

ONTARIO ENERGY ASSOCIATION

BILL 153: Building Infrastructure Safely Act.

December 22, 2023

To shape our energy future for a stronger Ontario.



Ontario Energy Association

ABOUT

The Ontario Energy Association (OEA) is the credible and trusted voice of the energy sector. We earn our reputation by being an integral and influential part of energy policy development and decision making in Ontario. We represent Ontario's energy leaders that span the full diversity of the energy industry.

OEA takes a grassroots approach to policy development by combining thorough evidence based research with executive interviews and member polling. This unique approach ensures our policies are not only grounded in rigorous research, but represent the views of the majority of our members. This sound policy foundation allows us to advocate directly with government decision makers to tackle issues of strategic importance to our members.

Together, we are working to build a stronger energy future for Ontario.

The Ontario Energy Association (OEA) is pleased to provide feedback on the Ministry of Public and Business Service Delivery (MPBSD) proposal for a renewed locates regulatory framework, as posted on the Regulatory Registry, entitled “*Proposed Legislative Amendments to the Ontario Underground Infrastructure Notification System Act, 2012 under the Building Infrastructure Safety Act, 2023*” and further outlined in Bill 153, *Building Infrastructure Safety Act*.

Context:

The locates file is a priority issue for the OEA and our members because it sits on the intersection of energy system costs and infrastructure delivery. If locates policy is not calibrated correctly it can have the effect of driving up energy system costs while failing to speed up the delivery of critical infrastructure needed for the province.

The OEA and our members believe that both goals must be met and the system as currently designed achieves neither. On the energy side, the locates file have driven up costs dramatically for utility rate payers. These have partially been documented in the OEB’s EB-2023-0143 consultation and, at minimum, represent an impact in the tens of millions of dollars annually.

In addition the current slate of policies do not necessarily bring about faster locate service delivery for priority/large projects, due challenges such as the size of the project, volume of locates needed, short line-of-sight into the volume of work coming up and other factors.

The Proposed Legislative Changes:

The OEA is supportive of the proposed legislative changes, conditional on the appropriate consequential policy elements being implement via regulations. We appreciate the effort the government has taken to ensure that the locates policy is better balanced to meet the full range of stakeholder needs.

The following feedback is based on both the proposed legislative changes as articulated in the Regulatory Registry posting as well as the briefing provided by MPBSD in November 2023 on the complementary regulatory changes to come.

These elements include:

- *Redefining locates to include “large projects”*: Not all locates are the same, especially when considering the time and effort required to complete locates for large/priority projects such as housing and transit. The OEA has consistently advocated for treating large/priority projects as a distinct requests requiring a dedicated process of its own. While the proposed definition still falls short of what is required to truly tackle the “pain points” for the industry, it represents a welcome step forward in the right direction.
- *Changing the locate delivery timeline for “large projects”*: The OEA has previously provided feedback stating that the 5-day requirement is unworkable for large/priority projects, and more procedural nuance (e.g. additional completion time) is required for projects of a specific size. We are supportive of the measure to increase the timeframe from 5 days to 10 days and is a step in the right direction, but one that we see as a temporary, transitional measure until a more robust framework is developed.
- *Removing the “excavator recourse” elements tied to 17(1)(c) around locate timelines*: The OEA is wholly supportive of this measure. Our members will be subject to penalties via Administrative Penalties if they egregiously fail to provide timely locates. Excavator recourse provisions are doubly punitive and not in keeping with an appropriately balanced regulatory framework.
- *No charging for locates*: The OEA and its members hold the safety of its customers and employees above all else. With this in mind, our members support the notion that residential and small business customers with limited projects should not be charged for locates, ever. They should never

be discouraged in any way from following the law. However, with larger projects, locates typically represent a substantial expenditure of resources for the utility but an immaterial cost in the scope of the project. General ratepayers should not be saddled with the cost of enterprises that seek to benefit from the service. Our members welcome further discussion with the MPBSD and the OEB on how such a structure could work beneficially for all participants.

- Phase 2: The OEA is supportive of the Phase 2 proposal to extend the locate notification for large projects to 20 – 30 days. One of the largest challenges that asset owners currently have in delivering timely locates is the inability to know and plan for the volume of work coming up. Extending the line-of-sight on the work will give asset owners the appropriate time to plan and procure resources to deliver timely locates.

Closing the Gaps:

While the package of legislative and regulatory policies represents a positive step forward in untangling the issues with locate service delivery, it is at best a transitory measure to truly delivering effective locate services. As such the OEA recommends that MPBSD adopt the following policy recommendations to close the policy gaps in the current proposal:

- Large Project Definition: It is likely that for very large and complex projects such as transit, housing and infrastructure, the proposed 10-day compliance timeline is still insufficient. OEA recommends relooking at the definition of large projects and its associated obligations through the phase 2 engagement.
 - The OEA still recommends a temporal and locational definition to large projects, i.e.;
 - Projects larger than 500 meters in an urban area and persisting longer than 30 days or;
 - Projects larger than 1000 meters in a rural area and persisting longer than 30 days.
 - The OEA also recommends that both notification and locate completion timelines be further extended to better align with the inherent complexities of very large priority projects.
 - Additional details can be found in our June submission to MPBSD.
- Dedicated Locator model: As the OEA has communicated numerous times in the past, the best way to ensure that the locates are completed within project timelines, particularly for large, priority projects is for excavators with large projects to adopt the “Dedicated Locator” model. Ontario had previously advanced this model in relation to broadband delivery and it remains the fastest and most cost-effective way to complete locates in a timely manner. As such the OEA recommends that MPBSD incorporate “dedicated locator” requirements for large projects.
- Absolute Liability: Section 17.2(7) of the Act imposes absolute liability provisions for Administrative Penalties on the asset owners even if they undertook *all reasonable steps to prevent the contravention or held a set of mistaken facts, which if true, would have rendered the contravention innocent.*
 - Given the highly variable nature of factors either driving locates (e.g. incremental weather events) or limiting locates delivery services (e.g. geographical location, labour availability, locate project size and scope), OEA finds section 17.2 (7) to be particularly problematic.

- Our members act in good faith to provide locate services and have scaled up locate resources to comply with government requirements. However, potentially requiring 100% compliance on a time-based delivery model (not on a risk or priority based-delivery model) and issuing APs even though “all reasonable steps” had been taken is a bad-faith regulatory model.
- OEA strongly recommends either removing or varying this section on “absolute liability”, particularly when Ontario One Call (or the “assessor”) acknowledges that all reasonable steps had been taken or the known facts at the time of the contravention were later discovered to be incorrect.

In summary, the OEA is supportive of many of the proposals put forward by the Ministry. However, we view this as a transitional step towards developing a robust locates framework which can meet the goal of ensuring timely and cost-effective locates can be delivered. We trust that our feedback will be received in the collaborative spirit in which it has been submitted.

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Ontario Energy Association

Let's unravel complex energy challenges, together.