule 3)

Bill 5 proposes to terminate comprehensive environmental assessments for two projects: 1) the proposed Eagle's Nest mine as part of the proposed Ring of Fire in Northern Ontario and 2) the proposed Dresden Dump.

The environmental assessments for both projects were put into place to provide forward-looking understanding of environmental and socio-economic conditions and impacts of planned developments to government decision-makers, Indigenous communities as well as members of the public.

What does this mean for Ontarians?

- The unilateral termination of the environmental assessments for both the Eagle's Nest mine and the Dresden landfill will rob the public, Indigenous communities and right-holders, the industry proponents as well as government officials of comprehensive scientific information for sound decision-making on these potentially harmful projects. This decision highlights the Ontario government's clear intentions to prioritize reckless development absent of evidence and at potentially great cost to the public.

***Mining Act* (Schedule 5)**

Schedule 5 proposes to amend the *Mining Act* by removing the public's ability to track mining claims. That is, ministerial powers are being expanded by giving the minister the power to suspend some or all functioning of the Mining Lands Administration System (MLAS) - the online system used for administering and registering mining claims on traditional Indigenous lands (or public lands).

Amendments to the *Mining Act* will also provide the minister with the discretionary power to establish a team of public servants to fast-track mining permits for individual proponents. It is unclear if this concierge service would be available to both established, well-connected mining companies and junior miners.

What does this mean for Ontarians?

- The new ministerial powers are being proposed without information on basic, minimum standards for ensuring transparency and procedural fairness. Further, the focus on expediting permitting through a concierge service (again without criteria, standards or transparency) will likely lead to inefficient resource allocation and preferential treatment provided to well-connected firms.

Electricity Act, 1998 (Schedule 1)

The Ontario government wants to change the *Electricity Act* so it can direct Ontario's energy agencies, like the Independent Electricity System Operator (IESO) and Ontario Power Generation (OPG), to stop buying goods and services from certain countries, regions or territories. Which places are affected would be decided through a future government directive.

What does this mean for Ontarians?

- While this amendment makes sense given the current U.S. tariff trade challenges that could lead to the ban of U.S. goods and services, the Ministry of Mines and Energy's technical briefing released with the legislation uses the People's Republic of China as their example of a "specific country, region or territory of origin".
- The use of Chinese goods and services (and not only Chinese State-owned enterprises) as the example is problematic as the Minister of Energy and Mines continue to create hurdles for renewable energy proponents in the government's upcoming Second Long-Term Procurement (LT2) while stacking the deck in favour of fossil fuel technologies including dirty natural gas-powered generation.
- The People's Republic of China currently produces upwards of 80 per cent of all components for solar panels and approximately 67 per cent of those of wind mills.
- Enacting a ban of Chinese components in future energy procurements would effectively foil the deployment of future solar and wind projects in Ontario. This move would deprive Ontarians from the lowest-cost, fastest to build energy sources.

For questions or suggestions on this backgrounder, please contact:

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