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Bill 153

An Act to amend the Ontario Underground Infrastructure Notification System Act, 2012

The Hon. T. McCarthy
Minister of Public and Business Service Delivery

Government Bill

1st Reading November 22, 2023
2nd Reading
3rd Reading
Royal Assent



EXPLANATORY NOTE

The Bill amends the *Ontario Underground Infrastructure Notification System Act, 2012*. Here are some highlights:

1. New subsection 2 (7) sets out that certain provisions of the *Not-for-Profit Corporations Act, 2010* do not apply to the Corporation with respect to by-laws that are necessary to implement a Minister's order.
2. Section 3 is amended to authorize the Minister, by order, to add objects to the Corporation.
3. New section 3.1 provides rules with respect to liability of certain persons specified in the section.
4. Section 4 is re-enacted to authorize the Corporation to, among other things, set and collect fees, costs or other charges, if done in accordance with processes and criteria approved by the Minister.
5. New section 5.1 sets out requirements in respect of locate requests, including that requests must be made in accordance with Minister's regulations. Subsection 5.1 (5) requires the Corporation to notify affected members if it receives an emergency, specified or standard request.
6. Section 6 is amended to add rules in respect of a specified request, which is a locate request of a type specified in the regulations made by the Minister. New subsection 6 (7) prohibits a member from charging a fee in respect of the activities required under subsection 6 (1).
7. New subsection 7 (9.1) requires the Corporation to give notice to certain persons if it receives a dedicated locator request. Subsection 7 (13) is re-enacted and sets out rules for members to follow when transmission infrastructure may be affected by an excavation or dig set out in a dedicated locator request.
8. Section 17 is amended to remove the requirement for a member to compensate an excavator for a loss or expense incurred because the member failed to provide a locate in accordance with the time limit applicable under section 6.
9. Various other related and consequential amendments are made.

**An Act to amend
the Ontario Underground Infrastructure Notification System Act, 2012**

His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1 (1) The definition of “assessor” in section 1 of the *Ontario Underground Infrastructure Notification System Act, 2012* is amended by striking out “of this Act”.

(2) Section 1 of the Act is amended by adding the following definitions:

“dedicated locator request” means a locate request that is not an emergency request and that is submitted by a project owner to the Corporation in respect of an excavation or dig project referred to in subsection 7 (1); (“demande de localisateur unique”)

“emergency request” means a locate request that is necessary as a result of a loss of service by a utility that, in the circumstances, is considered essential, such that the absence of the service can reasonably be expected to result in imminent or significant safety or environmental hazards, or imminent threat to a person or to the public; (“demande d’urgence”)

“specified request” means a locate request that is not an emergency request or a dedicated locator request and that is of a type specified in the regulations made by the Minister, if any; (“demande précisée”)

“standard request” means a locate request that is not an emergency request, dedicated locator request or specified request; (“demande normale”)

(3) The definitions of “emergency locate request” and “standard locate request” in section 1 of the Act are repealed.

(4) The definition of “excavator” in section 1 of the Act is repealed and the following substituted:

“excavator” means any individual, partnership, corporation, public agency or other person or entity that,

(a) digs, bores, trenches, grades, excavates, moves or breaks earth, rock or the materials in the ground, or

(b) intends to do any of the activities mentioned in clause (a); (“entreprise d’excavation”)

(5) The definition of “Minister” in section 1 of the Act is amended by striking out “Minister of Government and Consumer Services” and substituting “Minister of Public and Business Service Delivery”.

2 Section 2 of the Act is amended by adding the following subsection:

Non-application of *Not-for-Profit Corporations Act, 2010*

(7) Subsections 17 (2) to (6) of the *Not-for-Profit Corporations Act, 2010* do not apply to the Corporation with respect to by-laws that are necessary to implement a Minister’s order made under this section.

3 Clause 2.3 (10) (a) of the Act is amended by striking out “made under this Act”.

4 (1) Subsection 3 (1) of the Act is amended by adding the following paragraph:

8. To carry out any additional objects the Minister may, by order, specify.

(2) The French version of paragraph 1 of subsection 3 (1) of the Act is amended by striking out “des centres d’appels” and substituting “un système d’appels”.

(3) Section 3 of the Act is amended by adding the following subsection:

Restriction, commercial activity

(3) The Corporation shall not engage in commercial activity through an individual, partnership, corporation, public agency or other person or entity that is related to the Corporation.

5 The Act is amended by adding the following section:

No personal liability

3.1 (1) No action or other proceeding shall be instituted against a person mentioned in subsection (2), or someone who was formerly such a person, for any act done in good faith in the exercise or performance or intended exercise or performance of

any of the person's duties or powers under this Act, the regulations or a Minister's order, or for any neglect or default in the exercise or performance in good faith of such a duty or power.

