



**Ontario Federation of Agriculture**

**Ontario AgriCentre**

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April 17, 2015

Ms. Laura Blease, Senior Policy Advisor  
Ministry of the Environment and Climate Change  
Integrated Environmental Policy Division  
Land and Water Policy Branch  
135 St. Clair Avenue West, Floor 6  
Toronto, ON  
M4V 1P5

Dear Ms. Blease:

**Re: Environmental Registry Posting #012-3523**

The Ontario Federation of Agriculture (OFA) represents the interest of farmers and farm families throughout Ontario. Farming is the foundation of a robust agri-food system in Ontario contributing healthy foods, a vibrant economic engine and a sustainable eco-system.

As farmers, our members are dependent on access to clean and secure sources of water for plants and livestock. As such, the Great Lakes play a critical role in our food production system.

As the largest group of private land-owners in Ontario, farmers are heavily affected by policies and regulations addressing water issues. Consequently OFA carefully reviews any proposed legislation and subsequent regulations that address water issues and how they may impact farming in Ontario.

We are pleased to offer our observations and recommendations on *Bill 66: An Act to Protect and Restore the Great Lakes – St. Lawrence River Basin, 2015*

**The Scope of Bill 66**

It is noteworthy that the Great lakes - St. Lawrence River Basin (GL-SLRB) includes both terrestrial and aquatic environments.

Ontario residents may be unaware of the enormity of this drainage basin that delivers surface water and groundwater to the Atlantic Ocean via five Great Lakes and the St. Lawrence River. The GL-SLRB is home to 30% of Canada's population (approximately 98% of the population of both Ontario and Quebec) and 10% of the U.S. population, including the entire state of Michigan.

The terrestrial portion of the basin includes farm, rural-nonfarm, and urbanized lands.

With respect to agriculture the Canadian portion of the GL-SLRB includes 25% of Canada's agricultural production, while 7% of the agricultural production of the U.S. is grown in the GL-SLRB. Approximately 98% of Ontario farmland is located in the GL-SLRB.

For urbanized areas, the basin is the site of 42 Canadian and U.S. cities (Table 1). These cities have a combined population of 45 million people.

Ontario has five major drainage basins. The Bill 66 reference to the GL-SLRB includes the Lake Superior-Lake Huron Basin, Lake Erie-Lake Ontario Basin and the Ottawa River Basin. The other two major drainage basins in Ontario are the Hudson Bay-James Bay Basin and the Nelson River Basin.

Table 1 Canadian and U.S. Cities in the Great Lakes-St. Lawrence River Basin

Canadian Cities (west to east)	Population	U.S. Cities (west to east)	Population
Thunder Bay	120,000	Duluth, Minnesota	285,000
Sault Ste. Marie	75,000	Green Bay, Wisconsin	315,000
Windsor	215,000	Milwaukee, Wisconsin	2,000,000
Sarnia	75,000	Chicago, Illinois	10,000,000
Sudbury	160,000	Fort Wayne, Indiana	615,000
London	370,000	Grand Rapids, Michigan	1,500,000
Kitchener-Waterloo	320,000	Lansing, Michigan	540,000
Cambridge	130,000	Ann Arbor, Michigan	345,000
Brantford	100,000	Flint, Michigan	415,000
Guelph	125,000	Dearborn, Michigan	95,000
Barrie	140,000	Detroit, Michigan	5,300,000
Greater Hamilton Area	700,000	Toledo, Ohio	610,000
Greater Toronto Area	7,000,000	Akron, Ohio	710,000
St. Catharines	135,000	Cleveland, Ohio	3,500,000
Kingston	125,000	Erie, Pennsylvania	280,000
Ottawa-Gatineau	1,250,000	Buffalo, New York	1,200,000
Cornwall	50,000	Rochester, New York	1,100,000
Montreal	3,500,000	Syracuse, New York	665,000
Trois Riviere	130,000	Burlington, Vermont	215,000
Sherbrooke	145,000		
Quebec City	700,000		
Saguenay	160,000		
Total Population of Canadian Cities in GL-SLRB	15,405,000	Total Population of U.S. Cities in GL-SLRB	29,690,000
Total Urban Population of the GL-SLRB 45,095,000			

The latter basin empties into Hudson Bay from Manitoba. Ultimately, Ontario's surface water and groundwater resources flow either east to the Atlantic Ocean via the St. Lawrence River, or north to the Arctic Ocean. The area of land draining north to James Bay or Hudson Bay is more than twice that draining to the Atlantic Ocean via the St. Lawrence River. However, as stated above, 98% of Ontario's population resides in the GL-SLRB.

