



## The Corporation of the Town of Tecumseh

Public Works & Engineering Services

**To:** Mayor and Members of Council

**From:** Phil Bartnik, Director Public Works & Engineering Services

**Date to Council:** April 7, 2022

**Report Number:** PWES-2022-17

**Subject:** Getting Ontario Connected Act, 2022 – Proposed Legislation and Administrative Comments

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### Recommendations

It is recommended:

**That** report PWES-2022-17, Getting Ontario Connected Act, 2022 – Proposed Legislation and Administrative Comments, **be received**;

**And that** report PWES-2022-17 **be submitted** to the Ministry of Government and Consumer Services Public Safety and Operations Policy Branch as comments from the Town of Tecumseh regarding the proposed *Getting Ontario Connected Act, 2022* as specified on the Ontario's Regulatory Registry.

### Executive Summary

The purpose of this report is to provide comments on the proposed *Getting Ontario Connected Act, 2022*. This legislation, if passed, would amend the *Building Broadband Faster Act, 2021* and amend the *Ontario Underground Infrastructure Notification System Act, 2012*.

Upon approval by Council, this report will be submitted to the Ministry of Infrastructure Strategic Policy and Analytics Branch and the Ministry of Government and Consumer Services Public Safety and Operations Policy Branch as the Town's comments on the proposed legislation, in advance of the commenting deadline of April 7, 2022.

## Background

On March 7, 2022, the Minister of Infrastructure introduced Bill 93, [Getting Ontario Connected Act, 2022](#), which if passed would amend the [Building Broadband Faster Act, 2021](#) (BBFA) and the [Ontario Underground Infrastructure Notification System Act, 2012](#) with the intention of removing barriers, duplication and delays, making it easier and faster to build high-speed internet infrastructure across the province. The news release respecting the new *Getting Ontario Connected Act, 2022* is provided on the [Province of Ontario's website](#).

The legislation would also improve Ontario One Call's locate process of determining the location of underground infrastructure (i.e. telecommunication lines, watermains, gas lines, etc.) known as locates. This amended process would ensure that infrastructure owners use one service rather than their own services to avoid duplicate inspections and ensure that locates remain valid for 60 days. This service, an online platform called Broadband One Window (BOW), is being created to facilitate information sharing between parties.

In addition, the Province is proposing consequential amendments to the BBFA to align with the new dedicated locator regime proposed under the *Ontario Underground Infrastructure Notification System Act, 2012* to support more efficient locates for broadband projects.

Under the BBFA the Minister of Infrastructure may impose administrative penalties for non-compliance or contravention of the Act and its regulations. These penalties are part of a staged approach to the BBFA serving as a deterrent to non-compliance that could inhibit completion of provincially-designated broadband projects by the end of 2025.

A Statement of Intent, released as part of the Building Broadband Faster Guideline, signaled the Ministry of Government and Consumer Services would develop a legislative proposal under the *Ontario Underground Infrastructure Notification System Act, 2012* to, among other things, address issues with late locates and enhance locate delivery across the province.

Per the Statement of Intent, the Minister's authority to issue notices would also be amended to ensure alignment between the BBFA and a proposed regulation under the *Ontario Energy Board Act, 1998* (OEBA) that would, among other things, facilitate hydroelectric pole attachment requests.

The BBFA would apply to the following: every municipality in Ontario, Hydro One Inc., Ontario Power Generation, every gas distributor and gas transmitter, every electricity distribution system operator, every entity regulated under the *Oil, Gas and Salt Resources Act*, and every person or entity that owns or operates underground infrastructure that crosses a public right of way.

*Getting Ontario Connected Act, 2022* is intended to help achieve the Government of Ontario's commitment to ensuring that all communities across Ontario have access to high-speed internet by the end of 2025.

## Comments

The Ministry of Infrastructure and the Ministry of Government and Consumer Services are requesting feedback and estimated costs associated with the new requirements in the proposed legislative amendments to the BBFA under the *Getting Ontario Connected Act, 2022* and to the *Ontario Underground Infrastructure Notification System Act, 2012* respectively. Stakeholder submissions would be used to inform the regulatory impact assessment. Comments are due April 7, 2022.