Same

(2) Subsection (1) applies to the following persons:

1. An assessor.
2. An officer or a member of the board of directors of the Corporation.
3. A person whom the Corporation employs or whose services the Corporation retains.
4. An agent of the Corporation.

Liability of the Corporation

(3) Subsection (1) does not relieve the Corporation of liability to which it would otherwise be subject in respect of the acts or omissions of a person mentioned in subsection (2).

6 Section 4 of the Act is repealed and the following substituted:

Forms and fees

4 (1) The Corporation may,

- (a) establish forms related to its administration of this Act and the regulations;
- (b) set and collect fees, costs or other charges related to its administration of this Act and the regulations if it does so in accordance with the processes and criteria that it establishes and that the Minister has approved; and
- (c) make rules governing the payment of the fees, costs and charges described in clause (b).

Setting fees

(2) In setting the fees, costs and charges described in clause (1) (b), the Corporation may specify the amounts or the method for determining the amounts.

Publication of fees, etc.

(3) The Corporation,

- (a) shall publish the fees, costs or other charges and processes, criteria and rules referred to in clauses (1) (b) and (c) on its website and in any other way that may be provided for in the memorandum of understanding; and
- (b) may publish the information referred to in clause (a) in any other format the Corporation considers advisable.

Requirement to pay

(4) If a fee, cost or other charge published under subsection (3) applies to a person, the person shall pay the fee, cost or other charge to the Corporation in accordance with any rules made under clause (1) (c).

Transition

(5) Despite clause (1) (b), any fees, costs or other charges set by the Corporation before the day section 6 of the *Building Infrastructure Safety Act, 2023* came into force are deemed to comply with that clause until such fee, cost or other charge is subsequently reset.

Not public money

(6) The money that the Corporation collects in carrying out the administration of this Act and the regulations is not public money within the meaning of the *Financial Administration Act* and, subject to subsection 3 (3), the Corporation may use it to carry out activities in accordance with its objects.

7 The Act is amended by adding the following section:

Locate requests

5.1 (1) The Corporation shall ensure that the call system's operations satisfy any requirements and standards set out in the regulations.

Call centre in Northern Ontario

(2) The Corporation shall operate, as part of its call system, at least one call centre located in Northern Ontario.

Submission of locate requests

(3) A locate request shall be made in accordance with the regulations made by the Minister, if any.

No fee for locate request

(4) Despite subsection 4 (1), the Corporation shall not charge a fee to any excavator in respect of submitting a locate request.

Notification re emergency, specified or standard requests

(5) If the Corporation receives an emergency, specified or standard request with regard to a proposed excavation or dig, the Corporation shall notify each member who owns or operates underground infrastructure that may be affected by the excavation or dig.

Definition

(6) In subsection (2),

“Northern Ontario” means the territorial districts of Algoma, Cochrane, Kenora, Manitoulin, Nipissing, Parry Sound, Rainy River, Sudbury, Thunder Bay and Timiskaming and The City of Greater Sudbury.

8 (1) Subsection 6 (1) of the Act is amended by striking out “from the Corporation about a locate request made with regard to a proposed excavation or dig that may affect underground infrastructure owned or operated by the member” in the portion before paragraph 1 and substituting “under subsection 5.1 (5) in respect of a locate request”.

(2) Subsection 6 (2) of the Act is repealed and the following substituted:

Time limit for response, specified request

(2) A member who receives a specified request shall do the things required by subsection (1),

- (a) within the time period, if any, prescribed by the Minister in respect of the specified type of locate request; or
- (b) if the member and the excavator who made the specified request agree, in writing, to a time period different than the period mentioned in clause (a), within the agreed upon time period.

(3) Subsection 6 (3) of the Act is amended by,

- (a) striking out “standard locate request” and substituting “standard request”; and**
- (b) striking out “about the locate request” at the end and substituting “in respect of the request”.**

(4) Subsection 6 (4) of the Act is repealed and the following substituted:

Same, emergency request

(4) A member who receives an emergency request shall ensure that, within two hours of receiving notification in respect of the request,

- (a) a person able to do the things required by subsection (1) on behalf of the member is at the site for which the emergency request has been made; or
- (b) the information referred to in paragraph 2 of subsection (1) is provided.

(5) Clause 6 (5) (a) of the Act is amended by adding “who made the locate request mentioned in subsection (1)” after “the excavator”.

(6) Clause 6 (5) (b) of the Act is amended by striking out “the regulations set out” at the beginning and substituting “the regulations made by the Minister provide for”.