Below are comments prepared by the Ontario Federation of Agriculture (OFA) relating to Bill 66 - the proposed GLPA.

## The GLPA Duplicates Existing Legislation

When commenting on Bill 6, the predecessor to Bill 66, OFA argued that the proposed GLPA was duplicative and unnecessary. A number of existing statutes already provide protection to the GL-SLRB, albeit in a less direct manner.

OFA reiterates the fact that the province already has abundant legislative tools to address concerns raised both in Bill 66, and the **Great Lakes Protection Strategy**. The Strategy is a document integral to Bill 66, comprising 4 sections of the proposed GLPA.

A partial list of existing Ontario legislative tools includes:

- *Environmental Protection Act (EPA)*;
- *Ontario Water Resources Act (OWRA)*;
- *Nutrient Management Act (NMA)*;
- *Pesticide Act*;
- *Clean Water Act*;
- *Drainage Act*;
- *Lakes and Rivers Improvement Act*
- *Endangered Species Act*; and
- *Planning Act* and associated Provincial Policy Statements.

It is noteworthy that the first 5 of the Acts listed above are administered by MOECC, the ministry sponsoring Bill 66.

The overlap of Bill 66 can be illustrated by comparing the purpose statements for the EPA, OWRA, NMA and the proposed GLPA.

The purpose statements of the **EPA, OWRA, and NMA** respectively are:

“...to provide for the protection and conservation of the natural environment”.

“... to provide for the conservation, protection and management of Ontario’s waters and for their efficient and sustainable use, in order to promote Ontario’s long-term environmental, social and economic well-being”. (OWRA’s purpose statement focuses specifically on the conservation, protection and management of Ontario’s water resources.)

“...to provide for the management of materials containing nutrients in ways that will enhance protection of the natural environment and provide a sustainable future for agricultural operations and rural development”.

Under the NMA nutrients are characterized as either agricultural source materials (ASMs) or non-agricultural source materials (NASMs). ASMs include:

- Livestock manure and associated bedding material.
- Runoff from farm-animal yards and manure storages.
- Wash water from agricultural operations that have not been mixed with human body waste.
- Organic material produced by intermediate operations that process livestock manure, runoff from livestock yards and manure storage, and/or washwater from livestock operations

- Anaerobic digestion output, if,
  - the anaerobic digestion material was treated in a mixed anaerobic digestion facility,
  - at least 50 per cent, by volume, of the total amount of anaerobic digestion materials were on-farm anaerobic digestion materials, and
  - the anaerobic digestion material did not contain sewage biosolids or human body waste.
- Composted livestock mortalities as defined in subsection 1 (1) of Ontario Regulation 106/09.

NASMs as defined in the NMA include:

- Pulp and paper biosolids.
- Sewage biosolids.
- Anaerobic digestion output, if less than 50 per cent, by volume, of the total amount of anaerobic digestion materials that were treated in the mixed anaerobic digestion facility were on-farm anaerobic digestion materials.
- Any other material that is not from an agricultural source and that is capable of being applied to land as a nutrient

The purpose statement of Bill 66 is quite straightforward:

“...to protect and restore the ecological health of the GL-SLRB”.

Bill 66 adds nothing in terms of environmental protection that cannot be accomplished through existing Ontario statutes. There is no regulatory gap when it comes to protecting and restoring the ecological health of the GL-SLRB.

For example, OWRA and EPA regulations pertain to the:

- metal mining sector;
- chemical manufacturing sector (organic and Inorganic);
- industrial minerals sector;
- electrical power generation sector;
- pulp and paper sector;
- petroleum sector;
- metal casting sector; and the
- iron and steel manufacturing sector.

NMA regulations govern the management of ASMs and NASMs in the farm sector; municipal waste water treatment is regulated under the OWRA; and the operation of landfill sites is regulated under the EPA.

