



BILL 66: AN ACT TO RESTORE ONTARIO'S COMPETITIVENESS

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An outline of the environmental, consultation and human rights concerns with the impacts of Bill 66 from the perspective of the Anishinabek Nation.

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INTRODUCTION

About the Anishinabek Nation

The Anishinabek Nation incorporated the Union of Ontario Indians (UOI) as its secretariat in 1949. The UOI is a political advocate for 40 member First Nations across Ontario. The UOI is the oldest political organization in Ontario and can trace its roots back to Niswi-mishkodewin, or the Confederacy of Three Fires, which existed long before European contact.

About Anishinabek Inherent Rights and Jurisdiction

The Anishinabek Nation seeks meaningful co-existence with the Provincial Government of Ontario through mutual recognition, respect, sharing and responsibility. The Anishinabek have been given instructions by the Creator on how to live in harmony and balance, which includes governing our citizens and managing our responsibilities as a sovereign nation. The gifts of inherent right and jurisdiction over our lands and people granted to us by the Creator insist on free, prior and informed consent before any activity taking place that has potential to impact our lands, water and citizens. Consultation and accommodation are essential elements for the peaceful coexistence of our nations.

About Bill 66

Anishinabek First Nations in Ontario, as people that have historically regionally subsisted on the land, continue to derive their livelihood from the land and maintain stewardship over the land, bear witness on a day-to-day basis, environmental abuses and the impacts they have, both directly and indirectly over our citizens. With the introduction of Bill 66, *An Act to Restore Ontario's Competitiveness*, there is an evident fear among the Anishinabek First Nations that these abuses will only perpetuate and worsen the environmental crisis we are currently entangled in. Notwithstanding the current financial and administrative challenges the Ontario Government is currently facing, we as the leaders and decision-makers of our First Nations have a duty to manage the use of our natural resources responsibly and in a sustainable way, ensuring they are available for generations to come.

Bill 66 firmly prioritizes business, development, progress, and economic gain over and above not only the environment but also the people. The Anishinabek Nation is concerned that these economic gains will be made at the cost of the environment and so have prepared the following summary of concerns to submit for your attention and consideration.

The Anishinabek Nation is concerned that Bill 66 is environmentally retrogressive and appears to repeat mistakes of the past. In attempting to 'cut red tape' this bill represents a move towards deregulation that was warned against and blamed for deaths during the Walkerton Inquiry.

Through Bill 66, the government of Ontario is proposing amendments to existing legislative provisions that currently work together to safeguard the environment and public health and safety across the province. The Anishinabek Nation questions the need for the amendments contained in Bill 66. The Provincial Policy Statement (PPS) already directs municipalities to promote economic development through planning for and preserving areas for employment growth. The creation of the new open-for-business by-law as a planning tool is unnecessary and even redundant. It is the Anishinabek Nation's view that major new developments can be accommodated by employment lands already set aside by existing plans.

SCHEDULE 1: MINISTRY OF AGRICULTURE, FOOD AND RURAL AFFAIRS

Schedule 1 of Bill 66 applies to the Ministry of Agriculture, Food and Rural Affairs. The laws that will be impacted or changed include:

Agricultural Employees Protection Act, 2002.

The *Agricultural Employees Protection Act* protects the rights of agricultural employees who are not included in the *Labour Relations Act* due to the unique nature of farming as an occupation. The Act protects the rights of employees to form or join an association or to unionize. The extension of this Act to cover employees who engage in ornamental horticulture is of benefit to the employees of this industry. This may include employees of perennial and annual plant farms, nursery sod, woody plants, Christmas trees and ornamental plants. The Act does not cover people who may be employed by a municipality, or may be engaged in silviculture. Silviculture may include activities such as tree growing, tree planting and forest stand management, common occupations amongst members of the Anishinabek Nation.

Recommendation

1. The amendment of the Act to cover ornamental horticultural workers is positive in nature. The Act should be extended to include employees hired by municipalities, and those employed in silviculture activities.

Farm Registration and Farm Organizations Funding Act, 1993.

Section 2 of the *Farm Registration and Farm Organizations Funding Act* has been amended to eliminate the requirement for certain people carrying on a farm business to file a farming business registration form with the Minister. Individuals, corporations and other farming entities who object to registering the farm business and making payment to an accredited farm organization *because of his or her religious conviction*, have the ability to apply to a tribunal for an order that the requirement to register and make payments to farm organizations may be waived.

