



**Ontario Federation of Agriculture**

**Ontario AgriCentre**

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Carolyn O'Neill, Manager  
Integrated Environmental Policy Division,  
Land and Water Policy Branch  
Ministry of the Environment  
135 St. Clair Avenue West, 6<sup>th</sup> Floor  
Toronto, Ontario  
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Dear Ms O'Neill,

Below are comments prepared by the Ontario Federation of Agriculture (OFA) relating to EBR Registry Posting #011-6461, an Act Proposal Notice for a Great Lakes Protection Act.

For the record, the OFA believes that the proposed Great Lakes Protection Act is unnecessary given the number of legislative tools available that offer exactly the type of protection that is being sought. These tools include, but are not limited to the:

- ***Clean Water Act***
- ***Drainage Act***
- ***Endangered Species Act***
- ***Environmental Protection Act***
- ***Nutrient Management Act***
- ***Ontario Water Resources Act***
- ***Planning Act.***

The OFA sees merit in much of what is proposed in the "Great Lakes Strategy, 2012", but would like to point out that it was prepared without any legislative framework. And a major goal of the "Great Lakes Strategy", establishing a Great Lakes Guardian Council, does not require a legislative framework, either. However, if the Government of Ontario is more comfortable acting within the constraints of a legislative framework, surely the province's ***Planning Act*** would suffice.

The OFA's concerns with enacting Bill 6 will be outlined in a separate letter to Minister Bradley.

Comments within this letter refer to Bill 6, as circulated subsequent to First Reading, and are organized using the same headings as contained in the Bill.



## Explanatory Note

Bill 6 benefits from having an Explanatory Note that lays out the intent of the proposed Act. In addition to the Explanatory Note the Bill has an extensive Preamble and Purpose (Sections 1.1 – 1.2). This demonstrates a genuine effort to ensure that the rationale for introducing Bill 6 and its intended objectives are clear.

### Part 1 – Purposes and Interpretation

The similarities between the proposed Great lakes Protection Act and the **Lake Simcoe Protection Act, 2008**, are noteworthy. Indeed, language is virtually identical within many sections of the two documents. It is curious, however, that what are considered as ‘definitions’ in the **Lake Protection Simcoe Act**, are described as ‘interpretations’ in Bill 6, despite the fact that the same words are being either defined or interpreted. It would be helpful, and in keeping with regulatory modernization, if all Bills (and Acts and Regulations) adopted a standardized approach to the use of terms like ‘definitions’ and ‘interpretations’, and avoided using different terms for the same purpose.

As noted above, the Purpose Statement of Bill 6 is very similar to that of the **Lake Simcoe Protection Act (2008)**. However, the areal extent of the Great Lakes-St. Lawrence River Basin is far more extensive, and, consequently, a commitment to strive for continuous improvement of the Basin’s ecological health, rather than its restoration would be a more reasonable objective. Also, the concept of restoring ecological health is difficult in the absence of a definition (or interpretation) of ‘ecological health’. There is concern that phrases such as ‘protection and restoration of ecological health’ and ‘protection and restoration of natural habitats and biodiversity’ may imply that the objective is to replicate pre-European settlement conditions, or conditions from an even earlier era.

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It would be helpful if the interpretation of ‘Great Lakes ministers’ actually indicated the ministries involved, as does Ontario’s “Great Lakes Strategy” (p.30). Embedding the names of these eight ministries in legislation has drawbacks given that the name of a ministry may change from time-to-time, but the fact that there are so many ministries drawn into this Act also needs to be indicated.

The interpretation of ‘Public Body’ mixes those that are elected and directly accountable (e.g. a municipality) with those that are not (e.g. a source protection committee). It would be useful if the interpretation of Public Body differentiated between those that are elected and those that are appointed.

### Part 2 – Great Lakes Guardian Council (GLGC)

This Council is similar to the Lake Simcoe Coordinating Committee established under the **Lake Simcoe Protection Act**. However, the actual composition and purpose of the GLCC is not well described. It seems clear that the Minister of the Environment will Chair the GLCC, but it is not clear, for example, who actually has a permanent seat on



the GLCC other than the Minister of the Environment. Section 4.3 seems to indicate that the Chair will extend invitations to any particular meeting of the GLGC to those he/she considers 'advisable'. While it makes sense to invite some people as guests on the basis of specific agenda topics, one would assume that there would also be a core GLGC that would attend all meetings in order to provide continuity.

It is strongly advised that at least five agricultural representatives be provided a seat on the core GLGC. Having five agricultural representatives is based on the fact that virtually all (>95%) of the farmland in Ontario falls into the Great Lakes-St. Lawrence River Basin, and provides for one agricultural representative from the St. Lawrence River sub-watershed, and each of the sub-watersheds associated with Lake Ontario, Lake Erie, Lake Huron and Lake Superior.

Another option for consideration is establishing a separate Council for the sub-watershed basin of each of the Great Lakes in Ontario and the St. Lawrence River. This would result in five Councils and provide the opportunity for a more place-based approach to their work.

### **Part 3 – Ontario's Great Lakes Strategy**

Ontario's "Great Lakes Strategy" provides a useful overview and rationale for the proposed Act.

Much of what is proposed in the "Great Lakes Strategy" revolves around local land use and land use planning. Consequently, actions relating to the protection of the Great Lakes must be well integrated with the **Planning Act**, and accompanying Provincial Policy Statement, as well as the **Niagara Escarpment Planning and Development Act**, **Oak Ridges Moraine Conservation Act**, **Lake Simcoe Act**, **Greenbelt Act**, and **Places to Grow Act**. Needless to say, with the above list of Acts that provide provincial and local planning direction, the proposed Great Lakes Protection Act will be subject to criticism that it is duplicative.