The **Planning Act** includes policy statements intended to ensure Ontario's long-term prosperity, environmental health and social well-being by providing guidance on wisely managing change and promoting efficient land use and development patterns.

**Planning Act** Policy statements were updated in 2014 and are organized under the following four headings:

- Building Strong Healthy Communities
- Wise Use and Management of Resources
- Natural Hazards
- Implementation and Interpretation

The Policy statement on implementation and interpretation makes reference to the need for planning authorities in the GL-SLRB to consider agreements related to the protection or restoration of the GL-SLRB. Examples of these agreements include Great Lakes agreements between Ontario and Canada, between Ontario, Quebec and the Great Lakes States of the U.S., and between Canada and the U.S.

In Bill 66, three specific examples of the agreements cited above are referenced in section 33. They are:

- *Canada-U.S. Great Lakes Water Quality Agreement, 1978*
- *Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement, 2005*
- *Canada-Ontario Agreement on Great Lakes Water Quality and Ecosystem Health, 2014*

Taken together these documents provide ample guidance, through purpose statements, definitions, and principles, to federal, state and provincial governments on how to address issues in the GL-SLRB that impact on the ecology of the region. However, there is no indication that jurisdictions within the GL-SLRB are expected to replicate the language of Great Lake agreements in stand-alone legislation. The primary objective of Great Lake agreements is consistent:

“...restore, protect and conserve water quality and ecosystem health in the GL-SLRB.”

The fact that the GL-SLRB involves two national and ten sub-national jurisdictions and is governed by comprehensive agreements further demonstrates Bill 66 is unwarranted and may further complicate the existing multi-jurisdictional regulatory matrix through additional sub-national legislation.

OFA contends, again, that the objectives presented in the three Great Lake agreements can be achieved with existing legislative tools and agreements. The interactions across multiple statutes will be a source of potential confusion and unnecessary regulation.

## **Favourable Revisions to Bill 6**

Notwithstanding the above evidence that Bill 66 is not necessary and the implied suggestion to work on existing legislation if deemed necessary to fill perceived gaps, OFA does see some merit in new features of Bill 66 versus its earlier versions.

These include:

- OFA concurs with the addition of references throughout Bill 66 of the need to protect and improve the capacity of the GL-SLRB to respond to the impacts of, and contributors to, climate change.
- The OFA concurs with adding the Minister of Natural Resources and Forestry (MNRF) to section 9 of Bill 66. Essentially this empowers the MNRF, along with the Minister of Environment and Climate Change (MOECC) to establish quantitative and qualitative targets relating to the GL-SLRB.

However, OFA questions why the Minister of Agriculture, Food and Rural Affairs (OMAFRA) would not also be added. Given that the majority of land in southwestern Ontario, and much of the land in central and eastern Ontario is used for agricultural

production, it is appropriate for the OMAFRA Minister to be involved in the target setting exercise outlined in Section 9.

OFA recommends that OMAFRA be added to section 9 of Bill 66 in the same manner as MNRF has been added.

- OFA has no objection to Bill 66 clarifying that the Great Lakes Guardian Council will meet at least once per year (section 4 (2)). In Bill 6, the wording was 'from time to time' which is unnecessarily vague.
- OFA objected to language in Part V of Bill 6 on the basis that Geographically Focused Initiatives (GFIs) had the potential to marginalize the authority of municipalities. Specifically, OFA expressed concern that a Minister of the Environment may direct a public body other than a municipality to develop a proposal for a GFI that might ultimately require change to a municipality's Official Plan, without the municipality having been formally engaged in undertaking the GFI.

This concern has been addressed to some extent by incorporating new language into Bill 66. For example, clause 10 (b) (ii) of Bill 66 requires the Minister to consult at the proposal stage with:

...representatives of the interests of the municipalities located in whole or in part in the geographic area to which the proposal would relate."

- New language in subsection 12 (1) provides additional certainty that municipalities will be engaged by requiring that the Minister be provided with a description of the proposed consultation undertaken during development of a GFI. By referencing back to clause 4 (3) (b), Section 12 essentially draws in representatives from affected municipalities at the proposal preparation stage, even if the municipality is not the public body leading the GFI.