Section 21 of the *Farm Registration and Farm Organizations Funding Act* is amended to clarify the Ministry's role in receiving payment from farm businesses along with applications and forwarding those payments to the accredited farm organization. These changes give the Ministry authority to charge and recover administrative costs. The Minister is taking over powers to make regulations previously held by the Lieutenant Governor in Council. These changes speak to eliminating red tape and are most likely positive in nature.

Recommendation

2. Exempting certain individuals, corporations and other farming entities from having to file a farming business registration form and pay associated fees due to their religion confers special status upon these parties and does not seem reasonable or fair to other farmers who have to pay fees, and does not encourage a level playing field in the business environment. Section 8 of Bill 66 is recommended for removal.

SCHEDULE 10: MINISTRY OF MUNICIPAL AFFAIRS AND HOUSING

The option of allowing municipalities to pass an open-for-business by-law is proposed to expedite development by allowing exemptions from a number of regulatory enforcements specified in multiple pieces of legislation.

As Anishinabek First Nations have not been consulted in the development of Bill 66 and have no accommodation within it, Bill 66 cannot exempt proponents from the legal duty to consult with First Nations prior to the commencement of projects or development that is planned to occur within, or that has the potential to impact their territories.

Section 34 of the Planning Act, 1990.

The open-for-business planning by-law will give municipal councils significant discretion to determine which, if any, of the complex suite of policies and protections applies. The zoning by-law power will depend on forthcoming regulations, but it is clear that the new municipal discretion will apply to zoning of employment that meet minimum job creation threshold.

Under Schedule 10, the *Planning Act* is being amended by adding:

34.1 (1) A local municipality may pass a by-law to which this section applies (hereinafter referred to as an open-for-business planning by-law) that:

- (a) involves the exercise of the municipality's powers under section 34; and*
- (b) may impose one or more of the conditions specified in subsection (8) on the use of land or the erection, location or use of buildings or structures.*

Subsections 34 (10.0.0.1) through to 34 (10.0.0.34) of the *Planning Act*, under “Zoning by-laws” also falls within the list of allowable exemptions granted by the open-for-business by-law. Within this section, there is a concern regarding the exemption of public consultation. The duty to consult with First Nations where a project or development has a potential to impact First Nation territory has already been well-established and recognized by the courts. The lack of acknowledgement of this legal obligation within Bill 66 will assuredly falsely imply that proponents working through Bill 66 and the implementation of a municipal open-for-business by-law have been released from consultation obligations to all parties of interest, including that of First Nations.

In view of the fact that municipal by-laws do not have the authority to go beyond their borders and jurisdiction to alter or otherwise impact First Nation rights, Bill 66 is unlikely to provide justification for the violation of the duty to consult and accommodate the First Nations of the territories that it impacts.

As proposed, developments subject to an open-for-business by-law would not be required to comply with a municipality's official plan. This is of concern to the Anishinabek Nation in that Anishinabek interests that may have been articulated in the development of the official plan can be ignored through the development process. As such, Schedule 10 does not support reconciliation or the development of economic partnerships between First Nations and neighboring municipalities.

The Minister of Municipal Affairs and Housing will approve and impose conditions to protect public health and safety. The municipal council will have the power to decide whether they wish to implement any of the environmental policies.

The Provincial Policy Statement (PPS) contains policies that apply to many areas of concern to the Anishinabek Nation. Bill 66 circumvents other legislation that protects environmentally sensitive areas such as the Greenbelt and the Great Lakes.

The Anishinabek Nation is concerned that section 34.1 (1) allows development that does not comply with the PPS. For example, wetlands provide important spiritual, cultural, medicinal and economic inputs to Anishinabek communities. Protection of wetlands is paramount for the ability of our communities to realize and practice their Treaty Rights. Wetlands and other bodies of water are of importance to Anishinabek Nation citizens and Anishinabek First Nations. The Anishinabek Nation also has concerns with non-applicability of or inconsistency with the PPS in relation to active transportation, storm water management, low impact development, green infrastructure, natural heritage, water feature protection, climate change and resiliency and hazards.