In a similar manner, there is considerable overlap between the goals of the Strategy and the intent of existing provincial legislation such as the **Ontario Water Resources Act**, **Environmental Protection Act**, **Clean Water Act**, and **Endangered Species Act**. While it could be argued that the focus of Bill 6 on the Great Lakes-St. Lawrence Basin gives it a place-based dimension, it is not truly the case given that the Basin is so vast it is home to the majority of Ontario residents.

Sub-section 26.2 of the proposed Act provides a specific example of potential regulatory duplication by allowing for land use activities to be regulated that are adjacent or close to wetlands or intermittent tributaries. There are currently several regulations under numerous Acts (e.g. **Drainage Act**, **Nutrient Management Act**, **Pesticides Act**, and **Ontario Water Resources Act**) that govern land use activities in those locales. It is difficult to imagine how additional regulations under a new Act can be justified.



Provision for the Strategy to be periodically reviewed is appropriate. This will allow for progress on identified targets to be reported and for emerging issues to be incorporated into the Strategy.

The Strategy would be enhanced if it placed more emphasis on the fact that the Great Lakes (with the exception of Lake Michigan) and St. Lawrence River are international water bodies and therefore jurisdiction is shared. A more fulsome explanation of how Ontario's approach to managing their protection protocols compares to the approach taken by the states of New York, Pennsylvania, Ohio, Michigan, and Wisconsin would be helpful, as would a discussion on the role of the US and Canadian federal governments.

#### **Part 4 – Targets**

Land use planning in Ontario is shared between the province, upper-tier municipalities and lower-tier municipalities. The section of Bill 6 entitled "Targets" must recognize this and not imply that other public bodies may have a role equivalent to that of municipalities. Targets relating to the Great Lakes-St. Lawrence River Basin must be set by the province in consultation with municipalities. Municipalities, as part of their planning process, should be required to consult with local public bodies.

The collaborative model proposed is of value providing it does not diminish the land-use planning authority of municipalities.

#### **Part 5 – Proposals for Initiatives**

To achieve identified targets it is proposed that the Minister of the Environment may direct a public body to develop a proposal. A concern with this approach is that it has the potential to marginalize the very municipality where the initiative will be undertaken. As with the setting of targets, proposals for local Great Lakes-St. Lawrence Basin initiatives should be developed by municipalities with the full involvement of all interested stakeholder groups. The municipality may elect to have a particular public body coordinate the activity, but in that case it should be the municipalities decision; not the province's.

There may be some province-wide initiatives, such as the Canada-Ontario Farm Stewardship Program, that do not require the direct involvement of a municipality. In this case the initiative would be coordinated by OMAFRA, subsequent to consultations with the agricultural community.

Again, as with the setting of targets, a municipality preparing a proposal for an initiative should be required to consult broadly with stakeholder groups, and engage those groups in the proposal development phase. However, to go outside of the municipal government for advice on an initiative that will affect the municipality is fraught with difficulty.



## Part 6 – Initiatives

Bill 6 indicates that the Lieutenant Governor in Council is the body that approves a proposed initiative. This is the appropriate level of oversight.

However, as stated previously, the initiatives under consideration should be submitted either by a municipality, in the case of a local initiative, or a provincial ministry in the case of a provincial initiative. An example of why these initiatives must come from either the provincial or municipal government is the policy implementation authority provided in Section 19.6. It is inappropriate for a public body other than the provincial or municipal government to be given responsibility for implementing a public policy.

## Part 7 – Miscellaneous

Sub-section 34.6 contains standard language that is disturbing to those operating a business. The specific language is:

“Nothing done or not done in accordance with this Act or the regulations constitutes an expropriation or injurious affection for the purposes of the **Expropriations Act** or otherwise at law.”

Such language tends to be viewed as an attempt by government to restrict their liability in the event of unforeseen, unintended, negative consequences associated with the passage of an Act. While this language may constitute good legal advice, it is not the stuff of responsible government. In the spirit of “Open for Business”, if land-use restrictions imposed by a government policy negatively impact a farm business, or group of farm businesses, it is only reasonable that the responsible government should be required to remedy the situation in a satisfactory manner.

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Section 35 also presents a concern linked with the “Open for Business” initiative. In essence this Section states that if there is a conflict between a provision of this Act and a provision of another Act the provision providing the greatest protection of the ecological health of the Great Lakes-St. Lawrence Basin prevails.

This default to ecological protection is not consistent with the concept of cost-benefit analysis spelt out in the **Ontario Regulatory Policy, 2010**. That policy clearly states that a regulation must be subject to a clear assessment of its total costs and benefits in order to determine its reasonableness and practicality.

## Schedule 1

It would be helpful to give legal effect to a policy that protects Canada Land Inventory Agricultural Land Use Classes 1 through 4 in order to ensure that no initiatives target the conversion of productive farmland to natural habitat.



## Conclusions

While the Initiatives that will be enabled by Bill 6 are not technically regulations, they should be subject to the *Ontario Regulatory Policy, 2010*.

This will ensure that:

- Initiatives are responding to a clearly identified need;
- Initiatives are developed and implemented in a transparent manner;
- Initiatives are designed to not restrict local business activity;
- Initiatives are based on assessed risk, costs and benefits and minimize impacts on a fair, competitive and innovative market;
- Duplication of other initiatives or regulations is minimized;
- Initiatives are to be results-based;
- Initiatives are timely, reviewed on a routine basis, and abandoned once the need giving rise to their adoption no longer exists; and
- Initiative details are easily accessible and easily understood by the public and business.

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Thank you for the opportunity to comment on Bill 6.

Sincerely,

A handwritten signature in black ink that reads 'Mark Wales'. The signature is written in a cursive, flowing style.

Mark Wales  
President