New language also ensures that municipalities have input into the development of a draft GFI once the GFI proposal has been approved. Specifically, subsection 16 (4) indicates that the minister shall:

- ensure that a copy of the draft initiative is given to the clerk of each municipality located in whole or in part in the area to which the initiative would apply;
- ensure that each municipality is invited to make written submissions or pass a resolution on the draft initiative within the period of time specified by the Minister; and
- consider any written submissions or resolutions received from municipalities.

The above provisions offer additional assurance that municipalities are fully engaged in the development of all GFI proposals in their jurisdiction before they are sent by the Minister for Environment and Climate Change for Cabinet approval.

- Part VI of Bill 66 deals with the development of GFIs subsequent to the proposal being approved by the Minister. Clause 15 (2) (a) provides new language relating to existing protections. This language states that a public body or public bodies **shall** [emphasis ours] take into consideration:

- “any study, plan or strategy that relates to the ecological health of all or part of the area to which the initiative would apply if the study, plan or strategy is relevant to the draft initiative.”

This language is a clear attempt to ensure a public body or public bodies undertaking the development of a GFI is not only cognizant of any earlier, similar initiatives, but is required to incorporate any findings or recommendations from those earlier initiatives into the draft initiative being developed. Unfortunately, the effectiveness of this language is muted by addition of the phrase “in the opinion of the public body or public bodies”.

Normally, the word ‘shall’ in either legislation or regulation is meant to be taken as compulsory, while the word ‘may’ is more permissive. There is really no point in using the stronger word, ‘shall’, if the public body being directed has the discretion to determine the relevance of an existing study, plan or objective. Provincial government oversight of the proposed GLPA should be such that it is the relevant ministry that determines if an existing study, plan or strategy is relevant, and thus should be taken into consideration, when a draft initiative is under development.

OFA recommends that clause 15 (2) (a) be revised by omitting the words “in the opinion of the public body or public bodies”.

- Even stronger language can be found in clause 15 (2) (b) where it states that consideration shall be given to:

“...other Acts, land use plans, municipal by-laws or other local enactments that provide existing protection for the ecological health of all or part of the area to which the initiative would apply.”

This directive has the potential to be quite effective in avoiding a situation of a GFI being developed in an area where it would duplicate or overlap with an existing tool intended to accomplish the same basic objectives.

- Section 19 requires a GFI to either introduce a policy or recommend a regulation to achieve the GFI objectives. In subsection 19 (2), new language is introduced that OFA believes to be helpful. For example clause 19 (2) 10, speaks to the need for a GFI proponent to describe how the implementation of the GFI actually benefits the ecological health of the GL-SLRB. Given that GFIs have either a regulatory or policy aspect to them, it is important that they comply with the principle that a GFI must respond to a clearly identified need.

An even more useful clause (19 (2) (9) calls for a cost-benefit analysis arising from the implementation of a GFI. What is perplexing about this revision is that it calls for the cost-benefit analysis subsequent to the GFI’s approval by Cabinet. It is also worded in a manner that suggests the cost-benefit analysis is to be conducted relative to the public body or public bodies responsible for implementing the GFI, rather than the impacted citizens who must comply with the policies and regulations imposed by the GFI.

OFA concurs with the need for a GFI to be subject to a cost-benefit analysis but strongly recommends that the cost-benefit analysis be part of the proposal phase and a criterion upon which the Minister determines the proposal’s merit. Also, the cost-benefit analysis should relate to the impact of the GFI on stakeholders, not the administrative body responsible for its implementation.



- Section 38 of Bill 66 lists the types of regulations that Cabinet may make to enable the GLPA. Of the 13 situations listed that may require a regulation, two are new and both are of value. The first, 38 (1) (k) allows for a regulation to define any word or expression used in the Act that is not already defined in the Act. There are undefined words and expressions in Bill 66 that the OFA believes should be defined. They will be discussed in more detail below.

The second opportunity for regulation provides an exemption for any person or class of persons from any provisions of the Act. OFA is pleased to see that a mechanism is provided for seeking an exemption from a GFI policy or regulation.

- Section 7 of Bill 66 is a new section relating to the monitoring and reporting on ecological conditions. An advantage to this section is that it calls for public investment that will provide us with water quality data approaching that of our counterparts in the U.S.