Recommendation

3. All planning decisions should meet or exceed the minimum standards for protection of wetlands set out in the PPS.
4. As a minimum, the standards and requirements set out in the PPS and the abovementioned Acts should remain in force across Ontario and Schedule 10 of Bill 66 should be removed from consideration.

Section 39 of the Clean Water Act, 2006.

Over all, the purpose of the *Clean Water Act* is to protect existing and future sources of drinking water against drinking water threats. The *Clean Water Act* was enacted more than 10 years ago and requires planning and approval decisions at the provincial and municipal level to be consistent with the policies set out in the *Clean Water Act* as well as by approved source water protection plans that address significant drinking water threats and the Great Lakes.

For instance, if there is a conflict between the significant threat of the source protection policy and other land use planning documents, the source water protection plan and policies prevail. This means that municipal by-laws and public works must be consistent with approved significant threat policies in the Source Water Protection Plans. In addition, provincial approvals such as pollution permits for water discharge must also conform.

The Environmental Commissioner of Ontario independently reviewed the *Clean Water Act's* water protection processes and concluded that the processes of the *Clean Water Act* have worked well to develop individually tailored source protection plans that respond to the conditions and uses of each watershed. The Commissioner also pointed out that the *Clean Water Act* provided balance between the financial costs of conforming to more onerous policies and not compromising drinking water safety. Given these findings, the Anishinabek Nation is gravely concerned by the attempt in Schedule 10 to allow development in a manner that is not consistent with all sections of the *Clean Water Act*.

Bill 66 will allow commercial development to bypass many laws that are currently in place to protect the health and natural environment of Ontarians including the *Clean Water Act*. The *Clean Water Act* currently requires all *Planning Act* decisions to conform to policies approved in source water protection plans that address threats to drinking water such as landfills sewage, storage of fuels, fertilizer and manure, pesticides, road salt and other substances on lands near wells or surface water intake pipes used by municipal drinking water systems. The Minister of Municipal Affairs and Housing must review and approve municipal requests to pass open-for-business by-laws. However, Schedule 10 does not legally require the Minister to refuse such requests, as she or he should, if the proposed development might be a threat to drinking water sources.

If Bill 66 passes, it would exclude subsections 39(1) to (8) from applying to major development projects that may be authorized by the open-for-business planning by-laws. This means that massive industrial projects will be allowed to construct or operate in a wellhead protection area or surface water intake projection zone. In addition, Bill 66 would enable provincial officials to issue prescribed instruments such as environmental licenses, permits, or approvals for the activity or facility in an approved source water protection plan.

Recommendation

5. All sections of the *Clean Water Act* must remain applicable to all municipal planning and zoning decisions in order to protect the safety and health of the public.
6. As a minimum, the standards and requirements set out in the *Clean Water Act*, 2006, should remain in force across Ontario and Schedule 10 of Bill 66 should be removed from consideration.

Section 20 of the Great Lakes Protection Act, 2015.

The *Great Lakes Protection Act* addresses some of the biggest challenges facing the Great Lakes such as water pollution, wetland loss, and algal blooms. The Act requires that planning decisions conform with designated policies and have regard for other policies contained in any geographically focused area. Currently, there is no geographically focuses area identified within the *Great Lakes Protection Act*.

The Anishinabek Nation was involved in the development and implementation of the *Great Lakes Protection Act*, and continues to be involved with future Great Lakes Basin initiatives that will support the Act. The establishment of the Great Lakes Guardian Council, the Anishinabek Nation Grand Council Chief was invited to sit as co-chair alongside the Minister to the Council. The Anishinabek Nation supported the Great Lakes Guardian Council's work in the development of the Great Lakes Guide, however, the Council has yet to identify geographically focused initiatives located within the Great Lakes Basin.

Recommendation

7. The Anishinabek Nation must continue to be involved with the future of the Great Lakes Basin initiatives. It is imperative that the Anishinabek Nation remains informed, engaged, and actively involved in partnerships with Ontario to address the environmental challenges.
8. All sections of the *Great Lakes Protection Act* must remain applicable to all municipal planning and zoning decisions in order to protect the safety and health of the public and Schedule 10 of Bill 66 should be removed from consideration.

Section 7 of the Greenbelt Act, 2005.

Bill 66 will require that planning decisions conform to the *Greenbelt Act* which was created to limit urban sprawl. The *Greenbelt Act* currently protects large tracks of farmland and natural areas from development.