(7) Section 6 of the Act is amended by adding the following subsection:

No fee re locate activities

(7) A member who receives a notification in respect of a locate request under subsection (1) shall not charge a fee in respect of doing either of the things required under that subsection.

9 (1) Section 7 of the Act is amended by adding the following subsection:

Payment of fee

(5.1) For greater certainty, a notification given under subsection (2) is not a locate request and the project owner shall pay any fee set under clause 4 (1) (b) in relation to such notification.

(2) Clause 7 (7) (a) of the Act is amended by striking out “all locate requests, other than in respect of transmission infrastructure, by the project owner in respect of the project” and substituting “all notifications made by the Corporation under clause (9.1) (a) in respect of the project”.

(3) Section 7 of the Act is amended by adding the following subsection:

Notification re dedicated locator requests

(9.1) If the Corporation receives a dedicated locator request with regard to a project referred to in subsection (1), the Corporation shall notify,

- (a) the dedicated locator set out in the notification given to the Corporation in respect of the project under subsection (9); and
- (b) if the excavation or dig set out in the dedicated locator request may affect transmission infrastructure owned or operated by a member of the Corporation, each member whose transmission infrastructure may be affected.

(4) Subsection 7 (10) of the Act is amended by striking out “Subject to subsection (13), within 10 business days after a dedicated locator receives a notification from the Corporation about a locate request in respect of a project that may affect underground infrastructure owned or operated by one or more affected members” at the beginning and substituting “Within 10 business days after a dedicated locator receives a notification under clause (9.1) (a) in respect of a dedicated locator request”.

(5) Subsection 7 (12) of the Act is amended by,

- (a) striking out “subsections (6), (7) and (8), the” and substituting “subsections (6), (7), (8) and (10), a”; and
- (b) adding “and a reference to the affected member’s underground infrastructure does not include the affected member’s transmission infrastructure” at the end.

(6) Subsection 7 (13) of the Act is repealed and the following substituted:

Locates of transmission infrastructure

(13) If a member of the Corporation receives notification under clause (9.1) (b) with regard to a project referred to in subsection (1), the following rules apply:

1. If the locate request referred to in subsection (9.1) would have been a specified request if it had been submitted by an excavator who was not a project owner, the member shall do the things required by subsection 6 (1) in respect of the transmission infrastructure within the time limits set out in subsection 6 (2).
2. If the locate request referred to in subsection (9.1) would have been a standard request if it had been submitted by an excavator who was not a project owner, the member shall do the things required by subsection 6 (1) in respect of the transmission infrastructure within the time limits set out in subsection 6 (3) or (5), as applicable.

(7) Section 7 of the Act is amended by adding the following subsection:

No fee re locate activities for transmission infrastructure

(15) A member who receives a notification in respect of a locate request under clause (9.1) (b) shall not charge a fee in respect of doing either of the things required under subsection 6 (1) in accordance with subsection (13) of this section.

10 Paragraph 1 of subsection 10 (2) of the Act is amended by striking out “In the case of a locate request by an excavator that is not a project owner, the locate request must be a standard locate request” at the end.

11 (1) Subsection 12 (1) of the Act is amended by striking out “standard locate request” and substituting “standard request”.

(2) Subsection 12 (2) of the Act is amended by,

- (a) striking out “emergency locate request” and substituting “emergency request”; and
- (b) striking out “set out in paragraph 2 of subsection 6 (2)” at the end and substituting “set out in the definition of “emergency request” in section 1”.

12 Clause 17 (1) (c) of the Act is repealed.

13 (1) The French version of clause 20 (b) of the Act is amended by striking out “des centres d’appels” and substituting “du système d’appels”.

(2) Clause 20 (e) of the Act is repealed and the following substituted:

- (e) providing for further exemptions from or alterations to the application of the *Not-for-Profit Corporations Act, 2010* or the regulations made under it to the Corporation.

14 (1) Clause 21 (a) is repealed and the following substituted:

- (a) governing any matter that this Act describes as being prescribed by the Minister, done in accordance with the regulations made by the Minister or provided for or specified in the regulations made by the Minister;

(2) Clause 21 (e) of the Act is repealed.

(3) Clause 21 (f) of the Act is repealed and the following substituted:

- (f) governing an excavation or dig project referred to in subsection 7 (1), including,
 - (i) establishing requirements that apply to project owners, dedicated locators or affected members, and

- (ii) modifying the application of section 7 and any related provision to certain persons or things, including establishing other requirements that apply in respect of certain types of underground infrastructure;

Commencement

15 (1) Except as otherwise provided in this section, this Act comes into force on the day it receives Royal Assent.

(2) Subsection 8 (7) and 9 (7) and section 12 come into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

16 The short title of this Act is the *Building Infrastructure Safely Act, 2023*.