OFA fully supports the call for the ongoing pursuit of data on the ecological conditions of the lakes. Canadian data on important parameters such as baseline loading of phosphorous is lacking compared to the U.S. knowledge base. Targets for ecological health must be based on comprehensive data including the impacts of current agricultural production practices on loading, for example. Regulation should not be imposed until the data is available and impacts of current practices are understood.

### **Bill 66 Areas of Concern to OFA**

- In Bill 6, clause 1 (2) (2) indicated the purpose was to protect and restore wetlands, beaches, shorelines and other coastal areas. This language gave the impression that the focus of the proposed GLPA was on the near-shore environment. By adding the word 'watersheds' to the same clause in Bill 66 it becomes apparent that the scope of the proposed GLPA reaches upstream to the headwaters of every GL-SLRB river, stream or tributary and thus embraces every acre of the basin, whether the acre is classified as farm, rural non-farm, or urban.

This makes Bill 66 far reaching; in fact, Bill 66 governs the land under 98% of Ontarians.

- Section 6 of Bill 66 introduces the following terms:
  - Ecosystem Approach,
  - Precautionary Approach, and an
  - Adaptive Management Approach.

Definitions for these terms are provided in the Great Lakes Strategy (2012), but the OFA believes them to be inadequate.

OFA has particular concern with the use of 'precautionary approach'. The use of a precautionary approach risks the development of regulation based neither on scientific principles or scientific evidence. The approach can therefore be subject to popular misconception and political expediency.

OFA recommends that regulations must be contemplated and developed based on scientific principles and evidence. If uncertainty prevails then the knowledge gap must be filled to enable sound policy. However, in the unlikely event of a clear threat of serious or irreversible damage, cost-effective measures to prevent environmental degradation should be taken even if full scientific certainty is not available.



The definition of 'ecosystem approach' should recognize that humans are an integral component of an ecosystem. Consequently, a sustainable ecosystem requires the human species to be sustained where the human species relies on an economic system that relies on resource use.

The term 'adaptive management approach' should be made clear and embody the principle of continuous improvement. It should reference a systematic process for monitoring and evaluating the effectiveness of all actions taken to mitigate water quality and other environmental concerns.

### **Other Areas of Concern with Bill 66**

- The term 'ecological health' needs to be defined. The primary purpose of the proposed GLPA is to protect and restore the ecological health of the GL-SLRB. It is imperative that the term is clearly understood. If Bill 66 is to have any effect, ecological health must be measured both at baseline and beyond.

The definition should indicate what constitutes ecological health, and how one can differentiate, on either a quantitative or qualitative basis, the difference between an ecosystem that is healthy and one that is unhealthy. If the purpose is to protect or restore ecological health, the characteristics of ecological health must be clearly stated.

- The definition of the term 'public body' (Section 3) must be revised. OFA contends that the only public body with the authority to develop a policy or regulation that may require the revision of an on official plan (OP) is the municipal council that developed and approved the OP.

While it is legitimate for unelected individuals to be given the opportunity to provide input either individually or collectively using an advisory committee format, it is inappropriate to have the decisions of elected officials overturned by an unelected body. A municipality may choose to have an appointed committee of stakeholders develop a GFI proposal, or a GFI initiative, but it must be the municipality that ultimately approves the GFI locally and then moves it to the provincial government level for final approval. In the case of a GFI that is located in adjoining municipalities, each of the affected municipal councils must provide local approval.

- The Great Lakes Guardian Council (GLCC) requires a more thorough explanation. It's clear that the Minister of the Environment and Climate Change (MOECC) will Chair the GLCC, but it is not clear who or what organization actually has a seat on the GLCC other than the MOECC Minister. It is our view that "guardians" should not all be itinerant.

Subsection 4 (3) seems to indicate that the Chair will extend invitations to each meeting of the GLGC to those he/she considers 'advisable'. Theoretically, this could mean having different individuals at each GLCC meeting. While it makes sense to invite guests to GLCC meetings to present on specific agenda topics, the OFA strongly advises that a core GLGC be established and with members serving terms of up to 5 years.

- OFA believes there is merit in establishing a Council for each of the four Ontario Great Lakes and the Upper St. Lawrence-Ottawa River Basin. Partitioning the GL-SLRB in this manner would result in a more place-based approach to managing a drainage system as

vast as the GL-SLRB. This approach is consistent with the concept of Geographically Focused Initiatives.