The *Getting Ontario Connected Act, 2022* is an Act to amend the BBFA and the *Ontario Underground Infrastructure Notification System Act, 2012*.

**The BBFA amendments are listed below followed by Administrative comments to said amendments. The amendments include, but are not limited to, the following:**

- Amendment 1. Subsection 4(1) – the Minister may by notice require a distributor/transmitter to complete work necessary for the deployment of a designated broadband project.
- Town Comments This applies to local distribution companies, such as Essex Powerlines and Hydro One, in dealing with companies providing internet service.
- Amendment 2. Section 6 – requires that such notices (referred to in 4(1)) specify the date by which the notice must be complied with.
- Town Comments This applies to local distribution companies, such as Essex Powerlines and Hydro One, in dealing with companies providing internet service.
- Amendment 3. Subsection 7(1) – provides that where a notice (referred to in 4(1)) specifies a date, an application may be made to a judge of the Superior Court of Justice for an order altering the date.
- Town Comments This applies to local distribution companies, such as Essex Powerlines and Hydro One, in dealing with companies providing internet service.
- Amendment 4. Section 10.1 – includes new requirements for municipalities in responding to municipal service and right of way access applications from proponents of designated broadband projects: ten business

days to respond to right of way permits with distances of up to 30 km and 15 business days to respond with distances of 30 km or more.

**Town Comments** The Town has generally been meeting/exceeding this timeline. If the ‘dedicated locator’ is a Third Party (i.e. not a municipal employee) how will the Town be held responsible for late responses?

**Amendment 5.** Section 20.1 – includes new requirements relating to data sharing concerning utility infrastructure within 10 meters of a designated broadband project, this data must be disclosed within 15 business days of receiving the request via the BOW platform. This provides stakeholders with secure access to datasets, while helping to manage right of way access applications.

**Town Comments** How will municipal Geographic Information Systems (GIS) interface with the BOW platform? Will this require additional employee time commitments to review and process data to be uploaded?

**Amendment 6.** Section 21 – sets out timelines within which a proponent and an affected member of Ontario One Call are required to agree to a dedicated locator who would respond to locate requests by the proponent.

**Town Comments** Is the dedicated locator a municipal employee or a Third Party agreed upon by the excavator and municipality? If the dedicated locator is a Third Party, is the Third Party selected via a procurement process? Will a standard letter of agreement be drawn up by the province to facilitate this concurrence of dedicated locator?

**Highlights of the amendments to the *Ontario Underground Infrastructure Notification System Act, 2012* include, but are not limited to the following:**

**Amendment A.** Section 6(1) – Sections 6 to 11 of the Act are repealed and the following submitted.

**Town Comments** These revisions are quite extensive and in essence re-write more than half of the current legislation. The changes as proposed will have implications on more than just broadband infrastructure projects. These changes could be implemented for larger projects by electricity providers, gas distribution companies and any other entity that desires to use the new processes proposed.

**Amendment B.** Section 7 – Affected members of a specified excavation/dig project must agree in writing on a locator (the “dedicated locator”) who will respond to all locate requests by the project owner.

- Town Comments Refer to Town’s comments re: Section 21 of BBFA (Amendment 6 above). Furthermore, additional explanation is required with respect to 7(3) “An excavation or dig project for which the project owner chooses to use a dedicated locator.” The use of dedicated locators appears to be a ‘choice’ for the project proponent which then initiates additional work for a municipality to upload all the data required. This also removes the ability of a municipality to be the steward of their own infrastructure. A dedicated locator has no knowledge of the system, just has records to work from.
- Amendment C. Section 12 – The project owner shall bear the costs of the dedicated locator.
- Town Comments If the dedicated locator is a municipal employee, is the municipality compensated for the time dedicated to locating for the specified project?
- Amendment D. Section 8(1) – A locate is valid for 60 days; however, the member or dedicated locator may specify that it is valid for a longer period.
- Town Comments This is the current practice by the Town. This has been beneficial to the Town in areas where no infrastructure change is anticipated to occur in the near future.
- Amendment E. Section 9(1) – If a member becomes aware of a change to information in regards to a locate that is still valid, notification is required within two business days after becoming aware of the change.
- Town Comments This change increases safety to the public and infrastructure; however, it is anticipated to be difficult to find changes in recorded information regarding Town infrastructure if Town employees are not performing the locating service.
- Amendment F. Section 10(1)(ii) - Each member affected by an excavation/dig has done the required duties as outlined in subsection 6(1), or if section 7 applies, the dedicated locator has done the required duties as outlined in subsection 7(10).
- Town Comments Will the required duties completed by the affected members be uploaded to the BOW? There needs to be clear process involved on whether this information is being requested and uploaded to the BOW or to the current Ontario One Call online portal?
- Amendment G. Section 10(2) – Provision is made for excavators to share locate information with other excavators.