The Anishinabek First Nations are essential partners as the Greenbelt Plan is largely covered by a number of treaties that provide Treaty Rights and have Aboriginal Rights within the Plan area. The *Greenbelt Act* has been effective, however, Bill 66 will impact the efforts to solve environmental challenges.

Recommendation

9. All sections of the *Greenbelt Act* must remain applicable to all municipal planning and zoning decisions in order to protect the safety and health of the public and Schedule 10 of Bill 66 should be removed from consideration.

Section 7 of the Oak Ridges Moraine Conservation Act, 2001.

Bill 66 will require that planning decisions conform to the Oak Ridges Moraine Conservation Plan, and currently the municipalities cannot pass a by-law that conflict with the Plan.

The proposed Bill 66 seeks to amend the *Oak Ridges Moraine Act*. The proposed amendments are inconsistent with Anishinabek Nation interests nor does it enhance environmental protection. Bill 66 has great potential to negatively impact land use. Safeguarding the Greenbelt, Oak Ridges Moraine and the Niagara escarpment would add many ecological benefits that would benefit Ontario as a whole.

Recommendation

10. All sections of the *Oak Ridges Moraine Conservation Act* must remain applicable to all municipal planning and zoning decisions in order to protect the safety and health of the public and Schedule 10 of Bill 66 should be removed from consideration.

Section 6 of the Lake Simcoe Protection Act, 2008.

Bill 66 threatens the protections of the environment and violates the Anishinabek Nations right to a healthy environment where farmland, forests, watersheds and wetlands are at significant risk for development. As Ontario plans to deregulate the environmental regulations, significant pockets of land and vulnerable water supplies will be impacted.

This requires that planning decisions conform to the designated policies and have regard to other policies that are set out in the Lake Simcoe Protection Plan. For instance, in a case of a conflict between a by-law and a designated policy in the Lake Simcoe Protection Plan, the Plan would prevail, or whichever policy provides for the greatest protection.

The Anishinabek Nation was part of the processes in the establishment of the *Lake Simcoe Protection Act* and its plan. The Anishinabek Nation and Chippewas of Georgina Island were members to the Lake Simcoe Science Committee and Lake Simcoe Advisory Committee that provided advice on decisions made in the

process. With the proposed changes, the Lake Simcoe Basin becomes vulnerable to projects such as the proposed Upper York Region Sewage Solutions Project. The Chippewas of Georgina Island who reside on Lake Simcoe, have significant concerns with the proposed project that has yet to be addressed with both the Ontario Government and York Region.

Recommendation

11. All sections of the *Lake Simcoe Protection Act* must remain applicable to all municipal planning and zoning decisions in order to protect the safety and health of the public and Schedule 10 of Bill 66 should be removed from consideration.

Conclusion

Water is essential to all life, and the protection of water is vital. Many of the Anishinabek First Nations are developing or implementing source water protection plans that will prevent the contamination of their drinking water, complementing Ontario's source water protection initiative. Bill 66 would exempt open-for-business planning by-laws from section 39 of the *Clean Water Act* leaving the potential to adversely affect protected drinking water sources that are served by municipal drinking water systems. This has the potential to impact the Anishinabek First Nation that have water-servicing agreements in place with municipalities.

The Government of Ontario has stated "water resource protections in Ontario are the best protected in the world" and the Anishinabek Nation supports this statement. To maintain this level of protection, the Anishinabek Nation and the Ontario Government need to continue to work together as partners to address the key stressors on our environment.

The Made-in-Ontario Environment Plan that has been released, commits Ontario to continue to ensure the long-term sustainability of the water resources and proposed new actions to protect the Great Lakes, fish, wildlife, parks, beaches, coastal wetlands and water. Healthy Great Lakes are essential to the region's economic, social, and environmental well-being and is an issue of significant importance to the Anishinabek First Nations. The identified areas of action and key initiatives to develop new approaches that support the common goals for environmental and climate leadership are of mutual interest to the Anishinabek Nation.

The Anishinabek Nation continues to commit to working in partnership with Ontario on these important initiatives.

This submission is without prejudice to any member Anishinabek First Nation regarding individual submissions, existing projects, negotiations, Aboriginal and Treaty Rights, and respects the autonomy of all Anishinabek First Nations.