This will ensure that those providing advice to the Minister are knowledgeable about local drainage basin issues. An agricultural representative should be appointed to each of the five GLGCs. Agricultural representatives should be selected by local farmers using a similar process to that used in the selection of agricultural representatives for Source Water Protection Committees.

- In the event that only one GLGC is established for the entire GL-SLRB at least five agricultural representatives should be provided a seat on the core GLGC. One agricultural representative should be selected from the watersheds of each of the four Ontario Great Lakes, and the Upper St. Lawrence River-Ottawa River Basin.

Agricultural representatives should be selected by local farmers using a similar process to that used in the selection of agricultural representatives for Source Water Protection Committees. Having multiple farmer representatives on the GLCA is justified on the basis that more than 95% of farmland in Ontario is in the GL-SLRB.

- 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. The Lake Simcoe initiative provided experiential guidance on water protection initiatives.

As Lake Simcoe lays within the GL-SLRB that body of water and its basin will be captured by the GL-SLRB. However, OFA recommends that, if Bill 66 impinges in a contrary way to the workings of the Lake Simcoe model that the Lake Simcoe Protection Act prevails, reflecting GFIs already working effectively in that area.

- Subsection 26 (4) gives authority to enter property without the consent of the owner or a warrant. Providing this level of authority through legislation should be reserved for exigent circumstances only. An activity that **may** adversely affect the ecological health of a watershed does not meet the test of exigent circumstances.

Furthermore, an enforcement officer entering a farm property without the consent of the owner puts themselves at risk of serious injury from either livestock or dogs in the service of guarding livestock. It could also be in contravention of farm biosecurity protocols thus putting crop yields and livestock health at risk.

OFA recommends Section 24 (4) be revised to state "...officers have authority to enter property with neither the consent of the owner nor a warrant, but only when exigent circumstances can be demonstrated" where 'exigent circumstances' are defined as "...circumstances in which the delay necessary to locate the property owner or obtain a warrant would result in calculable, serious or irreversible damage to the ecosystem of the GL-SLRB."

- Subsections 26 (7) and 26 (8) provide details on offences and penalties. OFA believes that, although GFIs are local, offences and penalties should be consistent across the province. Consequently OFA suggests that an administrative monetary penalty (AMP) approach be considered under the penalty section of the Act. Provision for issuing an AMP is contained in the *Environmental Protection Act* and the *Municipal Act* but is presently absent from Bill 66.

Since many offences that could arise from the implementation of a GFI are likely to be administrative and/or minor in nature, provision of an AMP is a reasonable response and avoids costly judicial proceedings.

- Subsection 26 (15) is contrary to an element of the **Ontario Regulatory Policy 2010** that calls for regulations to be based on assessed risk, costs and benefits, and minimize impacts on businesses.

The Subsection requires farmers or other citizens to assess a regulation supporting a GFI in terms of potential conflict or redundancy with a regulation of another Act and then to act in accordance with the regulation providing the greatest degree of environmental protection. This requires extraordinary knowledge of the myriad of legislation and regulation alluded to earlier and then requires a judicial-like assessment of the efficacy of each regulation.

OFA submits the notion is absurd and illustrates the government's own acknowledgement of over regulation.

- Schedule 1 of Bill 66 contains language on policies respecting key natural features. It would be helpful to give legal effect to a policy that protects agricultural land in classes 1 through 4 in order to ensure that no GFIs target the conversion of productive farmland to natural habitat.

OFA recommends that Schedule 1 of Bill 66 be revised to give legal effect to a policy protecting classes 1 through 4 of agricultural land from conversion to natural habitat.

- An important aspect of Bill 66 is the concept of GFIs. Our earlier references to urban areas are very relevant given that urban areas are geographically-specific and the discharge from municipal wastewater treatment plants is recognized as the most serious concern facing the health of the Great lakes. Discharge from waste water treatment plants is an example of point source pollution. Non-point source pollution in an urban context is a function of the large area of impermeable, hard surface that interferes with the infiltration of storm water.