- Town Comments Confirmation is required on the process - if locate information has been received by one excavator from another excavator then the recipient of the locate information is still required to inform Ontario One Call of this separate excavation and log all data (i.e. type of plant to be installed; depth of plant; etc.) into the BOW or the Ontario One Call portal to ensure each affected member is aware of this additional work. Section 11 only states that the other excavator's contact information be provided to Ontario One Call. Additional information regarding this overall process should be uploaded to the BOW/Ontario One Call portal for a more complete overview.
- Amendment H. Section 12(1) – Excavators are prohibited from submitting a standard locate request more than 30 days before an excavation or dig is expected to commence and are also prohibited from submitting an emergency locate request that does not satisfy the description of such a request.
- Town Comments This amendment will decrease the number of 're-locates' received by excavators/diggers. This will boost efficiency, especially for municipal staff time.
- Amendment I. Section 14(1) – Members must complete their required duties per subsection 6(1) within three business days of receiving the locate request and shall notify Ontario One Call.
- Town Comments Will this notification be done via the BOW or the Ontario One Call portal? What specific information is required? Is this the same process as currently used when closing out locates? If this is part of a large project area the municipality is concerned that it could be one employee's entire job function to be receiving and updating these online portals and excavators.
- Amendment J. Section 14(2) – Members and dedicated locators are required to provide notification to Ontario One Call if there will be a delay in responding to a locate request.
- Town Comments Will this notification be done via the BOW or through the Ontario One Call portal? What specific information is required? Clarification on this process is required.
- Amendment K. Section 15 – Ontario One Call shall post information on their website respecting each member's locate performance including number of locate requests received and when these locate requests were completed. This information is to be removed two years after the day it was published.

**Town Comments** What is the reason for each member's locate performance to be publicized? Are specific locations where the plant is installed also provided to the public? Publicizing the company name and location of the plant may decrease the number of public inquiries received by municipal staff (i.e. questions regarding the flags on the right of way abutting their property). Will Ontario One Call remove the information published on the website two years after the day it is published? Is this 'removed' data stored for a period of time or completely deleted?

**Amendment L.** Section 16 - An excavator may claim compensation against a member for certain losses if the member fails to provide an accurate locate, for example. The excavator and the member may agree upon the compensation in writing.

**Town Comments** The term 'accurate' should be qualified i.e. the underground infrastructure is within a certain distance of the locate flag/marking. In certain areas of Town, there may be as-built drawings from many years ago. Older records will require verification for accuracy. The legalities of a compensation agreement may be complex.

Will a list of infractions and associated fines be provided?

**Amendment M.** Section 16(1) The Corporation (Ontario One Call) may appoint 'assessors' for the purpose of making an order under Section 16(2) which is an administrative penalty against a member/excavator/digger in accordance with this Section. An 'assessors' order, which could result in penalties, applies even if all reasonable steps were taken to prevent the contravention on which the order is based or if an honest and reasonable belief in a mistaken set of facts would have rendered the contravention innocent.

**Town Comments** This is harsh language leaving no room for any errors, even inadvertent clerical errors. Section 16 should be reviewed in its entirety across all sectors as these penalties and processes could have far reaching consequences.