Urban areas are ideal sites for GFIs, however, relying on public-bodies comprised of unelected individuals to develop and marshal GFIs to address either urban or rural land-use practices that pose potential risk to the GL-SLRB, is highly questionable. Preparing and implementing a GFI is a task for elected representatives assisted by practitioners skilled in the area of resource management. Generally, individuals with these skills are either employed or contracted by government.

The concept of 'empowering' citizens to do what is generally the domain of professional planners, professional engineers and natural resource managers is fraught with difficulty. Public consultations and advisory committees are an effective mechanism by which concerned citizens can present ideas and have their opinions heard. If that system isn't working the way it should then it needs to be fixed, but to elevate individuals from an advisory role to a decision-making role is not in the best interests of society or the natural environment.

While the GFIs that will be enabled are not technically policies or regulations, they will facilitate the development of policies and regulations. Consequently, GFIs must be subject to the **Ontario Regulatory Policy, 2010**.

This will ensure that:

- GFIs are responding to a clearly identified need;
- GFIs are developed and implemented in a transparent manner;
- GFIs are designed to not restrict local business activity;
- GFIs 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;
- GFIs are outcome-based;
- GFIs are timely, reviewed on a routine basis, and abandoned once the need giving rise to their adoption no longer exists; and
- GFI details are easily accessible and easily understood by the public and business.

OFA is pleased to have the opportunity to provide thoughts on the need for Bill 66 and more specifically, its content.

The Ontario Federation of Agriculture has firmly embraced the Ontario governments Open for Business initiative and, in fact, serves as the Open for Business coordinating body for the agri-food industry. This is simply because farmers and agri-businesses face more regulations than any other sector in our economy.

Farmers and agri-food businesses most often cite burdensome regulation as their main business concern and a significant factor in stifling innovation and growth,

We are therefore concerned when we see the unnecessary overlap of the proposed Great Lakes Protection Act. While we fully agree with the important and necessary principle of protecting our Great Lakes, OFA contends the goals can be achieved using existing tools in a manner consistent with Open for Business objectives.

We trust Ontario will seriously look at Bill 66 in this light and work with industry on better ways of achieving our shared goals.

Sincerely,



Don McCabe,  
President

Encl. – Summary of recommendations

cc: Hon. Jeff Leal, Minister of Agriculture, Food and Rural Affairs  
Ontario Commodity Board Presidents

## Summary of OFA Recommendations for Bill 66:

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- OFA contends, again, that the objectives presented in the three Great Lake agreements can be achieved with existing legislative tools and agreements. The interactions across multiple statutes will be a source of potential confusion and unnecessary regulation.

Subsection 26 (15) is contrary to an element of the **Ontario Regulatory Policy 2010** that calls for regulations to be based on assessed risk, costs and benefits, and minimize impacts on businesses.

The Subsection requires farmers or other citizens to assess a regulation supporting a GFI in terms of potential conflict or redundancy with a regulation of another Act and then to act in accordance with the regulation providing the greatest degree of environmental protection. This requires extraordinary knowledge of the myriad of legislation and regulation alluded to earlier and then requires a judicial-like assessment of the efficacy of each regulation.

OFA submits the notion is absurd and illustrates the government's own acknowledgement of over regulation.

- OFA recommends that OMAFRA be added to section 9 of Bill 66 in the same manner as MNRF has been added.
- OFA recommends that clause 15 (2) (a) be revised by omitting the words "in the opinion of the public body or public bodies".
- OFA concurs with the need for a GFI to be subject to a cost-benefit analysis but strongly recommends that the cost-benefit analysis be part of the proposal phase and a criterion upon which the Minister determines the proposal's merit. Also, the cost-benefit analysis should relate to the impact of the GFI on stakeholders, not the administrative body responsible for its implementation.
- OFA fully supports the call for the ongoing pursuit of data on the ecological conditions of the lakes. Canadian data on important parameters such as baseline loading of phosphorous is lacking compared to the U.S. knowledge base. Targets for ecological health must be based on comprehensive data including the impacts of current agricultural production practices on loading, for example. Regulation should not be imposed until the data is available and impacts of current practices are understood.
- OFA recommends that regulations must be contemplated and developed based on scientific principles and evidence. If uncertainty prevails then the knowledge gap must be filled to enable sound policy. However, in the unlikely event of a clear threat of serious or irreversible damage, cost-effective measures to prevent environmental degradation should be taken even if full scientific certainty is not available.
- The definition of 'ecosystem approach' should recognize that humans are an integral component of an ecosystem. Consequently, a sustainable ecosystem requires the human species to be sustained where the human species relies on an economic system that relies on resource use.

- The term ‘adaptive management approach’ should be made clear and embody the principle of continuous improvement. It should reference a systematic process for monitoring and evaluating the effectiveness of all actions taken to mitigate water quality and other environmental concerns.
- The term ‘ecological health’ needs to be defined. The primary purpose of the proposed GLPA is to protect and restore the ecological health of the GL-SLRB. It is imperative that the term is clearly understood. If Bill 66 is to have any effect, ecological health must be measured both at baseline and beyond.

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- The definition of the term ‘public body’ (Section 3) must be revised. OFA contends that the only public body with the authority to develop a policy or regulation that may require the revision of an on official plan (OP) is the municipal council that developed and approved the OP.
- The Great Lakes Guardian Council (GLCC) requires a more thorough explanation. It’s clear that the Minister of the Environment and Climate Change (MOECC) will Chair the GLCC, but it is not clear who or what organization actually has a seat on the GLCC other than the MOECC Minister. It is our view that “guardians” should not all be itinerant.

Subsection 4 (3) seems to indicate that the Chair will extend invitations to each meeting of the GLGC to those he/she considers ‘advisable’. Theoretically, this could mean having different individuals at each GLCC meeting. While it makes sense to invite guests to GLCC meetings to present on specific agenda topics, the OFA strongly advises that a core GLGC be established and with members serving terms of up to 5 years.

- OFA believes there is merit in establishing a Council for each of the four Ontario Great Lakes and the Upper St. Lawrence-Ottawa River Basin. Partitioning the GL-SLRB in this manner would result in a more place-based approach to managing a drainage system as vast as the GL-SLRB. This approach is consistent with the concept of Geographically Focused Initiatives.

This will ensure that those providing advice to the Minister are knowledgeable about local drainage basin issues. An agricultural representative should be appointed to each of the five GLGCs. Agricultural representatives should be selected by local farmers using a similar process to that used in the selection of agricultural representatives for Source Water Protection Committees.

- In the event that only one GLGC is established for the entire GL-SLRB at least five agricultural representatives should be provided a seat on the core GLGC. One agricultural representative should be selected from the watersheds of each of the four Ontario Great Lakes, and the Upper St. Lawrence River-Ottawa River Basin.

Agricultural representatives should be selected by local farmers using a similar process to that used in the selection of agricultural representatives for Source Water Protection Committees. Having multiple farmer representatives on the GLCA is justified on the basis that more than 95% of farmland in Ontario is in the GL-SLRB.

- As Lake Simcoe lays within the GL-SLRB that body of water and its basin will be captured by the GL-SLRB. However, OFA recommends that, if Bill 66 impinges in a contrary way to the workings of the Lake Simcoe model that the Lake Simcoe Protection Act prevails, reflecting GFIs already working effectively in that area.
- OFA recommends Section 24 (4) be revised to state “...officers have authority to enter property with neither the consent of the owner nor a warrant, but only when exigent circumstances can be demonstrated” where ‘exigent circumstances’ are defined as “...circumstances in which the delay necessary to locate the property owner or obtain a warrant would result in calculable, serious or irreversible damage to the ecosystem of the GL-SLRB.”
- Subsections 26 (7) and 26 (8) provide details on offences and penalties. OFA believes that, although GFIs are local, offences and penalties should be consistent across the province. Consequently OFA suggests that an administrative monetary penalty (AMP) approach be considered under the penalty section of the Act. Provision for issuing an AMP is contained in the *Environmental Protection Act* and the *Municipal Act* but is presently absent from Bill 66.
- OFA recommends that Schedule 1 of Bill 66 be revised to give legal effect to a policy protecting classes 1 through 4 of agricultural land from conversion to natural habitat.
- While the GFIs that will be enabled are not technically policies or regulations, they will facilitate the development of policies and regulations. Consequently, GFIs must be subject to the ***Ontario Regulatory Policy, 2010***.