## **Additional Comments/Considerations**

Further to the comments provided above, there are other potential impacts associated with complying with the new requirements in the proposed Bill 93 and legislative amendments to the BBFA and the *Ontario Underground Infrastructure Notification System Act, 2012*:

1. Public Works Staff – The Town of Tecumseh does not have a dedicated division that solely deals with municipal right of way access requests. Our Public Works staff perform numerous other tasks in addition to locate requests (sewer

inspections; sanitary and storm sewer maintenance; road work such as line painting, hardtop maintenance, road patrols, sign repairs; municipal ditch maintenance; storm pump station maintenance; winter control operations etc.). Will the new legislation and amended legislation require dedicated staff for fibre optic installation project work? With the amendments proposed this could be implemented in projects of any degree which the project proponent wishes to use the new amendments (dedicated locator).

2. Administrative Staff – We have one clerical staff that processes locate requests. How much additional time will be required to upload information to the new BOW portal, in addition to the time currently spent and expected to be continued updating the current Ontario One Call portal? The clerical staff member that processes the locate requests is also responsible for a number of other duties, such as permitting requests, work order management and also in person customer service at Town Hall. There is concern respecting strain on staff resources.
3. Geographic Information Staff – Currently Public Works and Water Services share the resources of the Town GIS staff to assist with concerns and record drawings on an as needed basis. With the proposed changes in Bill 93 there will be a definite reliance on GIS staff to assist with finding the required data from the Town digitized records and ensuring that it is the most up to date and complete record. The Town's record drawings are a digitization of what record information was available at amalgamation and some of the areas in Town have very old record drawings that may or may not be entirely up to date. These proposed amendments will make the reliance on this record data, if we must provide as part of a requested project, critical to be reviewed and scrutinized. This additional review will take time from the GIS employee as well as a municipal employee to verify.
4. Agreement – Is there an agreement or amending agreement with Ontario One Call that needs to be executed respecting the new processes, and to authorize the use of Town data that will be uploaded to the new BOW?
5. Future Costs – With the proposed amendments to the legislation, Ontario One Call has made it known that there will be additional new duties imposed on the Organization which will result in 'significant staffing and cost requirements' which will ultimately be borne by the members, in this case the Town. This is a concern for not only the increased Ontario One Call cost implications, but also the possible increased strain on municipal resources to meet the proposed amendments.

Following Council's approval of the information provided in this report, Administration will submit these comments and questions to the Ministry of Infrastructure Strategic Policy and Analytics Branch and the Ministry of Government and Consumer Services



Public Safety and Operations Policy Branch in advance of the commenting deadline of April 7, 2022.

## Consultations

Technology & Client Services

## Financial Implications

The financial implications of the proposed Bill 93, *Getting Ontario Connected Act, 2022* will not be realized until the legislation is enacted and the new process is fully implemented.

## Link to Strategic Priorities

Applicable	2019-22 Strategic Priorities
<input type="checkbox"/>	Make the Town of Tecumseh an even better place to live, work and invest through a shared vision for our residents and newcomers.
<input checked="" type="checkbox"/>	Ensure that Tecumseh's current and future growth is built upon the principles of sustainability and strategic decision-making.
<input type="checkbox"/>	Integrate the principles of health and wellness into all of Tecumseh's plans and priorities.
<input checked="" type="checkbox"/>	Steward the Town's "continuous improvement" approach to municipal service delivery to residents and businesses.
<input checked="" type="checkbox"/>	Demonstrate the Town's leadership role in the community by promoting good governance and community engagement, by bringing together organizations serving the Town and the region to pursue common goals.

## Communications

Not applicable

Website

Social Media

News Release

Local Newspaper

This report has been reviewed by Senior Administration as indicated below and recommended for submission by the Chief Administrative Officer.

Prepared by:

Cheryl Curran, BES  
Project Technician

Reviewed by:

Kirby McArdle, P.Eng.  
Manager Public Works & Transportation

Reviewed by:

Shaun Fuerth, BCS  
Director Technology & Client Services

Reviewed by:

Phil Bartnik, P.Eng.  
Director Public Works & Engineering Services

Recommended by:

Margaret Misek-Evans, MCIP, RPP  
Chief Administrative Officer

<b>Attachment Number</b>	<b>Attachment Name</b>
None	None